



December 21, 2017

Via email: cbsa.cepu-upemd.asfc@cbsa-asfc.gc.ca

Mr. Giosfat Mingarelli
Manager, Customs Enforcement Policy Unit
Enforcement and Intelligence Programs
Canada Border Services Agency
100 Metcalfe Street,
Ottawa, Ontario K1A 0L8

Dear Mr. Mingarelli:

Re: Proposed *Immigration and Refugee Protection Regulations* amendments to add the *Cannabis Act* and certain cannabis offences for trans-border criminal inadmissibility and immigration detention factors

The Immigration Law Section of the Canadian Bar Association (CBA Section) appreciates the opportunity to comment on proposed regulatory amendments to add the *Cannabis Act* to the list of prescribed Acts in the *Immigration and Refugee Protection Regulations* (IRPR).¹

The CBA is a national association of over 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 has approximately 1,000 members practicing all areas of immigration law. Our members deliver professional advice and representation in the Canadian immigration system to thousands of clients in Canada and abroad.

The introduction of the *Cannabis Act* is accompanied by other amendments, including the modernization of impaired driving offences in the *Criminal Code* in Bill C-46, *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* – and we also comment on the potential impact of the proposed amendments in the Bill on Canada Border Services Agency port of entry operations.

¹ Canada Border Services Agency, *Consultation notice: Proposed Regulatory Amendments to Add the Cannabis Act and Certain Cannabis Offences to the Regulations that Govern Transborder Criminal Inadmissibility and Immigration Detention Factors*, available [online](http://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/2017-6-eng.html) (<http://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/2017-6-eng.html>).

Proposed amendments to the IRPR

CBSA proposes amending the IRPR by adding the *Cannabis Act* to the list of prescribed Acts relating to persons found committing, on entering Canada, indictable offences. The *Cannabis Act* would effectively replace the *Controlled Drugs and Substances Act* (CDSA) for the cannabis-related offences that result in inadmissibility for committing an offence on entry to Canada. The IRPR would also refer to the *Cannabis Act* and its proposed cannabis offences in the considerations in assessing whether a person is a danger to the public.

Offences in the *Cannabis Act* are broader than those in the CDSA. The CBA Section recommends that only limited offences in the *Cannabis Act* be grounds for inadmissibility in section 36(2)(d) of IRPA. For example, section 17 of the *Cannabis Act* introduces a new hybrid offence of promoting cannabis, with a maximum penalty of three years of imprisonment. A person carrying a promotional flyer for the sale of cannabis while entering Canada could be found inadmissible for having committed an offence upon entering Canada. A vendor crossing the border with t-shirts with the image of a marijuana leaf could also be found in violation of section 36(2)(d). These enforcement measures would be excessive and not necessarily proportionate to the offence.

We also recommend that the current CDSA penalty regime be maintained in any amendments to section 36(2)(d) of IRPA and section 19 of the IRPR. Only those *Cannabis Act* offences that correspond to offences currently listed in sections 246(e) and (g) of the IRPR (ie. trafficking, importing and production) should be included as trans-border offences that could trigger inadmissibility through section 36(2)(d). The considerations in assessing whether a person is a danger to the public should be limited to trafficking, importing and production offences.

Potential Impact of Criminal Code Amendment – Driving Under the Influence

The CBA Section encourages the CBSA (and Immigration, Refugees and Citizenship Canada) to carefully consider the potential impact of amendments to the *Criminal Code* in Bill C-46. The Bill will have a far-reaching effect on the criminal inadmissibility of foreign nationals and permanent residents who have been convicted of an impaired driving (or related) offence – regardless of how much time has passed since completion of the associated sentence. The CBA Section anticipates a significant increase of demand on CBSA resources, as well as an increase of refused admissions, particularly of U.S. citizens, to Canada as a result of the amendment.

Currently, a person convicted of driving while impaired by drugs (including cannabis or alcohol) under section 253 and 255 of the *Criminal Code* may be prosecuted by indictment with a maximum penalty of imprisonment of not more than five years. A foreign national convicted of an impaired driving offence equivalent to section 253 is criminally inadmissible under paragraph 36(2) of IRPA. However a permanent resident would still be admissible.

Bill C-46 would change the maximum penalties for impaired driving, to make any driving under the influence (DUI) equivalent offence to ‘serious criminality’. The proposed penalty for operation while impaired (section 320.19(1)) reads as follows:

Everyone who commits an offence under subsection 320.14(1) or 320.15(1) is liable on conviction on indictment or on summary conviction...

(b) if the offence is prosecuted by indictment, to imprisonment for a term of not more than 10 years...

With a maximum sentence of not more than 10 years, DUI offences would fall under ‘serious criminality’ in section 36(1) of IRPA, which would make a foreign national and a permanent

resident criminally inadmissible. The consequences for those inadmissible for serious criminality would also be more severe – for example, they would also be ineligible to make a refugee claim.

Consequences of DUI becoming Serious Criminality

If DUI offences fall under serious criminality in section 36(1) of IRPA, a number of possible consequences could have significant impact on CBSA operations, foreign nationals and permanent residents:

- Foreign nationals with equivalent foreign DUI convictions would no longer be eligible for A36(3)(c) relief (ie. deemed rehabilitation after ten years for a single offence), but they could still apply for rehabilitation after five years.
- A higher level of Ministerial authority (superintendent at a port of entry) would be required to make decisions on rehabilitation (A24(1) Temporary Residence Permit) for serious criminality.
- Permanent residents convicted of a DUI, would be at risk of significant consequences, including the potential loss of their PR status.
- Permanent residents and foreign nationals convicted of a DUI offence and sentenced to six months or more of imprisonment would no longer have a right of appeal to the Immigration Appeal Division for an inadmissibility finding.

These consequences would put a significant strain on CBSA resources at ports of entry, as a result of the volume of foreign nationals who will no longer benefit from deemed rehabilitation. With authority to issue temporary resident permits (TRP) limited to superintendents, we anticipate that significantly more affected US citizens would be refused admission due to resourcing at ports.

This would likely also result in an increase of TRP and rehabilitation applications made through the visa office network operated by IRCC. While we support the need to protect the Canadian public from the dangers of DUI, eliminating access to deemed rehabilitation for those, for example, with a single old DUI conviction, would cause excessive strain on Government resources and significant hardship for affected individuals who have rehabilitated with the passage of time.

The CBA Section appreciates the opportunity to comment on the proposed regulatory amendments to the IRPR related to cannabis offences. We would be pleased to meet with you to discuss our comments further.

Yours truly,

(original letter signed by Kate Terroux for Barbara Jo Caruso)

Barbara Jo Caruso
Chair, CBA Immigration Law Section