



THE CANADIAN
BAR ASSOCIATION
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BARREAU CANADIEN

November 30, 2017

Via email: hon.ralph.goodale@canada.ca; Minister@cic.gc.ca

The Honourable Ralph Goodale, P.C., M.P.
Minister of Public Safety and Emergency
Preparedness
Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, ON K1A 0P8

The Honourable Ahmed 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 Ministers:

Re: CBSA Flagpoling Pilot Project Expansion

In July 2017, the Immigration Law Section of the Canadian Bar Association (CBA Section) wrote to you to express our concerns about the lengthy processing times for immigration applications at the Canada Border Services Agency (CBSA) Southern Ontario Region, as well as the Flagpoling Pilot Project initiated in June 2017.¹

In our letter, we recommended eliminating the Flagpoling Pilot Project, and made several suggestions for a more collaborative approach to address excessive immigration wait times at ports of entry (POE) across Canada. Since that time, however, there has been little change in the restrictions on flagpoling through the Pilot Project. We were dismayed to learn in early November that CBSA has not only extended the Pilot Project in Southern Ontario, but will also expand it to St-Bernard-de-Lacolle and St-Armand/Philipsburg, Quebec.

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 in 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.

Many foreign nationals who are legally admitted to Canada as temporary residents make use of sections 198 and 200 of the *Immigration and Refugee Protection Regulations* (IRPR) by physically leaving Canada and re-entering at a Canada/US land POE to apply for a work permit or to confirm landing after being issued a permanent resident visa (flagpoling).

¹ Canadian Bar Association, CBSA Flagpoling Pilot Project (July 11, 2017), available [online](http://ow.ly/Z7PF30gS92P) (<http://ow.ly/Z7PF30gS92P>).

The CBA Section understands that the Pilot Project was introduced by CBSA in an attempt to address high volumes and excessive immigration wait times from Friday to Monday in the Southern Ontario Region, particularly during peak summer travel months. However, applicants – including temporary residents who work and pay taxes in Canada – often flagpole on weekends for legitimate reasons (such as to avoid taking time off work or taking their children out of school).

The refusal to process these requests at POEs can have a significant detrimental impact on an applicant's ability to work or study in Canada, as well as on their health insurance coverage. If an officer decides to defer an examination at a POE to a weekday using the *Immigration and Refugee Protection Act* (IRPA) section 23, the applicant is readmitted to Canada with no status until the examination can be resumed.

This practice is not simply a deferral of process. While attending at non-peak times should mean that applicants receive faster processing, this has not generally been the case. In fact, our members report that foreign nationals are not being processed or are still subject to lengthy waits at non-peak times on Tuesday, Wednesday and Thursday (the days designated for processing) in the Southern Ontario Region. There are also reports of officers at other POEs outside of those designated in the Pilot Project refusing to process applications.

It is the CBA Section's view that the Pilot Project is unlawful, and will undoubtedly be challenged in court. We urge the federal government to cancel it. It is inconsistent with the objectives in section 3(1) of IRPA, as well as section 198 (applications on entry) and 200 (work permits) of the IRPR. While a foreign national must satisfy an officer that they meet the requirements of the category for which they are seeking re-entry to Canada, they have a right to be processed at a POE.

The CBA Section also urges the federal government to resolve issues related to lack of resources and long processing times at the border through lawful means, and to use the funds allocated to CBSA to deliver immigration programs for this purpose. In particular, we recommend again that:

1. Immigration, Refugees and Citizenship Canada (IRCC) should take immediate steps to shorten processing times at CPC Vegreville, which have grown significantly since the Pilot Project began in June 2017.
2. IRCC amend the IRPR to allow foreign nationals to travel outside Canada and return to Canada while their application for extension or variance is pending without jeopardizing their implied status.²
3. IRCC continue to give foreign nationals who are temporary residents in Canada other options for landing in Canada that would decrease the need for flagpole landings (including access to landing interviews either in person or by phone within a week of permanent visas being issued).
4. IRCC consider using an alternative online option to schedule landing appointments, similar to the online system used to book NEXUS interviews, to increase efficiency and positive customer experience.
5. IRCC open inland offices in major urban cities to deal with in-person applications on an urgent basis. For example, in situations where a work permit is issued with an error on it (such as an incorrect date or condition of employment) and requires immediate correction to alleviate or avoid undue hardship.

² Canadian Bar Association, Immigration Law Section, *Implied Status and Conditional Permanent Residence* (September 8, 2016), available [online](http://ow.ly/YcpU30dxQOQ) (<http://ow.ly/YcpU30dxQOQ>).

6. CBSA develop teams of officers with advanced knowledge of Canadian immigration law to deal with immigration cases at POEs more efficiently.
7. CBSA and IRCC develop a communication plan to educate the public about peak and non-peak processing times, and collaborate with the CBA Section to share this information with our members on a regular basis.

The practice of refusing to process applications of genuine temporary residents seeking entry and the refusal to land applicants is unlawful and not in the public interest. We urge you to direct CBSA officers to perform their duties in accordance with the law, and ensure funds allocated to CBSA for immigration operations are used for this purpose.

We continue to extend our offer to work with both departments toward a common goal of ensuring services are available to the public in a timely way, while mitigating demands on CBSA resources at POEs across Canada.

Yours truly,

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

Barbara Jo Caruso
Chair, CBA Immigration Law Section