



November 5, 2013

Via email: [Justine.Akman@cic.gc.ca](mailto:Justine.Akman@cic.gc.ca)

Justine Akman  
Director, Immigration Branch  
Citizenship and Immigration Canada  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Dear Ms. Akman:

**Re: Compelled Residency Obligation Examinations of Permanent Residents at Ports of Entry**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section). The CBA is a national association of over 37,500 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The Immigration Law Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

We understand that Citizenship and Immigration Canada is currently examining whether existing legislation enables immigration officers to conduct compelled residency obligation examinations of permanent residents at the port of entry, as well as whether the Port of Entry Manual (PE Manual)<sup>1</sup> might be amended to reflect this interpretation. In our view, the current legislative regime does not support compelled residency obligation examinations. In fact, this interpretation departs from the express intention of Parliament at the time the *Immigration and Refugee Protection Act* (IRPA) was enacted.

IRPA directs that officers *shall* allow a permanent resident to enter Canada if satisfied, following examination, that they have status as a permanent resident and also limits the scope of those examinations to confirming status.<sup>2</sup> IRPA clearly states that permanent residents can lose their

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<sup>1</sup> Citizenship and Immigration Canada, "ENF4: Port of Entry Examinations," online: [www.cic.gc.ca/english/resources/manuals/enf/enf04-eng.pdf](http://www.cic.gc.ca/english/resources/manuals/enf/enf04-eng.pdf).

<sup>2</sup> See s.19(2) of IRPA that provides the right of entry for a permanent resident and s.18 of IRPA that specifies the purpose of the examination on entry is to "determine whether the person has a right to enter Canada."

status only pursuant to the mechanisms in IRPA ss. 46 and 49.<sup>3</sup> Accordingly, the PE Manual provides that a port of entry officer cannot compel permanent residents to answer further questions about their compliance with the residency obligation once it is established that the individual is a permanent resident. Specifically, s.11.4 of the PE Manual reads:

When BSOs believe that a person who they have determined is a permanent resident is in non-compliance with the residency obligation of A28, the BSO may explain to the person that it has been established that they have a right to enter Canada, that there is some reason to believe they could be the subject of a report under IRPA which could lead to the issuance of a removal order, and that although the person may now enter Canada, they may **choose to answer** additional questions to determine whether the BSO's concerns are well founded or not [emphasis added].

Officers may write a report and issue a removal order if they determine the allegations are well founded. A permanent resident then retains the right to have the factual and legal basis of the report independently examined and adjudicated at the Immigration Appeal Division. Or, the permanent residence may choose to comply with the removal order.

At a practical level, the port of entry is far from an ideal place for returning permanent residents to undergo examination. Officers at the port of entry face a high volume of travelers and are subject to time pressures that will undermine the fairness of the procedure. Returning permanent residents are unlikely to have the necessary documentation in hand at the port of entry to enable a full review. For these reasons, mandating compelled residency examination at the port of entry will result in unjust procedure, and cause unnecessary delays at the border for other people trying to enter Canada. From a legal perspective, given that the process and defined roles of all parties in the manual flow directly from the authority in IRPA, it is unclear why changes are contemplated. Any amendments to the manual to compelled residency examinations would be *ultra vires*.

Earlier drafts of IRPA contained express authorization for officers to compel permanent residents to answer any question put to them by an officer. At the first reading of Bill C-31 (which died on the Order Paper in 2000 and was re-introduced as Bill C-11 in 2001), "foreign national" was defined as

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<sup>3</sup> S. 46(1)

A person loses permanent resident status

- (a) when they become a Canadian citizen;
- (b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;
- (c) when a removal order made against them comes into force;
- (c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d); or
- (d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection.

S. 49(1)

A removal order comes into force on the latest of the following dates:

- (a) the day the removal order is made, if there is no right to appeal;
- (b) the day the appeal period expires, if there is a right to appeal and no appeal is made; and
- (c) the day of the final determination of the appeal, if an appeal is made.

including everyone but citizens.<sup>4</sup> At first reading, both had examination provisions that specifically allowed compelled examinations of permanent residents on suspected inadmissibility, and included companion provisions for detention at the port of entry, examination, for related inland arrest. The express authority for compelled investigative examinations of permanent residents would have permitted broad questioning at both the port of entry and inland, on any possible ground of inadmissibility including suspected residency obligation violations.

The Minister at the time appeared before the Standing Committee and acknowledged in the following terms the criticism that Bill C-11 had faced on this subject by numerous witnesses, including the CBA Section:

I am told you've heard much on the subject of examinations. The policy intent in these sections of the bill is simply to see that our officers have the tools they need to enforce the law and maintain the integrity of our immigration and refugee programs. Allegations have been made about the powers of arbitrary arrest and compelled examination. In particular, amendments have been suggested to limit the authority of officers to conduct examinations where persons have made an immigration application and to underline that during these examinations only will there be a requirement that questions be answered truthfully. **I consider these consistent with the policy intent of Bill C-11 and welcome clarification in that regard.**<sup>5</sup>

Bill C-11 was amended before being reported back to the House of Commons on 28 May 2001: the authority to conduct compelled examinations of permanent residents to investigate suspected inadmissibility was removed. For ease of reference, we have attached the relevant excerpts of Bill C-11 and C-31 as Annexes A through C.

Parliament's clear intention was to limit the role of officers at the port of entry to determining whether the person seeking admission to Canada has a *right of entry* as a permanent resident and to limit officers' authority to compel examination of potential residency obligation violations.

The CBA Section would welcome the opportunity to discuss this issue with you and the Departmental officials before decisions are made on such significant amendments.

Yours truly,

*(original signed by Kerri Froc for Mario Bellissimo)*

Mario Bellissimo  
Chair, National Immigration Law Section

encl.

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<sup>4</sup> Bill C-31, *Immigration and Refugee Protection Act*, 2<sup>nd</sup> Sess, 36th Parl, 2000; Bill C-11, *Immigration and Refugee Protection Act*, 1st Sess, 37th Parl, 2001.

<sup>5</sup> Standing Committee on Citizenship and Immigration, Evidence (8 May 2001), online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=696136&Language=E&Mode=1&Parl=37&Ses=1> [emphasis added].

**Annex A: Excerpts from Bill C-31, 2nd Session, 36th Parliament, 48-49 Elizabeth II, 1999-2000 (version at first reading)**

*Definitions*

**2. “foreign national”** means a person who is not a Canadian citizen, and includes a stateless person.

*Examination by designated officer*

**15. (1)** A designated officer is authorized to proceed with the examination described in subsection (2) when a person makes an application to the officer in accordance with this Act or if the officer believes that a foreign national may be inadmissible.

*Objectives of examination*

(2) The designated officer shall examine

- (a) whether a person, on entering Canada, is a Canadian citizen within the meaning of the *Citizenship Act* or a person registered as an Indian under the *Indian Act*;
- (b) whether a foreign national
  - (i) on entering Canada, has permanent resident status, and
  - (ii) at any time, is inadmissible;
- (c) whether a foreign national other than a permanent resident
  - (i) prior to entering Canada, met the requirements of this Act or the selection criteria that are applicable to the foreign national,
  - (ii) on entering Canada, possesses the visa or other documents required under this Act, and
  - (iii) at any time, is inadmissible; and
- (d) whether a sponsor meets the sponsorship requirements of this Act.

*Obligation - answer truthfully*

(3) The person being examined must answer truthfully all questions put to them for the purpose of the examination, must produce a visa and all relevant evidence and documents that the designated officer reasonably requires and, in the case of a person referred to in paragraph (2)(c), submit to a medical examination on request.

*Instructions of Minister*

(4) The designated officer shall conduct the examination in accordance with any instructions that the Minister may give

**16.** A designated officer may board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts of it and hold the means of transportation until the inspection and examination are completed.

**Annex B: Excerpts from Bill C-11, 1st Session, 37th Parliament, 49-50 Elizabeth II, 2001  
(version at first reading, 21 February 2001)**

*Definitions*

**2. “foreign national”** means a person who is not a Canadian citizen, and includes a stateless person.

*Examination by officer*

**15. (1)** An officer is authorized to proceed with an examination where a person makes an application to the officer in accordance with this Act or where the officer has reasonable grounds to believe that a foreign national may be inadmissible.

*Provincial Criteria*

(2) In the case of a foreign national referred to in subsection 9(1), an examination of whether the foreign national complies with the applicable selection criteria shall be conducted solely on the basis of documents delivered by the province indicating that the competent authority of the province is of the opinion that the foreign national complies with the province’s selection criteria.

*Inspection*

(3) An officer may board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.

*Instructions*

(4) The officer shall conduct the examination in accordance with any instructions that the Minister may give.

*Obligation – answer truthfully*

**16. (1)** A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

(2) In the case of a foreign national other than a permanent resident,

(a) the relevant evidence referred to in subsection (1) includes photographic and fingerprint evidence; and

(b) the foreign national must submit to a medical examination on request.

*Evidence relating to identity*

(3) An officer may require or obtain from a foreign national who is examined, arrested, detained or subject to a removal order, any evidence—photographic, fingerprint or otherwise—that may be used to establish their identity or compliance with this Act.

**Annex B: Excerpts from Bill C-11, 1st Session, 37th Parliament, 49-50 Elizabeth II, 2001 (as amended by the Standing Committee on Citizenship and Immigration and as reported to the House on 28 May 2001)**

*Definitions*

**2. “foreign national”** means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person.

*Examination by officer*

**15. (1)** An officer is authorized to proceed with an examination where a person makes an application to the officer in accordance with this Act or where the officer has reasonable grounds to believe that a foreign national may be inadmissible.

*Provincial Criteria*

(2) In the case of a foreign national referred to in subsection 9(1), an examination of whether the foreign national complies with the applicable selection criteria shall be conducted solely on the basis of documents delivered by the province indicating that the competent authority of the province is of the opinion that the foreign national complies with the province’s selection criteria.

*Inspection*

(3) An officer may board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.

*Instructions*

(4) The officer shall conduct the examination in accordance with any instructions that the Minister may give.

*Obligation – answer truthfully*

**16. (1)** A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

(2) In the case of a foreign national other than a permanent resident,

(a) the relevant evidence referred to in subsection (1) includes photographic and fingerprint evidence; and

(b) the foreign national must submit to a medical examination on request.

*Evidence relating to identity*

(3) An officer may require or obtain from a permanent resident or a foreign national who is examined, arrested, detained or subject to a removal order, any evidence—photographic, fingerprint or otherwise—that may be used to establish their identity or compliance with this Act.

**Annex C: Excerpts from Bill C-11, 1st Session, 37th Parliament, 49-50 Elizabeth II, 2001 (as passed by the House of Commons on 13 June 2001)**

*Definitions*

**2. “foreign national”** means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person.

*Examination by officer*

**15. (1)** An officer is authorized to proceed with an examination where a person makes an application to the officer in accordance with this Act ~~or where the officer has reasonable grounds to believe that a foreign national may be inadmissible.~~

*Provincial Criteria*

(2) In the case of a foreign national referred to in subsection 9(1), an examination of whether the foreign national complies with the applicable selection criteria shall be conducted solely on the basis of documents delivered by the province indicating that the competent authority of the province is of the opinion that the foreign national complies with the province’s selection criteria.

*Inspection*

(3) An officer may board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.

*Instructions*

(4) The officer shall conduct the examination in accordance with any instructions that the Minister may give.

*Obligation – answer truthfully*

**16. (1)** A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

(2) In the case of a foreign national ~~other than a permanent resident,~~

(a) the relevant evidence referred to in subsection (1) includes photographic and fingerprint evidence; and

(b) the foreign national must submit to a medical examination on request.

*Evidence relating to identity*

(3) An officer may require or obtain from a permanent resident or a foreign national who is ~~examined,~~ arrested, detained or subject to a removal order, any evidence—photographic, fingerprint or otherwise—that may be used to establish their identity or compliance with this Act.