



THE CANADIAN  
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Via email: [tina.matos@cic.gc.ca](mailto:tina.matos@cic.gc.ca)

Tina Matos  
Director, Document and Visa Policy  
Citizenship and Immigration Canada  
300 Slater Street, 8th Floor  
Ottawa, ON K1A 1L1

Dear Ms. Matos:

**Re: Electronic Travel Authorization (eTA) Program**

### **Introduction**

The Canadian Bar Association's National Immigration Law Section (CBA Section) appreciates the opportunity to comment on the proposed Electronic Travel Authorization (eTA) program. The eTA would require any visa-exempt traveller arriving by air to apply online and obtain an eTA prior to travelling to Canada, with the exception of those holding a US passport.

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.

The CBA Section has concerns about the proposed eTA and seeks clarification about how the program would be implemented to ensure that procedures are clear, decision-making transparent, and that travellers have recourse to ask for a review of any adverse decision. At the same time, the new system should adhere to its stated purpose of being a basic screen of passengers, rather than becoming a new visa program. It is also important that travellers are kept informed about processing times.

At this early opportunity to provide input on the general thrust of the eTA, before pre-publication of the regulatory amendments, our comments are necessarily general, based on the information provided. Nevertheless, we can provide some critical questions and comments for the government to consider as the program is developed. We would be pleased to provide additional feedback prior to release of the proposed regulations.

## **Permanent Residents**

1. IRPA section 11(1.01) only applies to foreign nationals. Permanent residents are not foreign nationals. Would the system be able to determine if a person is a permanent resident?

## **Additional Documents**

2. Will there be ability to upload documents or submissions to explain potential grounds of concern, such as a pardon, a submission on equivalency for past criminality, a doctor's report, a letter of support from a relative living in Canada, etc.?
3. If the system rejects an application, would the application be referred to an officer? If so, where would the officer be located and what documents would form the record? Would that officer contact the applicant for additional information or documentation that might be necessary to satisfy any concerns before making a final decision? Would adverse information used by the officer to make the decision be provided to the applicant and would the applicant have an opportunity to respond?
4. What is the expected processing time for applications, both for applications processed immediately as well as for those that require further determination and are referred to an officer?

In our view, the applicant should know in advance the anticipated time frame, particularly where immediate approval is not given and the application is referred to an officer for further consideration.

## **Refusal of eTA**

5. Would a refusal be considered the refusal of admission or refusal of a visa and require disclosure as such on future applications? Would the refusal bar a subsequent application for an eTA for a certain period of time? Would the refusal bar an application for a Temporary Resident Visa at a consulate, where the applicant would be allowed to submit additional explanatory documentation? Under the US Electronic System for Travel Authorization (ESTA) program, a denial under the ESTA does not preclude an applicant from immediately applying for a visa at a consular post. Would CIC take the same position?
6. If successful at a consulate, would the applicant be eligible for an eTA in the future, once their TRV expired? If so, how would they indicate this in the eTA application form?
7. Would a refusal based on an alleged inadmissibility be a determination of inadmissibility for other purposes? What criteria would be used to determine that someone is inadmissible?
8. What information would be available to the applicant at the time of refusal or on an access to information application?
9. Would the criteria for making a decision be publicly available in the CIC Inland Processing Manuals or some other publicly accessible location?

## Appeal and Judicial Review

10. Who makes negative decisions under the eTA? If it is not a person but “the system,” would that decision be subject to judicial review or appeal or some other form of administrative appeal?
11. What would the limitation period be for administrative or judicial review or an appeal, given that applicants are likely outside of Canada?
12. What process would be available for review where there are errors in the determination that are not the fault of the applicant (such as mistaken identity) or where serious unintended unforeseen implications could arise from a refusal?

## Temporary Resident Permits at Ports of Entry

Preventing persons from applying for TRPs at ports of entry reduces necessary flexibility, since TRPs at consulates are taking far too long.

13. Will the existing process of permitting a visa exempt national to apply for a TRP at the time of arrival change if an eTA requires a “clean” record?
14. Would an officer have discretion to issue an eTA on the spot where a traveller arrives at a port of entry without having completed the online eTA application process?

## Ability to Apply at POE for Work Permits

There are several issues regarding how an eTA requirement might impact visa-exempt individuals intending to apply for a work permit at a port of entry.

15. Would the system ask if the person is coming to work or study in Canada? If so, how can a person answer correctly if it is anticipated the eTA is going to be valid for five years?

In the US, the ESTA online application form asks this question. However, US Visa Waiver Program is limited to visitor entries only. As visa exemptions in Canada are not limited to visitors’ entries, this would not be an appropriate question for a five year eTA, which could be used in connection with an application for a work permit, study permit, or visitor entry during its five year validity.

16. If this question is asked, would the system reject an application if the person does not already have a work permit?

If so, this would have the unintended consequence of affecting the ability of persons who may now legitimately apply for a work permit at the port of entry, such as persons in possession of a Labour Market Opinion or who are Labour Market Opinion exempt.

## Authorized Representation

17. It is likely that unauthorized representatives, such as travel agents and ghost consultants will provide advice on how to complete eTA forms. How does the government plan to deal with these violations?
18. Will there be ability to add an authorized representative form 5476, to recognize the choice of travellers to have the application process conducted through legal counsel?

## Language

Unless application forms are available in numerous languages, there will be an added cost to those who do not read English or French. The US ESTA website provides these forms in many languages.

19. Is there a plan to provide the application in multiple languages, or at least the top 10 languages of the top source countries for persons coming to Canada? If supporting documentation can be provided in the eTA process, will there be a requirement that a certified translation in English or French accompany any foreign language document?

## Computer Access

20. Will any alternative to online filing be available for those without computer access or lacking in sufficient computer skills to navigate an online filing process?

## Privacy

21. To what extent will information collected in an eTA application be shared with other Canadian departments or with foreign agencies such as US Customs and Border Protection?

## Beta Version

We strongly recommend that CIC test the eTA system through a select number of experienced immigration lawyers. Ensuring that any electronic system works through a variety of computer systems, operating systems, internet and modems, is an obvious first step. Discovering what issues arise through use of the system as observed by experienced practitioners would be of invaluable benefit to CIC. For example, drop-down menus may not provide all options that would be required. A Beta test of the proposed online process would also help to prevent glitches that would lead to a public perception of incompetence and inefficient implementation.

The past experience of some of our members is that online forms for other immigration applications were drafted in a way that did not permit accurate responses to questions. In some cases, this could inadvertently result in the inability to provide accurate, concise, relevant and complete information. We would be happy to assist CIC in avoiding these problems on the eTA system, which potentially is much larger in scope, by facilitating the testing we recommend above.

## Conclusion

We appreciate the opportunity to provide input at an early stage of developing the eTA, to ensure a smooth and efficient transition, and to help meet our mutual objectives of fairness, clear procedures, transparent decision making, efficiency and program integrity. We would appreciate a response to our questions and comments for the information of the public and our members who assist them, and also to permit us to assist further in the development and implementation of the program in a manner that is fair and respects the rights of travellers to Canada.

Yours truly,

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

Mario D. Bellissimo  
Chair, Immigration Law Section