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Via email: tracy.annett@cbsa-asfc.gc.ca

Tracy Annett
Director
Cabinet, Parliamentary and Regulatory Affairs Division
Canada Border Services Agency
191 Laurier Avenue West, 13th Floor
Ottawa, ON K1A 0L8

Dear Mr. Annett:

**Re: Immigration and Refugee Protection Regulations Amendments
Canada Gazette, Part I – February 15, 2014**

I am writing on behalf of the National Immigration Law Section of the Canadian Bar Association (CBA Section) on the proposed change to s. 228 of the *Immigration and Refugee Protection Regulations*. The CBA Section supports both the clarity provided by the amendment and the decision to issue departure orders rather than another form of removal order in cessation cases.

However, the CBA Section has serious concerns about the application of the cessation provisions and reports we have received about their use by the CBSA. We are particularly concerned by the target set by the Minister (Operation Bulletin PRG-2013-59) for a minimum number of 875 cessation and vacation applications per year. These targets or quotas have no place in the enforcement context. The pressures of meeting Ministerial targets risk interfering with a fair process and officers' discretion to consider the severity of referring a permanent resident to cessation or vacation.

Many people facing cessation applications are well-established permanent residents who have settled in Canada based on a legitimate understanding of Canada's laws and the meaning of permanent residence. The CBSA appears to be taking a very aggressive approach to pursuing applications even where the actions giving rise to the proceedings occurred many years ago under previous legislation. We question the fairness of applying provisions retroactively to strip permanent residence from individuals who could not have anticipated the consequences of their actions. Permanent residents should be allowed to know from the outset the rules with which they need to comply to maintain their status.

People subject to proceedings include those who returned to their country (sometimes only very briefly) after becoming permanent residents but years before the law made loss of permanent residence a consequence of return. In many cases, they had legitimate reasons for returning (such

as a sick or dying relative) and felt that their risk could be managed for a short time. The loss of permanent residence after years in Canada has devastating consequences for them and their families. Although many CBSA applications may not be successful, the stress, fear and costs generated by the process itself have a significant impact in the affected communities and families.

No public materials or guidelines on cessation have been issued for CBSA officers. Officers have given a clear indication in writing to our members that they do not consider the policies in Enforcement Manual ENF 24 to be applicable given the changes in the law. However, this version remains posted online. It is unclear at this time which policies are being applied.

When the *Protecting Canada's Immigration System Act* was debated in Parliament, we raised serious concerns about the scope of the cessation provisions and devastating impact of automatic loss of permanent residence.¹ Minister Kenney suggested to Parliament that the legislation was intended to apply to "people who claim persecution from a country, receive Canada's protection and immediately go back to that country that was supposedly the source of persecution... [and who] fraudulently obtain a protected person status."² It appears that CBSA officers are taking a much broader view of the legislative objective and applying the law beyond cases implying fraudulent applications.

Therefore, while we support the suggested change to the Regulations, we suggest cessation policies and procedures be clarified and communicated to the public as a matter of priority and prior to using the proposed new powers to issue removal orders. The climate of fear in established refugee communities resulting from the status quo is of profound concern to the CBA Section.

Yours truly,

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

Mario D. Bellissimo
Chair, National Immigration Law Section

¹ Canadian Bar Association, "Bill C-31: Protecting Canada's Immigration System Act," online: www.cba.org/CBA/submissions/pdf/12-27-eng.pdf at 32-34.

² *House of Commons Debates*, 41st Parl., 1st Sess, No 90 (6 March 2012) at 1530 (Hon Jason Kenney).