



December 21, 2020

Via email: ps.ministerofpublicsafety-ministredelasecuritepublique.sp@canada.ca

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

Dear Minister Blair:

Re: COVID-19 and CBSA Resumption of Removals from Canada

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to express concerns about the CBSA decision to resume removals from Canada as of November 2020. The CBA Section is troubled that this decision contravenes health and safety warnings from medical experts in the second wave of the COVID-19 pandemic and was taken without stakeholder consultation.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

Resuming Removals Puts Returnees, CBSA Staff and Global Community at Risk

In an email dated November 30, 2020, announcing resumption of removals (CBSA announcement), the Director General of the Enforcement Intelligence and Enforcement Branch described “a gradual reopening of countries, the emergence of viable vaccination options, and coordinated strategies amongst countries and air transport companies to mitigate possible transmission.”¹

There has been no fundamental change in the health and safety circumstances underlying CBSA’s decision to stop removals in March. The second wave of the pandemic has increased infections and fatalities. (See **Appendix A**). As of December 4, 2020, the government’s own data shows a surge of

¹ Removals Resumption Update, Email from Christian Lorenz to Mark Holthe, November 30, 2020.

COVID-19 infections and deaths in many countries.² Public health experts continue to call for limiting all interactions and travel to fight the pandemic effectively as a global community.³

While vaccination plans are in motion, there will not be mass inoculation in Canada for several months.⁴ There is no indication that a vaccine would be available to persons subject to removal. Removals are just as unsafe now as they were in March 2020. It would be safer and more efficient for CBSA to wait until a vaccine is widely available before resuming removals.

In *Revell*, Justice Shore stated that “[i]f the Applicant is to be deported, it will only be when medical specialist professionals in epidemiology deem it safe for the Applicant and the public in his midst, at every juncture of deportation and destination, to have followed each and every health precaution necessary.”⁵

Resuming removals is likely to exacerbate the pandemic and result in additional infections and fatalities. Returnees face an elevated risk of contracting COVID-19 during travel, which often occurs in closed airplane cabins. Giving personal protective equipment (PPE) to foreign nationals facing removal does not adequately address this risk. COVID-19 is highly transmissible in the limited space and ventilation of an airplane cabin. For removals involving lengthy flights, returnees and airline staff will need to remove their PPE to eat or drink, which puts them at increased risk.

In the last two weeks of November 2020, the Public Health Agency of Canada confirmed 74 domestic flights and 71 international flights carried a person who later tested positive for COVID-19. Neither airlines nor public health authorities performed full contact tracing or notified passengers after these potential exposures to the virus.⁶ Removals endanger not only the returnees, but also CBSA staff, airline staff and the returnees’ communities overseas.

Resuming Removals Departs from International Precedent

The CBSA announcement states that suspending removals “was an exceptional measure that was not shared by the international community.” Yet the OECD reports that many countries halted or strictly limited forced returns due to the pandemic, including Canada, Austria, Belgium, Chile, Colombia, Czech Republic, Denmark, France, Germany, Greece, Israel, Italy, Iceland, Lithuania, Latvia, Luxembourg, Mexico, Norway, New Zealand, Portugal, Slovenia, Spain, Sweden and Switzerland.⁷ Removals were *de facto* suspended in many other countries.⁸

² Government of Canada, “Interactive data visualizations of COVID-19” (Last Modified 4 Dec 2020), [online](#). Our World in Data, “Coronavirus Pandemic (COVID-19)” (Last Modified 3 Dec 2020), [online](#).

³ “WHO has warned that a premature lifting of lockdowns could spark a resurgence of infections and cause even more severe, longer-term damage to the economy than exists as a result of lockdowns.” Country decisions to lift restrictions is a complicated issue requiring analysis of several principles, including “knowledge of infection status, community engagement, adequate public-health capacity, adequate health-system capacity, and border controls.” See Emeline Han et al., “Lessons learnt from easing COVID-19 restrictions: an analysis of countries and regions in Asia Pacific and Europe” *The Lancet* (24 September 2020), [online](#).

⁴ CBC News, “Trudeau says 249,000 vaccine doses to arrive in Canada by the end of the year”, [online](#).

⁵ *Revell v. Canada* (Public Safety and Emergency Preparedness), 2020 FC 716, [online](#).

⁶ National Post, “We’re Flying Blind During COVID-19. Air Passengers Need to Be Pro-Active”, December 2, 2020, [online](#).

⁷ OECD Policy Responses to Coronavirus (COVID-19), “Managing international migration under COVID-19” (updated 10 June 2020), [online](#), at pages 12-14 [OECD].

⁸ *Ibid* at page 2.

These restrictions are consistent with the recommendations of the United Nations Network on Migration, which called on states to suspend forced returns during the pandemic to “protect the health of migrants and communities and uphold human rights of all migrants.”⁹

Resuming Removals has Disproportionate Impact on Vulnerable Individuals and Other Countries

CBSA’s announcement does not comment on how removals will affect vulnerable individuals and communities. It does not account for:

- the disproportionate impact of the pandemic on vulnerable groups and racialized communities.
- the inability of returnees’ nations to respond to the pandemic and protect their populations.
- the fact that gender-based violence is rising throughout the world, especially in countries whose institutions are under significant stress due to COVID-19 (**See Appendix A**).

Returnees who had a safe home in Canada often have no home to return to in their countries of origin. Removals will subject returnees to unusually precarious and unstable living conditions.

The World Health Organization (WHO)¹⁰ and the Centre for Disease Control and Prevention (CDC) have expressed concerns about vulnerable individuals.¹¹ Children are unlikely to tolerate PPE for extended periods of time. Many people subject to removal also suffer from disabilities and mental health disorders that can impact their ability to use PPE and may be aggravated by increased stress and anxiety linked to the global pandemic.

Canada is likely to ‘deport’ its health crisis to countries already in crisis. According to Johns Hopkins University, Canada is 29th out of 191 countries with confirmed COVID-19 cases.¹² Some people facing removal from Canada may be infected and could expose those on their flights or in their countries of origin.

Recourse Mechanisms Suggested by CBSA are Insufficient

The CBSA announcement noted that “individuals will be able to avail themselves of the various recourse mechanisms, where applicable under the legislation, such as appeals, judicial reviews, and permanent resident applications on humanitarian & compassionate (H&C) grounds.”¹³

These remedies are insufficient in the context of a pandemic. For example, there is no automatic stay of removal with an H&C application, or for challenging an H&C refusal in court. An applicant could be forced to leave Canada while awaiting a decision on their application.

Remedies that stay removal are discretionary. The Federal Court of Appeal recognized that removal officers have very narrow discretion to defer removals.¹⁴ If an applicant is ineligible for a regulatory stay of removal or denied a deferral, their only recourse is a stay motion at the Federal Court. This is costly and time-sensitive and is not in reach for many individuals given the economic impact of COVID-19. These barriers would disproportionately impact racialized communities.

⁹ United Nations Network on Migration, “Forced returns of migrants must be suspended in times of COVID-19” (13 May 2020), [online](#).

¹⁰ World Health Organization, Advice on the use of masks in the context of COVID-19, [online](#), p.4.

¹¹ Center for Disease Control, Considerations for Wearing Masks, [online](#).

¹² Johns Hopkins COVID-19 Dashboard, [online](#). (accessed December 4)

¹³ *Supra* note 1.

¹⁴ *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, para 49.

CBSA May Remove Individuals Eligible for the Health Care Front-Line Worker PR Stream

On August 14, 2020, the Minister of Immigration, Refugees and Citizenship announced that Canada will offer “a pathway to permanent residency for asylum claimants working in the health-care sector during the COVID-19 pandemic”¹⁵ (front-line program). On December 9, 2020, IRCC confirmed that “delegated officers may grant permanent residence to foreign nationals” who accumulate at least six months of qualifying full-time health-care experience in Canada by August 31, 2021 and meet other criteria.¹⁶

The CBSA announcement indicates that those likely to be eligible for the front-line program will not be subject to removal.¹⁷ However, the IRCC policy is clear that only applicants granted approval in principle (AIP) will benefit from a stay of removal.¹⁸ The program only opened for applications on December 14, 2020 and AIP decisions will take time. A CBSA decision to defer removal based on program ‘eligibility’ lacks assurance. The program criteria also give potential applicants to August 31, 2021 to accumulate qualifying experience. It is not clear how CBSA will determine who is eligible and who will become eligible and should not be subject to removal.

Discretion for applicants who may qualify creates uncertainty. CBSA must guess which foreign nationals may be granted AIP and may become eligible. CBSA may remove people who could have helped save lives in Canada and become permanent residents. Potential applicants are unable to predict if they can benefit from a deferral or stay of removal.

This uncertainty will likely create a costly administrative burden for CBSA and the Federal Court. We anticipate more requests to defer and stay removal based on eventual eligibility for the front-line program. They will be asked to make determinations that can only be reasonably made late next year.

Conclusion

CBSA’s decision to continue removals lacks transparency and justification. The UN Network on Migration has “called on States to suspend forced returns during the pandemic, in order to protect the health of migrants and communities, and uphold the human rights of all migrants, regardless of status.” States were urged to advance Objective 21 of the Global Compact for Migration “by guaranteeing due process and upholding the prohibition of collective expulsion and of returning migrants when there are foreseeable risks to their human rights.”¹⁹

We urge CBSA to adopt and follow a clear policy deeming all removal orders unenforceable due to public health risks.

Yours truly,

(original letter signed by Nadia Sayed for Mark Holthe)

Mark Holthe
Chair, CBA Immigration Law Section

¹⁵ Immigration, Refugees, and Citizenship Canada, “Pathway to permanent residency recognizes exceptional service of asylum claimants on front lines of COVID-19 pandemic”, (14 August 2020), [online](#).

¹⁶ Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic, [online](#).

Temporary public policy to grant permanent residence to certain foreign nationals selected by Quebec working in the health care sector during the COVID-19 pandemic, [online](#).

¹⁷ CBC News, Canada resumes deportations, but 'guardian angels' in Quebec will be spared, says CBSA, [online](#).

¹⁸ Temporary public policy to grant permanent residence to certain foreign nationals selected by Quebec working in the health care sector during the COVID-19 pandemic, [online](#).

¹⁹ *Global Compact for Safe, Orderly and Regular Migration*, Objective 21 (11 July 2018), [online](#).

APPENDIX A

“Since 31 December 2019 and as of 03 December 2020, **64 455 619 cases** of COVID-19 ... have been reported, including **1 495 430 deaths**.”¹ As of November 30, 2020, the Centers for Disease Control and Prevention’s (CDC) Travel Recommendations continued to list most countries as “Level 4: COVID-19 Very High”, noting that “travelers should avoid all travel to these destinations.”²

The International Air Transport Association (IATA) maintains an interactive map listing travel regulations per country. Most countries continue to be listed as “partially restrictive”.³

According to an analysis of the “Stringency Index”, a composite measure of various government actions to combat COVID-19, including school and workplace closures, restrictions on internal movement, and international travel, governments have “started reinstating lockdown measures ... once again restricting daily life through curfews and other measures to curb the virus’ spread.”⁴ In general, data suggest that the daily new confirmed COVID-19 cases remain high.

The Government of Canada’s interactive international COVID-19 map shows cases increasing in many countries.⁵

The World Health Organization has indicated that while “there are 49 candidate vaccines in clinical evaluation, 11 of which are at phase 3 evaluation ... US \$4.3 billion is needed immediately to support the mass procurement and delivery of vaccines, tests and treatments. A further US \$23.8 billion will be needed next year.”⁶ The WHO worries that “there is now a real risk that the poorest and most vulnerable will be trampled in the stampede for vaccines.”⁷

Access to vaccines and healthcare will be particularly difficult in some regions of the world affected by fragility, conflict and violence⁸; some of the most fragile countries include “the DRC, Mali and Niger, to Papua New Guinea, Haiti, Afghanistan, Yemen and the West Bank and Gaza.”⁹

The UN warns that “Tackling COVID-19 is doubly hard in countries where social and economic conditions were already unstable -- because of weak governance and state institutions, unequal access to services for vulnerable populations and, very often, community mistrust of government. These countries may also face compounding challenges, including climate change shocks, forced displacement and food insecurity. It is important that countries’ immediate response and longer-

¹ European Centre for Disease Prevention and Control, “COVID-19 situation update worldwide, as of 3 December 2020” (3 December 2020), [online](#).

² Centers for Disease Control and Prevention (CDC), “COVID-19 Travel Recommendations by Destination” (30 November 2020), [online](#).

³ The International Air Transport Association (IATA), “COVID-19 Travel Regulations Map” (3 December 2020), [online](#).

⁴ Financial Times, “Lockdowns compared: tracking governments’ coronavirus responses” (30 November 2020), [online](#).

⁵ Government of Canada, “Interactive data visualizations of COVID-19” (Last Accessed 4 December 2020), [online](#).

⁶ World Health Organization, “Weekly epidemiological update - 1 December 2020” (1 December 2020), [online](#).

⁷ World Health Organization, “WHO Director-General’s opening remarks at the media briefing on COVID-19 - 23 November 2020” (23 November 2020), [online](#).

⁸ Crisis Group International, “COVID-19 and Conflict: Seven Trends to Watch” (24 March 2020), [online](#).

⁹ United Nations, “COVID-19 in Fragile Settings: Ensuring a Conflict-Sensitive Response” (4 May 2020), [online](#).

term investments address these realities to avoid exacerbating existing sources of fragility and instead help build resilience, both to this crisis and future shocks.¹⁰

The UN Office for the Coordination of Humanitarian Affairs expects that 235 million people will require humanitarian assistance in 2021, a 40% increase compared to 2020¹¹, and a “sign that pain, suffering and torment brought by the coronavirus outbreak and other problems could get worse even if hopes of a vaccine are rising.”¹²

UN Secretary-General Antonio Guterres noted that “[t]he crisis is far from over ... Humanitarian aid budgets face dire shortfalls as the impact of the global pandemic continues to worsen ... The lives of people ... already living on a knife’s edge are being hit disproportionately hard by rising food prices, falling incomes, interrupted vaccination programs and school closures.”¹³ According to the OCHA, Syria will be the worst hit, and that other countries in significant need include Afghanistan, Congo, Haiti, Nigeria, South Sudan, Ukraine, Venezuela, Mozambique, Pakistan, and Zimbabwe.¹⁴

The second wave of COVID-19 has also created “a lethal mix of confinement, deepening poverty and economic duress” that is leading to a renewed wave of violence against refugees, women, and girls.¹⁵ “We are receiving alarming reports of sharp increases in the risks of gender-based violence, including intimate partner violence, trafficking, sexual exploitation, and child marriages,”¹⁶ warned UN High Commissioner for Refugees, Filippo Grandi. The UNHCR is “alarmed by increased risks of child and forced marriages being resorted to as a coping strategy by displaced families buckling under socio-economic pressures. Many countries experiencing conflict or displacement already have some of the world’s highest rates of these incidents.”¹⁷

Unequal power dynamics in global health and vaccine manufacturing capabilities may leave poor countries struggling to secure vaccines for their populations. According to researchers at Duke University:

[d]espite an international agreement to allocate the vaccine equitably around the world, billions of people in poor and middle-income countries might not be immunized until 2023 or even 2024 ... As of October, wealthy countries have claimed the vast majority of that capacity, leaving very little vaccine for low-income countries. Specifically, rich countries have already purchased, or are in the process of purchasing, more than 5 billion doses of candidate vaccines before clinical trials have completed. India has claimed another 1.6 billion doses, and Brazil has 200 million. Fewer than 800 million doses have been earmarked for the world's poorest countries.¹⁸

¹⁰ *Ibid* [Emphasis Added].

¹¹ UN Office for the Coordination of Humanitarian Affairs, “Global Humanitarian Overview 2021” (1 December 2020), [online](#).

¹² Jamey Keaten & Edith Lederer, “UN: Pandemic to fan surge in humanitarian needs in 2021”, *Powell River News* (1 December 2020), [online](#).

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ UNHCR, “UNHCR warns second wave of COVID pandemic driving further violence against refugee women and girls” (25 November 2020), [online](#).

¹⁶ *Ibid*.

¹⁷ *Ibid*.

¹⁸ Duke Global Health Innovation Center, “Launch and Scale Speedometer: Mapping Covid-19 Vaccine Pre-Purchases Across the Globe” (Last Modified 30 November 2020), [online](#). As reported in Michaela Doucleff, “Poor Countries Fall Behind In Race To Reserve COVID-19 Vaccine”, NPR (5 November 2020), [online](#). [Emphasis Added].