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Via email: [Daniel.mills@cic.gc.ca](mailto:Daniel.mills@cic.gc.ca)

Daniel Mills  
Assistant Deputy Minister, Operations  
Immigration, Refugees and Citizenship Canada  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Dear Mr. Mills:

**Re: Exclusion of Counsel in Immigration Matters**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to raise concerns about the exclusion of legal representatives by Immigration, Refugees and Citizenship Canada. This is a serious and, we believe, systemic issue. The problem is particularly pronounced in recent program changes and policies related to the COVID-19 pandemic including implementation decisions and online filing procedures that did not appropriately build in a role for representatives.

The CBA is a national association of 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Section is comprised of over 1,200 lawyers, practicing all aspects of immigration and refugee law, and delivering professional advice and representation on the Canadian immigration and refugee system to clients in Canada and abroad.

**Undermining Right to Counsel and Access to Justice**

Marginalizing the role of representatives breaches the right of individuals to be represented by counsel in legal processes that have significant long-term implications. For example, findings of misrepresentation can impact an applicant's other immigration applications, admissibility, and the future admissibility of their family members.

Encouraging applicants to proceed without legal representation is procedurally unfair and can amount to a breach of fundamental justice. It can lead to prejudicial outcomes particularly for vulnerable clients who also face cultural and language barriers. It will disproportionately affect racialized applicants who are more likely to face these barriers.

Relationships between counsel and clients are often longstanding and involve significant trust. Limiting lawyers' access to platforms limits their ability to advise their clients and maintain the solicitor-client relationship.

Many vulnerable applicants, such as the elderly, have limited access to technology and depend on counsel's assistance with things like online PR card applications and citizenship grant applications.

Access to legal advice is a multi-dimensional process that requires ongoing care and support, and should not be compromised for any reason, including technological developments.

Compromising the right of all individuals to the assistance of counsel with their applications may also lead to unnecessary and costly litigation, which further compromises access to justice.

### **Limiting Buy-in for New Platforms**

We understand that the new platforms excluding counsel are a minimum viable product, and that updates and new iterations will follow. However, limiting representatives' access to the first version of a new platform will likely reduce buy-in for a new program, frustrating some of IRCC's goals.

For example, in 2016, Service Canada implemented a portal for online submissions of labour market impact assessment applications aimed primarily at employers. Because no role was built in for lawyers, many employers did not trust the process. Usage was low until recently when Service Canada created a portal for legal representatives. Widespread implementation quickly followed as employers gained confidence in the system. If the system's initial design included representatives, it would have been more widely used, resulting in processing efficiencies years earlier. Service Canada's processing times have dropped since lawyers have been granted access to the portal. Reluctant employers increasingly use the portal via their representatives. For a new client-facing technology to succeed, representatives should be included from the outset.

### **Recent Examples of Exclusion of Representatives in New Digital Platforms**

The initial versions of the online citizenship grant, permanent residence card renewal, COPR landing portal, new PR pathways and PR digital intake platforms do not allow representatives to submit applications. This is concerning for many reasons:

- While representatives can potentially assist clients with the new platforms in the background, the *Immigration and Refugee Protection Regulations* prohibit the use of concealed representatives for certain types of applications.<sup>1</sup>
- Users of a single-user digital platform should not be expected to share their personal login information with a third party, even if it is a trusted representative. The information required to set up a MyCIC account is personal and requires applicants to undertake to keep their passwords private.
- Lawyers are subject to rules of professional responsibility regarding the preservation and protection of electronic passwords,<sup>2</sup> but these rules do not apply to consultants. The roll-out of new platforms will encourage third parties not bound by the same ethical obligations as lawyers to ghost applications and accounts. Oversight will only be possible if the representative files a Use of Representative form. Sharing login information and passwords with a client is likely a breach of the rules of professional conduct and IRCC Terms and Conditions.<sup>3</sup> For a client and representative to "share" an online account would also create logistical challenges.<sup>4</sup> In contrast, the IRCC Representative Portal ensures that the high volume of communications and submissions are protected and preserved by the representative. The success of this portal demonstrates the importance of including representatives in immigration and refugee processes.

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<sup>1</sup> IRPR 10(2)(c.1)-(c.4)

<sup>2</sup> For example, the British Columbia Law Society Code of Professional Conduct and the Nova Scotia Barrister's Society Code of Professional Conduct sections s.6.1-5 and s.6.1-6

<sup>3</sup> See [Terms and conditions — Immigration, Refugees and Citizenship Canada](#)

<sup>4</sup> New message notifications in MyCIC go to a single email address. Once a new message is read, it is no longer highlighted. It will be impossible to ensure that requests are acted on and new messages are attended to if more than one person is accessing the account. The likelihood of missing a message or request is high compared to a platform like the IRCC representative portal where the representative can get a bird's eye view of all new messages or action items.

- By excluding representatives from these processes, IRCC places applicants in a difficult position. Digital platforms were designed to reduce processing times and create efficiencies. Applicants must choose between having a complete service, with inevitably slower processing of a paper application, or an online process designed for self-represented applicants.

Given the current processing backlogs and inventories, there should be no rush to roll out systems that create legal, logistical and ethical challenges.

### **Difficulty in Communicating Through Webform, Case Specific Enquiry and Call Centre**

There are persistent issues with representatives accessing the Webform/Case Specific Enquiry system and Call Centre on behalf of applicants. These issues exclude representatives from actively advocating for their clients.

The Webform/Case Specific Enquiry system is an efficient way to update an application or submit a document. Given call centre volumes and the closure of IRCC inland and overseas offices due to the pandemic, the Webform is often the only way to reach someone at IRCC who can access a file.

Examples of recent issues include:

- Representatives on record have received responses to Webform submissions that there is no record of the representative, despite IRCC having previously corresponded with the representative.
- Representatives on record contact the Call Centre and the agent refuses to serve them as they cannot see the IMM 5476 form.
- IMM 5476 forms are rejected because information is said to be missing although no information is missing.
- IMM 5476 forms are rejected due to the lawyer's name differing slightly from the law society directory (e.g. a middle initial is not included)

There are systemic problems of agents being unable or unwilling to assist, undermining client service delivery objectives of IRCC.<sup>5</sup> When these problems occur, further correspondence is needed. They often lead to more webform submissions and weeks of back-and-forth communications, which is not an efficient use of the applicant's time or government's resources.

### **Conclusion**

We appreciate that IRCC had to act quickly and decisively during the pandemic. These are challenging times. We also applaud IRCC's efforts to use technology to improve the overall experience of immigration applicants. However, policy and program changes should not prejudice individuals who choose to be represented by counsel, erode the principles of fairness and natural justice or force counsel into a shadowed role.

The CBA Section continues to be willing to work with IRCC to test new systems and provide constructive feedback before they are launched. We would be pleased to meet with you to discuss this issue in more detail.

Yours truly,

*(original letter signed by Nadia Sayed for Mark Holthe)*

Mark Holthe  
Chair, CBA Immigration Law Section

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<sup>5</sup> Our members commonly experience these issues. See two examples in Appendix A that reflect facts reported by our members but have been edited for clarity and to remove personal information.

## Appendix A

### Examples of Webform Issues

#### Example 1

I updated the residential and mailing address of a client who was waiting for a PR card to be mailed. Two weeks later, IRCC responded "We have received your enquiry regarding your updated address and have transferred it to the responsible office." Two months later, I sent another update request because the card was still outstanding. Four months later, I received a message saying that the PR card was sent a month ago to the client's old address.

Over two full months after confirming they received the new address, they mailed a valuable personal document to a house my client no longer owns.

IRCC should not invite people to update personal information through a webform if it will achieve no effect.

#### Example 2

I received a refusal to accept new passports uploaded through the webform for a Provincial Nominee PR application that has been pending for more than 18 months. When I made a submission through the webform, I indicated that I was already authorized representative for the applicant and included a copy of the IMM 5476 originally filed with the application. I received a response from the Agent who acknowledged that the IMM 5476 originally submitted was accepted. They rejected me because the IMM 5476 did not include my middle name to match with the law society registry. A couple of questions come to mind:

- 1) I have previously added documents through the webform for this application using this same signed Use of Representative form. I am also clearly the representative as the application is in my Reps Account. Why do they need my middle initial now after IRCC has accepted the old IMM 5476 (including in the original filing) repeatedly in the past?
- 2) My name listed in the directory for the Law Society has my middle initial. What if I had included my full legal middle name on new IMM 5476's instead of just the initial?