



October 28, 2022

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

The Honourable Sean Fraser, P.C. M.P.  
Minister of Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Dear Minister Fraser:

**Re: Recommendations to improve access to PGWPs for international students afflicted by mental health disorders**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to suggest improvements to the Post-Graduation Work Permit (PGWP) program.

The CBA is a national association of 37,000 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 practicing in all areas of immigration and refugee law.

In April 2022, the CBA Section wrote to you with recommendations to improve the PGWP program.<sup>1</sup> The CBA Section recommended the abolishment of the full-time study requirement for international students to be eligible for a PGWP. Since then, the ability for students with mental health disorders to access a PGWP has worsened. As a result, we offer further recommendations on resolving barriers to obtaining PGWPs for vulnerable international students unable to maintain full-time studies status due to mental health disorders.

### **Eligibility for a PGWP Requires Pursuit of Studies Full-Time**

A key requirement for PGWP eligibility is that the applicant maintained full-time student status in Canada in each academic session of the programs of study they completed as part of their PGWP application.<sup>2</sup>

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<sup>1</sup> CBA, Recommendations to Improve the Post-Graduation Work Permit Program, [online](#).

<sup>2</sup> Post-graduation work permit eligibility requirements, [online](#).

Exceptions are only granted if the applicant:

- studied part-time only in their final academic session
- took a leave of absence authorized by their Designated Learning Institution (DLI) no longer than 150 days (i.e. 5 months).<sup>3</sup>

### **Full-Time Study Requirement Often Excludes International Students with Mental Health Disorders from Obtaining PGWPs**

Mental health disorders are prevalent among post-secondary students. It is estimated that 12–46% of all university students are affected by mental health disorders in a given year.<sup>4</sup> Studies indicate a greater incidence of mental health disorders among international students than domestic students. A recent Carleton University study identified 55% of surveyed international students at risk of depression and 50% at risk of an anxiety disorder.<sup>5</sup>

Depending on the specific disease, mental health disorders often impair the academic performance of afflicted students, such that they cannot progress in their studies on a full-time course load. For example, depression is the most common presenting symptom with international students. Depression can impair an individual's executive functions, sustained attention ability and working memory, which makes it more difficult to acquire new knowledge and cope with examination situations.

DLIs may accommodate students suffering from mental health disorders by reducing their course load to part-time studies. Yet this accommodation renders international students ineligible to subsequently apply for a PGWP. International students are in effect punished by IRCC for pursuing beneficial mental health accommodations and treatment.

To highlight how mental illness can impact international students, Appendix A shows anonymized case studies from CBA members of their international student clients.

### **Exception for 150-day Leaves of Absences is Insufficient Accommodation for Individuals Suffering from Mental Health Disorders**

The maximum length of an authorized leave is insufficient to assist international students suffering from mental health disorders. Mental health disorders are often chronic conditions that can require life-long accommodation and treatment, not a disease that can be neatly solved in 150 days. However, current PGWP policy only permits authorized leave of up to 150 days. Taking an authorized leave when a mental health disorder develops – and studying part-time on that leave – is not a long-term solution to PGWP ineligibility for international students so afflicted.

### **Requirement for Full-time Study is Inconsistent with Requirement to have Actively Pursued Studies**

The requirement to have studied full-time in every semester differs from the requirement to have actively pursued studies. According to the Operational Instruction “Study permits: Assessing study permit conditions” students are considered to be actively pursuing their studies where they have, at a minimum, part-time status with their institution. There is no rationale for a more stringent eligibility

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<sup>3</sup> Study permits: Assessing study permit conditions, [online](#).

<sup>4</sup> R.P. Auerbach, et al, “WHO World Mental Health Surveys International College Student project: Prevalence and distribution of mental disorders” (2018) 127:7 Journal of Abnormal Psychology, doi: 10.1037/abn0000362.

<sup>5</sup> Anil Varughese and Saul Schwartz, “The pandemic exposed the vulnerability of international students in Canada”, Carleton newsroom, January 24, 2022, [online](#).

requirement for the PGWP program, especially when it disproportionately affects those suffering from mental health issues.

### **Federal Court Removed Discretion of IRCC Officers to Issue PGWPs In Exceptional Cases**

Previously, IRCC officers adjudicating PGWP applications could use their remedial scope of discretion to issue PGWPs to applicants who suffered mental health conditions in deserving circumstances.

Recent decisions by the Federal Court removed IRCC officer's remedial discretion to issue PGWPs in compassionate situations:

- In *Dunkley v Canada (Citizenship and Immigration)*, the Federal Court upheld the refusal of a PGWP application, ruling that IRCC officers have no discretion to modify PGWP program delivery instructions on humanitarian and compassionate grounds.
- In *Verma v Canada (Citizenship and Immigration)*, the Federal Court upheld the refusal of a PGWP application, holding that IRCC officers have no discretion to stray from the PGWP eligibility requirement of full-time studies, even when the applicant could not maintain full-time studies due to a medical condition.

Following this loss of discretion, the only option to obtain a work permit for graduated international students whose mental illness precluded them from full-time studies is through application for a temporary resident permit in combination with a work permit. This remedy is highly discretionary.

### **Recommendations**

- 1) Abolish the requirement that studies be full-time in every semester and instead require that students with health conditions have actively pursued their studies by having, at a minimum, part-time status with their institution.
- 2) If the full-time studies requirement remains, remove the 150-day limit on a leave of absence and the requirement that the leave must be authorized by the DLI.

The above recommendations can be implemented without affecting program integrity. International students would still be required to actively pursue studies and would need to show a constellation of evidence demonstrating the genuineness of their health condition.

### **Conclusion**

By maintaining the full-time studies requirement, the current PGWP program punishes international students for having a mental illness and withholds an economic benefit in a manner that has the effect of reinforcing, perpetuating and exacerbating the disadvantages of those with mental health conditions.

The CBA Section appreciates the opportunity to raise concerns on this issue. We would be pleased to discuss our recommendations or offer additional insights.

Yours truly,

*(original letter signed by Véronique Morissette for Lisa Middlemiss)*

Lisa Middlemiss  
Chair, Immigration Law Section

## Appendix: Case Studies

### Case Study 1: “Jasmine Sok”

Jasmine Sok (JS), a 24-year-old foreign national came to Canada to pursue her bachelor’s degree at Unnamed University (UU), a prairie province designated learning institution (DLI).

She graduated after taking six years to complete her four-year bachelor program. JS was on an informal leave by going on part-time studies – UU has an official leave policy, but JS did not take steps to have her part-time studies recognized as a leave of absence due to very real consequences from her family in Cambodia. She was fearful that her family would stop sending her financial support due to her father’s excessively strict self-made ethos and constitution after surviving the Khmer Rouge genocide.

JS failed one prerequisite course in her program. Because this course was unavailable in the next semester, she had to wait for an entire year. As a result, her academic program was disrupted and she was forced to take fewer credits. This had a compounding effect that set her back by two years, thus completing her four-year program in six years.

This caused her more anguish, spiraling out of control to the point that she attempted suicide. She did not tell anyone but her brother who lives in Toronto. Prior to coming to Canada, JS had been diagnosed by a licensed psychologist with attention-deficit hyper-disorder (ADHD). This prior condition did not help her severe anxiety and panic attacks.

In Cambodian culture and in her family’s situation, mental health issues were not “real” health issues. The only reason she had an ADHD diagnosis was because her high school counsellor was able to proactively identify her academic struggles. This diagnosis was obtained with much reluctance from her family. Sadly, JS was too afraid to seek help during her time at UU.

When she finished her bachelor’s degree, JS applied for a PGWP. She accepted employment that gave her a feeling of independence and fulfilment. Four months later, this ended when IRCC refused her PGWP on the grounds that she applied for a PGWP beyond the time limit for in-Canada PGWP applications.

JS sought the help of an immigration lawyer to convince the IRCC officers to reverse the decision. JS did not inform her lawyer that she had studied part-time contrary to IRCC requirements. In a request to reconsider, her lawyer submitted that a better appreciation of the sequence of the termination of studies in fact met the requirement to apply for a PGWP within 90 days from the end of studies.

IRCC responded with another issue: JS was not studying full-time. Her lawyer informed her that discretion of an officer is unclear for PGWP applications and non-compliance with study permits, but that her options were limited. The lawyer was able to contact the officer in question (which is rare) and in the conversation, the officer left open the possibility that they may consider evidence relating to mental health if JS can provide evidence, including a letter from UU that supported this.

JS and her lawyer bootstrapped together submissions that included evidence of her prior diagnosis, explaining that she did not have supporting documentation relating to her recent mental health struggles. Evidence of her attempt to end her life were included (letter from her brother). She did her best to obtain a support letter from UU. Sadly, UU stonewalled, saying they have no ability to help her since she is no longer a student. DLIs abandoning international students is not uncommon and IRCC officers know this. Instead, she documented her efforts to obtain the letter from UU. Her lawyer pointed out to the immigration officer that UU’s lack of support for its international student exacerbated JS’ mental health struggles and continues to retraumatize her.

The immigration officer approved the PGWP. Note that this decision came before the two 2022 FC cases, *Dunkley* and *Verma*, that clarified that no discretion exists for PGWP applications.

## Case Study 2: Amar Narsingh

Amar Narsingh (AN) is a 28-year old Indian citizen and Canadian study permit holder who pursued a Masters of Mechanical Engineering at Also Unnamed University (AUU), a DLI in British Columbia.

AN struggled with mental health throughout his academic studies. He initially came to AUU to pursue a PhD but, at the recommendation of his supervisor, converted his studies into a Master's program, as he had difficulty grasping the Doctorate level content. AN felt he finally was at a sweet spot with his research progress, three years into his time in Canada, but then the COVID pandemic hit. AN's family in India caught COVID-19. AN wanted to go back and support his family during their health challenges, but the India travel ban in place in May 2021 and his ongoing studies would make it impossible for him to return to Canada.

Unfortunately, AN's father passed away in June 2021. AN was left with the guilt and grief of not being able to attend his father's funeral and to assist his mother and siblings. AN's traumatic grief and guilt rendered him unable to focus on his Master's thesis, prompting him to seek academic counselling. The school granted – exceptionally - one semester of authorized leave.

Unfortunately, AN's mental health suffered even further as he was denied a study permit extension application because IRCC's portals erroneously deemed that he did not properly submit a study permit extension before the expiry of his current permit. IRCC had a technical issue with the submission confirmation but did not respond to his request for reconsideration and re-opening.

AN missed his restoration window. He spent thousands of dollars to hire a lawyer to fix this and eventually have his file re-opened. During this time, AN's academic progress suffered significantly, and AN was told by his thesis supervisor that he could not continue in the program until AN 'caught up' on AN's own independent research studies. The school suggested a temporary de-registration as a student for a semester. AN follows the school's advice and took this time to access psychological services (therapy) and adequate recovery time to re-engage in his research. By the following fall semester AN was caught up and the school set a realistic timeline for him to take his thesis defense. AN had also been active in student politics during his time at AUU, continues to hold a position as research assistant, and is being recruited into Canada's cleantech sector for future job opportunities.

AN asked his lawyer to seek discretion for him on Post-Graduate Work Permit (PGWP) application for his one de-registered semester, but his lawyer informed him that recent Federal Court cases (*Dunkley* and *Verma*) would make it difficult to seek discretion. The lawyer does not know what the consideration factors are and if there is any discretion based on unpublished processing instructions. Given the recent Federal Court cases, AN will likely be refused a PGWP for failing to study full-time during the semester that he was overwhelmed by grief and had to access psychological services.