



January 15, 2024

Via email: anders.sorensen@cbsa-asfc.gc.ca

Anders Sorensen
Manager, Asylum Policy, Strategic Policy Branch
Canada Border Services Agency
Ottawa, ON K1A 0L8

Dear Anders Sorensen:

Re: Canada Gazette, Part I, Volume 157, Number 48: Regulations Amending the Immigration and Refugee Protection Regulations

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) in response to the Canada Gazette consultation notice proposing amendments to the Immigration and Refugee Protection Regulations (IRPR) to update the removal costs that must be repaid by foreign nationals who seek to return to Canada after being removed at the government's expense, as stipulated at section 243 of the IRPR.¹

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 1,100 members across Canada practising in all areas of immigration and refugee law.

We appreciate that section R. 243 of the IRPR has remained unchanged since 1993 and requires updating. However, the CBA Section maintains its June 2020 views² that the proposed changes are discriminatory and punitive.

Discriminatory and punitive cost recovery structure

The proposal would more than double the amount to be recovered from foreign nationals removed without an escort, and would increase the amount for escorted detained removals by more than eight times. The consultation notice states that the proposed cost recovery structure is based on CBSA's actual average enforcement expenditures. However, the fees contemplated in R 243 were not intended to recover full costs to the government and were not based on average removal costs at the time.

¹ Government of Canada, December 2, 2023, Canada Gazette, Part I, Volume 157, Number 48: Regulations Amending the Immigration and Refugee Protection Regulations, [online](#).

² CBA, Proposed Changes to Recovery of Removal Cost Framework, June 2020, [online](#).

We believe the proposed costs would pose an unreasonable burden for many vulnerable removed persons, including individuals who were minors at the time of their removal from Canada. The proposed changes disregard the purchasing power parity, the difference in standards of living in various countries, inflation and currency value, to name a few. The changes would disproportionately impact individuals from countries facing economic difficulties or whose purchasing power is less than that of Canada.

We urge CBSA to disclose information and particulars on how these removal costs were calculated, including the breakdown of costs for each type of removal listed based on country of removal and type of removal (escorted vs unescorted), as well as the actual costs incurred by CBSA.

We encourage CBSA to reflect on the discriminatory effect of the proposed changes, creating a permanent and insurmountable bar for persons to return from developing countries and individuals who lack financial resources even if they have meritorious claims for authorization to return to Canada. It would also punish individuals who were minors at the time of removal on the basis of matters outside their control.

Other expenses tied to removal

CBSA often instructs foreign nationals deemed removal-ready to purchase their own air tickets to return to their country of reference to defray the cost associated with a future return to Canada. However, if they are pursuing a Motion for a Stay of the execution of a Removal Order before Federal Court, many lawyers will advise against voluntarily purchasing an air ticket as this could be used to portray the foreign national, incorrectly, as holding no fear of return. If they are subsequently deported, the air ticket costs, often at an inflated rate, will be added to the already prohibitive cost associated with a future return.

Although individuals, including vulnerable persons and minors, who lack the ability to pay to return to Canada and who have compelling reasons to return to Canada may apply for a Temporary Resident Permit (A24) or Permanent Residency based on Humanitarian and Compassionate considerations, these mechanisms are highly discretionary. Therefore, it is inaccurate to state that further exemptions to the recovery of removal cost framework are unnecessary in light of the existence of the framework in the legislation.

Additional costs for detained individuals

The proposed amendments include an additional cost of \$1,495.00 for individuals who have been detained, specifically those adults whose detention was continued or initiated at the first detention review by the Immigration Division (ID) of the Immigration and Refugee Board.

A decision to detain is a subjective determination made by a CBSA officer and can be overturned following an objective assessment by the Immigration Division after a first, mandated, 48-hour detention review hearing. Evidence indicates that racialized individuals are detained for longer periods and that they are disproportionately impacted by such decisions.³ We believe this provision will disproportionately impact members of racialized and/or marginalized communities.

We urge CBSA to carefully consider that recovering costs from persons who were detained for removal is unjustifiable, discriminatory and punitive under any circumstances. It is not done in any other context, including criminal detentions. The proposal would be analogous to requiring

³ See HRW, 2021, "I Didn't Feel Like a Human in There" Immigration Detention in Canada and its Impact on Mental Health [online](#) and CBC, 2022, 1 in 4 border officers witnessed colleagues discriminate against travellers: internal report. [online](#).

applicants to pay a fee related to their incarceration prior to obtaining a pardon or record suspension. This runs contrary to intents and purposes of the legislation.

Conclusion

In conclusion, we believe that the proposed amendments should take into account the issues and factors we have raised, to avoid being punitive, discriminatory and contrary to the intent and objectives of the legislation.

The CBA Section thanks you for accepting its extension request to comment on these important regulatory changes. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of the proposed changes.

Yours truly,

(original letter signed by Véronique Morissette for Gabriela Ramo)

Gabriela Ramo
Chair, Immigration Law Section

cc. Zofia Hawranek, Senior Policy Analyst (IEPU-UPELI@cbsa-asfc.gc.ca)