CANADIAN INTERNATIONAL STUDENT PROGRAM
2022 & BEYOND

Brief submitted to the House of Commons Standing Committee on Citizenship and Immigration

Bellissimo Law Group PC
Mario D. Bellissimo,
Certified Specialist in Immigration and Refugee Law

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Ten Key Recommendations

1. **New International Study Program Categories**

2. **Distinctions between College and University Student Streams**

3. **New Municipal and Provincial Nominee Student Streams**

4. **New "Humanitarian" International Student Stream**

   a. There would be a distinction between permanent and non-permanent residency pathway student streams inclusive of specific target allocations and caps.

5. **Public Messaging Regarding ISP Must be Repositioned**

6. **Plain Language Approach on Forms Will Better Serve ISP**

7. **Public Portrayal of Authorized Representatives Must Change**

8. **Responsible Artificial Intelligence and Other Technology Governance Must be Implemented**

9. **Real Time Access to Study Permit Files - Relieve Burden of ATIP Requests**

10. **New Electronic Database for Policy Publication like in Australia**

Introduction

As reflected in much of the testimony and written briefs before the Parliamentary Committee, Canada's International Student Program (ISP) has grown explosively over the past few years. Pre-COVID-19, the ISP was valued as a 21.6-billion-dollar business and had produced up to 712,000 jobs[1] impacting various stakeholders (government, schools, potential migrants, residents, and citizens alike). Demand for study permits has dramatically increased, particularly for those seeking permanent residence. Immigration to Canada remains the lifeblood of our country. The ISP no doubt plays an important role in achieving these migration objectives.

Still, there are several serious issues surrounding the scope of the program and issues relating to educational recruitment, program integrity, and enrolment in learning institutions that are not designated by the government. Although we cannot speak to all of these issues in a submission of this length, we have provided ten brief recommendations that could improve the ISP. Some of these suggestions are not new, reflecting systematic issues that can only be resolved through significant overhaul on the part of governing authorities. Others are simpler.

Recommendations

Expanded Categories & New Messaging

Most study permit applicants believe in the current messaging that permanent residence is the desired and, perhaps more importantly, *attainable* result. For example, the Government of Canada in its Info Source: Personal Information Bank, **International Students (PPU 051),** describes study permit holders as **"***ideal candidates for permanent residency, given their language proficiency, Canadian education credentials, and Canadian work experience.***"**[2] This, however, is not the reality for many. Permanent and non-permanent resident student stream pathways are thus required. The changes to the program must occur by way of extensive consultation and the regulatory process, rather than through Ministerial Instructions (MIs). MIs should be utilized for pilot projects only. Inherent in a more flexible, responsive, and expedient ISP program is the additional need for caps and specific program allocations. We have set out some general recommendations, and we are open to discussing specific category requirements further:

1. **New International Study Program Categories**

Expanded categories for applicants reflective of the varied reasons (i.e., occupational demand) for short and long-term study and/or temporary and permanent migration should be introduced. This will benefit Canadian economic/social vibrancy, as well as diversity. Additional study permit pathways will better manage applicants' expectations as to the numbers and pathways to permanent residence, better align with Canada's needs, and better position applicants to make informed decisions. Although there exists 'in land' and 'outside

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[1] "Canada's International Education Strategy (2019-2024)." *International Education*, 19 Oct. 2020, https://www.international.gc.ca/education/strategy-2019-2024-strategie.aspx?lang=eng.

[2] "Info Source: Personal Information Banks." *Government of Canada*, 26 June 2019, https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/access-information-privacy/info-source/personal-information-banks.html#students.

of Canada' study permits, as well as dependent family study permits (amongst others), further expansion is required.

2. **Distinctions between College and University Student Streams**

Different institutional and program considerations may apply based on domestic need, program offerings, and provincial location. The introduction of these streams would allow the ISP to better maintain a cohesive management of intake, need, and applicant expectations.

3. **New Municipal and Provincial Nominee Student Streams**

ISP streams must align not only with the larger immigration objectives but also with accreditation, settlement, and local requirements for successful integration. Provinces and municipalities having a seat at the table will be critical to enhance and better align the ISP with short and long-term objectives.

4. **New "Humanitarian" International Student Stream**

Allow a percentage of the annual targets to be allocated to cases that require more flexibility and responsiveness to unanticipated global and domestic emerging issues, especially considering the pandemic.

5. **Public Messaging Regarding ISP Must be Repositioned**

The public messaging surrounding key details of any new streams, including those that do and do not offer pathways to permanent residence, must be carefully managed. It begins with the governmental websites right through to the learning institutions, including international messaging and stakeholder involvement. This step alone could curb runaway intake, better position applicants and learning institutions, and conserve precious resources (**see also Recommendation 7 below**).

6. **Plain Language Approach on Forms Will Better Serve ISP**

Forms and requests for information should be transparent and in plain language. Each year, we see many people facing misrepresentation allegations in study permit applications because they legitimately misunderstood a question on a temporary resident or permanent resident application form, usually relating to previous refusals. This is in part because certain questions are not easy to follow. For example, on study permit application form IMM 1294 (06-2019) E, the question at Box 2 (b) reads "*Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?*" Many clients miss the portion regarding "*any other country or territory*". Instead of multiple questions presented as one, the questions should be divided and set out in plain language. For example, we would suggest: *Have you ever applied to Canada for any type of immigration application, including for a permanent or temporary residence (visit, study, work) visa or permit, and been refused? Have you ever applied to any country other than*

Canada for any type of immigration application, including for a permanent or temporary residence (visit, study, work) visa or permit, and been refused?

The forms become even more confusing for applicants who have applied for and were refused a study permit and then apply for permanent residence. At Box 6(d) of the permanent resident application form IMM 5669 (06-2019) E it asks if the individual has "*been refused refugee status, an immigrant or permanent resident visa (including a Certificat de selection du Quebec (CSQ) or application to the Provincial Nominee Program) or visitor or temporary resident visa, to Canada or any other country or territory?*". The question introduces refugee matters. It also refers to visas only, and not permits. An applicant that was refused a study or work permit may interpret the question at Box 6(d) as not applying to their circumstances because there is no mention of the word "permit". The question at Box 6(d) additionally provides another example of asking multiple questions as one. This runs counter to the purposes of positioning applicants to be candid and reads more like a trap. Again, this question could be broken down and simplified. This would strikingly require *twelve* separate questions to position Box 6(d) fairly.[3] Applicants must always be candid, but we must work towards facilitation and not penalization; otherwise, innocent errors are captured in the same group as fraudsters and violators.

The consequences that follow a misrepresentation finding are significant: a five-year ban from Canada and five-year bar from applying for permanent residence. When captured by a misrepresentation finding, many immigration applicants have to dramatically alter their life plans and potentially those of family members. Few individuals can put their lives on hold for five years and/or still qualify five years later.

7. **Public Portrayal of Authorized Representatives Must Change**

Consistent with Recommendation 5, above, authorized representatives should be publicly recognized as valued stakeholders in facilitating the transition of future Canadians. Representatives transcend all layers of society, aiding in access to justice, which is all the more important in a techno-centric world. The overwhelming focus of IRCC messaging, however, is the harm in using representatives; communications on IRCC's website refer to representatives as unlawful and/or unscrupulous practitioners.[4]

Although the aim to protect the public through this messaging is important and appropriate, the result is a severely distorted image with little mention of the critical role authorized representatives play. This fuels a perception that accessing representation is always a

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[3]These 12 questions, broken down, would read as follows: *Have you ever made a refugee claim in Canada? Have you ever been refused refugee status in Canada? Have you ever withdrawn or abandoned your refugee claim in Canada? Have you ever made a refugee anywhere in the world? Have you ever been refused refugee status anywhere in the world? Have you ever withdrawn or abandoned your refugee claim anywhere in the world? Have you ever made an application for permanent residence in Canada for an immigrant or permanent resident visa (including a Certificat de selection du Quebec (CSQ or application to the Provincial Nominee Program) and been refused? Have you ever you ever made an application for permanent residence anywhere else in the world and been refused? Have you ever applied to Canada for any type of temporary residence visa or permit (visit, study, work) and been refused? Have you ever applied to anywhere in the world for any type of temporary residence visa or permit (visit, study, work) and been refused?*
[4]"Learn about Immigration and Citizenship Representatives." *Government of Canada*, 23 Nov. 2021, https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

perilous decision. The stakes of this public portrayal now are even higher as the technology can further distance the public from the decision-maker. The need to rethink is clear. It starts with new governance protections for all stakeholders. The result is a more fluid, transparent, responsive, and effective ISP.

The Role of Techno-Solutionism in the ISP is Critical

We have previously published several papers on the role of Artificial Intelligence and other technology,[5] which we have discussed in communications to Members of the Committee.[6] We continue to defer to these pieces as a primary source of information and will only highlight herein some of the core issues in relation to the promotion of AI.

The simplest explanation for "artificial intelligence solutions" (AI) (and the one that we deploy herein) is that it is an "activity devoted to making machines intelligent" which "enables an entity to function appropriately and with foresight in its environment".[7] Data is the raw material that powers this machine intelligence. Immigration, Refugees and Citizenship Canada (IRCC) has been quietly investigating and expanding its use of AI since as early as 2014 in the processing of permanent and temporary migrant applications. At present, AI is not being employed in study permit processing, but that should only be a matter of time. The discussion herein is thus timely.

The adoption and use of AI, including in study permit processing, raises several key questions including: Do we want technology to play a supporting role, a screening role, or ultimately a decision-making role? And how much can triaging be separated from decision making? Even where an immigration official ultimately renders the final decision on an application, it may be argued that the officer relied on, or was influenced by, an initial or proxy decision made by technology.[8] As the Committee is aware, the use of non-AI technology like Chinook and the Hiraya Processing Suite (HPS) in the processing of study permits and other streams has received much attention.[9] The implementation of these tools attempts to avoid delays in processing.[10] There was no public mention or rollout of these tools, however.[11] The rise in refusal rates and the changes to officers' notes are perceived to be directly attributable to these technologies. With respect to officers' notes specifically, in recent study permit refusal cases the reasons for refusal have become increasingly generic with little by way of even personal identifiers. We provide two examples issued to completely different offices that are very similar:

[5] Please see: Bellissimo, Mario D. "Discretionary Decision-Making and Artificial Intelligence in Canadian Immigration Law and Practice: In whose best interests?", *ImmQuest 16.6 and 16.7*, June-July 2020; Bellissimo, Mario D., "Part II: Discretionary Decision-Making and Artificial Intelligence in Canadian Immigration Law and Practice: In whose best interests – A Covid-19 year later", *ImmQuest* 17.5, May 2021; and Bellissimo, Mario D. "Techno-Centric Evolution of Discretionary-Decision Making in Canadian Immigration Law: How Can Counsel Respond?", *ImmQuest* 17.10 and 17.11, October -November 2021.

[6] Specifically, in letters dated 21 December 2021 from our firm to all Members of the House of Commons Standing Committee on Citizenship and Immigration (CIMM).

[7] Nilsson, Nils J., *The Quest for Artificial Intelligence: A History of Ideas and Achievements.* Cambridge, UK: Cambridge University Press, 2010.

[8] *Baker* v. *Canada (Minister of Citizenship & Immigration)* 2 S.C.R. 817 [1999] at para 21

[9] Please see: Bellissimo, Mario D. "Techno-Centric Evolution of Discretionary-Decision Making in Canadian Immigration Law: How Can Counsel Respond?", *ImmQuest* 17.10 and 17.11, October -November 2021.

[10] Orcan v. Canada (M.C.I.), Imm-6571-20

[11] *Ibid*

Case #1: I have reviewed the application. Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. According to the applicant's current or future employment prospects, I have accorded less weight to their employment ties to their country of residence. Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

Case #2: I have reviewed the application. Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. Weighing the factors in this application, I am not satisfied that applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

The hollowness of the above speaks to how quickly reasons can become devoid of meaning and less transparent, which leads to more challenges in study permit cases. These developments can be avoided. Given that the techno trend will only intensify, stakeholder consultation and transparency must be concomitantly and consistently promoted to eliminate these issues. A number of steps can be taken now, which we set out below as additions to our list of recommendations.

8. **Responsible AI and Other Technology Governance Must be Implemented**

Technology generally, and AI for one, is meant to make our lives easier and if implemented properly it should. We must ensure, though, that this technology operates in a way that is fair. To this end, we highlight the five core ethical principles for the use of AI in the administration of justice set out by the Commission for the Efficiency of Justice of the Council of Europe, as summarized by A.D. (Dory) Reiling:

- Respect for fundamental rights to ensure the design and implementation of AI is compatible with these rights, such as privacy.
- Equal treatment to avoid discrimination between individuals and groups.
- Data security to ensure the data used and its sources cannot be altered, with models that are multidisciplinary in design, are robust, and secure technologically.
- Transparency to ensure methods are clear and comprehensible, and to allow external audits. Choices made, data, and assumptions used should be readily accessible to third parties to ensure legal protection against decisions based on those choices, with the possibility of judicial review by the courts; and
- AI under user control to ensure the AI cannot decide by itself, does not prescribe anything, and users retain control of the choices they make, including having the ability to easily deviate from the outcome of the algorithm when needed. [12]

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[12] A. D. (Dory) Reiling, "Courts and Artificial Intelligence" (2020), *International Journal for Court Administration,* 11(2), pg. 6-8. Note that while the article focused on how AI can be used in court practice, the principles discussed have wide application.

How the technology is trained by individuals is an extension of how those individuals were trained, and the degree to which these individuals are reflective (different genders, diversity, etc.) of those they serve. There are valid concerns about technology embedding bias. This was highlighted by the *Final Report on IRCC Anti-Racism Employee Focus Group,* wherein respondents "expressed concern that some of the overt and subtle racism they have witnessed by both employees and decision makers can impact case processing".[13] We must not simply aspire to responsible AI and technological governance; we need innovative governance to address these systemic concerns. There is an opportunity for Canada to become a world leader and codify these protections in law.[14]

9. <u>**Real Time Access to Study Permit Files – Relieve Burden of ATIP Requests**</u>

An applicant should be able to access their file, find out the stage of processing, and/or reasons for refusal, thereby limiting the need to resort to the Access to Information and Privacy Records (ATIPS) process. This is particularly important given that ATIPS were not intended to be utilized in this way. Access will allow for concerns to be identified earlier, help preserve the individualization of the process, and act as a second set of eyes for IRCC by those equally interested in the process and the outcome - the applicants and the representatives IRCC serves.

Clearly, there exist technological hurdles that will take time to manage. Nevertheless, productivity gains can be transformative if the technology is implemented transparently. Significant modernization can be encapsulated in one step – enhanced access.

10. <u>**New Electronic Database for Policy Publication like in Australia**</u>

The centralization of information on application processing into one database would be helpful. It may entail the following features:

      a. Managed by the department for up-to-date changes;
      b. Subscription run;
      c. Including relevant Acts, Regulations, Directions, Gazette Notices, legislative and non-legislative instruments, Forms, and relevant internal policy (disclosable);
      d. Tracking updates and access to historical legislative frameworks; and
      e. Effective search facility and hyperlinks connecting relevant information/ legislation to ensure user friendliness.

The Australian Immigration system currently uses a similar database entitled Legend.com. We understand from counsel who have worked in that system that it provides a consolidated and centralized source of all up to date policy, legislation, and relevant case law for all. Again, the result is a more fluid, transparent, responsive, and effective ISP.

[13] Immigration, Refugees, and Citizenship Canada. "Final Report on IRCC Ant-Racism Employee Focus Group". *Government of Canada,* online: https://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/immigration_refugees/2021/122-20-e/POR_122-20-Final_Report_EN.pdf

[14] Nalbandian, Lucia. "Canada Should Be Transparent in How It Uses AI to Screen Immigrants." *The Conversation*, 22 Aug. 2021, https://theconversation.com/canada-should-be-transparent-in-how-it-uses-ai-to-screen-immigrants-157841.

Conclusion

The possibility for a more measured, nuanced, and effective ISP is within reach. This is in part because of exciting technological possibilities, and because we can draw on program experience. A national immigration and integrated ISP plan that is multi-tiered and effectively leverages technology in an innovative, transparent, and responsible fashion, employs plain language, and engages all stakeholders would be transformative. We must ultimately ensure though that the pace, consistency, and the mode of these changes are firmly grounded in Canada's core legal and democratic values.

Bellissimo Law Group PC

Bellissimo Law Group PC has a well-respected and lengthy history with immigration stakeholders. Our multi-cultural and talented team represents individuals from all over the world in Canadian citizenship, immigration, and refugee matters with experience dating back over forty-five years. We have engaged in extensive community, policy, pro bono, and academic outreach by virtue of our legal publications, policy positions, media, and speaking engagements throughout Canada over the past decades.

Bellissimo Law Group PC is responsible for key citizenship and immigration court decisions, policies, and publications that have shaped immigration law. We work with Immigration, Refugees and Citizenship Canada, Service Canada, the Canada Border Services Agency, Federal Court of Appeal, Federal Court of Canada, Department of Justice, and the Immigration and Refugee Board, not only on individual cases but also at the highest levels through our extensive outreach efforts.

Lead Author

Mario D. Bellissimo is a graduate of Osgoode Hall Law School and is a Certified Specialist in Citizenship and Immigration Law and Refugee Protection. He is the founder of **Bellissimo Law Group**. Mr. Bellissimo has appeared before all levels of immigration tribunals and courts including the Supreme Court of Canada. He is the past Chair of the Canadian Bar Association National Immigration Law Section, serves as an appointed member of the Federal Court Rules Committee, and participates on multiple stakeholder committees involving the Federal Courts, the Immigration and Refugee Board, Immigration, Refugees and Citizenship Canada, the Canada Border Services Agency, Employment and Social Development Canada, and the Department of Justice.

Mr. Bellissimo has testified before Parliamentary and Senate Committees on several proposed amendments to immigration law over the years. He has been a lead on policy papers, legal analyses, and proposed recommendations to government on behalf of immigration advocacy associations and in his personal capacity.

Mr. Bellissimo acts on a pro bono basis for Toronto's Sick Kids Hospital and Pro Bono Law Ontario and currently serves as the National Immigration Law and Policy Advisor for COSTI Immigration Resettlement Services. Mr. Bellissimo has authored several legal publications and has taught several immigration law courses, speaks across Canada, and frequently appears in the media on breaking citizenship, immigration, and refugee stories.