APPLICATION BACKLOGS & PROCESSING TIMES

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

Bellissimo Law Group PC

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

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Ten Key Backlog Reduction Recommendations

1. **Development of New Organizational Culture and Behavioral Training**

2. **Leveraging New Technology**

3. **Responsible Implementation of Artificial Intelligence (AI) and Other Technology**

4. **Application of *Services Fee Act* to IRCC processing**

5. **New Temporary and Permanent Residence Streams**

6. **New Caps and Queues**

7. **Creation of an Office of an Official Immigration Ombudsperson**

8. **All Forms and Messaging Should be in Plain Language**

9. **Public Portrayal of Authorized Representatives Must Change & Needed Consultation**

10. **Limited Use of Ministerial Instructions Only for Pilot Projects**

Introduction

If you change the way you look at things, the things you look at change.[1]

In May 2022 Immigration, Refugees and Citizenship Canada (IRCC) reported that their processing backlog had increased by 600,000 over the proceeding ten months. The backlog now totals 2.1 million applications.[2] This backlog is unquestionably a reflection of many factors, including underfunding, the practice of establishing annual quotas, and the underlying policy choices that drive those quotas. It is a delicate tapestry that requires surgical precision to rectify the problem. Given the enormity and complexity of the backlog, meaningful change to the Canadian immigration system will require years of multi-stakeholder consultation and co-ordination. There will also need to be technological, cultural, and philosophical shifts in immigration policy and delivery. This is germane given the long shadow of disturbing Canadian demographics, including a 1.5 per cent declining fertility rate.[3] Much of any future population growth will be the direct result of immigration. The problem is pressing, with wider impacts beyond simply the backlog.[4]

In the 2022 Federal budget, the Federal Government allocated $2.1 billion dollars over 5 years and $317.6 million dollars in ongoing funding to assist IRCC in the processing of permanent resident applications to Canada.[5] They have also committed $385.7 million dollars over 5 years and $86.5 million dollars in ongoing funding to assist IRCC and other stakeholders in processing temporary migrant applications.[6] While substantial funding is an important step, the challenge is building a new system on a tenuous foundation, with visa offices overwhelmed due to massive numbers of applications. Absent transformative change, the backlog numbers will continue to soar. The following ten recommendations speak to holistic measures that will support the effort to build an exciting and innovative new Canadian immigration program delivery model.

Recommendations

1. Development of New Organizational Culture and Behavioral Training

Amongst the greatest challenges facing IRCC that must be acknowledged are the lack of transparency and accessibility. Despite many laudable efforts to modernize the immigration system, there remain significant barriers to communicating with IRCC. The Call Centre has limited utility. IRCC's on the ground working relationship with authorized representatives, which should expedite processing, is often distant at best. These limits on communication in turn result in delays, litigation, and repeat or incorrectly filed applications, which overwhelm the system. A philosophy of facilitation and transparency are sorely needed, and it begins with training.

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[1] Dr. Wayne Dyer. "*Success Secrets*". Wayne's Blog. Available: https://www.drwaynedyer.com/blog/success-secrets/

[2] Kareem El-Assal and Shelby Thevenot. (May 10, 2022). "*IRCC's application backlog grows beyond 2.1 million people."* CIC News. Available: https://www.cicnews.com/2022/05/irccs-application-backlog-grows-beyond-21-million-people-0525204.html

[3] Ana Fostik and Nora Galbraith. (December 1, 2021). "C*hanges in fertility intentions in response to the COVID-19 pandemic*." Statistics Canada. Available: https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00041-eng.htm

[4] Tom Yun. (May 7, 2022). "*Canada is confronting a massive immigration backlog. This is what it looks like for those facing delays."* CTV News. Available: https://www.ctvnews.ca/canada/canada-is-confronting-a-massive-immigration-backlog-this-is-what-it-looks-like-for-those-facing-delays-1.5892040

[5] Government of Canada. (2022). "*A Plan to Grow Our Economy and Make Life More Affordable*." Available: https://budget.gc.ca/2022/home-accueil-en.html

[6] *Ibid*.

The necessity for additional training was confirmed in a study by Deloitte, where it was determined that there is an opportunity within government departments to increase efficiency by improving organizational culture and behaviour.[7] Deloitte suggests that IRCC should shift to an outcome-driven approach with an emphasis on training, high-level decision-making, and motivation. Leveraging technology (see below) and a seismic shift to facilitation, transparency, and improved communication would be groundbreaking, and would support the required transition in culture.

Other countries have deemed it necessary to reformulate training of immigration officers. One successful example has emerged from Australia, where a College of Officers of Immigrants was implemented in 2006.[8] The College focused on standardized training for their immigration officers and allowed for specialized training.[9] Through these methods, the College attempted to increase efficiency in application processing and reduce the number of processing errors made. The development of the college was based on a review of training models established by other government agencies in partnership with educational institutions.[10]

Training for IRCC officers should draw on the Australian example. The opening of the College highlighted a new approach to training with improved quality, standards, and a renewed focus on facilitation, diversity, inclusion, and transparency. While IRCC does not necessarily need to open a college, the implementation of comprehensive and wide-ranged training should be similarly adopted. The gains from following the Australian model are potentially dramatic.

2. Leveraging New Technology

Substantial time and resources are wasted by applicants, IRCC and even Members of Parliament seeking simple updates on applicant files. In our brief on the *Canadian International Student Program*[11] we spoke to the need for real-time access to notes on file. This would include information on the stage of processing, place of processing, processing notes, and/or reasons for refusal. Access to notes would 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 IRCC serves. This will in turn support faster processing in certain cases, as issues can be better identified and addressed expediently.

A focus should additionally be placed on establishing online informational sessions and video interviews rather than solely relying on one-way electronic-based communication. This would offer a quick and efficient way to resolve issues for multiple routine processing matters or areas of confusion that otherwise bottleneck the progress of a file.   It would also reintroduce desperately needed two-way touch points on files which help to humanize the process, de-escalate conflicts,

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[7] Lori Scialabba et., al. (May 06, 2019). "*Government backlog reduction: Five ways government agencies can improve services and mission delivery.*" Deloitte. Available: https://www2.deloitte.com/us/en/insights/industry/public-sector/government-backlog-reduction.html

[8] Mario D. Bellissimo. (August 3, 2016). *"Should we Send Immigration Officers Back to School?"* Bellissimo Law Group PC. Available: https://www.bellissimolawgroup.com/should-we-send-immigration-officers-back-to-school/

[9] *Ibid.*

[10] *Ibid.*

[11] Mario D. Bellissimo (February 25, 2022). "*Canadian International Student Program 2022 & Beyond*". House of Commons Canada. Available: https://www.ourcommons.ca/Content/Committee/441/CIMM/Brief/BR11713090/br-external/BellissimoLawGroupPC-1-e.pdf

and improve transparency and accessibility. As explained under **Recommendation 3,** below, technology offers expansive possibilities for addressing these (and other) processing concerns.

Finally, and in support of this effort to leverage technology, it should be highlighted that IRCC has access to enormous volumes of data on processing streams, including processing times per type of stream, number of applicants, efficiency of various visa offices, etc. This gold mine of data presents IRCC with an opportunity to gain insight into how visa offices process applications from when they are received until a decision is made. This information can be used to determine how best to approach processing moving forward to better standardize the decision-making process.[12]

3. Responsible Implementation of Artificial Intelligence (AI) and Other Technology

I spoke before Parliament on 7 April 2022 regarding Canada's use of AI in the immigration context, and we provided two comprehensive briefs on the role of AI in immigration processing.[13] It was underscored that while AI can help streamline applications and increase efficiency, we must be cautious. The submitted briefs provided ten recommendations on how to implement AI while maintaining the discretionary nature of decision-making and mitigating bias. We ask that you kindly revisit the briefs to review our recommendations. Our recommendation to avoid generic "cookie-cutter" decisions is particularly relevant, as this may contribute to further backlogs through re-submission of applications and/or litigation.

With the proper safeguards in place, AI and other technology could be revolutionary. AI is currently being used to pre-screen applications at a far faster rate. While the algorithm pre-screens, officers work on processing screened applications. The use of AI can be expanded to support data collation, the management of multiple application categories, and the production and enforcement of caps and queues (see below). The possibilities are indeed exciting.

4. Application of *Services Fee Act* to IRCC processing

In June 2017, Parliament implemented the *Service Fees Act* (*SFA*).[14] The *SFA* created a requirement for detailed annual reporting from government departments regarding their fee structure.[15] These fees are tied to performance standards.[16] When performance standards are not met, the *SFA* requires that fees be refunded to the individual who protracted the government service.[17] By April 2021, IRCC had implemented their policy under the *SFA*. It was indicated that the act would only apply to passport program fees, right of citizenship fees, and international

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[12] It may be best to outsource this project to a company outside of IRCC that has the expertise and objectivity to recommend how operations can be improved. If IRCC opts to take this approach, it is crucial that they take steps to protect ensure applicant privacy.

[13] Mario D. Bellissimo. "*Techno-Centric Evolution of Discretionary-Decision Making in Canadian Immigration Law: How Can Counsel Respond?*" House of Commons Canada. Available: https://www.ourcommons.ca/Content/Committee/441/CIMM/Brief/BR11765668/br-external/BellissimoLawGroupPC-2-e.pdf;
Mario D. Bellissimo. "*Differential Outcomes in IRCC Decisions: On the Scope and Impact of the Use of Advanced Analytics Technology in Application Processes*". House of Commons Canada. Available: https://www.ourcommons.ca/Content/Committee/441/CIMM/Brief/BR11713740/br-external/BellissimoLawGroup-e.pdf

[14] S.C. 2017, c. 20, s. 451.

[15] Immigration, Refugees and Citizenship Canada. (2019). "*2017 to 2018 Fees Report*". Government of Canada. Available: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/fees-report/2017-2018.html

[16] *Ibid.*

[17] *Ibid.*

experience Canada participation fees.[18] This was disappointing as all other streams (permanent residence, work permit, temporary residence, study permit, sponsorship etc.) were not covered. If the *SFA* applied to all (or even most) of IRCC's programs, it would demonstrate IRCC's intention to reduce the backlog and meet transparent processing times. It would also act as an important legal and principled incentive for IRCC to make meaningful strides in service standards.

5. New Temporary and Permanent Residence Streams

The introduction of more nuanced streams that better target the wide variety of immigration purposes will increase efficiency and control intake within program areas. Targeted streams would clarify (not complicate) requirements for potential applicants and expedite family reunification, increase economic benefit, and promote diversity. Varied streams could be more responsive to the diverse reasons permanent and temporary migrants seek entry to Canada. It would also allow the flexibility to assign targets and prioritize certain streams over others, and even pause as required.

As an example, there could be some combination of the family and economic categories. The family class need not be thought of as a non-economic category, and economic migration need not be thought of as a category that does not impact our nation building. Notably, countries like Australia have successfully embarked upon this approach with a sundry of categories, including sponsored family visitor, temporary business stay -short and long term, sponsored business visas, retirement investor visas, and professional development visas.[19] Critically, variability in streams would support improved specificity and transparency of IRCC's priorities, processing times, and targets. Please also see our brief on varied streams in the *International Student Program*.[20]

More generally, the involvement of municipalities in application processing would also potentially assist with integration, accreditation, settlement, and the eventual path to permanent residence. Municipalities represent untapped human and economic resources that could offer critical support to IRCC. Further study of how municipalities can support processing should thus be undertaken.

Consistency and clarity in messaging across all streams (new and old) would also significantly reduce intake and backlog, as applicants would be better able to determine the stream that best suits their goals. They would additionally be well aware of the current prioritization and processing times of that stream. For example, parsing student streams into those seeking permanent residence and those simply hoping to study in Canada would significantly reduce subsequent backlogs in permanent resident applications from former students who are ineligible to land in Canada. Students would not only declare their intentions to land at the outset but would also clearly understand their likelihood of obtaining permanent residence in the future.

As it relates to parent and grandparent immigration streams, there could be subcategories for permanent resident and temporary resident applicants, as well as categories to address urgent travel and/or humanitarian needs, or contributory parent options. Where one sub-category was prioritized

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[18] Immigration, Refugees and Citizenship Canada. (March 31, 2021). "*New policy on remissions when service standards are not met in some IRCC programs*". Government of Canada. Available: https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/service-fee-act-remissions-policy-2021.html

[19] Department of Home Affairs. "*Immigration and citizenship*" (2022). Australian Government. Available: https://immi.homeaffairs.gov.au/

[20] *Supra* note 11.

for a time, such as in response to the humanitarian crisis in the Ukraine, other streams could be paused. This is an applicant-centric approach that will lead to real change.

6. New Caps and Queues

It follows that the varied temporary and permanent resident streams should have clearly established and well communicated eligibility criteria, targets, processing times and caps. Applicants should be advised that applications will not be accepted and/or processed once caps are met. If applications are submitted after these targets are achieved, then they are returned.

Caps and queues are required in particular for temporary resident streams. Research shows that more than half of the backlog is comprised of applications for temporary residence.[21] Out of those applications, half are for temporary resident visas (TRV).[22] This is unsustainable. It is vital to take a balanced approach, as processing TRVs should not be at the expense of other categories, such as spousal sponsorships, which are currently seeing processing times of 15 months in Canada and 22 months outside of Canada.[23]

The introduction of caps and queues for TRVs is particularly appropriate given that many visitors to Canada hope to travel during specified timelines. Any delay in processing ultimately renders their applications moot. Yet these applications remain in queue despite no longer serving a purpose, increasing the delay and inventory. A cap that reflects available resources can help address this problem and effectively reduce the number of applications that need to be processed.

A similar cap and queue approach should be taken for study permit applications. Not only would the diversification of streams help to reduce the backlog in permanent resident applications, but adding in caps for study permits from diverse types of institutions (i.e., University vs. College) would additionally allow for the better identification and direction of resources.[24]

7. Creation of an Office of an Official Immigration Ombudsperson

There is a need to mandate not only systematic external audits of IRCC programs, but also follow-ups to the results of these audits. While problem areas may be identified in consultation between IRCC and stakeholders, there is no current requirement that these issues be addressed in law or in practice. An oft repeated idea over many years has been the creation of an Official Immigration Ombudsperson. To be successful this official must have power and resources.

Any Ombudsperson may be tasked initially with overseeing program improvements, ensuring that changes are maintained and enforced. Efforts may then be made to transform immigration delivery, focusing on the implementation of measures for transparent, responsible, and innovative governance. If properly resourced, an Ombudsperson could be an important part of the solution.

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[21] *Supra* note 2.
[22] *Ibid*.
[23] Immigration, Refugees and Citizenship Canada. (2022). "*Check processing times*". Government of Canada. Available: https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html
[24] *Supra* note 11

8. All Forms and Messaging Should be in Plain Language

In our brief on the *Canadian International Student Program*, we spoke to the importance of plain language.[25] We reiterate the substantial value of plain language in relation to the backlog. IRCC should re-orient their messaging to focus on customer experience on its website and forms. As also noted in our brief on *Differential Outcomes in IRCC Decisions*[26], the introduction of plain language would address the incredible expenditure of resources on the issue of misrepresentation that result from innocent misunderstandings of questions.

The issue of clarity is relevant to the discussion of backlogs where migrants seek to respond to, contest and/or overcome an allegation of misrepresentation. While these avenues are open to applicants, engaging in these paths further contributes to the backlog where officers must reconsider an application that was refused based on an innocent mistake rather than processing other applications. Ultimately, these cases do not capture persons seeking to game the system or pose a threat to the integrity of our Canadian immigration programs. An emphasis on clear language would greatly reduce the number of people who make these mistakes and end up in other parts of the immigration system to overcome what could have been avoided. Effective chatbots may also assist with basic informational support and demystifying the application process.

9. Public Portrayal of Authorized Representatives Must Change

In our brief on the *Canadian International Student Program,* we spoke to the importance of authorized representatives.[27] 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 on the harm in using representatives; communications on IRCC's website refer to representatives as unlawful and/or unscrupulous practitioners.[28] 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 perilous decision.

This messaging is critically important to any consideration of application backlogs. The use of counsel can mean that submitted applications are complete, all requirements are met, and any issues are sufficiently addressed. This can save time as officers will receive fewer incomplete applications. IRCC's position on counsel should be informative. In other words, the message from IRCC should be that counsel *can* help applicants better understand the requirements and interpret the law, however, applicants should ensure their representation is licensed and legitimate.

Also, the need for multi-stakeholder consultation and collaboration is acute. We have met so many well-intentioned hard-working IRCC personnel through conferences, working on committees, policy discussions or on a specific case. We have learned from these meetings that the mutual benefits of having consultations with representatives in the application process are undeniable.

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[25] *Ibid*

[26] *Supra* note 13

[27] *Supra* note 11.

[28] Immigration, Refugees and Citizenship Canada. (November 23, 2021). "*Learn about Representatives*". Government of Canada. Available: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html

More is needed. It starts with timely and meaningful consultation, which can result in an enriched, fluid, transparent, responsive and effective immigration program.

10. Limited Use of Ministerial Instructions for Pilot Projects

Ministerial Instructions (MI) should be utilized for pilot projects only. In 2008 the _IRPA_ was amended, and section 87.3 was created. This provision granted the then Minister of Citizenship and Immigration broad authority to set processing quotas and priorities for different classes of applications in a given year by way of MIs. The Minister was further able to summarily dispose of those applications that did not meet these criteria.[29]

Although an attractive and nimble tool, MIs must be used sparingly. The concern is the considerable power granted to the Minister to decide how, when, and to what degree applications are to be processed (if at all) without the concomitant requirement for consensus building, consideration of the regulatory process, and extensive stakeholder involvement. Practically, this can result in unilateral, reactive, and disjointed tinkering, which can add delay and uncertainty to immigration program delivery. We saw this in 2008 when an MI was adopted that unilaterally terminated applications to the Federal Skilled Worker program, some of which had been in process for eight years. This MI represents a blight in our immigration history that should not be repeated.[30]

Conclusion

The possibility for a more measured, nuanced, and effective immigration delivery model is within reach. A national immigration plan that is multi-tiered with new streams and the application of the _Services Fee Act_ would be transformative when introduced in combination with effective re-training, leveraging of technology in an innovative, transparent, and responsible fashion, as well as the employment of plain language, and the engagement of all stakeholders. Short term fixes and tinkering will not deliver desired outcomes. IRCC also cannot embark on this journey alone. Any advancement in processing will require the cooperation, vision, and assets of various stakeholders.

How the Government deals with the backlog will not only identify our level of adherence to domestic and international legal obligations but will signal if we are embarking on radical disruption built on clear and convincing empirical evidence we have gained from past missteps. If undertaken altogether, we can envision a future where we distance ourselves from non-transparency, inaccessibility, delays, uneven processing, bias, and marginalization.

If we put in the collective work now, pressing for thoughtful action through collaboration, oversight, transparency and responsible implementation, we have the potential to become a world leader. One where IRCC decision-making and delivery are shining examples of innovative, real-time results that are applicant-centric and guided by fairness and inclusion.

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[29] S.C. 2001, c. 27, section 87.3(5).
[30] Tabingo v. Can. (M.C.I.) (2014), 462 N.R. 124 (FCA) _IRPA_, section 87.4(1)

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.