

## IRCC Backlogs: Problems and Solutions

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

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CILA was founded in January 2021. We have over 400 members of the Canadian immigration bar from across Canada. One of our mandates is to advocate for improvement to immigration legislation, policy and operations.

As the Committee knows, there are over 2 million applications in the 'inventory' (IRCC preferred term to 'backlog') which is about 1 million more than prior to the pandemic.

The backlog is having an enormous impact. First and foremost, it makes it difficult for Canada to bring in people based on humanitarian reasons (such as translators in Afghanistan) and those in war-torn areas (such as Ukrainians). Of course, the government is right that the Taliban controls the border and so other obstacles exist, but it is hard for the Department to come up with creative solutions such as waiving biometrics for the young and elderly and come up with alternatives to traditional counterfoil visas when there are spouses, students and economic immigrants also in dire need of attention.

Indeed, while pre-pandemic, I have had family sponsorships processed in as little as 4 months, the currently stated timeframe is 12 months but is actually closer to 20. For spouses and common-law partners, a week can feel like an eternity. 20 months feels cruel. While the Minister indicated prior to taking the helm of the Department that he was keen to implement visitor visas for spousal sponsorships processed via visa offices, this has not yet come to fruition, no doubt due to concerns by senior civil servants about the potential for fraud. Also, when grandparents and caregivers are delayed, young parents postpone return-to-work plans.

I am fortunate to act for some of Canada's most prominent companies. Sometimes, these employers cannot find a Canadian with a particular skill-set. Sometimes, it's just good business to move Canadian-based employees abroad and bring in talented people from a subsidiary in another country to Canada. It keeps the company, and the nation, competitive. When a company needs someone, they need them yesterday. It is very awkward to have to tell corporate counsel or HR that a work permit from India, for instance, takes 40 weeks (!). The reality is that many Canadian companies are not operating at capacity as they do not have the human resources they need. Entire sectors (such as IT, manufacturing and construction) are preparing their own labour market research reports to prove they are suffering. The unemployment rate is extremely low and yet the backlog includes 189,061 new work permits and 235,793 economic category permanent residents as of April 29, 2022.

We must do better as Canada pulls out of a recession. The country's unemployment rate is extremely low with 800,000 vacancies. The 2021 census told us that it's not so much that Canada's population is aging, it's already aged. Over 40% of Canadians are now old or getting there. 19% are 65+ years old. 22% are between the ages 55-64. Our fertility rate is 1.4 children per woman yet the replacement rate is 2.1. Bringing in people efficiently is critical to our economic recovery but it was already the case that we needed immigrants for Canada's long-term economic survival. We need more working-age people to contribute to the tax base to pay for the health care and other demands of our aged population.

The other problem with delayed applications is that the greater the backlog, the harder it is to climb out of it. People are submitting the same application more than once and this was even encouraged by the Delhi visa office for visitor visa applications. I'm currently taking on cases where the delay is so great, our office is writing demand letters to the Department followed 30 days later by an application in Federal Court in an attempt to prompt movement (thereby settling the case) or to seek an order by a judge to compel the Department to make a decision. Other times, I find myself writing to Program Managers (the top immigration official at a visa office) or contacts in Ottawa. But it's getting harder to do this when these folks are all swamped with similar requests. In the past, truly meritorious cases could be addressed. But what happens when so many more cases are deserving of attention?

I believe the government must answer for this 2 million backlog. When I was national Chair of the Canadian Bar Association Immigration Section during the pandemic, I attended many liaison meetings and asked about delays given officers were unable to attend at processing centers to work on paper-based files and given visa offices were operating with skeleton staff due to the virus. I finally asked a rather impolite question which was simply about how many officers were actually working and if they were finding solutions so officers could work from home. I remember getting a vague answer about how immigration officers were part of the federal public service and so questions should be directed outside the Department. But then it was revealed that 80% of staff were on leave at the major processing centers for extended periods.

We need to know exactly what the productivity was, year by year pre-pandemic, during, and now. Why did the TR to PR Pathway result in more applications than intended? Why didn't the cap work? After all, this category is now cannibalizing Express Entry spots for 2022 and into 2023. IRCC should also analyze whether it is wise to have cap-free programs. While I understand the impulse in terms of Ukrainians who have no cap, IRCC needs to be consistent in its approach. Many of us remember what happened to the Federal Skilled Workers (points system) whose entire 'inventory' was eliminated prior to Express Entry being rolled out. Some had waited patiently for 8 years!

The *2021 Economic and Fiscal Update* proposed \$85M in 2022-3 to "process more permanent resident and temporary resident applications and reduce processing times in key areas affected by the pandemic." (<https://budget.gc.ca/efu-meb/2021/home-accueil-en.html>). The 2022 Federal Budget (<https://budget.gc.ca/2022/report-rapport/chap4-en.html#m81>) also

announced \$2.1B over five years and \$317.6M ongoing in new funding “to support the processing and settlement of new permanent residents to Canada.”

We need to understand how this money will be spent to address backlogs, what will be the government’s priorities and a detailed plan needs to be tabled for scrutiny.

For instance, PR Card interviews which currently must be done in-person can take many months and in some cases years to schedule. Rather than requiring people to pick up PR Cards in person, IRCC could conduct video call interviews.

There needs to be greater transparency as to processing times, stage of applications, and reasons for refusals. I tell my team at the office regularly that client satisfaction hinges on communication. Most applicants are ok with some delay as long as there is transparency as to the cause and future timing.

IRCC could also invest in emergency-preparedness so it is not caught off guard the next time there is a crisis such as occurred in Afghanistan or Ukraine. More advance planning is required so Canada can respond to the next war or natural disaster and officers need not be re-deployed away from processing applications which are critical to Canada’s economic and family reunification needs.

Accountability is key and part of that involves the Services Fee Act which ties fees paid to performance standards such that refunds are issued when these standards are not met. IRCC selectively implemented the Act, stating: “when an individual pays for a government service and the service standard is not met, the department involved must return a portion of the fee to the fee payer. In such cases, remissions (partial refunds) will be issued to complete applications received on or after April 1, 2021, for the Right of Citizenship fee, the International Experience Canada program participation fee, and certain fees related to passports and other travel documents.” (<https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/service-fee-act-remissions-policy-2021.html>). Note that all permanent residence and most temporary resident applications are exempt.

Another way IRCC can be accountable is vis-à-vis Quebec applications. As per the Canada-Québec Accord, Québec has competency over the selection process while Canada remains responsible of admissions. When it comes to permanent residence applications, Québec typically takes 2 to 3 years for selection decisions and then issues a CSQ. Though IRCC is only responsible for medical, criminal and security checks which involves far less analytical work, generally, it takes 2 times to 5 times longer for IRCC to process permanent residence application for Québec applicants. Thus, from end to end it takes an applicant 4 to 7 years making Québec less competitive than other Canadian provinces in terms of attracting immigrants.

It is completely unacceptable for the government to shut down communication with applicants, their lawyers and even Members of Parliament as has been done in the recent past, using the

excuse of the Afghanistan crisis and then the war in Ukraine. Indeed, the Program Manager in Delhi replies to emails with her by saying:

“Good day,

To contact the New Delhi IRCC office for cases being processed at this office, please use the webform on our website at [www.cic.gc.ca/english/contacts/web-form.asp](http://www.cic.gc.ca/english/contacts/web-form.asp). This is important as, among other things, it ensures there is not the false impression of privileged access to Canadian government services. **As such, any further emails sent directly to me will be deleted without a response.** We appreciate your patience in waiting to hear from us so that we may dedicate our resources to processing applications.

Please also note that due to the Covid-19 pandemic, we are working through a backlog that is about a year old for non-essential workers..”

And we have been excluded altogether from new digital application filing platforms developed by IRCC with the excuse that these platforms needed to be rolled out so quickly due to the pandemic.

There is a big difference in how other countries treat their immigration lawyers versus how immigration lawyers are treated in Canada. I have heard from top managers at visa offices and PNPs about high levels of fraud and negligence by registered consultants and that this has led to policies of shutting out representatives generally. Indeed, on IRCC’s website, we are lumped in with non-lawyer immigration consultants with a warning to the public about fraudulent representatives. Denying applicants access to counsel prejudices many who do not have the sophistication, technological know-how or access to the internet. It is also counter to the rule of law and our Canadian culture where citizens regularly hire lawyers and similar professionals, such as professional accountants given what is at stake. Immigration lawyers spot errors and omissions and are best able to provide complete applications which are often time-sensitive such that a returned application will mean the applicant no longer qualifies. We are highly educated and highly trained professionals and many of us volunteer significant time and effort in assisting the Department generally, as well as providing pro bono services to the vulnerable public. Immigration lawyers deserve more respect.

Most recently, we have heard that IRCC is having difficulty hiring more staff and that document security concerns led to officers being unable to work from home. The private bar adapted overnight to the pandemic and it is imperative that IRCC adapt as well and ensure that its over 7,000 employees are productive. Indeed, they should have designated officers as essential workers during the pandemic so that this backlog was never allowed to develop. The government itself indicates on Public Safety Canada’s website that Canada’s National Strategy for Critical Infrastructure classifies critical infrastructure in Canada according to ten sectors, one of which is titled “Government” and within that the following is listed: “workers supporting ePassport, permanent residency, facial recognition, visas, Vital Statistics, Provincial or Territorial Identity card programs.” (<https://www.publicsafety.gc.ca/cnt/ntnl-scr/crtcl-nfrstrctr/esf-sfe->

[en.aspx%2012/14](#)). Given most Canadians are vaccinated, IRCC should adapt its facilities and implement social distancing and personal protection equipment requirements and bring all workers back to the office.

As I have indicated above, a dysfunctional immigration system prevents us from providing humanitarian help, tears families apart and harms Canadian companies thereby endangering Canada's competitiveness and hampering our economic recovery at a time when our population has already aged and desperately needs immigration.

## **About CILA**

At its core, as reflected in our Mission Statement, CILA works to promote justice and fairness in citizenship and immigration law. The Association advocates for improvements to immigration-related policies and departmental operations through timely communications, coalition-building, court interventions, and test litigation. We aim to support our next generation and future leaders. Inclusion, diversity, and accommodation guide CILA.

CILA was founded by several members of the Immigration Bar that have proven track records for leadership. The intention was to establish an organization that could serve the Immigration Bar given the current trends of rapid change in immigration legislation, policy, and automation of delivery of immigration programs by Immigration Refugee Citizenship Canada (IRCC).

CILA's goal is support lawyers at all stages of their career. CILA provides timely responses to emerging immigration issues and policies. CILA disseminates and archives information of importance to assist members and a new generation of lawyers. Canadian border, immigration and citizenship issues are in the news daily. Changes have been and will continue to be substantial in the near and long term. CILA taps into the tremendous wealth of knowledge and expertise of lawyers and academic members across Canada to create a "Think Tank" to formulate policy and innovative and practical solutions to support the delivery of fair, inclusive, and diverse immigration to Canada.

CILA is expanding the offerings available to lawyers to equip them with essential tools and information to support their practices. This includes items such as leading research and legal and related publications to support practitioners keep abreast of emerging information and technologies. CILA is a repository of resources for members. We aim to also benefit stakeholders, other like-minded organizations, and ultimately the people we all serve, future Canadians.

## **About Ravi Jain**

Ravi Jain is the Founder of Jain Immigration Law. He is one of Canada's most recognized immigration lawyers in terms of leadership in the bar, peer recognition for excellence and client satisfaction.

Mr. Jain was presented with the Diamond Jubilee Medal by command of Her Majesty the Queen in recognition of his significant contributions to Canada. Recently, he was selected as "Lawyer of the Year" by *Best Lawyers in Canada* (the oldest peer-review publication for lawyers) for

receiving the highest voter feedback from colleagues across Canada. *Who's Who Legal* recognized him as a "Thought Leader" which is the top ranking for obtaining "the highest number of nominations from peers, corporate counsel and other market sources." The *Canadian Expert Directory* has selected him as well, which is an "acknowledgement of excellence by a practitioner's own peers and colleagues." Moreover, the prestigious Chambers and Partners, which ranks the world's best lawyers, has repeatedly recognized Mr. Jain's work.

Mr. Jain has over 21 years of practice experience and is among a small percentage who are certified by the Law Society of Ontario as Specialists in Immigration Law. He has been invited to address committees in both the Canadian Senate and Canada's House of Commons as a subject matter expert in immigration law on several occasions. Mr. Jain was instrumental in founding the Canadian Immigration Lawyers Association ([www.cila.co](http://www.cila.co)). He initiated and held meetings with 6 prominent co-founder immigration lawyers across Canada to form this new national organization for Canadian immigration lawyers and was elected as CILA's first President in 2021 during the founding process. He is also the Past National Chair of the Canadian Bar Association (CBA) Immigration Law Section having served in leadership roles from 2017-2021. The Immigration Section typically makes up over 50% of all CBA Parliamentary/Senate appearances and meetings and almost 25% of all CBA submissions and organizes an annual conference hosting hundreds of lawyers, judges and academics. Mr. Jain made several strong connections with Members of Parliament and Senators and simultaneously volunteered for three years as an Agenda Co-Chair, responsible for the agenda and speakers for the national CBA conference. Mr. Jain also led an initiative to compile a list of lawyers, including himself, willing to volunteer *pro bono* to assist the family members of victims of the airplane shot down by Iran on January 8, 2020.