

2023-12-19

BEIJING2024R002 – Increased Litigation from the China Caseload in 2023

Summary

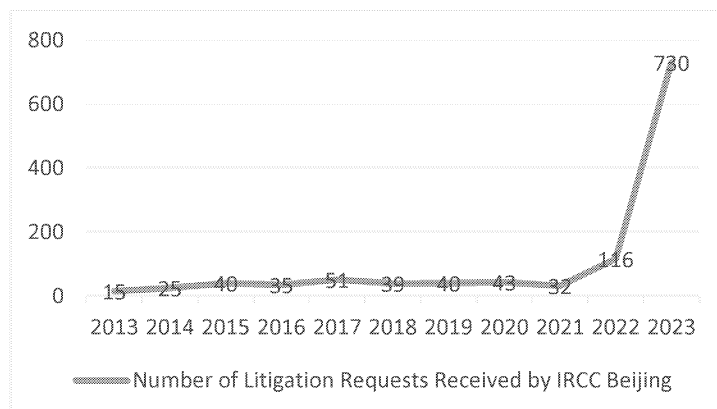
IRCC Beijing has seen a drastic spike in litigation from the China caseload in 2023. The number of litigation requests, defined as single notification messages our office has received from the Litigation Management Branch (LMB) requesting specific action on litigation cases, increased from 116 in 2022 to 730 in the first ten months of 2023. Prior to the surge, litigation volumes were significantly lower and consistent between 2013 and 2021.

For IRCC Beijing, litigation requests emerge mostly from temporary resident caseload, with the majority being study permit applications. Clients typically litigate files that are open for an extended period, seeking the writ of mandamus to compel IRCC to make the final decision. For most litigated cases, eligibility review has already been completed by officers and files are awaiting background check results.

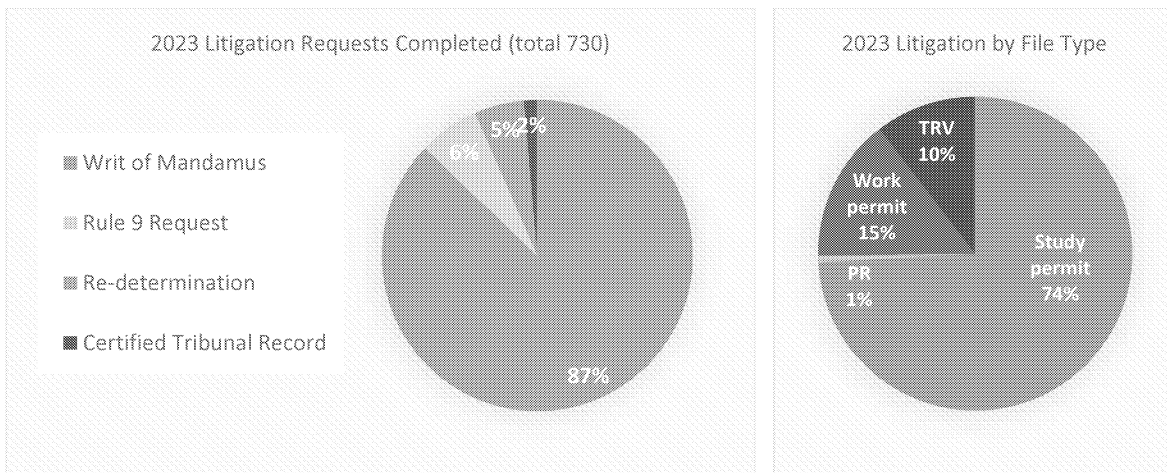
Potential factors that contribute to the litigation surge include: (1) lifted travel restrictions and more time-sensitive travel, (2) cases delayed by background checks, (3) higher proportion of graduate level studies, (4) clients unsatisfied with responses from previous enquiries, and (5) social media influences. Taking these factors into consideration, current communication and review practices can be assessed to improve client experience. We also need to look at our processes with the aim of reducing legal risk and efforts associated with litigation.

Report

1. The number of litigation requests received by IRCC Beijing on the China caseload has increased by more than 6 times in one year, from 116 requests in year 2022 to 730 requests in the first ten months of 2023 (Jan-Oct). Based on mission records, the number of litigation requests remained low from 2013 to 2021 with an average of 35 per year.



2. **By application type:** Out of the 730 litigation requests received this year, 725 were for temporary resident (TR) applications, and 5 were for permanent resident (PR) applications. Further analysis of the 725 TR requests shows that 541 were study permit (SP) applications, 108 were work permit (WP) applications, and 76 were temporary resident visa (TRV) applications.
3. **By action required:** Out of the 730 litigation requests, 636 were notices of writ of mandamus litigation, asking the court to order the migration office to finalize a file. 46 were Rule 9 requests (request for refusal reasons), 38 were certified tribunal record (CTR) requests (request for all materials on file), and 10 were re-determinations.



4. **Open files with no final decision accounted for 87% of all litigation requests:**
 - 636 mandamus applications involved a total of 588 files, with some files having multiple mandamus cases filed.
 - For 95% of these files (561 out of 588), IRCC Beijing had already completed the eligibility review before the litigation request was received.
 - At the time the litigation application was received, 266 of these files were open pending partner response for background checks. On average, these files had been open for 351 days based on received date in GCMS.

Implications for IRCC

5. **With travel restrictions lifted in mainland China in January 2023, more individuals can now travel, and applications are more time-sensitive than they were during the pandemic.** This contrasts with the previous three years when the Chinese public faced challenges traveling abroad. In addition, Canadian educational institutions have returned to on-campus learning, with fewer distance-learning options previously offered to offset travel restraints. As a result, there is increased incentive and urgency for Chinese students to travel to Canada; often, students have delayed starting their programs and further deferral is not an

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option. This may explain the increased number of litigation requests seen for the TR caseload, especially for study permits.


6. **Delays with background checks and pending partner information may be linked with the surge in litigation.** For the China caseload, only a small percentage of litigation arises from refused files (5% in 2023). Clients tend to accept decisions and, if still interested in going to Canada, reapply. Clients in the Chinese caseload typically litigate files that are open for an extended duration, seeking a final decision. In most cases, files are pending background checks after IRCC Beijing has completed the eligibility review. Processing times for background checks are perceived as unpredictable and, in the Chinese caseload, they can go from months to over a year.
7. **Another important consideration is the trend toward higher levels of education among Chinese study permit applicants.** Graduate level studies now account for a much larger proportion of our clientele,
For example, if we compare the overall study permit intake from China in 2019 (the last year before COVID) and 2023, the total number of applications received rose by 19%, but for master's studies it more than doubled, from 2,953 applications received in 2019 to 5,960 in 2023. The numbers in 2023 were also higher for undergraduate and doctoral studies.
8. **It is observed that many clients had submitted multiple enquiries through Webform or the IRCC Beijing general mailbox before seeking litigation action.** Despite responses provided by IRCC, these clients remained frustrated and continued to send repeated enquiries before resorting to litigation. Improving early communication with clients may help to provide better clarity on their file status and contextualize expectations for processing times beyond the normal timeframe.
9. **The increase in mandamus requests appears to be influenced by social media.** Feedback from recent student fairs indicated a widespread misunderstanding of an Embassy of Canada Weibo post. Although the post suggests that any applicant may be subject to a background check, many clients and agents incorrectly inferred that all Chinese applicants will certainly undergo additional checks. Local articles also suggest that clients on Chinese social media and forums are encouraging others to apply for mandamus as a tool to speed up background checks.

Next Steps

10. Considering the surge in litigation, IRCC Beijing has reassigned the responsibility of addressing all litigation requests from the Temporary Resident Unit (TRU) to the Program Support & Stewardship Unit (PSSU). This will allow TRU to focus resources on TR program delivery while PSSU provides full support on litigation.
11. To provide better client service, IRCC Beijing will review current procedures and email responses for files pending background checks and look for ways to provide clearer

expectations for applications exceeding normal processing times. Notwithstanding any efforts we may make with client outreach, our ability to diminish the volume of litigation will be limited as long as current intake trends and volumes continue, and background screening times remain unchanged. We can anticipate higher litigation volumes going forward.

Drafted: IRCC Beijing /
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