



# GMS Flash Alert

Immigration Edition

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## Canada - Federal Court Rules on Cancellation of NEXUS Memberships

A recent Federal Court decision could make it harder for Canadian government officials to cancel a traveller's NEXUS trusted-traveller card for minor infractions.<sup>1</sup>

### WHY THIS MATTERS

The court decision could make it less likely that a NEXUS member would have his or her NEXUS trusted-traveller card confiscated or cancelled by the authorities. Border service officers will now need to meet a higher threshold to justify cancelling a traveller's NEXUS membership.

### Context

Jointly run by the Canada Border Services Agency (CBSA) and the U.S. Customs and Border Protection, NEXUS is designed to speed up border crossings for low-risk, pre-approved travellers into Canada and the United States of America. Being a NEXUS member allows travellers to avoid long lines by using automated self-serve NEXUS kiosks and dedicated vehicle lines when entering Canada or the U.S. at major airports and land border crossings.<sup>2</sup>

Like all travellers, NEXUS members who are entering Canada need to disclose certain information upon entry. For example, under Canada's Proceeds of Crime, Money Laundering and Terrorist Financing rules, travellers have to report if they are carrying cash worth more than CAD 10,000. Historically, border services officers have held the discretion to revoke travellers' NEXUS memberships for minor mistakes and infractions.

The CBSA estimates that 1.4 million of the 1.7 million NEXUS card holders are Canadian citizens or permanent residents.<sup>3</sup> Each year, hundreds of Americans and Canadians who are NEXUS card holders have their membership revoked.

## A Higher Threshold to Revoke NEXUS Memberships

In *Nassar v. Canada*, Federal Court Justice John Norris ruled that revoking an individual's membership in the NEXUS trusted traveller program for neglecting to declare some of the cash he was carrying was unreasonable.

The case stemmed from an incident at Montreal's airport in October 2019, where a frequent international business traveller was awaiting to board a flight to Vienna for a trip to China. When a CBSA officer approached him and asked him how much cash he was carrying, the traveller said that he had USD 6,000. When the officer asked to count the money, it totalled USD 7,736, which, given the exchange rate at the time, added up to CAD 10,100.12. The officer searched the traveller's bag and found an envelope with EUR 1,450 that the traveller said he had forgotten from a previous trip.

Although there was no reason to suspect the cash was the proceeds of a crime or would be used to finance terrorism, the officer seized the money. Officials later returned the money to the traveller and fined him CAD 250 for not reporting all of the cash he carried. The officer seized the traveller's NEXUS card, and a month later his NEXUS membership was cancelled.

The notice informed the traveller that he had "contravened customs and/or immigration program legislation" and was no longer eligible for the program, which requires that members be of good character. The man appealed this decision, as a result of which the CBSA lowered the amount of time until he could reapply for a NEXUS membership from six years to two – but upheld the original decision to revoke his membership.

Following this, the Federal Court ruled that the currency violation alone was not enough to justify revoking the membership and there was a lack of sufficient reasoning as to why the individual's breach of rules meant he lacked the good character required for the NEXUS program.

The court ruling states:

*Crucially, apart from noting the fact that the applicant contravened the PCMLTFA, there is no explanation for why this caused the decision maker to lose confidence that the applicant would comply with all the requirements of the NEXUS program in the future. Perhaps if the applicant had intentionally failed to disclose the funds or had attempted to conceal the funds or if the funds were linked to money laundering or terrorist financing, no further explanation for why he was not trustworthy would be required. But this is not what the decision maker found. Rather, as articulated in the part of the decision dealing with the contravention of the PCMLTFA, the Senior Program Advisor did not dispute that it was an honest mistake on the applicant's part, that the funds were legitimate, or that it was an isolated incident. **In these circumstances, some explanation of why one honest mistake caused the decision maker to lose confidence that the applicant would comply with the requirements of the program in the future was required.***

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### KPMG NOTE

Travellers frequently make mistakes at the border, such as failing to fill out their cards correctly or pressing the wrong buttons on a kiosk display, with these minor mistakes leading to unreasonable NEXUS card cancellations.

While CBSA officers have held full power and authority to cancel someone's NEXUS card, the new ruling will now give travellers an opportunity to appeal and have their cases assessed so they can maintain their NEXUS card privileges. Those whose cards have been revoked for minor violations may reapply in light of the new ruling.

Those seeking to travel to Canada using their NEXUS cards should continue to maintain honest and full disclosure at ports of entry.

## KPMG NOTE continued:

Travellers who have concerns about how this new ruling may impact them are encouraged to contact KPMG Law LLP for further guidance.

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## FOOTNOTES:

- 1 See text of the case (*Nassar v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 378 (CanLII)) at: <https://www.canlii.org/en/ca/fct/doc/2021/2021fc378/2021fc378.html?searchUrlHash=AAAAAQAMbmV4dXMgmbm9ycmlzAAAAAAE&resultIndex=1> .
- 2 For more information on NEXUS, see: <https://www.cbsa-asfc.gc.ca/prog/nexus/application-demanded-eng.html> .
- 3 See E. Thompson, "Court rules NEXUS cards can't be cancelled for minor rules infractions," CBC News (online) (May 25, 2021) at: <https://www.cbc.ca/news/politics/canada-u-s-border-nexus-1.6036484> . (Note: By clicking on this link, you are leaving the KPMG website for an external site, that KPMG is not affiliated with nor is KPMG endorsing its content, and the use of the external site and its content may be subject to the terms of use and/or privacy policies of its owner or operator.)

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## Contact us

For additional information or assistance, please contact your local GMS or People Services professional\* or one of the following professionals with the KPMG International member firm in Canada:



**Howard Greenberg**  
**National Practice Leader - Immigration**

Tel. +1-416-943-0288 ext. 224

[hgreenberg@kpmglaw.ca](mailto:hgreenberg@kpmglaw.ca)



**Yomna Khatib**  
**Senior Associate**  
**Canadian Immigration**

KPMG Law LLP – Tax + Immigration,  
Canada

Tel. +1-416-943-7762

[ykhatib@kpmg.ca](mailto:ykhatib@kpmg.ca)



**Amira Zubairi**  
**Articling Student**  
**Canadian Immigration**

KPMG Law LLP – Tax + Immigration,  
Canada

Tel. +1-416-943-7889

[amirazubairi@kpmg.ca](mailto:amirazubairi@kpmg.ca)

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