

# **Canadian Bar Association Annual Meeting**

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## **CANADA'S IMMIGRANT MOVEMENT:**

### **OUR APPROACH TO PERMANENT AND TEMPORARY IMMIGRATION**

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#### **A) OVERVIEW**

Canada is a nation founded upon immigration. Settlers have been arriving in Canada since the 14<sup>th</sup> Century to start a new life and build a new world. Today, Canada's immigration programs keep that world turning. Immigration provides us with both the residents and skilled workers to keep our economy functioning. As our Canadian birth rate continues to decline, immigration will play an even more pivotal role in allowing us to maintain our economic stability given the projected demographic shortage of talent the world will be facing over the next thirty to forty years. Immigration is often considered to be the permanent relocation destination of persons between nations. However, immigration is comprised of both temporary and permanent flows of people. The permanent immigration process takes several years; temporary immigration applications such as workers, students, and visitors generally take days or weeks. This paper will generally outline Canada's temporary and permanent immigration programs.

#### **B) CANADA'S TEMPORARY IMMIGRATION PROGRAM**

Temporary status encompasses those people who come to Canada for a temporary purpose such as visiting, studying or working in Canada. Although individuals may be applying for permanent status simultaneously, it is necessary to maintain whatever temporary status a person has.

It is also important to note that applicants for temporary entry must satisfy visa officers or border officials that they will depart Canada at the end of their stay. Our immigration law presumes that persons are coming to Canada to live permanently, and temporary applicants must rebut this presumption. It is necessary for temporary applicants to prove that they will voluntarily leave Canada at the end of their stay or that there is some clear mechanism for an

applicant to ultimately achieve permanent resident status in Canada. This results in a high rate of refusal of temporary applicants particularly from countries requiring visas and/or with a poor economic climate.

## 1) **VISITORS VS. BUSINESS VISITORS**

Visitors are comprised of all temporary migrants such as tourists, business people, students, and workers. However, generally, this category focuses on tourists and business persons. Under visitor status, business visitors are allowed to perform certain minimal duties in accordance with the provisions of Regulation 186 of the *Immigration and Refugee Protection Act* (IRPA) and don't require work permits. This includes activities for the purpose of securing business relationships but not actual work that results in the ultimate provision of goods or services.

Foreign nationals who are authorized to engage in work in Canada without obtaining a work permit are set out in Regulation 186. Business visitors are specifically listed as foreign nationals who are:

- purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization in respect of such goods or services;
- giving or receiving training with a Canadian parent or subsidiary of the corporation that employs them outside of Canada, if any production of goods or services that results from the training is incidental;
- representing a foreign business or government for the purpose of selling goods for that entity and not engaging in selling to the general public at large;
- seeking to engage in international business activities in Canada without directly entering into the Canadian labour market; the primary source of remuneration for the business activities is outside Canada and the principal place of business and actual place of accrual of profits remain predominantly outside of Canada.

## 2) **WORK PERMITS**

### a) **Labour Market Opinions (LMO's)**

The standard method of obtaining a work permit in Canada is by way of a Labour Market Opinion, formerly referred to as a temporary validation of employment (job validation) by Human Resources and Service Development Canada (HRSDC) (The overall immigration program is delivered through the joint efforts of Citizenship and Immigration Canada (CIC), HRSDC, and Canadian Border Services Agency (CBSA)). CIC is Canada's department of Immigration; Service

Canada is essentially the federal government's Human Resources department; CBSA is the government's department controlling who enters and exits the country. Upon application by the employer, HRSDC issues a Labour Market Opinion (LMO) based on factors set out in R.203(3):

- i) The work is likely to result in direct job creation or job retention for Canadians;
- ii) The work is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- iii) The work is likely to fill a labour shortage;
- iv) The wages and working conditions offered are sufficient to attract Canadian citizens or permanent resident to, and retain them in, that work;
- v) Whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
- vi) Whether the employment of the foreign national is likely to adversely affect the settlement of an labour dispute in progress or the employment of any person involved in the dispute.

If an HRSDC officer determines that the entrance of the applicant will not have an adverse effect on the Canadian labour market, the officer will issue confirmation of employment to the employer by way of an LMO. The LMO is accessible to immigration officers by computer. The employee can then seek a work permit based on this opinion and will have to satisfy other legislative requirements for entry as a temporary resident, including submitting proper documentation and proof that he or she will leave Canada at the end of the temporary status. **This is important for employers – issuance of an LMO does not automatically result in work permit issuance.** This is particularly a concern in the Low Skilled Worker Program where visa offices routinely refuse work permits on the grounds that they do not think the applicant will leave Canada at the end of their stay where there is no direct pathway to permanent resident status and the likelihood for rejection of the work permit applicant is high for inability to demonstrate the individual will later return to their country of origin.

The LMO process is often the most frustrating category of work permits. It is the most difficult criteria to satisfy and has had the longest processing requirements over the past few years. LMO's were frequently taking months to process, with BC and Alberta taking up to 30-36 weeks. HRSDC (which administers the LMO process) had attempted to meet demands by introducing new programs. They

expanded their Low Skilled program in 2007 to allow employers to bring low skilled employees into Canada for periods up to 24 months from the previous 12. In addition, they introduced the Electronic LMO in 2008 to allow for the speedy entry of 33 occupations. Given the recent economic downturn the E-LMO program has been suspended. However, it was working very well and significantly reduced waiting times for processing from many months to a few days. Currently the general LMO process, which varies across the country, takes from a few days to 5 or 6 weeks.

#### **b) Low Skilled Worker Program**

The LMO process was previously restricted to skilled occupations. However, persistent and chronic shortages in the low skilled occupations forced the government to respond initially with a low skilled workers pilot project.

The Low Skilled Worker Program allows for people without post secondary training to come to Canada to fill labour shortages. The National Occupation Classification (NOC) grades occupations according to skill level such as skill levels O (Managerial), A (Professional) and B (Skilled Trades and Administration). The lesser skilled occupation levels are levels C and D. Employees can obtain work permits of up to two years for such occupations as fast food workers, cleaners, kitchen help, warehouse personnel and truck drivers. In order to bring people under this program, employers must demonstrate they have gone through much more stringent efforts in order to fill these jobs with available Canadian labour such as advertisements on both federal and provincial employment programs for disadvantaged or minority applicants.

This program does not have a permanent component to it. Employers are now able to bring low skilled labour into Canada for up to 24 months and then they must return to their home country for a minimum of four months before they will be able to return on another 24 month work permit. As in the other HRSDC process, the LMO process, the issuance of a labour market opinion for a low skilled worker **does not assure they will be allowed entry into Canada**. Canada Immigration scrutinizes applicants for work permits under this category very closely to be satisfied that they are likely to return to Canada and, given the strong draws for Canadian employment opportunities compared to those in their home countries, many applicants are denied work permits to Canada notwithstanding obtaining a labour market opinion for a low skilled worker. Costs to employers associated with this program are higher than other applicants as the program criteria specifies that employers must be responsible for return airfare from their home country as well.

### **c) Electronic Labour Market Opinions (E-LMO's)**

On September 24, 2007 Canada's Minister of Human Resources introduced the new Electronic Labour market Opinion, or E-LMO. This electronic process was designed to be a fast track process for a list of 12 specific occupations noted for having an extreme shortage of workers in Canada. Twelve occupations were first identified in this category and this program was available only in British Columbia and Alberta, where Canada's greatest labour shortages were.

On January 14, 2008, this list of occupations was expanded by an additional 21 occupations for a total of 33 specific occupations being identified.

The process was designed to allow for speedy registration of employers in these specific occupations such that E-LMO's can be issued to employees within 5-10 business days. Even if the process was somewhat longer in reality, it was a great improvement from the standard LMO processing time that had escalated to 6-7 months. However, of the 33 occupations, 13 rank as low skilled and these low skilled workers face a much higher rate of refusal for work permit applications. This will be discussed further regarding the creation of a low skilled worker program for LMO.

As of January 2009, the E-LMO program has been indefinitely suspended given the global economic downturn. Applicants are limited to the general application process for an LMO as described in the process for both skilled and unskilled workers. It is worth noting that while the global economic downturn has slowed the need for workers in many sectors, both the Federal and the Provincial governments recognize that there remains a pending shortage of workers generally.

### **d) Exemption from the LMO Process**

There are numerous exemptions from the LMO process. As a practitioner, one strives to find an applicable exemption rather than face the time consuming LMO process. If it is possible, an employer will usually want the worker to obtain a work permit without first obtaining a job validation from Human Resources Skills Development Canada (HRSDC). Therefore it is necessary to determine if the worker is exempt from that requirement.

#### ***i) Inter-Company Transferees***

Inter-Company transferees include executives, managers and persons with specialized knowledge within a company who have a minimum of one year of employment with the foreign company. The person seeks entry to perform services with the same company (or branch, subsidiary or affiliate) which is

engaged in substantive business operations in Canada or with a company that is engaged in substantive business operations in Canada which is owned or controlled by or affiliated with the foreign company. Executives direct the management of the company or establish goals and policies essential to day to day decision-making. Managers direct the company or department or subdivision of the company, supervise and control the work of other supervisory, professional or managerial employees, and exercise discretion and authority over day-to-day operations at a senior level. Specialists possess knowledge at an advanced level of expertise or possess proprietary knowledge of the company's product, services, equipment, techniques or management. They must demonstrate that they have been employed by the foreign company for a minimum of 12 months within the last 3 years seeing that they have gathered specialized knowledge of the company. Inter-company transferees are provided for under bilateral trade agreements such as the GATT, NAFTA, and CCFTA.

**ii) *NAFTA/CCFTA***

The *North America Free Trade Agreement* (NAFTA) was implemented to assist temporary entry for business people and workers from Canada, US and Mexico who are involved in the trade of goods or services or involved in investment activity (There is also the Canada-Chile Free Trade Agreement between Canada and Chile and the same provisions apply). One must have citizenship in one of these countries to qualify. Note that business visitors do not require a work permit. These are the following categories for obtaining work permits:

- Trade and Investors: carry on substantial trade in goods or services between Canada and US or Mexico or have committed or are in the process of committing a substantial amount of capital in Canada. They must be employed in supervisory or executive capacity or one involving essential skills.
- Business Visitor: participate in business activities outlined in Appendix 1603.A.1: research and design; growth, manufacture and production; marketing; sales; distribution; after-sales service; general service. The activities are international in scope; the business visitor will not enter the Canadian labour market; the primary source of remuneration and principal place of business remains outside of Canada. Typical examples include consultation, negotiation, discussion, research, participation in educational, professional or business conventions or meetings or to solicit business.

- **Intra-company Transferees:** remain employed by an American or Mexican enterprise in an executive or managerial capacity or one that involves specialized knowledge and are transferred to a related Canadian enterprise to perform in the same capacity. Executives direct the management of an organization or a major component or function of the entity, establish goals and policies of the organization, component or function; and exercise wide latitude in decision making. Managers in the NAFTA agreement are employees who manage the organization, or department, subdivision, function or component of the organization; supervise and control the work of other company; and exercise discretion over day-to-day operations of the activity or function for which the employee has control. However, under the provisions of FW1, 5.31, only senior managers qualify for the exemption. Specialized knowledge means special knowledge that an individual has of the enterprise's product, service, research, equipment, techniques, management or other interest, and its application in international markets; or an advanced level of knowledge or expertise in the organization's process and procedures. The person must have been employed continuously for one of the past three years in order to qualify for this exemption.
- **Professionals:** the qualifying professions are set out of Appendix 1603.D.1 of NAFTA and is attached as an exhibit at the end of this paper. The applicant must have the required qualifications of education and/or licensing and pre-arranged employment with a Canadian employer or an agreement to provide services through their employer to a Canadian enterprise.

Currently, Canada is in the process of negotiating a Free Trade Agreement with the European Union (EU). Currently, the NAFTA and CCFTA are the only two bilateral trade agreements in Canada that provides for the exchange of labour. The current EU negotiations are contemplating similar provisions to allow for the flow of workers between member nations. The schedule of occupations covered by these trade agreements is attached as an exhibit at the end of this paper. It is worth noting that these occupations are proscribed and generally only cover professionals, scientists and academics. It will be interesting to see if these occupational categories will be maintained in the Canada-EU Free Trade process.

### *iii) IT Workers Program*

This program was implemented in 1995 to facilitate the entry of certain information technology workers in response to critical shortages in the Software industry and covers the following specific job descriptions:

- Senior animator effects editor
- Embedded systems software designers
- MIS software designers
- Multimedia software developer
- Software developer-services
- Software products developer
- Telecommunications software developer

Under this program, the requirement for job-specific job confirmation was replaced by a national confirmation for workers who meet the requirements of these positions. The criteria are outlined in the Operations Memorandum F99-03, found at Appendix B (not currently available on the Department's website). The program was found to be successful and continues.

### *iv) Off Campus Work Permits*

In addition to studying, students are now able to work off campus while going to school as well as to get a work permit after graduating from school. The Off Campus Work Program allows students to work part time up to 20 hours a week while they are going to school. They must first be attending a school registered with the Province for the Off Campus Work Program, which generally includes public universities and colleges and generally excludes most private schools. Secondly, they must attend school in Canada for six months prior to being eligible for a work permit. The work permit is generally issued for the period of time that the student permit is valid. There is no requirement that the type of work correspond to the area of study.

### *v) Post Graduate Permits*

Students are also eligible for Post Graduate Work Permits allowing them to work for one to two years in a field of study related to their education after graduation. A two year permit is only available to those students who attend registered schools outside of major urban areas (i.e. Vancouver, Calgary, Toronto and Montreal) and must have completed at least two years of full time study. This is a very useful program as it allows students to obtain skills in their fields which may also make them eligible for permanent residence after completing their work experience in Canada. Students must obtain employment in a job related to the field of study.

**vi) *PNP Work Permits***

The regional need for particular types of workers and the inability of the Federal foreign worker program to meet demands have prompted the provinces to get into the foreign worker sphere. Provinces retain some jurisdiction in the immigration sphere and they are using this to further their own immigration needs.

Most provinces have signed agreements with the Federal Government allowing them to select a relatively small number of provincial nominees based upon the particular needs of individual provinces. Accordingly, criteria for provincial nominee programs vary by provincial needs in criteria. The vast majority of PNP programs are based upon economic need and/or benefit. Often the selection process is much faster than the federal process and leads to both permanent residence as well as temporary work status in an expedited fashion.

Currently, most provincial nominee programs are the application process of choice as they are able to select and nominate people more quickly than either the HRSDC Labour Market Opinion process or the Federal Skilled Worker process, and they generally provide individuals with the ability to obtain both a work permit and permanent resident status.

**vii) *Agricultural Worker Program***

The seasonal agricultural work program (SAWP) is a program with HRSDC that allows the entry of foreign workers to work in agricultural labour occupations in Canada. This program is a joint HRSDC and CIC initiative and allows entry of foreign workers from Mexico and several common-wealth Caribbean countries. Nine of the ten provinces in Canada participate in this program. In order for an employer to hire a foreign worker under SAWP, you must demonstrate that you have made significant efforts to hire Canadian agricultural workers at least 8 weeks before the starting date of their work in Canada and that you have endeavored to hire unemployed Canadians through HRSDC and provincial work programs at comparable Canadian wages of Canadian agricultural workers.

Employers must also be prepared to pay for the foreign worker's airfare to and from Canada and provide free seasonal housing as well as the immigration processing fees. Employers must also ensure that the workers are covered by Worker's Compensation and provides private or provincial health care during their stay in Canada. The workers are able to stay in Canada for up to 8 months at a time. There may be further provincial requirements given the employment standards of a particular province.

## **C) CANADA'S PERMANENT RESIDENCE PROGRAM**

The *Immigration and Refugee Protection Act and Regulations* (IRPA) set out the criteria for several classes of immigrants in both the economic and the humanitarian categories. Canada Immigration has attempted to achieve a 60-40 balance between economic and non-economic immigration. Non-economic immigration includes refugee, family class and humanitarian and compassionate applicants. Economic categories include skilled workers, business entrepreneurs, investors and provincial nominees and their general provisions are set out below.

### **1) ECONOMIC IMMIGRATION**

#### **a) Federal Skilled Worker Program**

The most common permanent resident application is the skilled worker process. Applicants are given points based upon their education, work experience, language skills and age, with bonus points for such factors as having worked and/or studied in Canada, having relatives in Canada and having an educated spouse. A person needs a score of 67 points to satisfy the criteria. Individuals must apply in the geographic region of their residence or where they have been lawfully admitted for 12 months. Those who have been in Canada for 12 months or more with legal status may be eligible to apply for permanent residence through a Canadian visa office in the United States. Alternatively a skilled worker application would have to be submitted at the Canadian Consulate or Embassy of their nationality or residence under the Simplified Application Process (SAP).

The skilled worker program has undergone significant change as of November 29, 2008. Under the system in operation prior to this date, the government had built up a backlog of nearly a million applicants. As a result, the Minister of Immigration introduced legislation allowing him to issue instructions as to which kind of applications would be processed. Prior to this, an individual who met the criteria in accordance with any NOC description at the highest levels, NOC O, A, or B, was eligible to apply as a skilled worker. The instructions issued by the Minister in November 2008 limit the number of occupational categories that the government will entertain to only 38 occupations. The government has indicated that these applications will be processed in 12 months or less. It is expected that the reduced number of applications will allow the department to speed up processing of the earlier backlog simultaneously.

In addition to the skilled worker category, priority processing can be obtained where the person qualifies with "Arranged Employment". This is done where a Canadian employer is offering indeterminate employment and the person otherwise meets the necessary point requirement.

Furthermore as mentioned, students who have studied in Canada and get work experience through either or both of the Off Campus Work Program and the Post Graduate Work Program, may gather the necessary experience to qualify for permanent residence under the skilled worker category and therefore, can apply for permanent residence on their own.

## **b) Business Immigration Program**

Canada's business immigration program is comprised of three separate categories: the Investor class, the Entrepreneur class, and the Self-Employed class. All three categories require applicants to demonstrate that they have operated a business for two of the past five years and otherwise need to meet the necessary criteria. An Investor applicant is a passive investor into a specified government fund.

An Investor must show that he has a net worth of \$800,000 and that he has the ability to make an investment for five years of \$400,000. He must demonstrate that he has owned and operated his business for two of the past five years or that he has been a senior manager for two of the past five years and controlling the direction and management of at least five personnel.

An Entrepreneur applicant must demonstrate the same, however, he requires a net worth of \$300,000. An Entrepreneur must be willing to make a significant investment in Canada within two years of landing. An Entrepreneur applicant is the least desirable application for permanent residence in that it is the only application for permanent residence in which a person is given terms and conditions to their permanent resident status. An Entrepreneur has two years after landing in Canada with which to make a significant investment and establish a qualifying Canadian business.

Both the Investor category and the Entrepreneur category must demonstrate that they have had a qualifying business overseas and that business must demonstrate that it meets two out of the five following criteria:

1. It must have gross sales of at least \$500,000 Canadian;
2. It must have net revenue of at least \$50,000 Canadian;
3. It must employ at least two full-time employees; or
4. It must have net annual assets of \$125,000 Canadian.

For the Entrepreneur applicants, to have their conditions removed, they must operate a "qualifying Canadian business." A qualifying Canadian business means that they must demonstrate, in the two years following their permanent residence, that for at least a period of one year subsequent to becoming a

permanent resident, operate a qualifying Canadian business which demonstrates the following:

1. That it has created two full-time job equivalents;
2. That it has had gross sales of \$250,000 Canadian;
3. That it has a net income of \$25,000 Canadian; or
4. That it has net annual assets of \$125,000 Canadian.

The Self-Employed category is a proscribed category that permits applications from persons who are self-employed in cultural activities, athletics, or farming. This category is designed to deal with people in the entertainment, cultural, sports, and farming professions. Applicants must demonstrate that they have been self-employed for two of the past five years and that they will have the ability to be self-employed in Canada in their profession. There is no set minimum requirement of investment or earnings, but past performance is an indicator of likely success in Canada.

### **c) Provincial Nominee Programs**

Following the lead of Quebec, which first negotiated an agreement allowing it to select immigrants in 1978, other provinces have seen that they want to have a say in selecting the kind of applicants best suited for their economies. In the past decade, all of the provinces have become much more active in immigrant selection, with Ontario being the last to come on board in June 2007. Each province has developed its own unique categories and criteria. This provides additional opportunities for employers and would be applicants.

The Provincial Nominee Program is currently the preferred process for applying for permanent residence as it entitles the applicant to receive priority processing. Thus, applications can be finalized in less than 12 months, compared with 2 to 5 years under the Federal Skilled Worker Program. The most common Provincial Nominee Program is an employer driven process which means that an individual needs to have an employer who is prepared to give a permanent full time position to the individual in a skilled or designated occupation. Most PNP programs also provide for speedy issuance of work permits pending priority processing for permanent residence.

PNP applications for permanent residence are processed on an expedited basis and often entitle a person to be able to work in Canada while that application is being processed. Provincial Nominee Programs vary from province to province so it is important that you consider the particular criteria for the Province that you are planning to work and live in. Some provinces have a Provincial Nominee Program for students. For instance, a student who graduates from a university in British Columbia after having completed at least two years of study in the

Province is eligible for permanent residence under BC's Provincial Nominee Program if an employer offers them a full time permanent position. No previous work experience with the employer is required.

#### **d) Canadian Experience Class**

In October 2007, the Minister of Immigration announced the creation of a new Canadian Experience Class, which would be created to facilitate the processing of immigrants from within Canada that had either been working or studying in Canada. Consultations for development of this class started in January 2008 and actual implementation of this new program commenced September 17, 2008.

The Canadian government recognizes that those persons who have already been working and studying in Canada integrate into the Canadian system more readily and accordingly they wanted to create a system that would allow them to apply for immigration from within Canada rather than having to submit their applications overseas, as was the process. Individuals who have worked in Canada for 2 years or who have studied for two years and worked in Canada for one further year are eligible. It will allow for people to be able to both submit their applications and to be landed from within Canada. Processing times should be approximately 12 months.

### **2) Non-Economic Immigration**

#### **a) Family Class**

The Family Class allows for certain family relationships to be sponsored, specifically spouses, dependent children, parents, or grandparents. Sponsoring a relative means that you will take financial responsibility for that person for a period of 3-5 years, depending on the relationship. There is a special emphasis on facilitating and expeditiously processing applications for spouses and for dependent minor children. Applications for parents and grandparents often take five years or more to be processed. The Family Class is a cornerstone of Canada's immigration program, as Section 3 of the *Immigration and Refugee Protection Act (IRPA)* specifically recognizes the reunification of families as one of its objectives of the legislation.

#### **b) In-land Spousal Category**

The family class application process mentioned above is designed to sponsor applicants who are overseas. For persons who have come to Canada and are remaining in Canada with their spouses, they are also eligible to apply under the In-Land Spousal category. Essentially the same principles apply as they do in the family class with respect to the relationships between spouses. However, overall,

it takes longer for an applicant to become a permanent resident from within Canada, and in the event that the application is unsuccessful, there are no appeal rights for spouses in the in-land spousal sponsorship category. In cases of refusal, applicants are left to making the overseas family class application.

**c) Refugee Applicants and Protected Persons**

Canada has a very strong refugee program and has been recognized in 1986 by the UNHCR with the Nansen Medal for its refugee determination program. When *IRPA* was enacted, the wording of our legislation was specifically changed from the *Immigration Act* to the *Immigration and Refugee Protection Act*, signifying Canada's commitment to refugee protection. Canada's refugee determination program is predominantly held within Canada by an independent tribunal, the Immigration and Refugee Board. Refugee claimants, upon arrival, are interviewed and designated as refugee claimants and are given documentation to prepare in support of their claim. They are provided with the right to counsel and they are given a hearing to assess the merits of the claim. Persons who are determined to be refugees are eligible to apply for permanent residence from within Canada and are able to sponsor their dependents from overseas. Canada does have an overseas determination program, which does not include a formal hearing process but includes an interview by immigration officers. It is a very small component of Canada's refugee determination program.

Notwithstanding that some applicants will not meet the specific definition of convention refugee, they may nonetheless be designated as a protected person. All failed refugee claimants and foreign nationals facing removal from Canada are offered a Pre-Removal Risk Assessment (PRRA) to determine whether or not they would face risk upon being returned to their country. If claimants are able to demonstrate that they are nonetheless subject to risk of harm upon return to their country, they may be allowed to apply for permanent residence from within Canada.

**d) Humanitarian and Compassionate**

Section 25 of *IRPA* also provides a very broad discretion for immigration officers to grant exemption from any requirement of the Act, based upon humanitarian and compassionate considerations and, specifically, the best interests of a child directly affected. My colleague, Mr. Lorne Waldman, addresses in his paper at great length the law with respect to these cases.

The humanitarian and compassionate jurisdiction is extremely broad and can attach to any aspect of any process and at any stage of the immigration process. It enables people to apply for permanent residence both from inside Canada or from overseas who don't meet any other eligible criteria, but who nonetheless can

support favourable criteria to warrant their being granted permanent residence in Canada or an exemption from removal. Humanitarian and compassionate discretion is often utilized for failed refugee claimants from within Canada who can demonstrate that there are compelling reasons why they and their family members should nonetheless remain in Canada. These factors include:

1. Having established significant family relationships;
2. Having become significantly established in the community;
3. Having become a *de facto* resident; and
4. Any other compelling or relevant factors in support of their remaining in Canada.

#### **D) STATISTICS**

Each year Canada's Minister of Immigration sets the targets for permanent Immigration to Canada based on the preceding year. For 2008 Canada accepted 247,202 permanent immigrants.

For 2009, the targets for permanent Immigration are between 240,000 to 265,000.

Temporary migration covers primarily visitor records, student permits, and work permits. In 2008, Canada accepted 193,061 temporary workers and 79,459 students.

Given Canada's recent and ongoing shortage of skilled and unskilled labour these figures are expected to continue to rise over the next few decades.

Attached at the end of this paper, please find a CIC document entitled "**Overview of Economic Immigration Program,**" which sets out the basic parameters of the economic program. As you can see, the temporary and permanent aspects of immigration are linked. What is key is that there are no specific targets for temporary residents, as opposed to permanent immigrants.

Below are some of the key statistics relating to Canada's temporary and permanent immigration flows.

## 1. Canada – Permanent Residents by Top Source Countries

<http://www.cic.gc.ca/english/resources/statistics/facts2007/permanent/12.asp>

Source countries	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
	<b>Number</b>									
China, People's Republic of	19,790	29,148	36,750	40,365	33,307	36,254	36,430	42,292	33,078	27,014
India	15,376	17,457	26,123	27,903	28,838	24,593	25,574	33,147	30,754	26,054
Philippines	8,184	9,205	10,119	12,928	11,011	11,988	13,303	17,525	17,718	19,064
United States	4,776	5,533	5,828	5,909	5,294	6,013	7,507	9,263	10,943	10,450
Pakistan	8,089	9,303	14,201	15,354	14,172	12,351	12,795	13,575	12,329	9,547
United Kingdom	3,899	4,478	4,649	5,360	4,724	5,199	6,062	5,864	6,542	8,128
Iran	6,775	5,909	5,617	5,746	7,889	5,651	6,063	5,502	7,073	6,663
Korea, Republic of	4,917	7,217	7,639	9,608	7,334	7,089	5,337	5,819	6,178	5,864
France	3,867	3,923	4,345	4,428	3,962	4,127	5,028	5,430	4,915	5,526
Colombia	922	1,296	2,228	2,967	3,226	4,273	4,438	6,031	5,813	4,833
Sri Lanka	3,329	4,728	5,849	5,520	4,968	4,448	4,135	4,690	4,490	3,934
Romania	2,976	3,468	4,431	5,589	5,689	5,466	5,658	4,964	4,393	3,770
Russia	4,304	3,782	3,523	4,073	3,677	3,520	3,685	3,607	2,850	2,854
Taiwan	7,193	5,483	3,535	3,114	2,910	2,126	1,992	3,092	2,823	2,780
Hong Kong	8,087	3,672	2,865	1,965	1,541	1,472	1,547	1,783	1,489	1,131
Yugoslavia (former)	1,172	1,492	4,744	2,802	1,623	940	708	272	126	49
<b>Top 10 source countries</b>	<b>87,491</b>	<b>98,461</b>	<b>121,519</b>	<b>134,282</b>	<b>123,226</b>	<b>119,052</b>	<b>123,757</b>	<b>144,448</b>	<b>135,343</b>	<b>123,143</b>
<b>Other countries</b>	<b>86,706</b>	<b>91,494</b>	<b>105,939</b>	<b>116,356</b>	<b>105,823</b>	<b>102,297</b>	<b>112,066</b>	<b>117,792</b>	<b>116,300</b>	<b>113,615</b>
<b>Total</b>	<b>174,197</b>	<b>189,955</b>	<b>227,458</b>	<b>250,638</b>	<b>229,049</b>	<b>221,349</b>	<b>235,823</b>	<b>262,240</b>	<b>251,643</b>	<b>236,758</b>



Source countries	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
	<b>Rank</b>									
China, People's Republic of	1	1	1	1	1	1	1	1	1	1
India	2	2	2	2	2	2	2	2	2	2
Philippines	3	4	4	4	4	4	3	3	3	3
United States	9	7	7	6	8	6	5	5	5	4
Pakistan	4	3	3	3	3	3	4	4	4	5
United Kingdom	11	10	10	10	10	9	7	7	7	6
Iran	7	6	8	7	5	7	6	9	6	7
Korea, Republic of	8	5	5	5	6	5	9	8	8	8
France	12	11	12	12	13	12	10	10	10	9
Colombia	45	39	25	21	16	11	11	6	9	10
Sri Lanka	14	9	6	9	9	10	13	12	12	11
Romania	15	14	11	8	7	8	8	11	13	13
Russia	10	12	14	13	14	13	14	15	20	18
Taiwan	6	8	13	19	19	21	27	18	22	19
Hong Kong	5	13	17	29	32	32	33	31	33	46
Yugoslavia (former)	40	29	9	22	31	48	59	99	120	149

## 2. Canada – December 1<sup>st</sup> stock of foreign workers by top source countries

<http://www.cic.gc.ca/english/resources/statistics/facts2007/temporary/09.asp>

Source countries	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
	<b>Number</b>									
Philippines	5,908	6,015	6,399	8,282	10,801	12,526	15,330	17,723	21,595	33,926
United States	20,931	20,387	21,456	21,143	20,326	21,152	22,069	23,794	25,328	26,737
Mexico	6,792	8,125	10,003	11,177	11,613	11,643	11,949	13,312	15,178	18,138
United Kingdom	5,259	5,757	6,565	7,073	7,072	7,530	9,492	10,757	11,148	12,600
France	2,539	2,891	3,372	3,784	4,038	4,410	5,982	7,485	9,080	9,994
Australia	4,047	4,043	4,585	5,451	6,267	6,914	8,289	8,625	9,077	9,845
India	1,316	1,550	1,893	1,916	2,190	2,716	3,736	5,118	6,374	8,706
Japan	5,934	7,157	6,570	6,497	7,830	8,284	8,612	8,844	8,429	7,867
Germany	1,633	1,671	2,009	2,283	2,084	2,276	3,138	3,657	5,441	6,885
Jamaica	5,202	5,542	5,288	5,701	5,382	5,859	5,918	6,117	6,413	6,732
Trinidad and Tobago	1,857	1,680	1,803	1,772	1,625	1,610	1,668	1,645	1,489	1,437
<b>Top 10 source countries</b>	<b>60,102</b>	<b>63,268</b>	<b>68,140</b>	<b>73,307</b>	<b>77,603</b>	<b>83,310</b>	<b>94,515</b>	<b>105,432</b>	<b>118,063</b>	<b>141,430</b>
<b>Other countries</b>	<b>17,437</b>	<b>19,297</b>	<b>22,090</b>	<b>23,651</b>	<b>24,143</b>	<b>27,166</b>	<b>31,516</b>	<b>36,311</b>	<b>43,983</b>	<b>59,627</b>
<b>Total</b>	<b>77,539</b>	<b>82,565</b>	<b>90,230</b>	<b>96,958</b>	<b>101,746</b>	<b>110,476</b>	<b>126,031</b>	<b>141,743</b>	<b>162,046</b>	<b>201,057</b>

Source countries	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Percentage distribution</b>										
Philippines	7.6	7.3	7.1	8.5	10.6	11.3	12.2	12.5	13.3	16.9
United States	27.0	24.7	23.8	21.8	20.0	19.2	17.5	16.8	15.6	13.3
Mexico	8.8	9.8	11.1	11.5	11.4	10.5	9.5	9.4	9.4	9.0
United Kingdom	6.8	7.0	7.3	7.3	7.0	6.8	7.5	7.6	6.9	6.3
France	3.3	3.5	3.7	3.9	4.0	4.0	4.8	5.3	5.6	5.0
Australia	5.2	4.9	5.1	5.6	6.2	6.3	6.6	6.1	5.6	4.9
India	1.7	1.9	2.1	2.0	2.2	2.5	3.0	3.6	3.9	4.3
Japan	7.7	8.7	7.3	6.7	7.7	7.5	6.8	6.2	5.2	3.9
Germany	2.1	2.0	2.2	2.4	2.1	2.1	2.5	2.6	3.4	3.4
Jamaica	6.7	6.7	5.9	5.9	5.3	5.3	4.7	4.3	4.0	3.4
Trinidad and Tobago	2.4	2.0	2.0	1.8	1.6	1.5	1.3	1.2	0.9	0.7
<b>Top 10 source countries</b>	<b>77.5</b>	<b>76.6</b>	<b>75.5</b>	<b>75.6</b>	<b>76.3</b>	<b>75.4</b>	<b>75.0</b>	<b>74.4</b>	<b>72.9</b>	<b>70.3</b>
<b>Other countries</b>	<b>22.5</b>	<b>23.4</b>	<b>24.5</b>	<b>24.4</b>	<b>23.7</b>	<b>24.6</b>	<b>25.0</b>	<b>25.6</b>	<b>27.1</b>	<b>29.7</b>
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source countries	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Rank</b>										
Philippines	4	4	5	3	3	2	2	2	2	1
United States	1	1	1	1	1	1	1	1	1	2
Mexico	2	2	2	2	2	3	3	3	3	3
United Kingdom	5	5	4	4	5	5	4	4	4	4
France	8	8	8	8	8	8	7	7	5	5
Australia	7	7	7	7	6	6	6	6	6	6
India	11	11	10	10	9	9	9	9	9	7
Japan	3	3	3	5	4	4	5	5	7	8
Germany	10	10	9	9	10	10	10	10	10	9
Jamaica	6	6	6	6	7	7	8	8	8	10
Trinidad and Tobago	9	9	11	11	12	13	14	15	16	20

## *E) CONCLUSION*

Canada's temporary migration movement is inextricably linked to the permanent immigration process both in law and in practice. The presumption that all persons are coming to live permanently in Canada is the litmus test against which all entrants to Canada are measured. Stricter scrutiny is given to those persons seeking to enter Canada from countries which require visas to enter and/or which have weaker economies. In situations where there is no ultimate possibility of obtaining permanent immigration status, the rate of refusal for temporary entry, whether as a worker, student, or visitor, is much higher. It is open to debate whether this presumption is an appropriate standard for temporary entry to a foreign country, but if facilitated movement between member nations is the designed goal, then this would need to be addressed. It is all the more necessary

to examine the current trade agreement model given Canada's current labour shortage to see whether our existing model is appropriate in our current economic environment.

A review of Canada's bilateral trade agreements as a means of exchange in labour between member nations is very telling. Canada is currently a signatory to the GATT, with 151 member nations and to six other bilateral agreements with the United States of America, Mexico, Chile, Europe, Costa Rica, Israel, and Peru. However, of these international trade agreements, only two, that of NAFTA with the United States and Mexico and of CCFTA with Chile, allow for the exchange of both goods and services. It is the provision for the exchange of services which allows for facilitated exchange of workers between member nations. The proscribed occupations under these two agreements apply to only professionals, academics, and scientists. When measured against the most needed occupations within Canada's current labour shortage, very few are listed on the schedule of professionals eligible to apply for work permits. If Canada is truly interested in facilitating the movement of labour as a means of addressing her current labour shortage, then these bilateral agreements, both present and future, will need to be modified to allow for the entry of skilled workers and trades people. Canada is currently in negotiations for further trade agreements with Korea, the Caribbean community, the Dominican Republic, the Central America Four (Honduras, Nicaragua, El Salvador, and Guatemala), Singapore, and the Free Trade Area of the Americas, and is concluding an agreement with Jordan. It is unknown whether these pending negotiations contemplate an exchange of both goods and services which would facilitate the movement of labour between member nations. Furthermore, as of May 8, 2009, Canada has commenced negotiations for a Trade Agreement with the European Union and seeks to include provisions for the exchange of workers.

The majority of the temporary worker movement in Canada does not arise as a result of Canada's bilateral trade agreements with other countries. Given Canada's present labour shortage, and expected ongoing labour shortage, it is not only worth re-examining the potential of our bilateral trade agreements to address this current problem, but also of examining the other means for obtaining temporary work permits, harmonizing the various government departments participating in the process for bringing foreign workers to Canada and developing and promoting a general facilitative approach for the entry of much needed foreign workers. This is of particular value given the creation of the Canadian Experience Class, which allows persons who have worked in Canada to ultimately obtain permanent resident status.

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