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***Work Permits:  
The Fundamentals***

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## 1. Introduction

The flow of international business and service delivery via electronic media, frequent business travel and intra-company relationships create a myriad of situations requiring the application of basic analytical tools to determine whether and how to obtain a work permit in the simplest, most cost-effective means. Many situations do not fit neatly within the legislation or interpretation bulletins. Consequently, knowing the fundamental principles and being able to apply them is essential for the immigration practitioner.

This paper is intended to provide a practical step-by-step look at the process of obtaining temporary work permits for foreign nationals seeking to work in Canada. Reference is made throughout to the governing legislation, being the *Immigration and Refugee Protection Act* (“IRPA” or the “Act”)<sup>1</sup> and the *Immigration and Refugee Protection Regulations* (“IRPR” or the “Regulations”), both of which came into effect on June 28, 2002. We also highly recommend familiarity and reference in work permit applications to Citizenship and Immigration Canada’s interpretation bulletin, the *Foreign Worker Manual*, as these are the guidelines to be followed by immigration officers when considering whether to issue a work permit.<sup>2</sup>

We first examine the definition of “work” and provide some examples of business activities that constitute work for the purposes of the Regulations, as well as those “grey areas” that are not straight forward, even for the seasoned practitioner and the experienced immigration officer.

Certain types of work are exempt from the requirement to obtain a work permit under immigration policy, treaty or the category reserved for business visitors. We discuss both the activities that are clearly exempted under the Regulations and those that may or may not fall within the scope of business visitors. We also identify the preliminary steps for evaluating a proposed activity.

While labour market opinions are not dealt with extensively in this paper, we do identify the basic exemptions and provide a quick summary in Schedule “A”. We also give some practical tips on how to obtain a Temporary Foreign Worker Unit Opinion and provide examples opinions and the ensuing work permit and entry stamp as Schedule “B” and the Request for Labour Market Exemption as Schedule “C”.

With this background and set of fundamental tools, we deal with the where, when and how to apply for and successfully obtain a work permit. We also address basic questions including: who is eligible for an open work permit? who requires a medical examination or temporary resident visa? and what if the applicant has a criminal record? Finally, we provide a few practical tips and strategies with respect to work permit renewals and maintaining temporary authorization to work in Canada without interruption.

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The authors would like to acknowledge and thank Christy Jones of Greenberg Turner for her contributions to this paper. We would also like to thank Victoria Cowling of Borden Ladner Gervais LLP for her panel moderation and editorial comments. This paper is being presented on April 18, 2009 at the National Citizenship and Immigration Law CLE Conference in Whistler, B.C., Introductory Workshop 8-C, Work Permits Fundamentals: A Step by Step “How To” Session on Work Permits. The Workshop panel includes Victoria Cowling as Moderator, Dani Willetts, Supervisor, Inland, on behalf of Citizenship and Immigration Canada, and Howard Greenberg and Vance Langford as Canadian Bar Association Speakers. The Workshop will include some interesting and hopefully insightful fact scenarios intended to promote audience participation and some humour.

<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c.27. *Immigration and Refugee Protection Regulations*, S.O.R./2002-227. Defined terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Act and the Regulations.

<sup>2</sup> Citizenship and Immigration Canada, Publications, “FW1 Foreign Worker Manual”, online: <http://www.cic.gc.ca/english/resources/manuals/fw/index.asp> (April 3, 2009; last updated 2008-06-11) at 11.

## 2. What is “Work”?

In assessing whether an activity constitutes work, one should first gather a solid understanding of the scope and purpose of the activity and the business involved. Then consider and analyze the activity with reference to the definition of “work” in the Regulations:

**"work" means an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.**<sup>3</sup>

Too many years ago to mention, a friend and I left university for a year to travel South America. Among other pacts we made as part of our travel code and romantic quest as “freedom fighters, riot quellers, insurrection starters and rescuers of damsels in distress”, we agreed not to use the word “work” as long as we were on our adventure. Instead, we would call it “that thing you do for money” and other similarly inelegant phrases. It was more than a few times that our attempts to express the concept in Spanish were misunderstood, probably as some form of proposition. In any event, calling work “that thing you do for money” captured one of the two concepts contained in the Regulations: an activity for which wages are paid or commission is earned.

### (a) Wages or Commission: Is It Only Money?

The *Foreign Worker Manual* states the following with respect to “wages or commission”:

If a person performs an activity that will result in them being paid or receiving remuneration, they will be engaging in work. This includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.<sup>4</sup>

The *Foreign Worker Manual* extends the definition of “wages or commission” to include “remuneration”, which may be problematic, since remuneration can include non-monetary forms of compensation.<sup>5</sup> In situations involving payment in money, the analysis of whether an activity constitutes “work” is relatively

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<sup>3</sup> Regulations, s.2. Section 2 also provides: "work permit" means a written authorization to work in Canada issued by an officer to a foreign national.

<sup>4</sup> Citizenship and Immigration Canada, Publications, “FW1 Foreign Worker Manual”, online: <http://www.cic.gc.ca/english/resources/manuals/fw/index.asp> (April 3, 2009; last updated 2008-06-11) at 11.

<sup>5</sup> Merriam-Webster’s Online Dictionary defines “remunerate” as “to pay an equivalent for a service, loss or expense”. Online: <http://www.merriam-webster.com/dictionary/remunerate> (April 3, 2009). However, the Oxford Dictionary defines remuneration as “money paid for work or a service”. Online: [http://www.askoxford.com/concise\\_oed/orexxmuneration?view=uk](http://www.askoxford.com/concise_oed/orexxmuneration?view=uk) (April 3, 2009).

straight forward. But a common question is whether forms of payment other than money, such as accommodation, goods or an exchange of services, constitute “remuneration” and therefore bring the activity within the definition of “work”.

For example, a client recently inquired about his daughter’s boyfriend painting his fence while visiting from Argentina. The foreign guest isn’t being paid to paint the fence, but if the fence is painted, then the family will have more time to go golfing and sightseeing, which the father will pay for as the host. Does the boyfriend require a work permit?

The Foreign Worker Manual provides some examples of work and activities not considered to be work, including:

- volunteer work for which a person would not normally be remunerated, such as sitting on the board of a charity or religious institution; being a “big brother” or “big sister” to a child’ being on the telephone at a rape crisis centre (Normally this activity would be part time and incidental to the main reason that a person is in Canada);
- unremunerated help by a friend or family member during a visit, such as a mother assisting a daughter with child care, or an uncle helping his nephew build his own cottage;
- long distance (by telephone or internet) work done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada.<sup>6</sup>

Based on the cottage building example above, it would appear that the boyfriend does not require a work permit to paint the fence, particularly since this is incidental to his visit to Canada.

Another type of activity, unpaid employment undertaken for the purpose of obtaining work experience, such as an internship or practicum normally done by a student, is within the examples of work provided in the Foreign Worker Manual. I currently have a client who is a citizen of Jordan wishing to do an unpaid internship in Canada as part of the curriculum for his graduate degree program at an Italian university. According to both the *Foreign Worker Manual* and the Calgary Temporary Foreign Worker Unit, he requires a work permit and a labour market opinion (LMO). But Service Canada indicates it will not issue a positive LMO for a position that does not pay wages. According to Service Canada, the employer will have to pay the prevailing wage for an appropriate occupation, demonstrate that the intern is not entering the Canadian labour market so recruiting and advertising requirements should be waived and since the occupation identified for the internship position would be a low-skilled occupation, request that

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<sup>6</sup> Supra note 3 at Page 12.

the requirements for the employer to provide airfare, assistance with affordable accommodation and medical benefits also be waived. Waiving advertising and recruiting and also low-skilled occupation requirements would be a significant exception for Service Canada. But still, requiring the employer to pay the prevailing wage will make the unpaid internship infeasible. The only alternate solution is to apply for a work permit at a visa office based on an LMO exemption and since this person is from a country that requires a Temporary Resident Visa, the Temporary Foreign Worker Units will not provide an assessment regarding LMO exemptions.

**(b) Direct Competition in the Canadian Labour Market**

The other concept in the definition of “work” is “an activity... that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market”. In fact, whether the activity is or could be directly competing in the Canadian labour market is a key indicator of whether an officer will take the position that a work permit is required.

The Foreign Worker Manual provides the following guidance:

What is an activity that “competes directly”?

Officers should consider whether there is entry into the labour market. Questions to consider:

- Will they be doing an activity that a Canadian or permanent resident *should* really have an opportunity to do? [italics added]
- Will they be engaging in a business activity that is competitive in the marketplace?

If the answer to either of these questions is ‘yes’, the foreign worker intends to engage in a competitive activity, which would be considered “work”.

...

What kind of activities are *not* considered to be “work”?

- An activity which does not really ‘take away’ from opportunities for Canadians or permanent residents to gain employment experience in the workplace is not “work” for the purposes of the definition.<sup>7</sup>

Based on these guidelines it is safe to say that if the activity involves payment in money, then it will be difficult to demonstrate that it does not constitute work. And even if there is no

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<sup>7</sup> *Ibid.*

remuneration, if the activity can reasonably (and sometimes unreasonably – note the subjective “should” above) be considered to compete directly with the opportunities of Canadian citizens and permanent residents, then it constitutes work.

### **3. Work without a Work Permit?**

There are many activities that constitute work and yet for which foreign nationals are exempt from the requirement to obtain a work permit. Sections 186 and 187 of the Regulations set out these exemptions.

#### **(a) Section 186 Exemptions**

Section 186 contains a sundry list of activities that constitute work and are exempt from the requirement to obtain a work permit.<sup>8</sup> The list includes business visitors, diplomats, armed forces, government officers, students, artists, athletes, journalists, guest speakers, convention organizers, spiritual leaders, judges, examiners, experts, medical trainees, aviation inspector, foreign crew, emergency personnel and applicants for work permit extensions who applied before the expiry of their work permits. What do they

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<sup>8</sup> No permit required

**186.** A foreign national may work in Canada without a work permit

(a) as a business visitor to Canada within the meaning of section 187;

...

#### **Business visitors**

**187.**(1) For the purposes of paragraph 186(a), a business visitor to Canada is a foreign national who is described in subsection (2) or who seeks to engage in *international business activities* in Canada *without directly entering* the Canadian labour market. [italics added]

#### **Specific cases**

(2) The following foreign nationals are business visitors:

(a) foreign nationals purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization in respect of such goods or services;

(b) foreign nationals receiving or giving training within a Canadian parent or subsidiary of the corporation that employs them outside Canada, if any production of goods or services that results from the training is incidental; and

(c) foreign nationals representing a foreign business or government for the purpose of selling goods for that business or government, if the foreign national is not engaged in making sales to the general public in Canada.

#### **Factors**

(3) For the purpose of subsection (1), a foreign national seeks to engage in international business activities in Canada without directly entering the Canadian labour market only if

(a) the primary source of remuneration for the business activities is outside Canada; and

(b) the principal place of business and actual place of accrual of profits remain predominately outside Canada.

all have in common? With some exceptions, it appears that the common thread is public policy consideration for the unique nature of their activities and the benefit to Canadian and reciprocal interests.

**(b) Section 187 Business Visitors**

Section 187 addresses business visitors, one of the most challenging and interesting exemptions to work with and to make work for your clients. When it comes to assessing whether the activity involves direct competition in the Canadian labour market, Section 187 provides some assistance: “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 predominately outside Canada.” Based on Section 187, if the activity involves purchasing goods or services, training or selling goods but not to the general public, then the foreign national may be considered a business visitor and exempt from the requirement to obtain a work permit. One practical rule of thumb for business visitors is that the duration of a single visit to Canada is relatively short (i.e. typically a few days or weeks and almost always less than one year).

**4. Business Visitors and the NAFTA**

For citizens of the U.S.A. and Mexico, the NAFTA also speaks to the definition of a business visitor in Annex 1603, Section A.<sup>9</sup> The basic requirement is “that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.”<sup>10</sup>

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<sup>9</sup> *North American Free Trade Agreement Between the Government of Canada, the Government of Mexico and the Government of the United States*, 17 December 1992, Can. T.S. 1994 No. 2, 32 I.L.M. 289. Foreign Affairs and International Trade Canada, online: [http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap16.aspx?lang=en#section\\_a](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap16.aspx?lang=en#section_a) (April 3, 2009).

**Annex 1603  
Temporary Entry for Business Persons**

*Section A - Business Visitors*

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.



The Canadian legislation is based in part on these articles. The *Foreign Worker Manual* also provides guidance in interpreting business visitor activities under the NAFTA.<sup>11</sup> Reiterating the NAFTA, it states that business activities covered by Appendix 1603.A.1 are activities of a commercial nature which reflect the components of a business cycle, namely:

- research and design;
- growth, manufacture and production;
- marketing;
- sales;
- distribution;
- after-sales service; and
- general service.<sup>12</sup>

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2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 1603.A.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. No Party may:

(a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult, on request, with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

<sup>10</sup> Annex 1603, Section A.1(c).

<sup>11</sup> *Supra* note 3, Appendix G, Section 2.

<sup>12</sup> *Supra* note 3 at 138.

Of these headings, it is the after-sales service provision that causes the most confusion among employers seeking to have their personnel perform temporary services in Canada. This provision will be discussed in further detail below.

(a) **NAFTA – After-Sales Service Exemption**

Appendix 1603.A.1 also includes an exemption for after-sales service and defines this service:

**After-Sales Service**

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

It is quite common for sales contracts between entities to include the installation or set up of the purchased products as part of the initial sales contract. As such, it would seem that U.S. and Mexican nationals would quite often be able to enter Canada under this exemption. However, there are a number of issues that should be addressed before recommending that an employee enter Canada to perform after-sales service.

First, the employee must be in possession of the requisite documentation when arriving at the port of entry. This documentation includes a copy of the sales and warranty agreement, including potential extensions, which clearly support the purpose of entry. For many employers, issuing their employees sensitive and confidential material such as a contract of sale is undesirable, as it renders them vulnerable to their competitors. Also, it is not uncommon for work to begin on a contract before the conditions of the contract are completely finalized. In this case, it would be difficult to argue a NAFTA After-Sales Service exemption when the necessary evidentiary documentation does not yet exist.

As a result of these potential obstacles, counsel could advise employers that those elements of the contract that are confidential can be omitted or blackened for immigration purposes. As long as the contract indicates that it is a contract of sale, and that the installation, repair, or servicing of the commercial or industrial equipment or machinery or computer software is part of the conditions of sale, the evidentiary requirements should be met. This solution also addresses the lack of a finalized contract, since the signed agreement only needs to include the warranty conditions of the agreement. A preliminary contract could then be provided to the employee that would satisfy immigration requirements.

Second, the purchased products must have been manufactured outside of Canada. If a foreign company has manufacturing or development facilities established in Canada, it could be difficult to claim that this requirement is met. It is therefore important to understand how the product was made before recommending that an employee enter Canada as a business visitor under the NAFTA After-Sales Service exemption.

Third, the employee must possess specialized knowledge essential to the seller's contractual obligations. There is no stipulated documentation required to present to immigration officers upon entry to Canada. However, the employee should be prepared to discuss his expertise. Also, it would be beneficial for the employee to have a copy of his academic credentials if related to his activities in Canada.

Finally, the after-sales service exemption can apply if a sales arrangement is established between a Canadian distributor and a Canadian end-user. This would seem to increase opportunity for clients to move employees across borders quickly. However, the exemption will only apply if the original cross border transaction involved a sale between a U.S. or Mexican company to the Canadian distributor. Again, the evidentiary requirement might be too cumbersome for clients, since it would mean entrusting an employee of a third party with a confidential agreement.

As a result of these evidentiary requirements for this particular exemption, employers and employees should be advised of the issues that may be encountered at the port of entry. Without the necessary documentation, employees will probably require work permits, since their activities in Canada will benefit and add value to the Canadian entity.

Sections 186 and 187 of the Regulations, as well as the NAFTA contribute substantially to maintaining the balance between protecting the Canadian labour market and the free flow of cross border services. Business realities change at an extremely fast pace, making it impossible for the legislation to comprehensively address all business situations. Clients would prefer that their employees be able to enter as business visitors whenever possible. In addition to the time saved when employees are exempted from obtaining a work permit, the costs to the client in both legal and government processing fees are minimized. However, as discussed, there are many situations where immigration counsel needs to consider not just the legal considerations but also the practical considerations before advising a client with respect to whether a work permit should be recommended for an employee entering Canada.

**(b) Evaluating a Proposed Activity: Preliminary Steps**

When an employer describes the circumstances under which a foreign national will be entering Canada, the question that should underlie all considerations is whether that employee will be entering the Canadian labour market. This is the basis upon which all work permit determinations are issued. Counsel should consider whether the service to be performed is one that will add value to the Canadian business, and whether it is a service for which compensation would be expected.

Once it is determined that value is indeed being added to the Canadian entity, the next consideration to be made is whether the activity falls precisely within one of the exempted activities outlined in Section 186 of the Regulations. For example, if a foreign employee will be teaching a training seminar for three days to employees of a subsidiary company in Canada, there is little need to contemplate whether a work permit is required because of Subsection 186(j). Similarly, if an employee of Company X in the United States wishes to enter Canada to sell its proprietary goods to Company Y in Canada, a work permit is not required due to Subsection 187(2)(c). Unfortunately, the legislation cannot cover all circumstances under which employees enter Canada.

If a situation is not addressed by s.186, it is then appropriate to determine whether the activity is one that comes within the meaning of a business visit. Simply stated, is the activity international in scope, as contemplated by Subsection 187(1)?

There is little guidance to determine what constitutes an international activity. However, Subsection 187(3) describes the additional requirements of employees entering Canada to participate in international business activities. In addition to participating in international activities, this section provides that the primary source of remuneration for the activity must be outside of Canada, and the principal place of business and actual place of accrual of profits must remain predominantly outside of Canada. This means that if a Canadian company will generate profit from the service provided by the foreign worker, then the activity would not be considered international. This assessment is often very difficult to make. Whether profits are generated as a result of the employee's contribution is a subjective analysis, and it is difficult to predict how an immigration officer will judge the circumstances.

## **5. Labour Market Opinions: Is the Job Offer Exempt?**

### **(a) Obtaining a Labour Market Opinion**

Obtaining a positive Labour Market Opinion (LMO) can be a lengthy process. Also, it is possible that the new assessment directives published by Human Resources and Social Development Canada in January 2009 regarding minimum recruitment efforts will make it quite difficult for some employers to meet their staffing needs in Canada in the time frame required.<sup>13</sup> As such, it is helpful to be aware of those situations where the requirement to obtain a positive labour market opinion could be avoided.

### **(b) Basic LMO Exemptions**

A complete explanation of those circumstances where a positive labour market opinion is not required, as well as all eligibility criteria, can be found in the *Foreign Worker Manual*.<sup>14</sup> However, for quick reference, Schedule “A” to this paper provides a summary of the most common work permit categories and the eligibility criteria for each LMO exemption.

In addition to these LMO exempted work permit categories, it is helpful to note that the following foreign nationals are not required to obtain positive LMOs in support of their work permit applications:

#### **(i) Provincial Nominees**

Once a province has nominated an individual for permanent residence, he or she may apply for a work permit directly to CIC while the permanent residence application is finalized. Each province has different selection criteria.

#### **(ii) Spouses of Skilled Workers, Provincial Nominees and Foreign Students**

Spouses or common law partner of temporary foreign workers are eligible for an open work permit valid for the same duration as the principal applicant’s work permit, as long as the following criteria are met:

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<sup>13</sup> In January 2009, the Regional Occupations Under Pressure Lists, which made certain occupations subject to minimum advertising requirements based on recognized demand, was replaced by minimum advertising requirements for all occupations. The requirements for all occupations include 14 days advertising on the National Job Bank within the last 3 months. For NOC B, C and D occupations, the advertisement must include the employer’s name, business address and wage being offered. See online: Human Resources and Skills Development Canada, “Temporary Foreign Worker Program – Minimum Advertising Requirements”, [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/communications/advertrecruitment.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecruitment.shtml) (April 12, 2009).

<sup>14</sup> See *supra* note 3 at 35-36. See also, Citizenship and Immigration Canada, “FW2 – Temporary Foreign Worker: Worker Quick Reference Guide”, online: <http://www.cic.gc.ca/english/resources/manuals/fw/fw02-eng.pdf> (April 13, 2009; last updated: 2005-05-26).

- (A) the principal applicant must occupy a position in Canada with a NOC “0”, “A”, or “B”
- (B) the principal applicant’s work permit is valid longer than six months and
- (C) the couple must reside in Canada.

If the principal applicant has been nominated under a PNP, then the NOC code does not need to be at any particular level. The spouse will be eligible for an open work permit for the same duration as the principal applicant’s. Finally, spouses of foreign students enrolled full time in a post secondary institution, who hold study permits or post graduate work permits are eligible for an open work permit.

(iii) Refugee claimants

Refugee claimants are eligible for a work permit until such time as a decision is made with respect to their refugee claim.

(iv) International Youth Exchange Programs

Many countries have reciprocal agreements with Canada whereby young professionals and students are permitted to obtain a work permit for a temporary period of time to promote international experiences. The eligibility criteria and duration of these work permits will vary, depending on the applicant’s citizenship.<sup>15</sup>

(c) **Temporary Foreign Worker Unit – Exemption Opinions**

In 2003, Citizenship and Immigration Canada established the first Temporary Foreign Worker Unit (“TFWU”) in Montreal with a mandate “to inform employers of the requirements to be met when bringing a foreign worker to Canada.”<sup>16</sup> In September 2006, to address the economic boom in Western Canada, Monte Solberg announced the opening of TFWUs in Calgary and Vancouver as pilot projects. Effective February 2008, the TFWU project was expanded to Moncton, serving the Atlantic Region and Toronto, for the Ontario Region.

Currently, each of the TFWUs “offers guidance to employers and/or their authorized representatives seeking to employ foreign workers” and “will not respond to enquiries coming from other sources or foreign workers themselves.”<sup>17</sup> The description of services for the TFWUs includes:

- guide you or your representative through the immigration process for hiring foreign workers
- ease entry for temporary foreign workers who are exempt from the labour market opinion process, and

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<sup>15</sup> For a complete list of these programs, see *supra* note 3, *Foreign Worker Manual*, Appendix E at 121.

<sup>16</sup> *Ibid.* at 177.

<sup>17</sup> Citizenship and Immigration Canada, online <http://www.cic.gc.ca/english/work/employers/tfw-units.asp> (April 5, 2009).

- pre-screen your supporting documents to streamline the application process and provide an opinion for officers at the port of entry.<sup>18</sup>

Generally, TFWUs are the most welcome development in some time with respect to the work permit process for Canadian employers and their representatives. Service standards are generally five business days, but this is often affected by staffing issues and volumes. To obtain an opinion whether a job offer is exempt from the requirement to obtain an LMO, obtain and complete the Request for Assessment form used by the particular office. Brevity in submissions to TFWUs is important. The deliverable for TFWUs is an opinion that is not binding on port of entry or visa officers, but is most often followed where the balance of the application is consistent with the submissions. For reference, Schedule “B” contains two recent sample TFWU exemption opinions and the work permit and passport stamp issued based on the opinion issued by the Toronto TFWU. Also as Schedule “C”, we attach the current “Request for Labour Market Opinion Exemption” required by the Toronto TFWU.

Note the language used in the opinions issued by Toronto and Calgary, respectively, and in particular, the extreme caution in the Toronto TFWU opinion:

#### Toronto TFWU Opinion

“... It appears that the temporary foreign worker **may be exempt** from the requirement to obtain an LMO under:

NAFTA T24 – INTRA-COMPANY TRANSFEREE

...

...Please note that this letter constitutes **an opinion only** based on the information you have provided for review. The final decision to issue a work permit or not will be made when the prospective temporary foreign worker applies for a work permit at a Canadian Port of Entry.”

#### Calgary TFWU Opinion

“... It appears that this client is exempted from the requirement to obtain a LMO for a work permit under:

NAFTA – Significant benefit to Canada R205 (a)  
Exemption Code: C10  
Duration requested: 1 year  
NOC: 0213 Computer and Information Systems Managers

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<sup>18</sup> Citizenship and Immigration Canada, online, <http://www.cic.gc.ca/english/work/employers/apply-who.asp> (April 5, 2009).

In practice, it is recommended to submit a complete copy of the Request for Assessment to the port of entry with a well-briefed applicant. If all of the information presented upon arrival at the port of entry appears to be consistent with the TFWU opinion, then officers generally defer to the prior detailed review and recognize the exemption opinion.

## **6. When and Where to Apply for a Work Permit**

The Regulations specify when a foreign national may apply for a work permit, including before entering Canada, when entering Canada and after entering Canada. As a general rule – always subject to exceptions - only citizens of countries that are exempt from the requirement to obtain a temporary resident visa may apply at the port of entry and only workers, students and their family members and NAFTA-exempt applicants may apply after entering Canada.<sup>19</sup> Everyone else should apply at a visa office outside Canada.<sup>20</sup>

### **(a) Before Entering Canada - Visa Offices**

Work permit applicants who require a TRV or are otherwise not eligible to apply at a port of entry or from within Canada, must apply at a visa office outside Canada. Each Canadian visa office has slightly different requirements for supporting documentation, payment methods, photos and other elements of a work permit application. In fact, the November 2008 edition of “Inside Immigration”, the CBA National Citizenship and Immigration Law Section Newsletter contained an interesting survey of consular requirements for work permit applications which highlighted the differing requirements and processing times at Canadian visa offices around the world.<sup>21</sup> The principal application package is available online.<sup>22</sup> Processing times vary at visa offices and are generally about one month, but can be significantly longer at busy posts such as Manila and Beijing, particularly if there are any delays due to incomplete applications.

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<sup>19</sup> Regulations, Sections 197-199.

<sup>20</sup> *Foreign Worker Manual*, *supra* note 3 at 12. Section 198 of the Regulations provides that a foreign national may apply for a work permit when entering Canada if he or she is exempt from the requirement to obtain a TRV. Generally, these exemptions are determined by nationality, but there are also exemptions based on documents (e.g. properly accredited diplomatic, consular national and international organization representatives) and purpose of entry (e.g. transportation crew, transiting passengers, aviation inspectors and advisors, visiting forces, attendees at U.S. consular interviews and holders of study permits and work permits who went only to the United States or St. Pierre and Miquelon).

<sup>21</sup> Kevin Zemp, “Consular requirements and comparison chart”, Inside Immigration, November 2008, online: [http://www.cba.org/CBA/newsletters/pdf/10\\_08\\_imm\\_newsletter\\_4.pdf](http://www.cba.org/CBA/newsletters/pdf/10_08_imm_newsletter_4.pdf) (April 14, 2009).

<sup>22</sup> Citizenship and Immigration Canada, “Application to work in Canada: Work permits”, online: <http://www.cic.gc.ca/english/information/applications/work.asp> (April 5, 2009).



**(b) When Entering Canada - Ports of Entry**

Generally, a foreign national may apply for a work permit at a port of entry if the person is exempt from the requirement to obtain a temporary resident visa. However, if an LMO is required (i.e. the job offer is not LMO exempt), then the foreign worker must either:

- have a positive LMO with respect to the job offer, or
- be exempt under programs for seasonal agricultural workers or live-in caregivers, or
- be a citizen or permanent resident of the United States or a resident of either Greenland or St. Pierre and Miquelon.<sup>23</sup>

**(c) After Entering Canada - Inland Offices**

All work permit applications submitted for processing from within Canada are sent to the Case Processing Centre (“CPC”) in Vegreville, Alberta. If the officer at Vegreville considers it necessary to refer the application to a local office, this will be done. Typically, this is only done where there is an issue with respect to the admissibility of the applicant or some other problem with the application that may require an interview or other action. Otherwise, interaction with officers at CPC Vegreville is generally done by direct phone call from the officer and facsimile correspondence to provide information requested by the officer at a number provided for that purpose.

**7. How to Apply for a Work Permit**

Section 200 of the Regulations provide that if the application is made at the appropriate venue, then an officer shall issue a work permit if following an examination, it is established that the foreign national meets the eligibility criteria for the type of work, is able to perform the job duties and is otherwise admissible to Canada.<sup>24</sup> The *Foreign Worker Manual* sets out the documents required with an application and contains a useful flowchart for assessing temporary foreign workers.<sup>25</sup>

The major difference between applying for a work permit at a visa office and at the port of entry is that no application form is necessary at a port of entry or an inland office. That is, instead of using a work permit application form, ports of entry and inland offices accept submissions that provide the same information, including a genuine job offer, a labour market opinion or evidence of exemption from the requirement for an LMO, and documentation evidencing that the applicant possesses the qualifications and experience to

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<sup>23</sup> Regulations, Section 198.

<sup>24</sup> See Citizenship and Immigration Canada, “Working Temporarily in Canada: How to apply”, online: <http://www.cic.gc.ca/english/work/apply-how.asp> (April 5, 2009).

<sup>25</sup> *Supra* note 3 at 75-79.

perform the duties of the position and that the applicant is otherwise admissible to Canada. In fact, the main issue to address in every work permit application is that the applicant is qualified to do the job.

Good work permit applications are concise, make it clear that the representative is authorized and to whom all correspondence and documentation is to be addressed, reference the applicable document checklist or visa office website and include all of the information requested. Most important of these items, the job offer must have a definite term, occupation and description of duties and qualifications against which the candidate can be assessed. If the job offer appears to be tailored to the applicant's qualifications and not objectively stated with reference to the National Occupational Classification ("NOC") 2006, then issues may arise with respect to its validity. With these matters addressed, the most important consideration for the officer is whether the applicant possesses the qualifications and experience to perform the job duties.

For port of entry work permit applications, it is good practice to deliver the application in advance, to contact a supervisor at the office responsible to confirm that the application has been received and to advise when the applicant will be there in person. In reality, many offices are too busy to give advance consideration to an application, making it critical to ensure that the applicant has a complete copy of the materials and is well-briefed on the job position and duties, duration of employment and can clearly demonstrate his or her qualifications that meet the requirements of the position. For this reason, a positive TFWU opinion or LMO will be most helpful and usually take the officer directly to the qualifications of the applicant and if satisfied, the issuance of the work permit.

In terms of the validity period for a work permit, the main considerations are temporary intent, duration of LMO, expected duration of employment in the job offer, maximum period allowed under the particular program and the expiration date of the applicant's passport. Given these factors and the requirements of the employer, it is generally advisable to make the duration of employment in the offer or contract to be a definite period that is as long as reasonably possible to avoid cost and uncertainty associated with renewals.<sup>26</sup>

## **8. What is an Open Work Permit?**

Open work permits authorize the holder to work for any employer in Canada. They are either unrestricted, for eligible applicants who have passed a medical examination for immigration purposes,<sup>27</sup> or restricted, meaning that the employer is unspecified, but employment is not authorized for jobs that

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<sup>26</sup> See *Foreign Worker Manual* at 84.

<sup>27</sup> Or have failed the medical examination due to excessive demand for services but satisfy the criteria of Section 206 or 207(c) or (d) of the Regulations.

would require an immigration medical examination, including child care, primary or secondary education, health services field occupations, and for applicants from designated countries, agricultural occupations.

The most common types of applicant for an open work permit encountered in representing business people include spouses of skilled workers, foreign students and members of the spouse or common-law partner in Canada class. As a practical tip, always recommend applying for an open work permit for the spouse of a skilled worker prior to or upon entry to Canada to obtain the benefit of this category and avoid delays associated with an application to CPC Vegreville.

## **9. General Admission Requirements**

In contrast to the subjective and difficult nature of determining foreign workers from business visitors, establishing whether a foreign national will require a medical examination or a Temporary Resident Visa is quite straight-forward.

### **(a) Medical Examinations**

If a foreign national will be entering Canada on a temporary basis, meaning that he will be entering Canada as a business visitor or as a temporary foreign worker, an immigration medical examination may be required depending on where the individual resides, how long he will be required to remain in Canada, and his anticipated activities in Canada.

#### **(i) Medical Requirements Based on Residence and Duration of Stay in Canada**

Legislation that speaks to medical requirements for temporary residents in Canada can be found in s.30 of the *IRPR*. Persons who intend to stay in Canada for more than six months and who, in the year before they apply to visit Canada, have spent more than six consecutive months in a *designated country* will be required to undergo an immigration medical examination before an immigration document will be issued to them.

Designated countries are those that that Citizenship and Immigration Canada has determined to have higher numbers of reported cases of communicable diseases than Canada. A complete list of designated countries can be found at: <http://www.cic.gc.ca/english/information/medical/dcl.asp>

When determining whether an individual has resided *continuously* in a designated country, or will be residing in Canada *continuously* for a period of more than six months, it is important to note that absences

from the country of less than 14 days, real or planned, will not affect the calculation. What this means is that absences from a country for more than 14 days *will* affect the calculation. As such, it is important to note that under the following circumstance, a medical examination should **not** be required:

- A foreign national has resided in a designated country for longer than six continuous months;
- He intends on coming to Canada for 5 months to contribute to his employer's client project in Canada;
- He then intends on returning to Canada for an additional 3 months before returning to his home country;
- A medical examination under these circumstances would not be required, even though the total span of time that he will be required in Canada exceeds 6 months.

It is also important to note that under these circumstances, the foreign national would likely need to apply for two separate immigration documents (e.g. work permits) to address the two specific time periods intended in Canada. If only one is requested, a medical examination would be required since there would be no way for Citizenship and Immigration Canada to be sure of the amount of continuous time that a foreign national will remain in Canada.

When a medical examination is required, processing time of an application for temporary residence in Canada will increase substantially. As such, it will often happen that a foreign national who would be subject to the medical examination, or his employer, will suggest that he should apply for an immigration document for a duration of less than six months in order to circumvent the additional time it would take before the foreign national is able to travel to Canada. Note that if it is the intention of the applicant to remain in Canada for longer than six months, it would be a misrepresentation to request a shorter duration, and should not be counselled.

(ii) Medical Requirements Based on Activities in Canada

Depending on their intended occupation while in Canada, certain temporary foreign workers are required to undergo medical examination regardless of their intended duration of stay. Occupations that bring the incumbent into close contact (more than three hours per day and/or risk of exchange of body fluids) with people considered to be vulnerable by CIC will be required to undergo an immigration medical examination.

The occupations include:

- workers in the health sciences field, including staff and employees, clinical laboratory workers;
- patient attendants in nursing and geriatric homes, medical students admitted to Canada to attend university, medical electives and physicians on short-term locums;
- teachers of primary or secondary schools or other teachers of small children;
- domestics;
- workers who provide in-home care to children, the elderly and the disabled; and
- day-nursery employees.

Agricultural workers from designated countries will also be required to undergo an immigration medical examination prior to entering Canada, regardless of their intended duration of their stay.

**(b) Does the Applicant Require a Temporary Resident Visa?**

Whether an individual requires a Temporary Resident Visa (“TRV”) depends solely on their nationality. Length of duration of stay in Canada, where the applicant resides, and whether a work permit is required has no bearing on whether a Temporary Resident Visa will be required. A list of those countries whose citizens require TRVs can be found at: <http://www.cic.gc.ca/english/visit/visas.asp>

**(c) Criminality**

It is always important to confirm whether the work permit applicant may be inadmissible to Canada due to criminality. Anyone who has been convicted inside, outside or upon entering Canada of an indictable offence or two summary offences that were not from the same incident, is inadmissible to Canada.<sup>28</sup> The most common offences to deal with are driving while impaired and minor possession of a controlled substance. Often employees do not wish to disclose criminal offences to their employers and this becomes a potential conflict for the representative, which should be handled correctly according to Law Society rules and professional ethics. Often employers are satisfied knowing just that the employee needs a Temporary Resident Permit or must apply for rehabilitation, without requiring details of the offences. If this is the case, then the representative may be able to work directly with the foreign worker to overcome the criminal inadmissibility with an approach based on sensitivity.

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<sup>28</sup> See Division 4, Sections 33-42 of the Act. For a practical understanding of how to deal with inadmissibility, see also, Citizenship and Immigration Canada, “ENF 2 Evaluating Inadmissibility”, online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf02-eng.pdf> (April 15, 2009).

In terms of where to deal with criminality, the starting presumption should be that if a Temporary Resident Permit or an application for rehabilitation is required, the foreign worker should be applying at a visa office outside Canada. However, if the worker is deemed rehabilitated for an offence due to the passage of time, or if there is a compelling reason (i.e. genuine urgency with respect to work requirements – and not just bad planning or failure to disclose until the last minute), then an immigration officer at the port of entry may be facilitative.

## **10. Work Permit Renewals**

### **(a) Implied Status**

Foreign workers who apply to renew their work permits on or before the expiry date are authorized to continue working with the assumption that the work permit has been extended until the date on which the application is refused or the end of the new period authorized, if the application is approved.<sup>29</sup> This ability to continue working, commonly referred to as “implied status”, is an important tool to provide certainty during processing of an application to renew, particularly when processing delays may be expected. Therefore, advise your clients about how implied status may provide certainty and actually extend the duration of their authorization to work in Canada.

### **(b) Renewal Strategies**

Strategies for renewing work permits should be developed and implemented well before the expiry date on the current document. Sufficient lead time should be allowed for obtaining an LMO or TFWU exemption opinion, if necessary. New developments with respect to the worker, the job duties and the employer need to be taken into account and disclosed to ensure that the new work permit covers the business activities of the foreign worker and that all dependent family members obtain appropriate visa documents.

Travel and timing requirements may also determine when and where the application for a new work permit is made. Foreign workers who are eligible to apply at the port of entry may wish to do so in order to avoid the processing time for inland applications. However, if the application to extend is made from

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<sup>29</sup> Section 183 of the Regulations provides in part:

(5) If a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until

(a) the day on which a decision is made, if the application is refused; or  
(b) the end of the new period authorized for their stay, if the application is allowed.

within Canada, ensure that the foreign worker does not leave and seek readmission to Canada while it is being processed. Otherwise, the worker must be eligible and prepared to make an intervening application at the port of entry and the inland application will become redundant.

Finally, when there is uncertainty about whether the application will ultimately be approved, there may be some strategic advantage to submitting the application right on the expiry date (and keeping a postal or courier receipt on file to document the implied status), allowing the worker an additional period of authorized employment in Canada while awaiting a decision and planning next steps.

## **11. Conclusion**

This paper may continue to serve as a reference for the basic principles to use in assessing whether a business activity constitutes work, whether a work permit is required and if so, whether there are additional requirements or exemptions that apply. It may also be a practical guide to when, where and how to obtain a work permit as well as strategies for renewal and future planning. Finally, it should assist in identifying the sources of law, policy and interpretation that govern this constantly changing area of practice.

In April 2009, due to current global economic conditions, many employers and foreign workers are asking whether it is becoming more difficult to obtain a Canadian work permit and whether in fact global labour mobility is as fluid as it was even six months ago. While it is clear that restrictions are being applied in the area of Canadian labour market opinions, it is important to note that Citizenship and Immigration Canada policy is to maintain current levels of immigration to Canada and that little has changed for business visitors and work that is exempt from labour market opinion requirements. Nevertheless, it will be important to follow the implications of the amendments to the temporary foreign worker program expected later this year.

**SCHEDULE "A"**

**Quick Summary of LMO Exemptions**

<b>Job Category / LMO Exemption Code</b>	<b>Eligibility Criteria</b>	<b>Duration</b>	<b>Comments</b>
<p><b>Intra Company Transfer</b> <b>Specialized Knowledge Worker</b>  (C12, T24)</p>	<ul style="list-style-type: none"> <li>• There must be a qualifying relationship between the home employer and the employer in Canada (i.e. affiliate, parent, subsidiary, or branch).</li> <li>• The employee must have been employed by the home employer for at least one continuous year, full time, during the three years preceding the date of the work permit application.</li> <li>• The employee must “occupy an employment position” in Canada.</li> <li>• The employee must hold specialized knowledge that is not common in Canada.</li> </ul>	<ul style="list-style-type: none"> <li>• 3 years initially, renewable to a maximum of 5 years.</li> </ul>	<ul style="list-style-type: none"> <li>• For a parent/subsidiary relationship, the parent must own directly or indirectly, half or more than half of the entity and control the entity, or 50% of a 50-50 joint venture and has equal control and veto power over the entity, or own less than half of the entity, but in fact control the entity.</li> <li>• “occupying a position” in Canada does not necessarily mean that the employee needs to relocate to Canada. However, there must be a clear employer-employee relationship between the Canadian entity and the employee. The Canadian entity must control the day-to-day activities of the employee.</li> <li>• The C12 provisions mirror those of the NAFTA pertaining to Intra-Company Transferees.</li> </ul>
<p><b>Intra Company Transfer</b> <b>Executive/ Manager/ Functional Manager</b>  (C12, T24)</p>	<ul style="list-style-type: none"> <li>• The eligibility criteria mirror those of Specialized Knowledge Workers. However, instead of the employee holding advanced or specialized knowledge, the employee must manage the organization, or a major component of a department of the organization, manage other staff, or manage an essential function of the organization.</li> </ul>	<ul style="list-style-type: none"> <li>• Three years initially, renewable to a maximum of 7 years.</li> </ul>	<ul style="list-style-type: none"> <li>• This category also addresses those situations where a manager is responsible for a department in both Canada and her home country. Even though the employee may not reside in Canada, or work regularly out of Canada, a work permit would be required if she will need to implement her managerial decisions in Canada while she is in Canada.</li> </ul>
<p><b>Reciprocal Employment</b>  (C20)</p>	<ul style="list-style-type: none"> <li>• There must exist a reciprocity arrangement between the Canadian company and the home employer. The purpose of this category is to permit Canadian employees to gain international experience temporarily and allow for cultural exchanges. The effect on the labour market should be neutral.</li> </ul>	<ul style="list-style-type: none"> <li>• There is no specified maximum duration associated with this category, but reciprocity must be established for each work permit renewal.</li> </ul>	<ul style="list-style-type: none"> <li>• This category can be useful when a candidate does not qualify under the Intra Company Transfer category as there is no requirement that the employee have worked for a year with his home employer. However, unless the Canadian employer has a written policy that outlines its program regarding the exchange of employees globally, it may be difficult to establish reciprocity. The assessment by the immigration officer is subjective, and there is no defined documentary requirement to demonstrate reciprocity.</li> </ul>



<p><b>Student Work Permits</b> <b>Co- op work</b> (C30)</p>	<ul style="list-style-type: none"> <li>Foreign students do not require an LMO to work, as long the work term forms an integral part of their academic program of study.</li> <li>The student must hold a Study Permit.</li> </ul>	<ul style="list-style-type: none"> <li>There is no set maximum, but the work term may not exceed 50% of the total duration of the program of study.</li> </ul>	<ul style="list-style-type: none"> <li>This work permit category applies to programs of study at Canadian institutions only. A student attending a school outside of Canada wishing to perform a work term in Canada would require an LMO, or be exempt under one of the CEC 21 International Student and Young Worker Programs.</li> </ul>
<p><b>Student Work Permits</b> <b>Off Campus Work Permit</b> (C25)</p>	<ul style="list-style-type: none"> <li>The student must possess a valid study permit, and have studied full-time at a participating institution for at least six months out of the twelve months preceding their application.</li> <li>The student must be in satisfactory academic standing for at least six months out of the twelve months preceding their application.</li> <li>The student must continue to meet the eligibility requirements while participating in the Program.</li> </ul>	<ul style="list-style-type: none"> <li>The off campus work permit is issued valid to the expiry date of the student's study permit.</li> </ul>	<ul style="list-style-type: none"> <li>A list of participating institutions can be found at: <a href="http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-mou-students.asp">http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-mou-students.asp</a>.</li> <li>There is a positive obligation on foreign students to return the work permit to their local CIC office once the student no longer meets the eligibility criteria of the program.</li> <li>Students may only work up to 20 hours per week during the school term, and full time during scheduled breaks.</li> <li>Students are permitted to work full time after they graduate to a maximum of 90 days while they transition to a post graduate work permit, as long as the off campus work permit is still valid.</li> </ul>
<p><b>Student Work Permit</b> <b>Post Graduate Employment</b> (C43)</p>	<ul style="list-style-type: none"> <li>The student must have graduated from a participating post-secondary institution (most are).</li> <li>They must have been engaged in full-time studies, at the Canadian institution. Distance learning would not qualify.</li> <li>The full-time program of study must have been for a duration of at least eight months.</li> <li>The application must be submitted within 90 days of formal written notification by the institution to the student that they have met the requirements of the course of study.</li> <li>The student must still be in possession of a valid study permit upon application.</li> <li>The student must not have been formerly issued a work permit under</li> </ul>	<ul style="list-style-type: none"> <li>The work permit will be issued for the same duration as the student's program of study to a maximum of three years.</li> </ul>	<ul style="list-style-type: none"> <li>As of April 21, 2008, CIC work permits issued under the post graduate category are "open" meaning that there is no named employer or employment location listed on the permit. Although this offers more flexibility for recent foreign graduates, it could impact their eligibility for subsidized health care. As such, if an applicant prefers that his work permit lists an employer and location of employment, CPC Vegreville will comply with this request, as long as evidence of a specific job offer is submitted with the application.</li> </ul>

	this program.		
<b>Significant Benefit</b> (C10)	<ul style="list-style-type: none"> <li>The employee's contribution must provide significant social, cultural or economic benefit.</li> </ul>	<ul style="list-style-type: none"> <li>There is no maximum duration, although it would be extremely rare to see these work permits issued for longer than one year.</li> </ul>	<ul style="list-style-type: none"> <li>Issuance of these work permits is quite rare. Under most circumstances, an immigration officer will insist that the employer seek an LMO in support the employee's work permit.</li> </ul>
<b>NAFTA Professionals</b> (T23)	<ul style="list-style-type: none"> <li>The employee must be a citizen of the U.S.A. or Mexico.</li> <li>The eligibility criteria associated with the specific profession must be met. This is normally a bachelor's degree in the area of the profession. A few professions (e.g. Computer Systems Analyst and Management Consultants) allow for the substitution of experience, or a 2-year degree plus experience in lieu of a 4 years bachelor's degree.</li> </ul>	<ul style="list-style-type: none"> <li>There is no maximum associated with this category, work permits are issued in three year allotments.</li> </ul>	<ul style="list-style-type: none"> <li>The GATS treaty also allows for certain professionals to obtain work permits without an LMO. Citizens of most countries will be eligible under the GATS. However, these work permits are issued to a three-month maximum and there are fewer professions listed than under the NAFTA.</li> </ul>
<b>Information Technology Workers</b> (No exemption code – this is a blanket LMO rather than an exemption from LMO)	<ul style="list-style-type: none"> <li>Candidates must hold a 4 year post secondary degree in any discipline, or a 2 year post secondary diploma with a computing element.</li> <li>Two years of professional IT experience is required.</li> <li>Academic training or professional experience in the technologies of one of 6 defined IT occupations is required.</li> </ul>	<ul style="list-style-type: none"> <li>There is no maximum allowable duration, however CPC Vegreville will not issue work permits under this program in allotments greater than 1 year.</li> </ul>	<ul style="list-style-type: none"> <li>This program was introduced by HRSDC, and is not a legislated work permit category. It is a pilot project, whereby an LMO is implied based on a demonstrated need of IT Workers in Canada. Therefore, applications submitted under this category will not be assessed by CIC's Temporary Foreign Worker Units.</li> <li>Due to the age of the pilot project, many of the technologies in which applicants require specialized knowledge are quite outdated.</li> </ul>

\*LMO confirmation exemption codes are listed on pages 35-36 of the *Foreign Worker Manual*.

**SCHEDULE "B"**

**Sample Temporary Foreign Worker Unit Opinions, Work Permit and Entry Stamp**

Citizenship and  
Immigration CanadaCitoyenneté et  
Immigration Canada

CIC Calgary Admissions  
Temporary Foreign Workers Unit  
170, 220 4<sup>th</sup> Ave SE  
CALGARY, AB  
T2G 4X3

December 17, 2008

BURSTALL WINGER  
ATTN: VANCE LANGFORD  
FAX# 403-265-8565

Dear Sir/Madam:

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RE: Labour Market Opinion Exemption Request for Assessment  
Client:  
Client ID:  
Prospective Employer:  
Prospective Position Title: IT Project Manager

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A preliminary review of your request for exemption of the labour market opinion (LMO) for the above-noted client has been conducted. It appears that this client is exempted from the requirement to obtain a LMO for a work permit under:

NAFTA – Significant benefit to Canada R205 (a)  
Exemption Code: C10  
Duration requested: 1 year  
NOC: 0213 Computer and Information Systems Managers

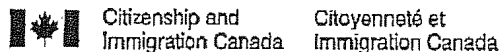
This client may request a work permit at a port of entry upon arrival in Canada. He/she will be examined to determine that all other requirements of the Immigration and Refugee Protection Act and Regulations are met. These requirements may include medical, security and background checks for the client and if applicable, any accompanying family members.

Please ensure that you provide this client with a copy of this letter so that they may present it to an officer upon arrival in Canada.

Sincerely,

T. Simpson  
Immigration Officer

Canada



Toronto Temporary Foreign Worker Unit  
25 St. Clair Ave E Suite 200  
Toronto, Ontario M4T 1M2

24 March, 2009

Vance Langford  
Burstall Winger  
1600, 333-7<sup>th</sup> Ave. S. W  
Calgary, Alberta T2P 2Z1

Dear Mr. Langford:

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RE: Labour Market Opinion Exemption Code: T24  
Prospective Temporary Foreign Worker:  
Client ID:  
Prospective Employer:  
Prospective Position Title: Technical Manager  
NOC Code: 0721

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We have reviewed your request for an opinion that the above-noted temporary foreign worker is exempt from the requirement of a Labour Market Opinion (LMO). It appears that the temporary foreign worker **may be exempt** from the requirement to obtain a LMO under:

**NAFTA T24 – INTRA- COMPANY TRANSFEREE**

The temporary foreign worker to whom you have offered the above-noted position may request entry under the above-noted exemption at a port of entry upon arrival in Canada. He/she will be examined to determine that all other requirements of the *Immigration and Refugee Protection Act* and *Regulations* are met. These requirements may include medical, security and background checks for the client and if applicable, any accompanying family members. Please note that this letter constitutes **an opinion only** based on the information you have provided for review. The final decision to issue a work permit or not will be made when the prospective temporary foreign worker applies for a work permit at a Canadian Port of Entry.

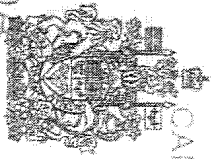
Please ensure that you provide the temporary foreign worker with a copy of this letter as **the letter should be presented to an officer at the port of entry upon arrival in Canada.** The prospective temporary foreign worker **should also have copies of supporting documentation** supplied with this request as he or she may be requested to provide supporting evidence again at the port of entry.

Sincerely,

  
M. Correia, Immigration Officer  
Toronto TFWU

**Canada**

Citizenship and Immigration Canada / Citoyenneté et Immigration Canada



PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI - IMMIGRATION

BB121 622 701

U934663962

WORK PERMIT CANADA CANADA  
CASE TYPE : 20

- TRAVEL DOC : PASSPORT
  - BONDED : MR
  - EMPLOYER :
  - OCCUPATION : FULL-TIME OPERATION MANAGERS
  - EMP LOC : ONTARIO
  - FEE STATUS : FPE 10557
- CONDITIONS:
1. UNLESS AUTHORIZED, PROHIBITED FROM ATTENDING ANY EDUCATIONAL INSTITUTION AND TAKING ANY ACADEMIC, PROFESSIONAL OR VOCATIONAL TRAINING COURSE.
  2. NOT AUTHORIZED TO WORK IN ANY OCCUPATION OTHER THAN STATED.
  3. NOT AUTHORIZED TO WORK FOR ANY EMPLOYER OTHER THAN STATED.
  4. NOT AUTHORIZED TO WORK IN ANY LOCATION OTHER THAN STATED.
  5. MUST LEAVE CANADA BY 26 MAR 2012

SURNAME GIVEN NAMES - NOM DE FAMILLE, PRÉNOMS		SEX - SEXE	
BIRTH DATE - DATE DE NAISSANCE		MALE	
COUNTRY OF BIRTH - PAYS DE NAISSANCE		U.S.A.	
COUNTRY OF CITIZENSHIP - CITOYEN DE		U.S.A.	
EMP. FILE NO. - N° DE RÉG. DU BUREAU	CLIENT ID. - ID DU CLIENT		
DATE SIGNED - SIGNÉ LE	VALID UNTIL - DATE D'EXPIRATION	EXT. NO. - CODE PROBOG	
26 MAR 2009	26 MAR 2012	00	

ACCOMPANYING FAMILY MEMBERS  
NAME :  
DOB :

REMARKS: TECHNICAL MANAGER,  
NAFTA INTRA-COMPANY TRANSFEREE.

THIS DOES NOT AUTHORIZE RE-ENTRY.  
CIC: F FRANCES IB 3604



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LE PRESENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

IMM 1442 (03-2963) 15



**SCHEDULE "C"**

**Request for Labour Market Opinion Exemption**





# Request for Labour Market Opinion Exemption

The Toronto Temporary Foreign Worker Unit offers guidance to employers seeking to employ foreign workers who are exempted from the Labour Market Opinion (LMO) process (<http://www.cic.gc.ca/english/work/exempt-2.html>).

To request an assessment of a LMO exemption for your employee, complete this form and fax or mail to the appropriate temporary foreign worker unit. **Requests should be submitted to the TFWU in the region where the bulk of the Temporary Foreign Workers duties will be performed.** Contact information for Temporary Foreign Worker units across Canada can be found on line at <http://www.cic.gc.ca/english/work/employers/tfw-units>.

If more space is required in completing the application, use a separate sheet of paper. Please limit all supporting documentation to a maximum of 10 pages (not including copies of identification and evidence supporting credentials).

Employer Information	
Name of Business:	
Business Phone number:	Fax number:
Address:	
Contact name:	Job title:
E-mail address:	
Describe the principle business activity:	
Details of Job	
Confirmation exemption code:	Confirmation exemption title:
Explanation of how the job meets the requirements of the exemption being requested:	
Job title:	NOC code:
Location of job:	
Expected start date of employment:	Expected duration of employment:
Main duties of the job:	



Educational requirements of the job:

Describe how foreign worker meets requirements:

Experience/skills requirements of the job:

Describe how foreign worker meets requirements:

Are there provincial/territorial/federal certification, licensing or registration requirements of the job? (If yes, indicate the name of the certifying/licensing/registering body).

**Language requirements:**

**Oral:**  English  French  Other  None **Written:**  English  French  Other  None

If "other", please explain:

### Foreign Worker Information

Name of foreign worker—Family Name:

Given name(s):

Gender:

Male / Female

Date of birth (dd-mmm-yyyy)

Country of birth:

Country of residence:

Citizenship:

If the foreign worker is currently in Canada, please indicate the immigration status:

Has foreign worker ever been charged or convicted of any crime or offence in any country? (If yes, give details).

### Supporting Documentation

**Employer documentation:**

- Business licence
- Confirmation of where is company incorporated
- Copy of job offer
- Location of parent, branch, subsidiary or affiliate companies

**Foreign worker's documentation:**

- Copy of passport
- Confirmation of education
- Confirmation of required certification/licensing or registration if required
- Confirmation of immigration status if currently in Canada
- If applicable, nomination under a Provincial Nominee Program
- If applicable, detail how employment:
  - Benefits the Canadian economy
  - Falls under an international agreement
  - Creates opportunities for Canadian workers
  - Requires specialized knowledge

**Note:** Foreign workers from visa exempt countries may apply for a work permit at a port of entry upon arrival in Canada. They will be examined to determine that all requirements of the *Immigration and Refugee Protection Act and Regulations* are met. Requirements may include medical, security and background checks for the applicant and any accompanying family members.

## Use of a Representative

A representative is someone who has your permission to conduct business on your behalf with Citizenship and Immigration Canada (CIC) and Canada Border Services Agency (CBSA). You may have one representative only. If you appoint an additional representative, the previous representative will no longer be authorized to conduct business on your behalf and receive information on your application.

I am appointing a representative

I am not appointing a representative

Name of Representative

Phone Number:

Mailing Address of Representative

CSIC Number (if applicable):

## Declaration of Applicant

### Important: You must read and sign this section

I confirm that I have read and understood the contents of this form. I declare that the information that I have provided in this form is true, complete and accurate. I confirm that I understand that if I have made a false declaration or have otherwise provided false or misleading information the potential employee's application could be rejected. I further confirm that I understand that providing such false or misleading information, making a false declaration or failing to declare all information material to the potential foreign workers application could be an offense under the *Immigration and Refugee Protection Act*.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date dd/mm/yr

## Privacy Statement

The information you provide on this form is collected under the authority of the *Immigration and Refugee Protection Act* and is required to determine eligibility for an exemption to the Labour Market Opinion requirement according to the requirements of this Act. It will be retained in the Personal Information Bank. It may be shared with other organizations or disclosed, without notice or consent, pursuant to section 8(2) of the *Privacy Act*. Under the *Privacy Act* and the *Access to Information Act*, individuals have the right to protection of and access to their personal information. Details on these matters are available at [Infosource.gc.ca](http://Infosource.gc.ca), [www.cic.gc.ca](http://www.cic.gc.ca), and through the Citizenship and Immigration Canada Call Centre. Infosource is available at Canadian public libraries.