THE CANADIAN BAR ASSOCIATION
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August 30, 2010

The Honourable Jason Kenney, P.C., M.P.
Minister of Citizenship, Immigration and Multiculturalism
Jean Edmonds Building South Tower
21st Floor
365 Laurier Street West
Ottawa, ON K1A 1L1

Dear Minister:

Re: Mandatory Language Testing

I write on behalf of the Citizenship and Immigration Section of the Canadian Bar Association (the CBA Section) regarding the Ministerial Instructions published in the Canada Gazette on June 26, 2010. The Ministerial Instructions state that applications under the Federal Skilled Worker Class and the Canada Experience Class (CEC) will not be processed unless they are accompanied by a formal language assessment.[1]

Under the Federal Skilled Worker Class, section 79 of the *Immigration and Refugee Protection Regulations* (IRPR), states:

> 79. (1) A skilled worker must specify in their application for a permanent resident visa which of English or French is to be considered their first official language in Canada and which is to be considered their second official language in Canada and must
>
> (a) have their proficiency in those languages assessed by an organization or institution designated under subsection (3); or
>
> (b) *provide other evidence in writing of their proficiency in those languages.* [Emphasis added]

Section 87.1(2) of the IRPR, which pertains to the CEC class, states in part:

> 87.1(2) A foreign national is a member of the Canadian experience class if …
>
> (*b*) they have had their proficiency assessed in the English or French language by an organization or institution designated under

[1] Online: http://canadagazette.gc.ca/rp-pr/p1/2010/2010-06-26/html/notice-avis-eng.html.

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> subsection (4), *or have provided other evidence in writing of their proficiency in either language,* and have obtained proficiencies for their abilities to speak, listen, read and write that correspond to benchmarks, as referred to in Canadian Language Benchmarks 2000 for the English language and *Niveaux de compétence linguistique canadiens 2006* for the French language…[Emphasis added]

In light of these provisions, the IRPR provides applicants with two options to demonstrate their language proficiency: (1) a formal language test; or (2) other evidence of proficiency in writing. The Ministerial Instructions clearly contradict the law, as the Instructions state that only applications which include language testing results will be processed.

The CBA Section has previously made submissions regarding the impracticality of mandatory language testing for all skilled workers. A copy of our February 2008 submission is enclosed for your convenience. However, regardless of one's opinion on the desirability of mandatory third party language testing, the democratic process and the rule of the law should be upheld when it comes to the issuance of Ministerial Instructions.

The Ministerial Instructions conflict with the IRPR by cutting two options down to one. In legal terms, the Instructions are *ultra vires,* beyond the power of the Minister, by constraining the manner by which a federal skilled worker or a member of the CEC can prove their language proficiency. Doing this indirectly, by providing that an application that complies with one of two regulatory options will be processed and one that complies with the other will not be processed, is of no consequence. According to the Rule of Law, which requires that government and citizens alike be subject to the law, this constraint should not be imposed in this fashion. We oppose an administrative directive that attempts to alter the current laws of Canada.

We accordingly ask for the pertinent part of the Ministerial Instructions to be rescinded. We are available to meet in person, or by conference call, if you wish to further discuss this matter.

Yours truly,

(original signed by Kerri Froc for Chantal Arsenault)

Chantal Arsenault
Vice-Chair, National Citizenship and Immigration Law Section