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Via email: Heidi.Smith@cic.gc.ca

Ms. Heidi Smith
Director
Permanent Resident Policy and Programs
Immigration Branch
Citizenship and Immigration Canada
365 Laurier Avenue W
Ottawa, ON K1A 1L1

Dear Ms. Smith:

**Re: Regulations Amending the Immigration and Refugee Protection Regulations
(Mandatory Language Testing) *Canada Gazette*, Part I, December 11, 2010**

I write on behalf of the Citizenship and Immigration Law Section of the Canadian Bar Association (CBA Section) in response to the pre-publication of the above-noted proposal to remove the option to provide other written evidence of language proficiency from subsection 79(1) and paragraph 87.1(2)(b) of the *Immigration and Refugee Protection Regulations* (the Proposed Regulations). As indicated in our past submissions, the CBA Section remains concerned about the impact of mandatory language assessment. As well, while these changes have now been more appropriately proposed in the form of regulation, we are concerned that Ministerial Instructions may be used to “try out” changes to legislation on a temporary basis. We detail our concerns below.

Procedural Issues

We commend the Minister for proceeding by way of regulatory amendment rather than relying upon the previous Ministerial Instructions alone to accomplish a change to language assessment. As we indicated in our submissions of August 30, 2010, we strongly believe that proceeding by regulatory amendment best serves the democratic process and the rule of law.

However, the Regulatory Impact Analysis Statement (RIAS) makes reference to the prior Ministerial Instructions:

The Department is now proposing a regulatory amendment consistent with that processing directive, to reflect the permanent direction the Department has taken toward mandatory language testing in support of language proficiency assessments.

To be clear, the CBA Section does not agree that regulations can be changed by Ministerial Instruction, whether the changes are temporary or permanent, for the reasons expressed in our August letter.

Inadvisability of Mandatory Language Assessment

Since February 2008, the CBA Section has commented on the inadvisability of making language testing mandatory for the Canadian Experience Class or for any other classes of prospective immigrants.¹ While we understand the desire to ensure equal treatment of all applicants, mandatory language testing is both unnecessary and impractical for applicants who have lived their entire lives in an English or French speaking environment, such as applicants from the United Kingdom, the United States and France.

The RIAS indicates that “50 percent to 100 percent of written submissions are ultimately deemed insufficient evidence for the assessment of language proficiency.” Anecdotal information from members of the CBA Section makes us question whether this statistic is applicable to applicants from predominantly English- or French-speaking countries.

Accessibility of Testing Centres

Since June 2010, when Ministerial Instructions were issued requiring that all applications include results of language testing, the shortage of testing facilities both in Canada and abroad and increasing delays in appointment dates has been exacerbated.

In our submission of February 11, 2008, we noted that:

At present, the number of IELTS and TEF language testing providers are limited typically to one city per province. We would welcome the addition of other testing providers. If IELTS and TEF are given exclusive monopolies on language testing, CIC should insist that they offer testing in major population centres across Canada.

The shortage of testing centres continues, not only in Canada but abroad. Some countries do not have testing centres and others often require applicants to travel hours to different locations and to wait for weeks, or even months, before they can schedule an appointment to have their tests completed.

Delays in the filing of an application for permanent residence are always problematic. However, the delays caused by mandatory language testing will have a particularly negative effect on temporary foreign workers, who are subject to regulations coming into force on April 1, 2011, limiting the time they are eligible to obtain permanent residence in Canada to four years with no ability to remain in Canada beyond that period.

The Proposed Regulations will also have an adverse impact on international graduates. If they do not obtain permanent residence within the three-year limit on labour market opinion (LMO) exempt work permits, their employers will be required to apply for LMOs and the international graduates will be required to apply to extend work permits.

¹ See our February 2008, May 2008, August 2008 and August 2010 submissions, online: <http://www.cba.org/CBA/submissions/pdf/08-11-eng.pdf>; <http://www.cba.org/CBA/submissions/pdf/08-26-eng.pdf>; <http://www.cba.org/CBA/submissions/pdf/08-48-eng.pdf>; <http://www.cba.org/CBA/submissions/pdf/10-55-eng.pdf>

CBA Section members are already observing significant delays associated with language testing centres and the consequential increase in applications for LMOs and work permit extensions. For applicants who have lived their entire lives in an English or French speaking environments, the Proposed Regulations will unnecessarily increase application volumes for temporary foreign workers and international graduates, with the concomitant increase in program costs and processing times.

Other Models

In our May 2008 submission, we presented other models used to demonstrate language proficiency, such as in the United Kingdom and Australia, where language testing is one option among others. Closer to home, the Programme de l'expérience québécoise has established a minimum requirement for French proficiency but allows the applicant to demonstrate it by presenting one of the following:

- Complete academic transcript attesting to the successful completion of at least two years of secondary or post-secondary study in French pursued full time in Québec or abroad;
- Academic transcript attesting to the successful completion of an intermediate level French course in an educational institution recognized by the *Ministère de l'Éducation, du Loisir et du Sport* or in a university located in Québec;
- Results attesting to the successful completion of a standardized oral French test at the intermediate level; or
- Attestation of having satisfied the language requirements of a professional order in Québec.

We therefore suggest where applicants can easily demonstrate their proficiency of French or English by written evidence they should continue to be permitted to do so.

Alternative Legislative Option to Mandatory Testing

The CBA Section proposed in its May 2008 letter an alternative to mandatory language testing. It provides for other clearly defined written evidence, allowing for increased transparency and enhanced reliability in the assessment of applicants' language proficiency without being unnecessarily cumbersome. We still believe that this proposal is preferable:

The amended section 79(1) would instead read as follows:

- 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:
- (i) Have their proficiency in those languages assessed by an organization or institution designated under subsection (3), or
 - (ii) Have completed secondary school or resided for ten years or more in, and be a passport holder or permanent resident of, any country whose national or official language is English or French and which has a literacy

rate, as reported in the most recently published HDI, equal to or greater than 90 percent,² or

- (iii) Be the holder of a university degree at the Bachelor's, Master's or Doctoral level of any country whose national or official language is English or French and which has a literacy rate, as reported in the most recently published HDI, equal to or greater than 90 percent, if the language of instruction or research was English or French, or
- (iv) Be the holder of a university degree at the Bachelor's, Master's or Doctoral level granted by an accredited university in Canada and the language of instruction or research was English or French.

Language Assessment

As stated in our submission of August 22, 2008, the CBA Section supports the Government's intent to provide a moderate language proficiency requirement for NOC 0 and A occupations, and a basic language proficiency requirement for NOC B occupations. However, the proposed Regulations exceed the moderate and basic language requirements. To fulfill this intention, we suggest the regulations be amended as follows:

- The Canadian Language Benchmark for occupations in NOC 0 and A should be a total of 24, which equates to moderate proficiency on all bands of the IELTS test.
- The Canadian Language Benchmark for occupations in NOC B should be a 16, which equates to basic proficiency on all bands of the IELTS test.

Conclusion

We hope that our comments are helpful and would welcome any questions or requests for clarification. We would also be pleased to meet with you to discuss the proposed amendments to the Regulations.

Yours truly,

(original signed by Chantal Arsenault)

Chantal Arsenault
Chair, National Citizenship and Immigration Section

² An alternative to our proposed clause (ii) would be a "Be a passport holder of any country whose national or official language is English or French and which has a literacy rate, as reported in the most recently published HDI, equal to or greater than 90 percent."