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June 27, 2018

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Ms. Lara Dyer  
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Dear Ms. Tyler and Ms. Dyer:

**Re: Consultation on Caregiver Pathways**

The Canadian Bar Association Immigration Law Section (CBA Section) is pleased to provide input to Immigration, Refugee and Citizenship Canada's (IRCC) current review of the Caregiver Pathways. Our comments reflect the ideas we shared during a conference call with you on May 14, 2018, as part of your informal consultations with stakeholders.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section is comprised of over 1,000 lawyers, practicing in all aspects of immigration law and delivering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

The Minister announced in fall 2017 that existing caregiver pilot programs would come to an end in November 2019. IRCC committed at that time to establishing an improved pathway to permanent residence (PR) for caregivers. In February 2018, the Minister announced in the media that, while the current Caregiver Pathways were set to expire, the federal government was not "shutting down

any caregiver programs” and “there is and always will be a pathway to permanent residency for caregivers under our government and we will continue to reunite families faster”.<sup>1</sup>

Our remarks on the conference call were informal, based on our professional experiences representing caregivers and caregiver employers as clients. We have organized them here into five specific topics: LMIA for Caregiver Employers; Work Permits; Eligibility and Application for PR; Transition Program; and Enactment by Regulation versus Ministerial Instructions.

### **LMIA FOR CAREGIVER EMPLOYERS**

Caregiver employers are required to obtain a Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC) to determine if the employment of a foreign worker will have a negative impact on the Canadian labour market.

The current LMIA process is cumbersome. The employer must first obtain a Canada Revenue Agency number, which takes at least 10 working days. Then, the employer must advertise the job for at least 30 days through multiple work-search sources, such as the Canada Job Bank and Emploi Quebec, and through channels targeting under-represented demographic groups. The advertising requirement applies even to those employers wanting to extend the job for the same caregiver.

New conditions for employers to meet are regularly added to the LMIA process. In Quebec, ESDC will not complete the LMIA until the provincial Ministère de l' Immigration, de la Diversité et de l' Inclusion (MIDI) is prepared to endorse the LMIA and issue a Certificat d'acceptation du Québec. Many employers are also subject to substantial, non-refundable LMIA fees (\$1,000 federally and additional fees in Quebec) and are expected to assume other costs, such as the caregiver's travel to and from Canada. It can take up to five months for the employer to receive a LMIA, followed by another two months for the caregiver to obtain a work permit.

The onerous requirements of the current LMIA system have led to a severe shortage of caregivers for Canadian children and vulnerable adults needing hands-on daily care. We particularly question the advertising requirement. CBA Section members with extensive experience representing caregiver employers have been unable to report any instances of caregiver recruitment that directly resulted from the job being advertised.

We recommend a simplified LMIA process for caregivers and elimination of the advertising requirement. Caregivers are destined to work in people's homes, not in business establishments or institutions. They should be considered a distinct group of foreign workers with a unique place in the Canadian labour market. The Canadian employer can be required to demonstrate the need for a caregiver for children, older adults or adults with disabilities, as well as the financial capacity to pay based on an income threshold. However, advertising the job should not be necessary because the shortage of qualified caregivers, and the corresponding lack of competition among job-seekers for this type of work, has been largely established across the country.

LMIA-approved occupations in the caregiver category should include those listed under National Occupational Classification (NOC) codes 4411 (home child-care providers) and 4412 (home support workers) as they are specifically intended for private residences. Related occupations classified under NOC codes 3012 (registered nurses) and 3233 (licensed practical nurses) should be excluded, as these occupations already have a direct pathway to PR through Express Entry and provincial or territorial immigrant nominee programs.

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<sup>1</sup> The Honourable. Ahmed Hussen, [Canada is not shutting down any caregiver programs](#), *The Asian Connection Newspaper* (February 18, 2018)

The caregiver's residence in Canada – live-in or live-out – should be a term of the contract left to the employer and the worker to determine between them. Currently, ESDC practically forbids the employer to require a live-in arrangement even where it would be justified due to the high needs of the person requiring care and the circumstances of the household (such as the work schedule of the family members). In the experience of CBA Section members, foreign caregivers choose to live in the employer's home in the majority of cases, often to avoid the cost of renting their own accommodation. The insistence on a live-out arrangement as a condition of employment is not favoured by either the employer or the caregiver, and it is impractical and unwarranted.

Finally, an exemption from the LMIA process should be available where a caregiver and employer are seeking to extend their original employment contract.

## **WORK PERMITS**

### **Sector-specific**

For decades, foreign caregivers in Canada have been authorized to work only for a particular employer, which in many instances has led to a detrimental dependence on the employer and employee abuse.

We recommend sector-specific work permits (WPs) for caregivers under the NOC codes 4411 and 4412, offering reasonable employment mobility and the opportunity to leave a harmful workplace for caregiving work with a different employer. Again, live-in or live-out should be left to the employer and caregiver to negotiate, and caregivers should not be discouraged from seeking out a live-in arrangement.

### **Duration of Work Permits**

Currently, work permits are issued for a maximum of 24 months from the date of the LMIA. This often shrinks to 17 months, practically speaking, as the caregiver loses time waiting for IRCC to process and approve their WP application (because IRCC requires the LMIA confirmation before approving the WP application, the caregiver cannot apply for the WP earlier) The same LMIA, once issued, cannot be extended: the employer must apply for a new LMIA and satisfy, once again, the time-consuming advertising requirement before extending the job for the same caregiver.

We propose that IRCC issue WPs for four years. Two years is too short a period of employment, especially if caregivers must accumulate at least 24 months of caregiving work experience before applying for PR. The WP should be effective from date of the caregiver's entry into Canada, not from the date of the LMIA.

### **Accompanying Permits for Spouses and Dependent Children**

Under previous and current caregiver programs, spouses and adult children of caregivers were and are ineligible for WPs as accompanying family members. This is in unfair contrast to the eligibility for open WPs of spouses of skilled temporary foreign workers (i.e., occupations under NOC skill levels 0, A, and B).

Caregivers must accumulate two years of qualifying caregiver work experience, and then undergo a lengthy process to apply for PR. They are separated from their families for several years while meeting these conditions. To facilitate family reunification, we recommend making open WPs available to the caregiver's spouse and dependent children who have finished secondary education, similar to the current entitlement of the spouses of skilled foreign workers and full-time international students.

As well, school-aged children of caregivers should be entitled to study permits (SPs) without the additional burden on the parents to demonstrate why the children are seeking to study in Canada. WP and SP applications for the spouse and children should be processed at the same time as the caregiver's WP. To streamline the process and reduce disruption to the family, we also encourage visa offices to decide on those applications concurrently.

We recommend that the whole family be screened for PR admissibility into Canada upfront, at the time of those WP and SP applications. This would eliminate the prolonged uncertainty about the admissibility of family members, and allow for time to seek solutions where a family member is found inadmissible.

### **Place of Work Permit Application**

Caregivers in the Live-in Caregiver (LIC) Program were prohibited by regulation from qualifying as PRs if they had not applied for their initial caregiver WP at a visa office outside Canada. This barrier was eliminated in November 2014 with the introduction of the new Caregiver Pathways to PR. Nevertheless, CBA Section members have reported numerous instances where caregivers' PR applications were refused, despite having the required two years of experience, because they applied for the initial caregiver WP at the IRCC processing office in Canada (CPC-Vegreville). In some cases, the caregivers were not eligible to apply anew under Caregiver Pathways, or any other category of PR application. After having dedicated at least a couple of years to demanding caregiver work, this is a devastating result.

We recommend that the location of the WP application, and other similar technicalities in the application process, not impact the caregiver's eligibility for PR.

### **Bridging Permits**

Once the caregiver submits a PR application, they should be eligible for an open LMIA-exempt WP to bridge the gap between the expiry of their WP and receipt of PR. The accompanying spouse and children should also be entitled to bridge their WPs and SPs for a corresponding length of time.

### **Priority to Caregivers in Canada**

Processing priority should be given to caregivers already in Canada who seek a WP extension with the same employer, or intend to start a new caregiving job with a different employer. The current system is unduly onerous for foreign caregivers already in Canada who face lengthy delays in LMIA- and WP-processing (up to five months), during which time the caregivers must find some way to support themselves. We recommend these cases be fast-tracked.

### **Intake Caps**

Under the previous LIC Program, there were no limitations or quotas for caregiver WP or PR applications. The current two Caregiver Pathways are capped at 5,500 PR applications per year.

We recommend that any intake caps for foreign caregivers reflect actual needs in the Canadian labour market, and that caps be instituted at the outset of the WP application, rather than later at the PR application stage. This will ensure that only as many foreign nationals are admitted into Canada for caregiving work as can be granted PR. Intake caps should be published and regularly updated on the IRCC website. This approach will facilitate realistic expectations and long-term planning with regards to PR applications for caregivers, and will enable IRCC and visa offices abroad to manage application volumes and processing times more effectively.

## **Education and language requirements**

The LIC Program required (by now-repealed regulation) that foreign caregivers demonstrate, when applying for WPs, a level of fluency in English or French that would enable them “to communicate effectively and independently in an unsupervised setting”. The current language requirements for caregiver WP applicants stem from the more general regulation that WP applicants demonstrate their ability “to perform the work sought.”<sup>2</sup> This criterion is too open-ended and subjective, resulting in imprecise and inconsistent assessments by visa officers of the applicant’s language proficiency. Minimum scores on approved language tests do not come into play until the PR application stage.

We recommend that IRCC introduce clearly described language criteria at the initial WP application stage (e.g., minimum scores in specific skill areas on approved language tests), and that those standards be applied consistently and transparently by Canadian visa offices abroad. The language threshold for caregivers should be set at Level 5 of the Canadian Language Benchmarks, consistent with the language requirement for PR applicants under the Canadian Experience Class. A higher proficiency is unnecessary for those seeking work in Canada as caregivers.

At this time, there is no minimum education level required for caregiver WP applicants (the LIC Program called for the equivalent of secondary-school completion). PR applicants under the current Caregiver Pathways program must have completed the Canadian equivalent of a post-secondary program of at least one year. This requirement is unduly onerous and difficult to attain. Caregivers who haven’t had the opportunity to complete these studies in the past cannot easily acquire the credentials once they arrive, given prohibitively high tuition fees for international students and the time needed to acquire PR-qualifying work experience. Caregivers also cannot be certain at the outset that their post-secondary education in other countries will be found equivalent to one year of completed post-secondary studies in Canada. Equivalency is determined only at the PR application stage once caregivers have obtained an educational credential assessment report from an IRCC-approved agency.

John Acheson of the PR Program Division at IRCC shared with our members at the 2017 CBA National Immigration Law Conference that the current two Caregiver Pathways were “under-subscribed” and that the annual cap of 2,750 applications for each Pathway was not reached. This may be a consequence, in part, of the onerous education requirement.

Completion of high school is a sufficient level of education for a caregiver. A post-secondary credential is not necessary for satisfactory performance in this work. We recommend that caregivers be required to demonstrate the Canadian equivalent of secondary-school completion, both at the WP application stage and when applying for PR.

## **ELIGIBILITY AND APPLICATION FOR PR**

We recommend that foreign caregivers and their immediate family members be eligible for PR on arrival, possibly subject to the condition that the caregiver complete 24 months of authorized employment within a certain number of years following their admission into Canada.

Qualifying work experience should include the occupations under NOC codes 4411 (home child-care providers) and 4412 (home support workers), and exclude occupations such as registered nurses or licensed practical nurses who have direct PR pathways through Express Entry and many provincial or territorial immigrant nominee programs. The total time worked under both NOC 4411 and NOC 4412 occupations should qualify to meet the work experience requirement. Currently,

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<sup>2</sup> [Immigration and Refugee Protection Regulations](#), s. 200(3)(a)

combining work experience in different NOC occupations is not allowed under either of the Caregiver Pathways. Applicants must work for two full years in a NOC 4411 or a NOC 4422 occupation. This mutual exclusion between the two NOC codes is unwarranted, given that the occupations all involve caregiving work at the core. We also recommend that part-time work from multiple employers be counted to achieve a full-time equivalent, similar to the acceptance of combined part-time work under the Canadian Experience Class. Breaks in employment should not disqualify the overall work experience.

Most of our recommendations on PR eligibility and admissibility requirements reflect the points above on WPs. Language and education requirements should be the same as the corresponding requirements at the WP application stage. A complete PR admissibility assessment of the caregiver and their family members should be conducted upfront, before WPs are issued. All family members should be processed concurrently and granted PR at the same time. Medical examination should be conducted only once, at the WP application stage, not again at the PR application stage (just as PR applicants were exempt under the LIC program from a repeat medical examination).<sup>3</sup>

Last, the processing target for caregiver PR application should be set at six months, and IRCC should allocate sufficient resources to adhere to this timeline.

### **TRANSITION PROGRAM**

Since IRCC announced the planned termination of the Caregiver Pathways in November 2019, some CBA Section members have noticed a marked increase in refusals of caregiver WP applications. We suspect this increase may result, in part, from the visa officer's concern about the potential for overstay in Canada once the applicant's WP expires. The applicant cannot apply for PR unless they have accumulated at least two years of qualifying caregiver experience by November 2019 (to accomplish this, the caregiver would have had to start working by November 2017). It is difficult for caregiver applicants in this circumstance to prove their "temporary intent" in Canada and satisfy visa officers that they will not remain beyond the duration of their WP.

At the same time, those who did receive initial caregiver WPs after November 2017 are growing concerned and distressed due to the absence of a clear and direct pathway to PR. Transitional, retroactive measures are needed to ensure that foreign workers who started working in Canada after November 2017 will receive full credit for their caregiving work experience when IRCC implements PR eligibility criteria for a new caregiver program.

Last, visa offices abroad should consistently apply the "dual intent" in section 22(2) of the *Immigration and Refugee Protection Act* and assess the WP applicant's intent to leave Canada separately from their ability to access and qualify for a caregiver PR pathway.

### **ENACTMENT BY REGULATION VERSUS MINISTERIAL INSTRUCTIONS**

The LIC Program and the PR class under it were established by regulation in 1997 and were governed by the same rules until November 2014 when the new Caregiver Pathways were introduced by way of Ministerial Instructions. Unlike regulations, Ministerial Instructions are temporary and short-term by their legal nature – with a life of only five years. The Ministerial Instructions for the current Caregiver Pathways do not apply in Quebec, and the workers with caregiver experience in that province must relocate elsewhere to apply for PR. In contrast, regulations allow for longevity, clarity, stability, and consistent application throughout Canada without excluding caregivers working in a particular part of Canada. We support establishing

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<sup>3</sup> [Immigration and Refugee Protection Regulations](#), s. 30(1)(g).

caregiver-specific WP requirements and introducing new caregiver pathways to PR by regulatory enactment, and not by Ministerial Instructions.

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The CBA Section appreciates the opportunity to participate in the current consultation and contribute to the IRCC's review of the Caregiver Pathways. In offering our comments, concerns and recommendations, we seek to facilitate the conception, development and implementation of a viable, fair and efficient caregiver immigration program. Many CBA Section members are highly experienced in representing caregiver employers and workers in the context of LMIA, WP and PR applications. We believe our knowledge, insights and suggestions will be of substantial benefit to IRCC in devising a successful caregiver program that meets the needs of the employers and immigration policy-makers in Canada. We ask that you engage the CBA Section in subsequent stages of the consultation process and allow us to present additional feedback.

Yours truly,

*(original letter signed by Sarah MacKenzie for Barbara Jo Caruso)*

Barbara Jo Caruso  
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