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Via email: [EDSC.DGCE.PTETExamens-TFWPReview.SEB.ESDC@hrsdc-rhdcc.gc.ca](mailto:EDSC.DGCE.PTETExamens-TFWPReview.SEB.ESDC@hrsdc-rhdcc.gc.ca)

Philippe Massé  
Director General  
Employment and Social Development Canada  
Portage IV - 140 Promenade du Portage  
Gatineau, QC J8X 2K2

Dear Mr. Massé:

**Re: Temporary Foreign Worker Program Service Standards and Fee Review**

The Canadian Bar Association Immigration Law Section (CBA Section) is pleased to provide input to the review of service standards and fees associated with the Temporary Foreign Worker Program (TFWP) Labour Market Impact Assessment (LMIA) process.

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 on the Canadian immigration system to clients in Canada and abroad. In preparing our comments, the CBA Section reached out to its members across the country.

We understand that this review is undertaken with a view to increasing the speed and efficiency of LMIA service standards, and to ensure LMIA fees adequately reflect the costs of the service. We applaud this initiative and are pleased to offer recommendations to advance needed improvements, particularly to ensure compliance with regulatory objectives, consistency of decision-making, timeliness, and quality of service. There is room for considerable improvement in the LMIA process. Currently the program often does not serve the interests of employers – small businesses in particular – which may have a negative impact on the employment of Canadians.

There are pockets of LMIA processing that appear to run smoothly, and these may offer internal lessons for improving the system elsewhere:

- Current processing standards and service quality in the Greater Toronto Area are satisfactory.
- Certain policy driven streams of LMIA applications (i.e. top 10% wage earners and project based or specialized work) have access to expedited processing (10 business days) and waiver from the usual recruitment or transition plan requirements. These streams and locations are not a source of complaint.

- Processing standards and service quality of LMIAs under the Global Talent Stream are excellent, and should be used as a model for processing of other streams.

Outside of these pockets, the CBA Section hears consistent concerns, from businesses of all sizes across Canada and the lawyers who represent those employers, about the LMIA application process.

### **LMIA Processing: Ensuring Compliance with the Regulations and IRPA Objectives**

The use of an LMIA to support issuing a work permit to a foreign worker is prescribed in section 203 of the *Immigration and Refugee Protection Regulations (IRPR)*. The test is whether “the employment of the foreign national is likely to have a **neutral or positive effect** on the labour market in Canada”, and that “**reasonable efforts** have been made to hire or train Canadian citizens or permanent residents”.<sup>1</sup>

The objectives of the *Immigration and Refugee Protection Act* include:

- (c) to support the development of a strong and prosperous Canadian economy**, in which the benefits of immigration are shared across all regions of Canada;...
- (f) to support, by means of consistent standards and prompt processing**, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;...
- (g) to facilitate the entry of ... temporary workers** for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;..”  
(emphasis added)<sup>2</sup>

Since the 2014 overhaul of the LMIA program, the test in section 203 of the IRPR has not been adhered to, and the current process is often inconsistent with the IRPA objectives noted above.

The redesigned LMIA process presents obstacles that deter employers from employing foreign workers. Decisions are often made that do not reflect the Regulations and seem contrary to good economic sense. The intense scrutiny of every application results in processing delays and program inefficiencies. Each employer is treated as a potential violator, with no recognition of trusted employers. Resources and funds have been diverted to enforcement of the employer compliance regime, further extending processing times. Employers report frustration with processing delays and unsupported refusal of applications that negatively impact their ability to hire the workers they require.

CBA Section members also report that, as a result of the inability to hire necessary foreign workers, many employers refuse contracts and pass on growth opportunities that would benefit the Canadian economy. Instead of creating more Canadian jobs through growth, these jobs are often exported to other countries, resulting in economic loss for Canada. For example, employers in labour intensive resource industries, such as meatpacking, report that a shortage of workers in Canada to process raw materials results in the materials being shipped to other countries for processing.

There appears to be a disconnect between Service Canada’s labour market presumptions and the reality of employers’ legitimate need to effectively access foreign workers, especially in specific sectors. There are significant, even severe, shortages of labour in certain occupations and regions. The presumption that all labour market needs can be met by the Canadian workforce, if employers try hard enough, is incorrect. Labour supply in the Canadian market is not sufficient for every labour need.

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<sup>1</sup> [Immigration and Refugee Protection Regulations](#), SOR/2002-227

<sup>2</sup> [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, section 3(1)

Numerous industries currently experience a real shortage of workers because not enough Canadians want or can provide the required service. Denying these jobs to foreign workers means employers must scale back plans for growth or, worse, reduce or terminate current operations, with associated losses of direct and related Canadian employment (i.e. in transportation, marketing, trade, human resources, and in 'out-front' service occupations). By way of illustration, the restaurant jobs of Canadians or permanent residents can be jeopardized by Service Canada's refusal to allow the employment of four foreign cooks, or by the imposition of a process that requires \$4000 in fees and six months' processing time to obtain an LMIA that supports a one-year work permit. Many other industries are similarly affected by the current LMIA process.

We recommend that Service Canada realign the LMIA program to ensure compliance with IRPA objectives and regulations. Canadian employers need objective criteria for the program, based on the regulatory framework, that allow them to plan their usage in a predictable and effective way. We also recommend that the LMIA program follow the example set by other government departments by focusing compliance efforts on high risk areas. The focus on identifying possible non-compliance from well-intentioned employers, in particular in high wage groups where compensation and working conditions are a matter of negotiation, is not an effective use of resources.

### **Timeliness: Addressing Processing Delays**

When a business seeks out a foreign national to work in Canada, an urgent need often fuels that request. When that Canadian business does not have a related entity outside of Canada from which to draw talent, an LMIA is often the only recourse. Timeliness and predictability of processing times are critical issues for the success of the TFWP.

Current processing times are unreasonably long, unpredictable, and inconsistent across the country,<sup>3</sup> creating a barrier for employers who, in order to plan their operations, need workers in a foreseeable and reasonable timeframe (not six or nine months from the time of application). Temporary foreign workers and applicants for permanent residence frequently fall out of status and lose their eligibility as a result of delays in processing the LMIA they need to renew their work permits, creating hardship not only for the foreign worker but also for the Canadian employer.

CBA Section members report that employer requests for expedited processing based on dependency on the foreign worker are frequently rejected without reasons. The Employer Contact Centre (ECC), while providing better service than its counterpart at IRCC, is not able to assist in expediting applications, beyond forwarding a message where processing times have been exceeded. To ensure the ECC is better able to assist callers and to alleviate employer frustration, the CBA Section recommends that Service Canada:

- a) improve ECC agent training to ensure agents understand the TFWP program and are better able to assist with requests; and
- b) authorize ECC agents to escalate the request for expedited processing where there is urgency.

When approved, the duration of LMIA's for "low-wage" occupations (currently any job paid under \$23 per hour) is limited to one year. Given unpredictable and lengthy processing times, the

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<sup>3</sup> For example, in Western Canada the processing time for many, possibly all, "regular" applications not benefiting from expedited processing has deteriorated to 25 weeks from submission to first contact with employer. CBA Section members have expressed specific concern about non-adherence to service standards for dual intent LMIA's filed with Service Canada in Saint John, NB. At this time dual intent LMIA's are not being assigned to officers for several weeks after filing.

employer must start the LMIA application process all over again within the first few months of the worker's employment. LMIA's supporting two and three year work permits should be available to low-wage workers. One year LMIA's are not efficient, and place unnecessary strain on all parties to the process, including on limited Service Canada resources.

Long LMIA processing times cause difficulties for employers generally, and for small employers in particular. The CBA Section recommends that this problem be remedied on a priority basis, and that Service Canada adhere to clearly established timely and efficient service standards. The required resources to address this issue may be available by rebalancing resources from the employer compliance program. Significant resources are currently spent on random, frequent and prolonged inspections, which could be redirected to providing faster (more consistent) decision-making. Random compliance inspections appear to find little non-compliance by most Canadian employers and resources would be better used to focus on compliance of identified 'high risk' employers or industries.

### **Assessment and Quality of Service**

Consistent decision-making based on objective criteria is critical to the ability of a business to source and retain foreign talent. CBA Section members report very different processing styles and inconsistent adjudication both within offices and across the country, often not appearing to be based on the criteria in the Regulations. An overly narrow, technical approach to assessing LMIA applications, combined with inadequate officer training and instructions (including a lack of business and industry knowledge) result in a service that does not support Canadian businesses who rely on TFWP and effectively deters companies with urgent needs from engaging with it. Concerns from our members include:

- refusal by officers for minor deficiencies (for example, a missing postal code from the address of employment listed in recruitment ads);
- overly rigid interpretation by officers of the National Occupational Classification categories, overriding reasonable assessments of employer efforts at recruitment, the need for the foreign worker, and the neutral or positive impact of that foreign worker's employment;
- imposition of additional requirements that are not included on the website or that contradict instructions on the website;
- lack of civility by officers when dealing with employers and counsel;
- insufficient training for officers in interpreting and understanding financial information, business needs and basic business economics;
- inappropriate one size fits all approach to transition plans (for high-wage workers) and quotas (for low-wage workers);
- unrealistic transition plans imposed, and then required to be updated with new transition activities for every LMIA application;
- calls to confirm information clearly in the application, creating an unnecessary bottleneck and wasting resources.

Consistency in assessment criteria is critical to the success of the TFWP. We recommend that assessments be based on consistently applied legislated objectives and criteria. We also recommend that officers receive additional training to better apply these standards and properly interpret and understand financial information.

The current requirements for transition plans seem rigid, arbitrary and often not sufficiently connected to the options for transition to permanent resident status. We recommend that the

current requirement for transition plans be replaced with plans that are flexible and discretionary, and more effective in achieving specific goals, similar to the Labour Market Benefit Plans (LMBP) used under the Global Talent Stream (GTS). These plans should be required as part of the non-GTS LMIA streams only in circumstances where the employer does not intend to assist the foreign worker in transitioning to permanent residence in Canada.

We recommend that the blanket 10% cap on the percentage of low-wage temporary workers be eliminated. The cap is arbitrary and inflexible and can be punitive for some industries. Any caps imposed should be on a specific sector or NOC basis, set in consultation with industry stakeholders and according to industry and regional needs.

The CBA Section is concerned with the Alberta “Refusal to Process” occupation list. The list is a blunt instrument that prevents Alberta employers from accessing talent they need when they cannot find it in Alberta. Some NOC classifications are extremely broad in scope and, as a result, some very specialized positions are barred because they share a NOC code with less specialized and more common roles. For example, a highly specialized mechanic with experience servicing a particular type of unique machinery is barred because their occupation falls within the same NOC code as a run of the mill heavy-equipment mechanic. Also, we understood that ESDC would monitor and regularly amend the list based on consultations with Alberta employers. This does not appear to be the case. Given these issues, we recommend that the “Refusal to Process” occupation list be removed and similar occupation lists not be introduced in the future without extensive consultation with employers and stakeholders. Instructions to not process should be made in connection with more specific job descriptions (not broad NOC codes), should be flexible enough to accommodate circumstances such as specific skill sets, and should rest on reliable data on surpluses in the labour market.

### **Job Bank and Job Match**

The requirement for employers to use the Job Bank or Job Match system is problematic given issues with its functionality. Particularly for high-wage occupations, matches are often made with applicants who are clearly unqualified. Matches for low-wage occupations appear to be made with anyone who resides in the area and has any kind of basic education. Officers may also refuse an application if a match is made on day 29 of 30, even where day 29 is on a weekend and the ad expires before the candidate can be invited. Employers have been refused LMIA for unwittingly selecting restrictive rather than default match options. Further, the dropdown menus on the Job Bank do not allow employers to enter the information they are required to include in an ad to support an LMIA, and do not match other job sites (so don’t allow for consistent ads across sites).

These are just a few examples of functional problems with the Job Bank that we recommend be resolved. The Job Bank should either be optional, leaving it up to the employer to post recruitment advertisements where it makes sense for the occupation and industry or, if it continues as a requirement, the Job Bank must be modernized to meet employer needs. In the meantime, we recommend that the requirement of using the Job Bank or the Job Match system be discontinued.

### **Fees**

In our opinion, processing fees are too high for the current level of service. This is especially true with LMIA requests for multiple workers. For example, the processing fee for an application for eight workers is \$8,000, although the approval process for an application for multiple workers will not take much more time to process than an application for one worker. A fee of \$1,000 per worker is over four times higher than the fee charged by IRCC under the International Mobility Program. We recommend against introducing premium processing fees at this time, and suggest that the primary focus be on making critical process improvements to the TWFP.

## Engaging with Counsel

The TFWP allows for designated representatives and the application includes a third party authorization form permitting lawyers and licensed consultants to act as paid representatives. Nevertheless, CBA Section members regularly report that officers avoid, or refuse to engage with, retained legal counsel, including refusing to recognize counsel, to speak to counsel and sometimes to even copy counsel on the decision.

This approach is contrary to the rights of the employer applicants, and negatively impacts the ability of businesses to engage with the TFWP. We recommend that instructions and training be given to officers on appropriately and effectively engaging with counsel.

## Global Talent Stream

Overall, the Global Talent Stream of the TFWP operates very well. GTS officers appear to be professional and well-trained, with a focus on working with employers to reach their goals within the confines of the law. The LMBP – an integral part of the GTS stream – focuses on demonstrating “employer-specific commitment to activities that will have lasting, positive impacts on the Canadian labour market.”<sup>4</sup> This focus is better aligned with the “neutral or positive impacts” contemplated in the regulatory framework than the LMIA Transition Plan, which is limited to transitioning the job to a Canadian citizen or permanent resident (and not what the Regulations require).

We recommend that the collaboration evident in the GTS process between Service Canada, the employer and third party representatives be emulated in the LMIA process.

## Summary of Recommendations

1. Realign the LMIA program to ensure compliance with the IRPA objectives and regulations.
2. Focus application scrutiny and compliance efforts on high risk areas.
3. Improve training to ensure ECC agents understand the TFWP and are better able to assist with requests.
4. Authorize ECC agents to escalate the request for expedited processing where there is urgency.
5. Make LMIA supporting two- and three-year work permits available to low-wage workers.
6. Remedy, on a priority basis, excessive, unpredictable and inconsistent LMIA processing times. Adhere to clearly established timely, efficient service standards.
7. Give officers the training needed to apply consistent standards, based on legislated objectives and criteria, and to properly interpret and understand financial information.
8. Eliminate the blanket cap on the percentage of low-wage temporary workers. Set caps in consultation with industry stakeholders, and according to industry and regional needs.
9. Develop and implement flexible, discretionary transition plan requirements to be applied only when the employer is not assisting the worker to obtain permanent resident status.
10. Eliminate the “Refusal to Process” occupation list in Alberta. Do not introduce similar lists in the future without extensive consultation with employers and stakeholders, and ensure instructions to ‘not process’ are in connection with specific job descriptions, are flexible

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<sup>4</sup> Government of Canada, EDSC, [Hire a temporary foreign worker through the Global Talent Stream](#)

enough to accommodate particular circumstances such as specific skill sets, and are supported by reliable data on surpluses in the labour market.

11. Make the Job Bank and Job Match requirement optional, or update it to meet employer needs. Suspend the requirement for its use pending changes.
12. Do not introduce premium processing fees at this time. Focus on making critical process improvements to the TWFP.
13. Give officers training and instructions on appropriately and effectively engaging with authorized legal counsel.
14. Emulate in the LMIA process the collaboration evident in the GTS process between Service Canada, the employer and third-party representatives.

The CBA Section appreciates the opportunity to share its concerns and to make recommendations for the development of a new approach to setting LMIA service standards and fees. We would be pleased to engage in an ongoing dialogue with a view to implementing improvements. In the meantime, please let us know if you have any questions about our recommendations.

Yours truly,

*(original letter signed by Sarah MacKenzie for Marina Sedai)*

Marina Sedai  
Chair, Immigration Law Section