

The following are the speaking notes used by Attorney Colin R. Singer a conference presenter at the Canadian Institute's conference held in Toronto on October 30, 2007.

Catering to the Unique Labour Requirements of Foreign Workers to Achieve Maximal Workforce Capacity

The Canadian labour market and foreign workers

Canada is experiencing its lowest levels of unemployment in more than 30 years. This is especially the case for many employers in this region of the country where current labour market requirements present significant ongoing challenges for Human Resource Managers.

Increasingly, we are observing that immigration and the recruitment of foreign workers is a viable option to addressing a particular labour market requirement for resource managers.

Temporary Foreign Worker (TFW) program is the primary means for employers to address critical skill and labour shortages.

In 2006 112,000 work permits issued; total population of temporary foreign workers in Canada was 171,000 representing an increase of 122% in the prior 10 years.

- Ontario: « Full Employment «
- 50,000 temporary workers in 2006
- UI rate 6.2% September 2007

- Foreign recruitment is a suitable tool for many industries where the prevailing wage rate cannot attract sufficient labour from the applicable labour market.

- Foreign workers are often highly educated with good work ethic

Canada's Immigration Policies

Shared jurisdiction between the Federal Government and the Provinces

Immigration is a matter of joint responsibility between the Federal government and the provinces and has been since Confederation, under the Constitution Act of 1867. As one can appreciate, shared jurisdiction between Canada's provinces and the Federal government on just about any subject, generally leads to complexities and challenges for those involved.

Understanding the role of each of the parties is a matter of great importance for human resource managers intending to recruit foreign workers.

Canada's immigration policies: Economic/skilled workers:

- (A) Long-term demographic developments that will have profound effects on Canada's labour market (aging population, a growing elderly dependency ratio; a shrinking labour force and a problem of brain drain).
- Permanent Residence: An effective retention tool.
- (B) Current local sectorial labour market requirements and deficiencies within the provinces.
- Temporary work permits
 - Regional Occupations Under Pressure List

Federal Role:

- Skilled Worker Program - Selection of 110,000 – 125,000 permanent residence / economic immigrants each year
 - National Occupation Classification (NOC) Cats O, A, B.
 - Managerial, professions, occupations requiring college/trade diplomas.
 - (Delays: 1.5 – 5+ years, depending on the visa office)

- Temporary Foreign Worker Program (TFW): Issuance of 100,000+ work permits each year.
- Temporary Foreign Worker Program: (TFW)
 - National Occupation Classification (NOC) Cats O, A, B.
 - Managerial, professions, occupations requiring college/trade diplomas.
- Low Skilled Worker Pilot Project
 - National Occupation Classification (NOC) Cats C and D
 - Primary industries, equipment operators, transport workers, Construction labourers.
- Security and medical screening.
- Delegation of powers to the provinces – Nominee Agreements.

Role of the Provinces

- Provincial Nominee Programs - Selection of approximately 12,500 permanent residence / economic immigrants per year (Shorter processing times: 3-6 mos + 10 mos = 16 mos)
- Collaborate with HRSDC and CIC on the issuance of r. 203 LMO's and Sectorial Agreements for (Temporary Worker programs – Occupations under Pressure; Construction Workers Pilot; Agricultural Workers, etc.)

Temporary Foreign Worker Program

- Regulatory context: r. 203 IRPR: HRSDC provides opinions: “Canadians First”
- Labour Market Opinion Process managed by Service Canada / HRSDC
 - NOC: Define the occupation
 - Current labour market information for the region, prevailing wage rates, labour shortages
 - Efforts by the employer to recruit qualified Canadians
 - Review of salary and working conditions

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- CIC verifies to ensure the applicant possesses the qualifications
- CIC ensures security, criminality and health

- Work permit for applicant (renewable), open spousal work permit
- Delays: Vary between days and months

- Blanket LMO's reduces delays
- The application process:
 - Advertising the position – Where, what terms to include
 - Demonstrate efforts to hire Canadians
 - Request(s) for additional information
 - Negative decision: Appeal process

- Regional Occupations under Pressure Ontario – Simplified for occupations with NOC 0, A, B
 - Management Occupations
 - Business, Finance and Administration
 - Sciences
 - Health
 - Trades, Equipment Operators

Low Skilled Worker Pilot Project: Limitations of current program

- Limitation on length of work permit: 24 months. No renewal until four months have expired after the original permit has elapsed
- No spousal work permit (spouse may accompany as a visitor; obtain LMO)
- Employment contract: numerous redundancies
- No harmonization between HRSDC offices in processing requirements
- Barred from applying for permanent residence under Federal program and PNP Program in Ontario
- Delays to approval vary between 1-3 months

Work Visa: Begins with the HRSDC/Service Canada Labour Market Opinion (LMO)

- Applicable exemptions: NAFTA; GATTS

Work Visa: The HRSDC/Service Canada Labour Market Opinion Hiring Process

Occupational Title & Descriptions: The Tools

The National Occupational Classification (NOC) –
<http://www23.hrdc-drhc.gc.ca/2001/e/generic/welcome.shtml>

- Authoritative resource on occupational information in Canada
- Skilled or Low Skilled; Occupations Under Pressure
 - National Occupation Classification (NOC) Cats O, A, B.
 - Managerial, professions, occupations requiring college/trade diplomas
- Low Skilled Worker Pilot Project
 - National Occupation Classification (NOC) Cats C and D
 - Primary industries, equipment operators, transport workers, Construction labourers.
- Occupations Under Pressure List

The Wage Book
<http://www.labourmarketinformation.ca/>

- The “going rate”, fluctuates and can be challenged
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Advertising

- Service Canada National Job Bank
- Demonstrate on-going efforts in print medium
 - Adequately describe the position; application deadline
 - Wage range
 - Maintain C.V.'s
 - Log responses, interviews, etc.

The Written Offer; Employment Contract

Skilled

- Respect Ontario Employment Standards Code; Collective Bargaining Units
- Wages = Prevailing Labour Market Conditions
- Relocation Expenses, other benefits - Optional

Low Skilled

- Ontario Employment Standards Code; Collective Bargaining Units
- Wages = Prevailing Labour Market Conditions
- Must appear in advertisements
- Relocation Expenses – Required

The HRSDC/Service Canada Labour Market Opinion Application Process

Skilled

- National Occupation Classification (NOC) Cats O, A, B.
- Managerial, professions, occupations requiring college/trade diplomas

Low Skilled Worker Pilot Project

- National Occupation Classification (NOC) Cats C and D
- Primary industries, equipment operators, transport workers, Construction labourers.

Occupations under Pressure List – A Simplified process

- Skilled – Only one (1) HRSDC online job bank posting for seven days.
- Low Skilled – HRSDC online job bank with wages indicated plus local print advertisement.

One Application vs. Bulk Applications

- Plan ahead, think medium term – weeks for LMO approvals
- Once approved – 2-4 days for LMO approvals
- “Hiring in principle” / “Quota”
- Submit full history of advertising efforts
- Include sample résumés
- Corporate documentation; articles of incorporation; tax registration

Submitting Applications: Overseas/Outside Canada Visa Offices vs. Port of Entry

- Nationality of applicant determines filing venue
- <http://www.immigration.ca/tempent-visit.asp>

Trades Licensing:

- Compulsory certification trades
- Conditional LMO's: 6 months to become licensed in Ontario.
- Theory exam; Practical exam (some occupations – i.e. Welders)

Develop & Implement Certification Training Program

- Assist qualified, experienced trades to re-acquire general terminology
- Assign foreign worker to journeyman on rotation basis
- Consult apprenticeship websites to familiarize with exam components
- Employee's success is employer's success

Permanent Residence: An Employee Retention Tool

Federal Application:

- Skilled Worker Program – Point System
 - National Occupation Classification (NOC) Cats O, A, B.
 - Managerial, professions, occupations requiring college/trade diplomas
 - Country of habitual residence or work permit
 - Delays: 1.5 yrs (Buffalo, Work Permit)

Ontario Provincial Nominee Program

- Permanent residence programs include professional and skilled worker streams.
- 500 certificates issued for NOC skill level 0, A, B on work permit
- Two step process:
 - (1) Employer Pre-approval and
 - (2)PNP application submission
- Employer driven programs
- Professionals:
 - Specialist Physicians
 - General Practitioners and Family Physicians
 - Pharmacists
 - Audiologists and Speech-Language Pathologists
 - Physiotherapists
 - Registered Nurses
 - Medical Laboratory Technologists
 - Medical Radiation Technologists
 - University Professors
 - High-End Academic Researcher

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- Skilled worker – Manufacturing or Construction
 - Machinists and Machining and Tooling Inspectors
 - Tool and Die Makers (includes metal patternmakers and metal mould makers)
 - Industrial Electricians
 - Construction Millwrights and Industrial Mechanics
 - Heavy-Duty Equipment Mechanics
 - Carpenters (includes framers and form workers)
 - Bricklayers
 - Cement Finishers
 - Tile setters
 - Drywall Installers and Finishers
- CIC: Security, Admissibility, Medicals
- Processing times – 1-2 months to nomination; 12-15 months overall.
- Limitations: 500 nominations per year – insufficient for Canada's largest province

Recruiting personnel

Intra-provincial vs. foreign recruitment

- Intra-provincial – generally temporary
- Foreign workers – generally permanent
- Ontario Labour Standards: Less than 3 months, no risk

Going Abroad

Where:

- Procedures and processing delays vary significantly between countries
- Language, training and experience
- Recruit from countries where transition / integration chances maximized

How Many; How: Direct vs. Agency

- Anticipate future hiring needs: Obtaining approval for 10 = 1
- Cost: Direct advertising; screening applicants; time
- Cost: Agency fees for trades' occupations – 12.5% (\$7,500 / \$60,000)
- No Agency fees for management occupations

Attracting & Retaining Foreign Workers

- Help create the right environment from the start: Assign a settlement tutor; welcome them to the community at large.
- The rights of foreign workers and the obligations of employers:
 - With some exceptions, foreign workers in Ontario are subject to provincial jurisdiction to the extent that Canada Labour Code does not apply.
 - Protection of foreign workers is increasingly being viewed through the prism of human rights: Charter of Rights and Freedoms prohibits a province from engaging in conduct that violates international human and labour rights.
 - Foreign workers covered by provincial labour standards – Freedom of association; etc.
 - Three months: Termination without notice.
- Obtaining Union consent
- Recruitment Agreements: Trades' Employee pays; employer subsidizes with conditions.
 - Become a “motivated employer” – absorb 25%-33% of fees for trades' employees
 - Agree to sponsor employee
 - Conditional “loan” to employee
- Recruitment Agreements: Management Employees
 - Agree to sponsor employee
- Assist in settlement process: accommodations, health cards, school registrations, getting around and successful settlement

Conclusion:

- Influencing immigration policy
- Attracting & Retaining Foreign Workers: Flexibility, help with settlement
- Develop a good understanding of procedures & delays and ***plan ahead*** so that expectations are reasonable
- Monitor delays for visa renewals; applications for permanent residence to retain employees