

CANADA'S

IMMIGRATION & CITIZENSHIP

BULLETIN

Editors: Jonathan Leebosh and Roxanne Israel, Egan LLP, Business Immigration Lawyers, Allied with Ernst & Young

Understanding Quebec's Immigration Economic Stream

By Colin R. Singer, Managing Partner www.immigration.ca

Introduction

Since the coming into effect of the Cullen Couture Agreement in 1978, as amended by subsequent accords between the Governments of Canada and Quebec (Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens, 1991), the Quebec government is the only province to have concluded a comprehensive agreement with the Government of Canada for the purpose of facilitating the formulation, coordination and implementation of immigration policies and programs with respect to the admission of foreign nationals to a province. Consequently, in 1981, the Quebec government enacted (and re-enacted in 1994 and in 2006), its own laws regulating the selection of foreign nationals wishing to settle permanently or temporarily in Quebec: *An act respecting immigration to Québec*, R.S.Q., c. I-0.2, and its attendant regulations. The following provides an overview of the current rules and processing procedures for Quebec destined applicants applying under the Economic Class.

Under Quebec provincial law, the majority of foreign nationals are selected each year under the Economic Class comprised of the skilled worker, investor, entrepreneur and self-employed. The selection process is points based. The Quebec Department of Immigration (Ministère de l'Immigration et des Communautés Culturelles "MICC"), legislates by Ministerial Order, the number of points that can be allocated to each of the selection factors; the authority to create, eliminate and/or modify a mandatory minimum number of points which applicants can be required to obtain for each of the selection factors within each class of immigrants; and the authority to retrospectively enact regulatory amendments which could apply to applicants submitted prior to an amendment and which have not proceeded to a specified point in the assessment process.

Each year the MICC submits its annual report to the Quebec National Assembly outlining the number of immigrants to be admitted to the province in the following year. Where immigration levels are reached in a given year, across all levels or within sub classes of the immigration plan, the Minister may suspend the processing of existing inventory until the subsequent year. Indeed, Quebec has legislative authority to

admit a substantial number of immigrants to its province, far more than any of the other provinces in Canada.

Changes to Quebec immigration law in 2006, 2009 and 2013

In October 2006, October 2009, and August 2013, the Quebec government implemented comprehensive amendments to its Economic Class selection rules. Under those modifications, there are presently five categories within the Economic stream which can be summarized as follows:

1. **Skilled worker:** A foreign national who settles in Quebec to hold employment the foreign national is likely able to hold. This determination is made primarily on the basis of the candidate's education and experience as well as other selection factors.
2. **Quebec Experience Program Candidate:** A foreign national having worked in Quebec in a skilled occupation for a period of 12 months within the 24 months preceding the date of the application, or having obtained, within the three years preceding the application, a diploma from a Quebec educational institution after completing at least half the duration their program of studies in Quebec, and who can demonstrate an intermediate-advanced French language proficiency through means of standardized testing. The Quebec experience program is a sub-category of the skilled worker category.
3. **Entrepreneur:** A foreign national with at least two years of suitable experience in the operation of an enterprise that the foreign national acquired in the five years preceding the date of the application and comes to Quebec to create or acquire an enterprise to manage himself or to participate as an associate in the daily management of an agricultural, industrial or commercial enterprise in Quebec that will employ at least one Quebec resident for a minimum of 30 hours per week and who will control at least 25% of the equity, alone or with his spouse or de facto spouse, with the equity being worth at least \$100,000.
4. **Investor:** A foreign national with suitable management experience of two years in the five years preceding the

application, who alone or with his accompanying spouse or de facto spouse has net assets of at least \$1,600,000 obtained legally, excluding amounts recently gifted, who undertakes to invest \$800,000 for five years, in a prescribed investment.

The filing of new applications under this category is currently suspended pending assessment of applications received in August 2013, when the government temporarily re-opened its program.

5. Self-employed: Will come to Quebec to create employment for the applicant by practicing a profession defined in the National Occupational Classification.

Under the 2006 changes to the skilled workers' stream there was a notable shift in government policy to direct efforts towards selecting immigrants who are perceived as more likely to integrate into the Quebec labour market. It is believed that the following 10 criteria will continue to facilitate this objective:

1. Education/Training

Education is the most significant criteria of settlement success according to research. To be eligible to receive approval (Quebec Certificate of Selection "CSQ"), an applicant must possess an education level which is equivalent at least to the Quebec general secondary school level or a related vocational diploma.

Emphasis is focused on a diploma issued by a Quebec educational institution either in Quebec or abroad, or a foreign diploma recognized as equivalent by the Quebec government.

Another feature which remains an integral selection consideration is the occupation demand list known as "Areas of Training". This criterion favours applicants by awarding a maximum of (16) additional points to applicants whose educational background represents an asset in the sense that it affords enhanced employment opportunities within sectors of the labour market in Quebec that have chronic labour shortages. The August 2013 program amendments update and expand the eligible "Areas of Training" to take into account current labour market shortages. Further, the Areas of Training factor is no longer a basis for ineligibility, as it was from April 1, 2012 to July 31, 2013. Applicants with diplomas which do not appear on the Areas of Training list will not be eligible for priority processing. It should also be noted that the new Areas of Training list will be applied retroactively to certain pending applications submitted prior to August 1, 2013.

2. Experience

The 2006 program changes eliminated the previous minimum requirement of six months of professional experience for pre-selection. Under the current rules, professional experience is no longer required. However, in order for points to be allocated for work experience, it must have been acquired within five years preceding the submission of the application. In addition, paid and non-paid training periods can be counted if attested to by a diploma. Four points are awarded to recent graduates having only six months of employment experience.

3. Age

Current rules award points to applicants between the ages of 18 and 42 with priority given to applicants whose age ranges from 18 to 35.

4. Language proficiency

Knowledge of French, the official language of Quebec, is an important indicator of integration success. Quebec policy makers maintain that French language ability also increases long-term immigration retention rates. As such, current selection rules emphasize oral communication skills in French as well as English language ability. The August 2013 amendments reintroduce the allocation of points for written comprehension and oral expression in both languages and increase the minimum proficiency levels required to be allocated maximum points for French. More specifically, the changes require intermediate-advanced competency (levels 7 and 8 of the Échelle Québécoise de niveaux de compétence en français). The increased emphasis on French language ability applies retroactively to pending applications submitted prior to August 1, 2013 that have not reached a designated stage of processing, and effectively disqualifies thousands of previously qualified applicants who will no longer be eligible for points based on their French proficiency. (The Quebec government currently faces a legal challenge to these amendments before the Quebec Superior Court. (Case No.: 500-17-078740-134). The court recently rejected an interim request to safeguard pending applications against the new modifications.)

However, recent government policy allows qualified applicants with pending applications submitted prior to August 1, 2013, a period of 12-18 months to reach the new French language proficiency threshold in order to receive points under this factor.

5. Stay and family in Quebec

For a stay in Quebec to be considered, time spent in Quebec must have been completed by the applicant or a spouse or de facto spouse during the 10 years preceding the submission of the application. There are no points awarded for friends or distant relatives living in Quebec.

Only close family members such as parents, children, brothers, sisters, grandchildren and grandparents are taken into account for this factor. Also, persons having worked for at least three months in Quebec as part of a recognized international youth exchange program, receive 5 points.

6. Characteristics of the accompanying spouse

For those with a spouse or de facto spouse, additional points can be awarded for their education, experience in noted areas of training, age, and language proficiency.

7. Validated offer of employment

An applicant with a validated offer of employment may be awarded points based on the region of settlement in Quebec. The Quebec government wishes to promote settlement in the outlying regions of the province and therefore up to 10 points can be awarded to those who settle in designated outlying regions of the province.

For the greater Montreal area, where the majority of newcomers settle, the maximum that can be awarded is 6 points under this factor. This factor is now included in the employability pre-selection stage. This is an important change because it affords applicants with a validated offer of employment a greater chance of qualifying at pre-selection and selection, and who may otherwise have minimal French language proficiency or who are deficient in other factors. Applicants with a validated offer of employment will be given priority processing along with those in the Quebec Experience category.

8. *Children*

Applicants with children aged 21 and under are awarded up to a maximum of 4 points per child to a maximum of 8 points.

9. *Financial self-sufficiency*

Candidates must be able to support themselves and their accompanying family members during the initial three-month period of settlement. Consequently, they must undertake to commit that they will meet their basic financial needs during the transitional period of settlement. One point is awarded under this factor.

10. *Adaptability*

This factor provides for a maximum of 6 points and is assessed during the selection interview. The immigration officer who interviews the candidate will take into account three sub-factors: these include the applicant's knowledge of Quebec, the job market and sector in which the applicant would like to work; steps taken by the candidate to prepare for his or her integration into the job market and Quebec society; as well as the personal qualities as related to the professional activities of the applicant.

The selection process: from the pre-screening to selection

The Quebec application selection process currently follows a complex multi-stage review and requires that the principal applicant must be favourably assessed at an initial eligibility stage followed by two preliminary processing stages, each with required cut-off point requirements in order to proceed to a selection stage. Applications filed at one of the Quebec government processing offices located in Hong Kong, Mexico and Montreal must meet the following two eligibility criteria:

1. Possess a minimum level of education which is equivalent at least to a Quebec general secondary school level or a related vocational diploma.
2. Possess sufficient funds to support the cost of settlement as measured against published cost of living indices during the first three months for the applicant and accompanying family members.

Applications which meet the above criteria will be evaluated under two "pre-screening" stages.

At the initial employability pre-screening stage, emphasis is placed on a variety of factors which are intended to assess the medium term prospects of the applicant's overall employability and mobility potential in Quebec. Experience includes training periods served during apprenticeship, training or specialization

attested to by a diploma, in an occupation at a skill level of qualification higher than level "D" within the meaning of the National Occupational Classification, excluding experience acquired in an occupation mentioned on the list of inadmissible occupations (currently childcare and home support workers are excluded).

At the initial pre-screening stage, single applicants must obtain a cut-off score of 42 points based on six selection factors within the following criteria: training/education (and areas of training), experience, age, language (French and English), prior visits/ties to Quebec and validated employment offer. Applicants with a spouse or de facto spouse must obtain 50 points including the points allocated to the accompanying spouse or de facto spouse.

Applicants who have obtained a validated offer of employment are allocated either 6 or 10 points under the employment validation factor.

To receive points the employer and the applicant must meet essential conditions. The employer must have been operating for a minimum of 12 months and have sufficiently canvassed the local labour market for the position being offered. The applicant must possess relevant employment experience (higher than level "D" within the meaning of the National Occupational Classification), and where applicable the worker/applicant must meet the conditions of regulatory access to practice the occupation in Quebec.

Where an applicant does not meet the cut-off score at the employability pre-screening stage, the application is refused without further consideration.

Where an applicant succeeds at the initial pre-screening assessment the application will undergo a second pre-screening evaluation taking into consideration all of the factors of the selection grid except the Adaptability factor. To advance to the selection stage, single applicants must reach 49 points and applicants with a spouse or a de facto spouse must obtain 57 points. However discretionary measures permit otherwise qualified applicants who do not meet the points threshold, the opportunity to enhance their French language proficiency over a period of 12 months in order to continue with the evaluation process.

Finally, at the selection stage, an applicant is assessed under the Adaptability Factor (which includes knowledge of the employment market; knowledge of Quebec, and related factors). Single applicants must reach at the selection stage, 55 points and applicants with a spouse or a de facto spouse must obtain 63 points in order to qualify for a Quebec Selection Certificate.

In some instances, applicants who do not obtain the required number of points to qualify for selection may qualify to receive consideration for the use of positive discretion by the Minister. Likewise, there is authority for the Minister to exercise negative discretion and refuse an application where there is reason to believe that the foreign national does not intend to settle in Quebec, or for other sufficient reasons which could include an assessment by the decision maker regarding the unlikelihood an applicant will be able to successfully become employed in Quebec.

The MICC has implemented a system of priority processing of skilled worker applications to be carried out in the following order:

1. Quebec Experience category;
2. Validated employment offer;
3. Preferred areas of training (applicant, spouse or a de facto spouse); (Annual cap set at 20,000);
4. Others.

The Immigration Plan 2013

The MICC intends to admit between 46,200 - 50,800 immigrants across the following categories in 2013/2014:

Skilled Workers: 38000 - 40000

Business: 5000 - 7000

Other economic class: 400 - 600

Refugees: 2300 - 2500

Others: 500 - 700

Numerical overview

Since 1996, the MICC has periodically amended the worker class selection process in order to facilitate immigration to Quebec and reinforce demographic objectives by, among others, increasing the proportion of economic immigration to Quebec to more than 50% of the total numbers admitted each year, and increasing the overall proportion of Francophone immigration to more than 40%.

Between 2008 and 2012, of the 255,442 immigrants admitted to Quebec in all categories, 69.5% were admitted under the economic stream (among which 61.9% derives from the skilled worker stream and 5.5% from business immigrants); 63.0% possessed knowledge of the French language while a further 16% listed French as their mother tongue. During the period, approximately 24.4% of all admissions derived from Quebec's three main source countries: Morocco, Algeria, and France.

As of 2012, admissions from China have overtaken all other countries and account for 10.1% of admissions for that year (<http://www.micc.gouv.qc.ca/publications/fr/recherches-statistiques/Immigration-Quebec-2008-2012.pdf>). However informally, a substantial percentage is comprised of immigrant investors and their dependants.

Interestingly, during the period 2004-2008, where admissions from India, Pakistan, Philippines and the United States totalled 18,471 (13.40%) for this period, these numbers fell precipitously in 2008 to less than 7% as the effects of substantive selection rule changes implemented in 2006 which favour French speaking applicants, became apparent. This trend is expected to continue following 2013 changes which favour applicants with even higher levels of French.

In 2012, Quebec admitted 55,086 applicants comprising of 34,285 skilled worker workers and 4,634 business applicants representing approximately 70.7% of the total numbers of foreign nationals admitted to the province. In 2007, Quebec admitted 45,201 applicants including 25,439 skilled worker applicants and 1,852 business applicants representing approximately 60.5% of the total numbers of foreign nationals admitted. During the period 2001-2006 foreign nationals as a

percent of the total population in Quebec increased by 2.6% from 9.9% to 11.5%. Although the proportion of immigrants to Canada who settled in the Province of Quebec declined during the period 1991 (22.3%) and 1995 (12.3%), this figure has been increasing since 2005 (16.5%). The numbers were 20.8% in 2011 and 21.4% in 2012. From 2002 to 2006, about 80.2% of the immigrants to Quebec settled in the Greater Montreal area. As of 2006, about 30% of the residents of Montreal were foreign born. A noteworthy development is that in recent years, the Quebec government has succeeded in its efforts to increase the number of selected immigrants who speak French.

In 2012, 63.0% of landed immigrants in Quebec identified themselves as Francophones while in 2003 they represented 50.8%. Compared to 42% of Francophones selected by the Quebec government in 1998, this represents a substantial increase. Thus, one can conclude that the Quebec government appears to be reaching its policy objectives identified in 2006 of selecting a majority of Francophone immigrants under its annual immigration plan. This is significant because Quebec intends to receive upwards of 50,000 foreign nationals in 2013 and in the subsequent years (<http://www.micc.gouv.qc.ca/publications/fr/planification/Plan-immigration-2013.pdf>). However, an area in which the Quebec government welcomes an improvement is the rate of retention (those actually settling in Quebec), and in particular, immigrants admitted under the business stream.

Statistics indicate that although 80.4% of immigrants selected by the Quebec government between 1996 and 2005 were residing in the province in January 2008, this figure varies substantially depending on the category and class from which immigrants are admitted. In particular, only 33.3% of Business Class immigrants admitted between 2002 and 2011 remained in Quebec in 2013, while the figures were 75.4% for skilled workers and 89.9% for live in caregivers.

Overall it appears that the October 2009 amendments especially benefit applicants who have a validated offer of employment or preferred areas of training, while the August 2013 amendments serve to reinforce policy objectives aimed at increasing the proportion of French speaking candidates selected.

To subscribe to this newsletter or to order additional copies, contact:

CANADA LAW BOOK

a Division of Thomson Reuters Canada Ltd.

One Corporate Plaza

2075 Kennedy Road

Toronto, Ontario, M1T 3V4

phone 1-416-609-3800

toll free 1-800-387-5164

fax 1-416-298-5082

E-mail www.carswell.com/email

www.carswell.com

© 2013 Thomson Reuters Canada Ltd.

All rights reserved.

No part of this publication may be reproduced in any form or by any means, including photocopying, without the prior written permission of the copyright holder.

Published 10 times per year. Annual subscription rate:

\$243.00