



November 20, 2013

Via email: aefa@sen.parl.gc.ca; CIMM@parl.gc.ca

The Honourable Senator Raynell Andreychuk
Chair, Foreign Affairs and International Trade
Committee
Senate of Canada
Ottawa, ON K1A 0A4

Mr. David Tilson, M.P.
Chair, Citizenship and Immigration Committee
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Senator Andreychuk and Mr. Tilson:

**Re: Bill C-4, Part 3, Division 16
Expression of Interest and Ministerial Instructions for Canadian Experience Class**

The National Immigration Law Section of the Canadian Bar Association (the CBA Section) takes this opportunity to comment on proposed regulatory amendments to the *Immigration and Refugee Protection Act* (IRPA) in Part 3, Division 16 of Bill C-4, the *Economic Action Plan 2013 Act No. 2*. The CBA is a national association of over 37,500 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

Part 3, Division 16 of Bill C-4 introduces specific amendments to IRPA regarding the Expression of Interest (EOI) system. The federal government introduced the EOI system in its 2012 Economic Action Plan as an upcoming immigration initiative and anticipates implementing it in January 2015.

Efforts to modernize, adapt and adjust the selection system for economic class immigrants are important, and the CBA Section commends the government in principle for proactively taking steps to make collective improvements. However, we have serious concerns about legal process, consultation and implementation, as outlined below.

I. Consultation Period

The CBA Section has concerns about the limited consultation on this important change to Canadian immigration law and policy. Bill C-4 would substantially change the way in which economic immigrants are selected to come to Canada. The Bill would remove these changes from Parliamentary scrutiny and approval and give what appears to be unilateral authority to the Minister of Citizenship and Immigration to change selection rules and procedures. These changes could be implemented without notice or public consultation.

In fall 2012, the government held consultations with employers at a very preliminary stage on an EOI system. The consultation was based primarily on a Labour Market Opinion (LMO) model that is

not reflected in Bill C-4. The proposed framework is a fundamental shift in immigration selection policy, and implementation is not anticipated for at least a year. There will be no mechanism to reconsider this framework for the EOI system once the amendments are made, because key-policy-making will be made by Ministerial instruction rather than regulatory amendment. Meaningful consultation now would enhance rather than impede the implementation process. For these reasons, the CBA Section recommends that additional time be set aside for study and consultation prior to the passage of these amendments.

II. Growing Use of Omnibus Legislation and Ministerial Instructions

The CBA has steadfastly objected to omnibus legislation like Bill C-4. Enacting important changes in diverse and unrelated subject areas in a single bill precludes meaningful comment and debate.

The issue is compounded in immigration law, with the growing reliance on Ministerial Instructions at the expense of Parliamentary oversight.¹

III. Predictability and Transparency

Immigration applicants are as worried about the **certainty of selection** as they are about long processing timelines and employment opportunities. Although we understand the need for flexibility, timeliness and proactivity, predictability of the system is fundamental to attracting the best applicants. Changing rules without public consultation can undermine the confidence of potential immigrants and cause them to look elsewhere. The proposed EOI system may leave many applicants without a sense of certainty of outcome, and could deter them from applying to come to Canada as students, temporary workers or immigrants.

People plan their lives around the possibility of immigrating to Canada. They commit to working or studying in Canada for years, so that they might meet the selection criteria. If we continue the shift to Ministerial Instructions, we recommend that there be guarantees that significant changes will be submitted for Parliamentary scrutiny and public debate before they are implemented.

IV. Questions about the Proposed EOI System

A number of critical questions about the proposal have yet to be answered. The testimony of Citizenship and Immigration Canada officials on November 7, 2013 before the House of Commons Committee on Citizenship and Immigration² seems to indicate that the role of provinces in the program has not been established, the government has borrowed heavily from the New Zealand program without fully exploring clear legal differences between Canada and New Zealand, the number of immigration categories to which EOI would apply has not been finalized, an automated system will make the eligibility decision in the EOI system, and the costing model is still being developed. The details are critical.

The following questions must be studied and answered before the proposed EOI system can be meaningfully assessed:

1. What public consultation does the government propose for the EOI system and how will it ensure that consultations are open to the public, meaningful and transparent?
2. What technological and administrative systems are being considered to implement the EOI system and what will the procedures be?

¹ See CBA Resolution 13-04-M, online: www.cba.org/CBA/resolutions/pdf/13-04-M-ct.pdf and CBA Resolution 12-06-A, online: www.cba.org/CBA/resolutions/pdf/12-06-A-ct.pdf.

² See testimony of Maia Welbourne, Senior Director Strategic Policy and Planning, Citizenship and Immigration Canada on November 7, 2013, at www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6297021&Language=E&Mode=1&Parl=41&Ses=2

3. What will be required for Canadian employers to have access to candidates in the EOI system and how will the government provide access to information while respecting the privacy of candidates?
4. What agencies and delivery agents will have access to information in the EOI system?
5. Previous references to an “employer registration process” where an employer could have access to the pool of qualified candidates, is notably absent from the proposed amendments in Bill C-4, which refers only to disclosing certain personal information about candidates to entities on instructions by the Minister. Are these entities Canadian employers, and will there be a registration process to be considered under these instructions? If so, how will certain employers be deemed eligible to have access to a pool of qualified candidates?
6. With the introduction of the EOI system, will LMOs have any role in immigration programs, including the Arranged Employment category under the Federal Skilled Worker Program?
7. If LMOs play a part in the EOI system, how will they be prioritized as compared to LMOs for temporary workers, and will additional resources be dedicated to the LMO process to avoid longer processing times?
8. There is no reference to processing fees for the EOI stage. Will a fee be imposed?
9. What aspects of the EOI system would be subject to judicial review or appeal? For example, what are the procedures for review of the assessment of foreign credentials, language abilities or other criteria used to determine whether an invitation is issued?
10. What is the timeline for determining the outstanding items outlined in CIC officials’ testimony before the House of Commons Committee on Citizenship and Immigration?

V. Conclusion

The CBA Section commends the government for its efforts to develop a Canadian immigration system that is faster, more effective, prevents backlogs and is more responsive to changes in the Canadian labour market.

However, we have serious concerns about implementing substantive reforms based on framework legislation in omnibus bills and further concentration of power in the Minister that eliminates a meaningful consultative process. We believe that further consultation and study is required for constructive feedback with a view to improving the immigration systems.

Yours truly,

(original signed by Tamra Thomson for Mario Bellissimo)

Mario Bellissimo
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cc. The Honourable Senator Joseph A. Day, Chair, National Finance Committee, nffn@sen.parl.gc.ca
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