

Case Study by Economy
Pacific America

Canada

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Immigration Law Centre

Revised Paper

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**CANADA'S MOVEMENT OF TEMPORARY WORKERS:
OUR APPROACH TO TEMPORARY IMMIGRATION WITHIN THE
OVERALL IMMIGRATION PROGRAM**

By: Catherine A. Sas Q.C.

OVERVIEW

THE BIG PICTURE

Canada is currently experiencing her greatest labour shortage in over 30 years. No where is this more pronounced than British Columbia and Alberta. In both provinces, unemployment is at the lowest levels in decades. Positions for both skilled and unskilled workers cannot be filled and foreign workers are being brought in from around the globe. Demographic studies suggest that Canada will continue to experience this kind of labour shortage for several years if not decades, as aging baby boomers retire and Canadians maintain a low birth rate.

Immigration is often touted as a partial solution to our labour deficit. However, even at current targets of processing approximately 265,000 permanent immigrants into Canada each year, current backlogs in the Federal immigration program have a queue of approximately 800,000 people, representing several years of processing at current

levels. Budgetary commitments by the Federal Government and concerns that Canada cannot absorb larger numbers of immigrants have kept targets below what many believe are necessary to address the problem. Provincial Governments are increasingly aware of the need for more immigrant labour in their areas and are using their area of jurisdiction in the immigration field to help alleviate the problem through the use of Provincial Nominee Programs.

On the temporary side, both Citizenship and Immigration Canada (“CIC”) and Human Resources and Skills Development Canada (HRSDC) are attempting to facilitate the entry of workers on a short term basis to meet labour needs. The number of foreign workers admitted annually into Canada has ballooned to 112,658 foreign workers in 2006, with all indications being that they will continue to increase.

However, Canada is still facing chronic labour shortages in key sectors. There are systematic impediments to the flow of workers inherent in our immigration law and processing systems which fail to allow for a free-flow of temporary labour even in our current labour shortage. The temporary movement of workers is affected by the permanent immigration program. In considering how to facilitate the speedy entry of skilled and low skilled labour, it is necessary to examine the interrelationship between Canada’s permanent and temporary residency movements.

TEMPORARY VS PERMANENT STATUS

Temporary status encompasses those people who come to Canada for a temporary purpose such as visiting, studying or working in Canada. Although

individuals may be applying for permanent status simultaneously, it is necessary to maintain whatever temporary status a person has.

It is also important to note that applicants for temporary entry must satisfy visa officers or border officials that they will depart Canada at the end of their stay. Our immigration law presumes that persons are coming to Canada to live permanently, and temporary applicants must rebut this presumption. It is necessary for temporary applicants to prove that they will voluntarily leave Canada at the end of the stay or that there is some clear mechanism for an applicant to ultimately achieve permanent resident status in Canada. This results in a high rate of refusal of temporary applicants particularly from countries requiring visas and/or with a poor economic climate.

Under visitor status, business visitors are allowed to perform certain minimal duties in accordance with the provisions of Regulation 186 of the *Immigration and Refugee Protection Act* (IRPA) and don't require work permits.

Business Visitors

Foreign nationals who are authorized to engage in work in Canada without obtaining a work permit are set out in Regulation 186. Business visitors are specifically listed as foreign nationals who are:

- i. purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization in respect of such goods or services;

- ii. giving or receiving training with a Canadian parent or subsidiary of the corporation that employs them outside of Canada, if any production of goods or services that results from the training is incidental;
- iii. representing a foreign business or government for the purpose of selling goods for that entity and not engaging in selling to the general public at large;
- iv. seeking to engage in international business activities in Canada without directly entering into the Canadian labour market; the primary source of remuneration for the business activities is outside Canada and the principal place of business and actual place of accrual of profits remain predominantly outside of Canada.

WORK PERMITS

Labour Market Opinions (LMO's)

The standard method of obtaining a work permit in Canada is by way of a Labour Market Opinion, formerly referred to as a temporary validation of employment (job validation) by Human Resources and Service Development Canada (HRSDC). HRSDC issues a Labour Market Opinion (LMO) to the employer (the applicant) based on factors set out in R.203(3):

- i. The work is likely to result in direct job creation or job retention for Canadians;
- ii. The work is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- iii. The work is likely to fill a labour shortage;
- iv. The wages and working conditions offered are sufficient to attract Canadian citizens or permanent resident to, and retain them in, that work;

- v. Whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
- vi. Whether the employment of the foreign national is likely to adversely affect the settlement of an labour dispute in progress or the employment of any person involved in the dispute.

If an HRSDC officer determines that the entrance of the applicant will not have an adverse effect on the Canadian labour market, he or she will issue confirmation of employment to the employer by way of an LMO. The LMO is accessible to immigration officers by computer. The employee can then seek a work permit based on this opinion and will have to satisfy other legislative requirements for entry as a temporary resident, including submitting proper documentation and proof that he or she will leave Canada at the end of the temporary status. **This is important for employers – issuance of an LMO does not automatically result in work permit issuance.** This is particularly a concern in the Low Skilled Worker Program where visa offices routinely refuse work permits on the grounds that they do not think the applicant will leave Canada at the end of their stay where there is no direct pathway to permanent resident status and the likelihood for rejection of the work permit applicant is high for inability to demonstrate the individual will later return to their country of origin.

The LMO process is often the most frustrating category of work permits. It is the most difficult criteria to satisfy and has the longest processing requirements. LMO's frequently take months to process, with BC and Alberta taking from 25-30 weeks. HRSDC (which administers the LMO process) has attempted to meet demands by introducing new programs, including reduced recruiting requirements for positions on Regional Lists of Occupations under Pressure for BC, Alberta and Ontario. They have

recently expanded their Low Skilled program to allow employers to bring low skilled employees into Canada for periods up to 24 months from the previous 12. In addition, they have introduced the Electronic LMO.

Low Skilled Worker Program

The LMO process was previously restricted to skilled occupations. However, persistent and chronic shortages in the low skilled occupations forced the government to respond initially with a low skilled workers pilot project.

The Low Skilled Worker Program allows for people without post secondary training to come to Canada to fill labour shortages. The National Occupation Classification (NOC) grades occupations according to skill level such as skill levels O (Managerial), A (Professional) and B (Skilled Trades and Administration). The lesser skilled occupation levels are levels C and D. Employees can obtain work permits of up to two years for such occupations as fast food workers, cleaners, kitchen help, warehouse personnel and truck drivers. In order to bring people under this program, employers must demonstrate they have gone through much more stringent efforts in order to fill these jobs with available Canadian labour such as advertisements on both federal and provincial employment programs for disadvantaged or minority applicants.

This program does not have a permanent component to it. Employers are now able to bring low skilled labour into Canada for up to 24 months and then they must return to their home country for a minimum of four months before they will be able to return on another 24 month work permit. As in the other HRSDC process, the LMO process, the issuance of a labour market opinion for a low skilled worker **does not assure they will be allowed entry into Canada.** Canada Immigration scrutinizes

applicants for work permits under this category very closely to be satisfied that they are likely to return to Canada and, given the strong draws for Canadian employment opportunities compared to those in their home countries, many applicants are denied work permits to Canada notwithstanding obtaining a labour market opinion for a low skilled worker. Costs to employers associated with this program are higher than other applicants as the program criteria specifies that employers must be responsible for return airfare from their home country as well.

Electronic Labour Market Opinions (E-LMO's)

On September 24, 2007 Canada's Minister of Human Resources introduced the new Electronic Labour market Opinion, or E-LMO. This electronic process was designed to be a fast track process for a list of 12 specific occupations noted for having an extreme shortage of workers in Canada. Twelve occupations were first identified in this category and this program is available only in British Columbia and Alberta, where Canada's greatest labour shortages exist.

On January 14, 2008, this list of occupations was expanded by an additional 21 occupations for a total of 33 specific occupations being identified. These 21 occupations are listed and discussed further at page 19 of this paper.

This process in theory is to allow for speedy registration of employers in these specific occupations such that E-LMO's can be issued to employees within 5-10 business days. Even if the process is somewhat longer in reality, it is a great improvement from the standard LMO processing time of 6-7 months. However, of the 33 occupations, 13 rank as low skilled and these low skilled workers face a much higher rate of refusal for work permit applications. This

will be discussed further regarding the creation of a low skilled worker program for LMO.

Exemption from the LMO Process

There are numerous exemptions from the LMO process. As a practitioner, one strives to find an applicable exemption rather than face the time consuming LMO process. If it is possible, an employer will usually want the worker to obtain a work permit without first obtaining a job validation from Human Resources Skills Development Canada (HRSDC). Therefore it is necessary to determine if the worker is exempt from that requirement.

Inter-Company Transferees

Inter-Company transferees include executives, managers and persons with specialized knowledge within a company who have a minimum of one year of employment with the foreign company. The person seeks entry to perform services with the same company (or branch, subsidiary or affiliate) which is engaged in substantive business operations in Canada or with a company that is engaged in substantive business operations in Canada which is owned or controlled by or affiliated with the foreign company. Executives direct the management of the company or establish goals and policies essential to day to day decision-making. Managers direct the company or department or subdivision of the company, supervise and control the work of other supervisory, professional or managerial employees, and exercise discretion and authority over day-to-day operations at a senior level. Specialists possess knowledge at an advanced level of expertise or possess proprietary knowledge of the company's

product, services, equipment, techniques or management. They must demonstrate that they have been employed by the foreign company for a minimum of 12 months within the last 3 years seeing that they have gathered specialized knowledge of the company. Inter-company transferees are provided for under bilateral trade agreements such as the GATT, NAFTA, and CCFTA.

NAFTA/CCFTA

The *North America Free Trade Agreement* (NAFTA) was implemented to assist temporary entry for business people and workers from Canada, US and Mexico who are involved in the trade of goods or services or involved in investment activity (There is also the Canada-Chile Free Trade Agreement between Canada and Chile and the same provisions apply). One must have citizenship in one of these countries to qualify. Note that business visitors do not require a work permit. These are the following categories for obtaining work permits:

- i. Trade and Investors: carry on substantial trade in goods or services between Canada and US or Mexico or have committed or are in the process of committing a substantial amount of capital in Canada. They must be employed in supervisory or executive capacity or one involving essential skills.
- ii. Business Visitor: participate in business activities outlined in Appendix 1603.A.1: research and design; growth, manufacture and production; marketing; sales; distribution; after-sales service; general service. The activities are international in scope; the business visitor will not enter the Canadian labour market; the primary source of remuneration and principal place of business remains outside of Canada. Typical examples include consultation, negotiation, discussion, research,

participation in educational, professional or business conventions or meetings or to solicit business.

- iii. Intra-company Transferees: remain employed by an American or Mexican enterprise in an executive or managerial capacity or one that involves specialized knowledge and are transferred to a related Canadian enterprise to perform in the same capacity. Executives direct the management of an organization or a major component or function of the entity, establish goals and policies of the organization, component or function; and exercise wide latitude in decision making. Managers in the NAFTA agreement are employees who manage the organization, or department, subdivision, function or component of the organization; supervise and control the work of other company; and exercise discretion over day-to-day operations of the activity or function for which the employee has control. However, under the provisions of FW1, 5.31, page 29, only senior managers qualify for the exemption. Specialized knowledge means special knowledge that an individual has of the Canadian enterprise's product, service, research, equipment, techniques, management or other interest, and its application in international markets; or an advanced level of knowledge or expertise in the organization's process and procedures. The person must have been employed continuously for one of the past three years in order to qualify for this exemption.
- iv. Professionals: the qualifying professions are set out of Appendix 1603.D.1 of NAFTA and are listed at page 18 of this paper. The applicant must have the required qualifications of education and/or licensing and pre arranged employment with a Canadian employer or an agreement to provide services through their employer to a Canadian enterprise.

IT Workers Program

This program was implemented in 1995 to facilitate the entry of certain information technology workers in response to critical shortages in the Software industry and covers the following specific job descriptions:

- i. Senior animator effects editor,
- ii. Embedded systems software designers,
- iii. MIS software designers
- iv. Multimedia software developer,
- v. Software developer-services,
- vi. Software products developer,
- vii. Telecommunications software developer.

Under this program, the requirement for job-specific job confirmation was replaced by a national confirmation for workers who meet the requirements of these positions. The criteria are outlined in the Operations Memorandum F99-03, found at Appendix B (not currently available on the Department's website). The program was found to be successful and continues.

Off Campus Work Permits

In addition to studying, students are now able to work off campus while going to school as well as to get a work permit after graduating from school. The Off Campus Work Program allows students to work part time up to 20 hours a week while they are going to school. They must first be attending a school registered with the Province for the Off Campus Work Program. Secondly, they must attend school in Canada for six months prior to being eligible for a work permit. The work permit is generally issued for

the period of time that the student permit is valid. There is no requirement that the type of work correspond to the area of study.

Post Graduate Permits

Students are also eligible for Post Graduate Work Permits allowing them to work for one to two years in a field of study related to their education after graduation. A two year permit is only available to those students who attend registered schools outside of major urban areas (i.e. Vancouver, Calgary, Toronto and Montreal) and must have completed at least two years of full time study. This is a very useful program as it allows students to obtain skills in their fields which may also make them eligible for permanent residence after completing their work experience in Canada. Students must obtain employment in a job related to the field of study.

PNP Work Permits

The regional need for particular types of workers and the inability of the Federal foreign worker program to meet demands have prompted the provinces to get into the foreign worker sphere. Provinces retain some jurisdiction in the immigration sphere and they are using this to further their own immigration needs.

Most provinces have signed agreements with the Federal Government allowing them to select a relatively small number of provincial nominees based upon the particular needs of individual provinces. Accordingly, criteria for provincial nominee programs vary by provincial needs in criteria. The vast majority of PNP programs are based upon economic need and/or benefit. Often the selection process is much faster than the federal process and leads to both permanent residence as well as temporary work status in an expedited fashion.

Currently, most provincial nominee programs are the application process of choice as they are able to select and nominate people more quickly than either the HRSDC Labour Market Opinion process or the Federal Skilled Worker process.

Agricultural Worker Program

The seasonal agricultural work program (SAWP) is a program with HRSDC that allows the entry of foreign workers to work in agricultural labour occupations in Canada. This program is a joint HRSDC and CIC initiative and allows entry of foreign workers from Mexico and several common-wealth Caribbean countries. Nine of the ten provinces in Canada participate in this program. In order for an employer to hire a foreign worker under SAWP, you must demonstrate that you have made significant efforts to hire Canadian agricultural workers at least 8 weeks before the starting date of their work in Canada and that you have endeavored to hire unemployed Canadians through HRSDC and provincial work programs at comparable Canadian wages of Canadian agricultural workers.

Employers must also be prepared to pay for the foreign worker's airfare to and from Canada and provide free seasonal housing as well as the immigration processing fees. Employers must also ensure that the workers are covered by Worker's Compensation and provides private or provincial health care during their stay in Canada. The workers are able to stay in Canada for up to 8 months at a time. There may be further provincial requirements given the employment standards of a particular province.

PERMANENT RESIDENCE

The *Immigration and Refugee Protection Act and Regulations* (IRPA) set out the criteria for several classes of immigrants in both the economic and the humanitarian categories. Canada Immigration has attempted to achieve a 60-40 balance between economic and non-economic immigration. Non-economic immigration includes refugee, family class and humanitarian and compassionate applicants. Economic categories include skilled workers, business entrepreneurs, investors and provincial nominees. Details of the 2 most dominant categories of economic immigration are set out below.

Federal Skilled Worker Program

The most common permanent resident application is the skilled worker process. Applicants are given points based upon their education, work experience, language skills and age, with bonus points for such factors as having worked and/or studied in Canada, having relatives in Canada and having an educated spouse. A person needs a score of 67 points to satisfy the criteria. Individuals must apply in the geographic region of their residence or where they have been lawfully admitted for 12 months. Those who have been in Canada for 12 months or more with legal status may be eligible to apply for permanent residence through a Canadian visa office in the United States. Alternatively a skilled worker application would have to be submitted at the Canadian Consulate or Embassy of their nationality or residence under the Simplified Application Process (SAP). SAP applications are taking several years (3-5 years) to be processed given the current backlog of applications, which is estimated to be between 800,000 and 900,000 applicants. Priority processing can be obtained where the person qualifies with

“Arranged Employment”. This is done where a Canadian employer is offering indeterminate employment.

Furthermore as mentioned, students who have studied in Canada and get work experience through either or both of the Off Campus Work Program and the Post Graduate Work Program, may gather the necessary experience to qualify for permanent residence under the skilled worker category and therefore, can apply for permanent residence on their own.

In the 2007 budget, the government announced that they would develop an In-Canada permanent residence process for students and foreign workers. Currently, the Canadian Experience Class (CEC) is under development.

Provincial Nominee Programs

Following the lead of Quebec, which first negotiated an agreement allowing it to select immigrants in 1978, other provinces have seen that they want to have a say in selecting the kind of applicants best suited for their economies. In the past decade, all of the provinces have become much more active in immigrant selection, with Ontario being the last to come on board in 2007. Each province has developed its own unique categories and criteria. This provides additional opportunities for employers and would be applicants.

The Provincial Nominee Program is currently the preferred process for applying for permanent residence as it entitles the applicant to receive priority processing. Thus, applications can be finalized in less than 12 months, compared with 2 to 5 years under the Federal Skilled Worker Program. The most common Provincial Nominee Program is an employer driven process which means that an individual needs to have an employer

who is prepared to give a permanent full time position to the individual in a skilled or designated occupation. Most PNP programs also provide for speedy issuance of work permits pending priority processing for permanent residence.

PNP applications for permanent residence are processed on an expedited basis and often entitle a person to be able to work in Canada while that application is being processed. Provincial Nominee Programs vary from province to province so it is important that you consider the particular criteria for the Province that you are planning to work and live in. Some provinces have a Provincial Nominee Program for students. For instance, a student who graduates from a university in British Columbia after having completed at least two years of study in the Province is eligible for permanent residence under BC's Provincial Nominee Program if an employer offers them a full time permanent position. No previous work experience with the employer is required.

Canadian Experience Class

In October 2007, the Minister of Immigration announced the creation of a new Canadian Experience Class, which would be created to facilitate the processing of immigrants from within Canada that had either been working or studying in Canada. Consultations for development of this class started in January 2008.

The Canadian government recognizes that those persons who have already been working and studying in Canada integrate into the Canadian system more readily and accordingly they wanted to create a system that would allow them to apply for immigration from within Canada rather than having to submit their applications overseas, as is currently the process. It is envisioned that people who have either worked or studied in Canada for a minimum of two years would be eligible to apply for

permanent residence within this class. At present, the targets are that this class will be available for application by the end of 2008. It will allow for people to be able to both submit their applications and to be landed from within Canada. Processing times should be approximately 12 months.

STATISTICS

Each year Canada's Minister of Immigration sets the targets for permanent Immigration to Canada based on the preceding year. For 2006 Canada accepted 251,649 permanent immigrants.

For 2008, the targets for permanent Immigration are between 240,000 to 265,000.

Temporary migration covers primarily visitor records, student permits, and work permits. In 2006, Canada accepted 112,658 temporary workers and 61,703 students. 983,378 visitor visas were also issued.

Given Canada's constant shortage of skilled and unskilled labour these figures are expected to continue to rise.

Attached at the end of this paper, please find a CIC document entitled **"Overview of Immigration Program,"** which sets out the basic parameters of the economic program. As you can see, the temporary and permanent aspects of immigration are linked. What is key is that there are no specific targets for temporary residents, as opposed to permanent immigrants.

Below are some of the of the key statistics relating to Canada's temporary and permanent immigration flows with some particular data from Asia.

TABLE I

Canada – Permanent Residents by Top Source Countries
<http://www.cic.gc.ca/english/resources/statistics/facts2006/permanent/12.asp>

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Number										
China, People's Republic of	18,526	19,790	29,148	36,750	40,365	33,307	36,256	36,429	42,292	33,080
India	19,615	15,375	17,457	26,123	27,904	28,838	24,593	25,575	33,148	30,753
Philippines	10,872	8,184	9,205	10,119	12,928	11,011	11,989	13,303	17,525	17,717
Pakistan	11,239	8,089	9,303	14,201	15,354	14,173	12,351	12,795	13,575	12,332
United States	5,030	4,776	5,533	5,828	5,911	5,294	6,013	7,507	9,262	10,943
Iran	7,486	6,775	5,909	5,617	5,746	7,889	5,651	6,063	5,502	7,073
United Kingdom	4,657	3,899	4,478	4,649	5,360	4,725	5,199	6,062	5,865	6,542
Korea, Republic of	4,001	4,917	7,217	7,639	9,608	7,334	7,089	5,337	5,819	6,178
Colombia	571	922	1,296	2,228	2,967	3,226	4,273	4,438	6,031	5,813
France	2,858	3,867	3,923	4,345	4,428	3,963	4,127	5,028	5,430	4,915
Sri Lanka	5,071	3,329	4,728	5,849	5,520	4,968	4,448	4,135	4,690	4,490
Romania	3,916	2,976	3,468	4,431	5,589	5,689	5,466	5,658	4,964	4,393
Russia	3,735	4,304	3,782	3,523	4,073	3,677	3,520	3,685	3,607	2,851
Taiwan	13,324	7,193	5,483	3,535	3,114	2,910	2,126	1,992	3,092	2,823
Hong Kong	22,250	8,087	3,672	2,865	1,965	1,541	1,472	1,547	1,783	1,489
Yugoslavia (former)	1,384	1,172	1,492	4,745	2,803	1,623	941	708	272	126
Top 10 source countries	118,070	87,490	98,461	121,520	134,285	123,228	119,055	123,757	144,449	135,346

Other countries	97,968	86,705	91,496	105,939	116,356	105,823	102,296	112,067	117,790	116,303
Total	216,038	174,195	189,957	227,459	250,641	229,051	221,351	235,824	262,239	251,649

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Percentage distribution										
China, People's Republic of	8.6	11.4	15.3	16.2	16.1	14.5	16.4	15.5	16.1	13.2
India	9.1	8.8	9.2	11.5	11.1	12.6	11.1	10.8	12.6	12.2
Philippines	5.0	4.7	4.9	4.5	5.2	4.8	5.4	5.6	6.7	7.0
Pakistan	5.2	4.6	4.9	6.2	6.1	6.2	5.6	5.4	5.2	4.9
United States	2.3	2.7	2.9	2.6	2.4	2.3	2.7	3.2	3.5	4.4
Iran	3.5	3.9	3.1	2.5	2.3	3.4	2.6	2.6	2.1	2.8
United Kingdom	2.2	2.2	2.4	2.0	2.1	2.1	2.4	2.6	2.2	2.6
Korea, Republic of	1.9	2.8	3.8	3.4	3.8	3.2	3.2	2.3	2.2	2.5
Colombia	0.3	0.5	0.7	1.0	1.2	1.4	1.9	1.9	2.3	2.3
France	1.3	2.2	2.1	1.9	1.8	1.7	1.9	2.1	2.1	2.0
Sri Lanka	2.4	1.9	2.5	2.6	2.2	2.2	2.0	1.8	1.8	1.8
Romania	1.8	1.7	1.8	2.0	2.2	2.5	2.5	2.4	1.9	1.8
Russia	1.7	2.5	2.0	1.6	1.6	1.6	1.6	1.6	1.4	1.1
Taiwan	6.2	4.1	2.9	1.6	1.2	1.3	1.0	0.8	1.2	1.1
Hong Kong	10.3	4.6	1.9	1.3	0.8	0.7	0.7	0.7	0.7	0.6
Yugoslavia (former)	0.6	0.7	0.8	2.1	1.1	0.7	0.4	0.3	0.1	0.1
Top 10 source countries	54.7	50.2	51.8	53.4	53.6	53.8	53.8	52.5	55.1	53.8
Other countries	45.4	49.8	48.2	46.6	46.4	46.2	46.2	47.5	44.9	46.2
Total	100.0									

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
	Rank									
China, People's Republic of	3	1	1	1	1	1	1	1	1	1
India	2	2	2	2	2	2	2	2	2	2
Philippines	6	3	4	4	4	4	4	3	3	3
Pakistan	5	4	3	3	3	3	3	4	4	4
United States	9	9	7	7	6	8	6	5	5	5
Iran	7	7	6	8	7	5	7	6	9	6
United Kingdom	10	11	10	10	10	10	9	7	7	7
Korea, Republic of	11	8	5	5	5	6	5	9	8	8
Colombia	60	45	39	25	21	16	11	11	6	9
France	17	12	11	12	12	13	12	10	10	10
Sri Lanka	8	14	9	6	9	9	10	13	12	12
Romania	12	15	14	11	8	7	8	8	11	13
Russia	14	10	12	14	13	14	13	14	15	20
Taiwan	4	6	8	13	19	19	21	27	18	22
Hong Kong	1	5	13	17	29	32	32	33	31	33
Yugoslavia (former)	35	40	29	9	22	31	48	59	99	120

TABLE 2

Canada – Permanent Residents from Asia and Pacific by Top Source Countries
<http://www.cic.gc.ca/english/resources/statistics/facts2006/permanent/14.asp>

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
	Number									
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Philippines	10,872	8,184	9,205	10,119	12,928	11,011	11,989	13,303	17,525	17,717
Pakistan	11,239	8,089	9,303	14,201	15,354	14,173	12,351	12,795	13,575	12,332
Korea, Republic of	4,001	4,917	7,217	7,639	9,608	7,334	7,089	5,337	5,819	6,178
Sri Lanka	5,071	3,329	4,728	5,849	5,520	4,968	4,448	4,135	4,690	4,490
Bangladesh	2,929	1,948	1,825	2,715	3,393	2,616	1,896	2,374	3,940	3,838
Vietnam, Socialist Republic	1,787	1,628	1,397	1,800	2,097	2,282	1,686	1,802	1,821	3,122
Taiwan	13,324	7,193	5,483	3,535	3,114	2,910	2,126	1,992	3,092	2,823
Afghanistan	2,115	1,583	2,111	2,845	3,182	2,971	3,011	2,527	2,908	2,552
Hong Kong	22,250	8,087	3,672	2,865	1,965	1,541	1,472	1,547	1,783	1,489
Top 10 source countries	109,942	78,540	90,149	112,641	123,465	110,410	105,445	106,269	128,810	116,885
Other countries	7,158	5,680	6,443	8,101	9,484	8,651	8,290	8,308	9,247	9,595
Total	117,100	84,220	96,592	120,742	132,949	119,061	113,735	114,577	138,057	126,480

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Percentage distribution										
China, People's Republic of	15.8	23.5	30.2	30.4	30.4	28.0	31.9	31.8	30.6	26.2
India	16.8	18.3	18.1	21.6	21.0	24.2	21.6	22.3	24.0	24.3
Philippines	9.3	9.7	9.5	8.4	9.7	9.3	10.5	11.6	12.7	14.0
Pakistan	9.6	9.6	9.6	11.8	11.6	11.9	10.9	11.2	9.8	9.8
Korea, Republic of	3.4	5.8	7.5	6.3	7.2	6.2	6.2	4.7	4.2	4.9
Sri Lanka	4.3	4.0	4.9	4.8	4.2	4.2	3.9	3.6	3.4	3.6
Bangladesh	2.5	2.3	1.9	2.3	2.6	2.2	1.7	2.1	2.9	3.0
Vietnam, Socialist Republic of	1.5	1.9	1.5	1.5	1.6	1.9	1.5	1.6	1.3	2.5
Taiwan	11.4	8.5	5.7	2.9	2.3	2.4	1.9	1.7	2.2	2.2
Afghanistan	1.8	1.9	2.2	2.4	2.4	2.5	2.7	2.2	2.1	2.0
Hong Kong	19.0	9.6	3.8	2.4	1.5	1.3	1.3	1.4	1.3	1.2
Top 10 source countries	93.9	93.3	93.3	93.3	92.9	92.7	92.7	92.8	93.3	92.4
Other countries	6.1	6.7	6.7	6.7	7.1	7.3	7.3	7.3	6.7	7.6
Total	100.0									

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
	Rank									
China, People's Republic of	3	1	1	1	1	1	1	1	1	1
India	2	2	2	2	2	2	2	2	2	2
Philippines	6	3	4	4	4	4	4	3	3	3
Pakistan	5	4	3	3	3	3	3	4	4	4
Korea, Republic of	8	7	5	5	5	5	5	5	5	5
Sri Lanka	7	8	7	6	6	6	6	6	6	6
Bangladesh	9	9	10	10	7	9	9	8	7	7
Vietnam, Socialist Republic of	11	10	11	11	10	10	10	10	10	8
Taiwan	4	6	6	7	9	8	8	9	8	9
Afghanistan	10	11	9	9	8	7	7	7	9	10
Hong Kong	1	5	8	8	11	11	11	11	11	11

TABLE 3

Canada – Annual Flow of Foreign Workers by Top Source Countries
<http://www.cic.gc.ca/english/resources/statistics/facts2006/temporary/03.asp>

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
	Number									
United States	24,642	24,949	24,969	27,903	24,868	21,312	16,567	16,623	17,174	16,841
Mexico	6,133	6,998	8,147	10,084	11,326	11,660	11,332	11,575	12,805	13,933
France	4,265	4,342	4,870	5,615	5,309	4,989	5,034	6,607	7,665	8,681
Philippines	2,072	2,218	2,213	2,272	4,134	4,776	4,958	5,757	6,102	8,529
Australia	3,661	3,720	3,676	4,254	4,881	5,648	5,907	7,202	7,105	7,442
United Kingdom	5,207	5,400	6,428	7,029	7,374	6,645	6,180	7,659	7,607	7,162
Jamaica	5,253	5,074	5,409	5,337	5,781	5,557	5,943	5,953	6,155	6,313
Japan	4,517	4,569	5,061	4,339	4,479	5,415	5,426	5,439	5,812	5,601
Germany	1,863	2,133	2,314	2,511	2,593	2,212	1,947	2,386	2,684	4,008
India	1,063	1,403	1,555	2,431	2,290	2,459	2,772	3,066	3,705	3,821
China, People's Republic of	1,002	1,228	1,779	2,325	3,069	2,864	2,138	1,735	1,523	1,569
Trinidad and Tobago	1,733	1,733	1,648	1,774	1,839	1,678	1,627	1,659	1,606	1,479
Top 10 source countries	59,346	61,136	64,866	71,828	73,814	71,325	66,257	72,267	76,814	82,331
Other countries	16,214	18,919	22,146	25,224	26,807	24,065	22,247	22,956	25,794	30,327

Total	75,560	80,055	87,012	97,052	100,621	95,390	88,504	95,223	102,608	112,658
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Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Percentage distribution										
United States	32.6	31.2	28.7	28.8	24.7	22.3	18.7	17.5	16.7	15.0
Mexico	8.1	8.7	9.4	10.4	11.3	12.2	12.8	12.2	12.5	12.4
France	5.6	5.4	5.6	5.8	5.3	5.2	5.7	6.9	7.5	7.7
Philippines	2.7	2.8	2.5	2.3	4.1	5.0	5.6	6.1	6.0	7.6
Australia	4.9	4.7	4.2	4.4	4.9	5.9	6.7	7.6	6.9	6.6
United Kingdom	6.9	6.8	7.4	7.2	7.3	7.0	7.0	8.0	7.4	6.4
Jamaica	7.0	6.3	6.2	5.5	5.8	5.8	6.7	6.3	6.0	5.6
Japan	6.0	5.7	5.8	4.5	4.5	5.7	6.1	5.7	5.7	5.0
Germany	2.5	2.7	2.7	2.6	2.6	2.3	2.2	2.5	2.6	3.6
India	1.4	1.8	1.8	2.5	2.3	2.6	3.1	3.2	3.6	3.4
China, People's Republic of	1.3	1.5	2.0	2.4	3.1	3.0	2.4	1.8	1.5	1.4
Trinidad and Tobago	2.3	2.2	1.9	1.8	1.8	1.8	1.8	1.7	1.6	1.3
Top 10 source countries	78.5	76.4	74.6	74.0	73.4	74.8	74.9	75.9	74.9	73.1
Other countries	21.5	23.6	25.5	26.0	26.6	25.2	25.1	24.1	25.1	26.9
Total	100.0									

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
	Rank									
United States	1	1	1	1	1	1	1	1	1	1
Mexico	2	2	2	2	2	2	2	2	2	2
France	6	6	6	4	5	7	7	5	3	3
Philippines	8	8	9	11	8	8	8	7	7	4
Australia	7	7	7	7	6	4	5	4	5	5
United Kingdom	4	3	3	3	3	3	3	3	4	6
Jamaica	3	4	4	5	4	5	4	6	6	7
Japan	5	5	5	6	7	6	6	8	8	8
Germany	9	9	8	8	10	11	11	10	10	9
India	11	11	12	9	11	10	9	9	9	10
China, People's Republic of	12	12	10	10	9	9	10	11	14	13
Trinidad and Tobago	10	10	11	12	12	12	12	12	12	15

CURRENT PROCESSING ISSUES

CIC, CBSA and HRSDC and Inter-Jurisdictional Delivery of Canada's Immigration Program.

Canada's Immigration program has three players in its overall service delivery: The Department of Citizenship and Immigration (CIC), The Department of Human

Resources and Service Development Canada (HRSDC) and The Department of Public Safety and Emergency Preparedness Canada, which oversees the Canada Border Services Agency (CBSA).

CIC is responsible for the delivery of Canada's Immigration policy.

HRSDC is responsible for ensuring that foreign workers coming to Canada are not taking jobs away from Canadians.

CBSA operates Canada's borders and maintains border security while at the same time determining who enters into Canada.

Consider the aspiring work permit seeker. For the majority of persons seeking work permits, it is first of all necessary for the potential employer to apply for approval from HRSDC for a Labour Market Opinion (LMO) before the individual applicant may apply for a work permit. For the majority of applicants who live in countries where it is necessary to apply for a visa before entering Canada, they must apply for a work permit at an overseas visa post, and submit the LMO obtained by their employer from HRSDC. Even though an employer obtains an LMO (or E-LMO) CIC may refuse a work permit application. There is a much higher rate of refusal for work permits from countries requiring a visa for Canada or for countries with weaker economies. In order to obtain a work permit, an applicant must satisfy a visa officer that they are coming to Canada for a temporary purpose and that they will ultimately return to their home country.

Assuming that one is fortunate enough to possess both an LMO and obtain a temporary resident visa, allowing one to apply for a work permit at a port of entry, that is not sufficient. An individual must present themselves to the CBSA officer at the border. CBSA officers can and do deny entry to persons with LMO's and Temporary

Resident Visa's. They also deny entry to persons making similar applications pursuant to exemption codes.

The purposes of these three Departments are not the same; nor are their functions coordinated. As will be described later, the disconnect in service delivery between these three different government bodies has a large and detrimental effect on Canada's overall Immigration program particularly in regards to temporary migration.

Annual Targets, Priority Processing, Budgeting Restraints and Backlogs

As mentioned above, the Minister of Immigration makes an Annual Report to Parliament each fall where the future years target levels for Immigration are announced. These levels announcements only relate to permanent residents to Canada. There are no prescribed targets for temporary migrants of any kind.

Currently Canada's target for permanent residents for 2008 is between 240,000 and 265,000. Given our need for both skilled and unskilled labour why isn't our permanent migration target higher? Quite simply because of limited financial resources. In order to accept more people the Government Departments require more resources at overseas visa posts. We need more manpower to review and process the applications. For our Minister of Immigration to announce higher levels, her announcement must firstly be preceded by our Minister of Finance allocating additional funds for the Immigration program in his spring budget. Recent news reports indicate that the government may be reducing the targets for overseas economic applicants to reduce this backlog.

Even with more financial resources, often we can't expand our overseas operations due to space constraints. For example, the Beijing Visa office (among others) has struggled with this problem for years in that they cannot find additional space in the

city to increase its staff to address the workload. Eventually we have Satellite Offices opening in other cities to relieve some of the pressure from the primary Immigration centre. Usually these Satellite Offices handle primarily visitor processing and are not full Immigration missions.

In addition to the general lack of resources for program delivery, Canada struggles with a huge backlog of applicants. One can design a program for Immigration, but one cannot control how many people will apply. For many years Canada has received more applications than it can process per year. Accordingly we have built up a backlog of applications estimated to be in excess of 800,000 permanent resident applications worldwide. At current annual processing levels of approximately 265,000 per year one can easily conclude that Canada has more than a three year supply of applicants.

Accordingly in September of 2007 Canada introduced the Simplified Application Process (SAP) for skilled workers applications. Rather than incur the expense of warehousing hundreds of thousands of applications with personal documents of applicants for several years, a scaled down 2-3 page application form was designed whereby an applicant would submit this abbreviated form and payment of fees and wait to be contacted by the local visa office. The estimated processing times for Simplified Application Process applications for Permanent Residence are between 3-5 years.

Obstacles to the Entry of Temporary Foreign Workers

Canada is signatory to seven bilateral trade agreements. Of these bilateral agreements, only three provide for the exchange of goods and services:

- i. General Agreement on Tariffs and Trade (GATT)
- ii. NAFTA

iii. CCFTA

It is the provision for exchange in services that allows for the movement of people. However, the occupations eligible for facilitated movement between member nations are a very proscribed group:

TABLE 3

<u>General</u>	<u>Scientist</u>	<u>Medical/Allied Professional</u>
Accountant	Agriculturalist	Dentist
Architect	Animal Breeder	Dietitian
Computer Systems Analyst	Animal Scientist	Medical Laboratory Technologist / Medical Technologist
Disaster Relief Insurance Claims Adjuster	Apiculturist	Nutritionist
Economist	Astronomer	Occupational Therapist
Engineer	Biochemist	Pharmacist
Forester	Biologist	Physician
Graphics Designer	Chemist	Physiotherapist / Physical Therapist
Hotel Manager	Dairy Scientist	Psychologist
Industrial Designer	Entomologist	Recreational Therapist
Interior Designer	Epidemiologist	Registered Nurse
Land Surveyor	Geneticist	Veterinarian
Landscape Architect	Geologist	<u>Teacher</u>
Lawyer	Geochemist	College Teacher
Librarian	Geophysicist	Seminary Teacher
Management Consultant	Horticulturist	University Teacher
Mathematician	Meteorologist	
Range Manager / Range Conservationalist	Pharmacologist	
Research Assistant	Physicist	
Scientific Technician/Technologist	Plant Breeder	
Social Worker	Poultry Scientist	
Sylviculturist	Soil Scientist	
Technical Publications Writer	Zoologist	
Urban Planner (including Geographer)		
Vocational Counsellor		

In contrast to these occupations are those covered by the E-LMO process, which represents those occupations most desperately needed in Canada. The E-LMO process recognizes the following 33 occupations:

TABLE 4

Carpenters (Journeyman/woman)	Heavy-Duty Equipment Mechanics	Petroleum Engineers
Civil Engineers	Hotel Front Desk Clerk	Pharmacists
Commercial Janitors, Caretakes	Hotel and Hospitality Room Attendants	Registered Nurses
Construction Labourers	Industrial Electricians	Residential Cleaning and Support Workers
Crane Operators (Journeyman/woman)	Industrial Meat Cutters	Retail Salespersons and Sales Clerks
Delivery Drivers	Ironworkers	Roofers
Dental Technicians	Machinists	Ski and Snowboard Instructors
Electrical & Electronics Engineers	Manufacturing & Processing Labourers	Specialized Cleaners
Food and Beverage Services	Mechanical Engineers	Steamfitters, Pipefitters
Food Counter Attendants	Mechanical Engineering Technologists	Surveyor Helpers
Food Service Supervisors		Tour and Travel Guides Welders

Only the following six occupations (Civil Engineers, Electrical and Electronics Engineers, Mechanical Engineers, Petroleum Engineers, Pharmacists, and Registered Nurses), set out in bold above, are on both the scheduled list of occupations under Canada's trade agreements and under the E-LMO list. As four of these occupation titles are collectively identified as Engineers under NAFTA and CCFTA, in reality only three occupations are common to both the trade agreements and the E-LMO list: engineers, pharmacists, and nurses.

The bilateral trade agreements do not allow for the movement of either skilled trades people or low skilled workers. The only possible mechanism for the transfer of such workers is as inter-company transferees. Therefore, another interesting point is the

contrast between the top source countries of permanent migrants with temporary migrants.

In 2006, the top ten source countries of permanent immigrants is as follows:

TABLE 5

- | | |
|------------------|-------------------|
| 1. China | 6. Iran |
| 2. India | 7. United Kingdom |
| 3. Philippines | 8. Korea |
| 4. Pakistan | 9. Colombia |
| 5. United States | 10. France |

In 2006, the top ten source countries of temporary workers is as follows:

TABLE 6

- | | |
|------------------|-------------------|
| 1. United States | 6. United Kingdom |
| 2. Mexico | 7. Jamaica |
| 3. France | 8. Japan |
| 4. Philippines | 9. Germany |
| 5. Australia | 10. India |
| | 13. China |

While China is the number one ranked country in providing permanent residents to Canada, it ranks 13 for temporary movement. This reflects not only work permits but student and visitor permits as well.

Please note that the United States and Mexico rank number one and two respectively for all 10 years of the studies' results, in terms of the top source countries for temporary migration.

TABLE 7

Canada – Annual Flow of Foreign Workers by Top Source Countries<http://www.cic.gc.ca/english/resources/statistics/facts2006/temporary/03.asp>

Source countries	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
	Rank									
United States	1	1	1	1	1	1	1	1	1	1
Mexico	2	2	2	2	2	2	2	2	2	2
France	6	6	6	4	5	7	7	5	3	3
Philippines	8	8	9	11	8	8	8	7	7	4
Australia	7	7	7	7	6	4	5	4	5	5
United Kingdom	4	3	3	3	3	3	3	3	4	6
Jamaica	3	4	4	5	4	5	4	6	6	7
Japan	5	5	5	6	7	6	6	8	8	8
Germany	9	9	8	8	10	11	11	10	10	9
India	11	11	12	9	11	10	9	9	9	10
China, People's Republic of	12	12	10	10	9	9	10	11	14	13
Trinidad and Tobago	10	10	11	12	12	12	12	12	12	15

THE LANGUAGE OF IMMIGRATION LEGISLATION

As discussed above, the Canadian Immigration process is established through the: *Immigration and Refugee Protection Act*, the *Regulations* and the *Immigration Manuals*.

It is important to note that the general language of all of these documents is restrictive rather than facilitative. We don't discuss who we are seeking to bring to Canada and how we will accomplish this. Rather there is a presumption that everyone will come and we need to keep certain persons out. *IRPA* provides as follows:

Act 11(1) Application before entering Canada – A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Act 18(1) Examination by officer – Every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.

While this gatekeeper language mentality may be generally appropriate, sometimes it becomes problematic when we have the type of labour shortage we are experiencing now. Furthermore, this type of language does not recognize Canada's trade relationships with other countries, nor does it facilitate the entry of persons to Canada particularly on a temporary basis. There is an inherent presumption that all persons seeking to enter Canada are seeking to live there and therefore must be in possession of an Immigration visa. **Accordingly it is often easier to obtain permanent residency than it is to obtain temporary resident status in Canada.** This is particularly the case if one is from a country requiring a visa to enter Canada and/or if one is applying for a work permit in a low skilled occupation.

RECOMMENDATIONS FOR CHANGE

CULTURAL CHANGE

In order to be able to facilitate the entry of foreign workers into Canada effectively and expeditiously it is necessary to firstly change the culture of bureaucracy and the mindset of the participants. The participants are the employees in the following three departments respectively; Citizenship and Immigration Canada (CIC which has overall responsibility for Immigration), Canada Border Services Agency (CBSA which has overall responsibility for border security) and Human Resources Service Development Canada (HRSDC which is Canada's national human resources agency) who handle various aspects of the work permit process. There is no need to revise or implement any new legislation nor must it have any budgetary implications. Instead, it simply requires direction to modify the way these employees think and the approach that they take in processing applications for skilled and unskilled – foreign workers.

The current approach tends to try to require almost all employers to obtain a Labour Market Opinion (LMO) whenever a foreign worker is needed. Obtaining an LMO (or its predecessor – a temporary confirmation of job offer) has historically been the primary mechanism for obtaining a work permit. It ensures opportunities for Canadian workers by requiring employers to demonstrate that they have truly tried to find Canadian workers before looking abroad. However, while this protectionist mechanism makes sense when there is relatively high unemployment, it is overly

cumbersome in a full employment environment where labour shortages are unquestionable.

In my view the reason Canada keeps increasing her volumes for a standard LMO, and as a result maintaining her intense labour market shortage, has to do with the mindset of our officers in all three of these departments. The mindset is to insist upon an LMO in all cases, even when alternative approaches are available. Unless there is change the mindset of the officers to look to other options other than the LMO first, then Canada will continue to have increasing demands for LMO's and we won't be able to reduce the backlog of applications without increasing the number of people working to process LMO applications.

There are numerous exemptions from the need to obtain an LMO prior to obtaining a work permit, including:

- i. Inter-Company transferees C-12
- ii. GATS
- iii. NAFTA/CCFTA
- iv. IT Workers Program
- v. Post Graduate Work Permits
- vi. Off Campus Work Permits
- vii. Provincial Nominee (PNP) Work Permits
- viii. Significant Benefit to Canada – C-10
- ix. Self-Employed or Entrepreneur Work permits C-11

Obviously the more people who can be processed under any of these exemption codes or alternative processes, the less inventory in the LMO process. Within the past few years, the length of time it takes to obtain an LMO has increased dramatically.

Four or five years ago, one could obtain an LMO within a few weeks. A couple of years ago it took a couple of months. This summer, it was taking 16-20 weeks to obtain an LMO. On Sept. 24, 2007, the ELMO process was announced to allow for a speedy process to obtain LMO's in 12 particular occupations. It was predicted that this new approach would improve overall service times by diverting 25% of applications to a fast process stream. However, instead, processing times have worsened considerably. By early December of 2007, LMO's were taking 27-30 weeks in BC and Alberta – more than 7 months! While a more attractive program may lead to increased demand, the problem here seems to be that the designers of the ELMO system created a process that is very labour intensive. Thus, the only thing that occurred was a shifting of resources.

As mentioned above, this is the current mindset in the overall work permit process. It has not always been this way. As recently as four years ago the LMO process (at this time it was the temporary confirmation of employment) was not the default response for work permit approval for foreigners. In many situations, if you applied for an LMO and an alternative process existed, the HRSDC officer would call you and tell you that you had other alternatives for processing this individual. Basically the HRSDC personnel would be telling you to get this person out of their workload and handle it some other way. In some instances they would even write letters telling counsel that they should be seeking a work permit under the IT Worker program or under the Significant Benefit to Canada criteria. Armed with this letter, the border officials or visa officer would grant the work permit under the appropriate exemption.

What changed? Well, it wasn't the law. The *Immigration and Refugee Protection Act (IRPA)* was enacted in June 2002. However there was very little change to the basic foreign worker process or to the statutory basis for exemptions from the

LMO process, which had been in existence for many years. The most recent changes to this group were the implementation of the IT Workers Program which was implemented in 1985 and the various Provincial Nominee Programs (PNP) which have been implemented in provinces across the country during the 1990's. What changed was that policy makers in Ottawa decided to rewrite the *Foreign Worker Policy Manual*. The Policy Manuals are a series of policy guidelines which officers refer to in determining applications. They are not law. They require no legislative or statutory change. And yet they are regarded as the Bibles of immigration processing. They are used by both CIC and CBSA officers. Somewhere in 2003 the manuals were re-written to require the use of LMO's as a general rule and the use of exemptions in only the most exceptional cases. The language for guiding officers in considering many application processes, such as Significant Benefit to Canada (C-10); Self-Employed and Entrepreneurial applicants (C-11); and, Inter-company Transferees (C-12); became restrictive and discouraged the processing of applications under these headings. This has had a profound effect on the approach of officers in all departments that deal with foreign workers. At the same time, the guidelines for officers engaged in the LMO screening process were made more bureaucratic and rule-bound. There was no discussion or debate in Parliament about these initiatives. Somewhere along the line someone decided that all officers considering these applications should look at the glass of water as half empty rather than half full. The effect has been dramatic. Whereas applications for key personnel in significant financial ventures could obtain a work permit under Significant Benefit to Canada C-10 or entrepreneurial business people could invest their money and get their projects off the ground immediately under C-11, all of a sudden we were discouraging these applications and deferring these individuals for a time

consuming and wasteful LMO. Things worsened. Over time the insistence on an LMO has increased such that even people who clearly met the IT Workers program or even the provisions of NAFTA are often asked to get an LMO. Who is asking for the LMO? Everyone. Visa officers at visa posts are asking for LMO's in most cases. CBSA officers who consider the applications are asking for LMO's. In 2006 CIC created two Temporary Foreign Worker Units in Calgary and Vancouver. These offices vet work permit applications to give an *opinion* that an applicant meets one of the exemption criteria to reduce the likelihood that a CBSA officer would reject such an application at the border. If CBSA officers were directed to be facilitative in considering these applications the need for TFWU's would cease to exist. We could allocate these personnel to other aspects of work permit processing. Sadly, however, even TFWU officers are clinging to a bias in favour of the LMO process in most cases. In these circumstances, HRSDC can not expect any real relief from its enormous inventory in the near future.

What is the solution? Firstly, change the wording of the *Foreign Worker Manual* to be facilitative rather than restrictive. Canada is no longer in the 1980's where she has a labour surplus and high unemployment. We are desperate for foreign labour. Secondly, and most importantly, our three Ministers for Human Resources, Immigration, and the Department of Public Safety and Emergency Preparedness, need to **jointly** direct that all three departments are to be facilitative rather than restrictive in the consideration and processing of work permit applications. All applications will still need to be considered in keeping with currently established statutory legislation and processing guidelines. But we can look for a way to get to yes rather than requiring the unnecessarily slow Labour Market Opinion process in all cases.

Such a joint direction has no budgetary implications in terms of legislative modifications or staffing of personnel. It is revenue neutral as far as implementation. Other than the press releases which have the impact for huge political gain.

Bring the Teams Together

The Minister of Human Resources has admirably been implementing processes to try and improve the current situation for speeding up the issuance of LMO's. In Nov. of 2006 Minister Solberg created the Designated Occupations Lists Under Pressure for BC, Alberta and Ontario. Advertising requirements to try to recruit Canadians for these occupations were reduced from weeks or months to a mere week on the Government Job Bank Website. Unfortunately, there is little practical significance to users of this process when an employer still has to wait 27-29 weeks for the LMO to be processed.

The Minister of Human Resources modified the Low Skilled Worker program to extend the period of time that a low skilled employee can work in Canada from 12 to 24 months to assist employer in keeping their foreign workers for longer periods of time and defraying the high costs of bringing them to Canada under this program. However, the effectiveness of the Low Skilled Worker program is severely limited by the approach of CIC officers abroad. The level of rejections of these types of applications by officers at overseas visa posts is extremely high. In discussions with the Attorney General for BC (also the Minister for Multiculturalism) he has indicated that the rate of rejection for work permit applications processed in India (Delhi and Chandigarh) is over 70%. As well, long term solutions are limited, as there is no mechanism for an employer to keep a low skilled employee in Canada on a permanent basis.

On Sept. 24, 2007 the Minister of Human Resources implemented the E-LMO process which recognized 12 occupations that could circumvent the normal LMO process and obtain permits within 5 days (on January 14, 2008 the number of occupations increased to 33). Although practical in concept, the actual processing times are longer than expected and there are systematic problems with the process in actual delivery. Over one-third of the occupations under this category fall in the low skilled category.

Notwithstanding the valiant efforts of the Minister of Human Resources, the timeframes for bringing foreign workers to Canada have not improved. Even with the E-LMO process, the Minister of Human Resources can't control visa or work permit issuance by his colleague Ministers in Immigration or the Department of Public Safety and Emergency Preparedness. CIC officers are still refusing to issue work permits for the majority of LMO's for low skilled workers. So whether an employer waits two weeks or seven months for an E-LMO/LMO, if he can't get his low skilled but vitally necessary people to Canada because the Minister of Immigration's team won't issue visas, the whole process is meaningless. Even where HRSDC and CIC manage to get together and approve the LMO and the required visa, it is the CBSA border official who makes the final determination. Many CBSA officers have a jaundiced view of CIC Temporary Foreign Worker Unit opinions and also take a restrictive view of policy guidelines for all of the nine exemption processes mentioned above. Too many port of entry officials are focused on keeping people out rather than facilitating the entry of desperately needed foreign workers. CBSA officers have been encouraged to use a restrictive gatekeeper approach rather than a facilitative approach. Rather than taking a

few minutes to assess an application and see whether they can find an exemption that fits, they are encouraged to simply refer cases for a Labour Market Opinion.

Until all three teams are able to get together and decide that it is in Canada's best interests to facilitate the entry of foreign workers, the current processes will serve to have a negative effect on our economy. A shift to a coordinated, pro-active approach is desperately needed.

Create a Low Skilled Worker Category Process for Immigration

Currently the low skilled worker program allows for an employer to obtain a person to work in Canada for up to 24 months. After 24 months, they must leave Canada for four months if they are to be able to obtain another work permit. The expenses that the employer faces in obtaining a work permit under this category are significant. They must demonstrate considerable efforts at advertising to hire other Canadians, they must cover all recruitment costs, they must assist in finding accommodation and they must pay all travel and medical costs. In short there is considerable expenditure for the employer in bringing a worker to Canada and yet there is no way for an employer under this program to be able to keep an employee on a permanent basis. Furthermore, once employers successfully complete the LMO process, they are ultimately refused Work Permits for their employees at a much higher rate, as the overseas officer doubts the employee's likelihood to return to their home country and as there is "no path to Permanent Residence."

Given the very onerous (expensive and extensive) requirements for the employer in order to bring low skilled workers to Canada, it is recommended that there be a component for permanent residence to Canada built into the program. Otherwise the

employer must go through the same extensive and expensive efforts each two year period that the person is brought to Canada. It is recommended that the model of the Live-In Caregiver program be used for the model for the low skilled worker program. An employer would still have to go through the extensive requirements, however upon bringing an applicant to Canada and having them work for a period of two years they are eligible to apply for permanent residence from within Canada.

It is recommended that CIC add the same requirements from the Live-In Caregiver program, namely that an applicant has a minimum of a Grade 12 education and that they demonstrate basic proficiency in English or French. Such a program would create a “path to Permanent Residence” which would assist employers in obtaining valuable low skilled employees. This program could easily be built into Canadian Experience Class, which is currently under development.

Further development of Free Trade Agreements with other countries allowing for Exchange of both Goods and Services.

Canada is currently a signatory to the General Agreement on Tariffs and Trade (GATT). There are currently 151 member nations as identified by the World Trade Organization (WTO) who participate in the exchange of goods and services pursuant to the GATT. In addition to this comprehensive multi-national trade agreement, Canada is also a signatory to another series of bilateral agreements with the United States, Mexico, Chile, Europe, Israel, and Costa Rica. More recently they have just concluded an agreement with Peru and they are currently working on completing further bilateral trade agreements with Columbia, Korea, and Singapore. It is important to note that of those agreements that have presently been signed, with the exclusion of the Peru

agreement, only NAFTA and CCFTA provide for the exchange of services (given the recent completion of the Peru agreement, it is not clear if this will provide for the exchange of both goods and services). Canada also has several trade agreements pending with the four Central American countries: Honduras, Nicaragua, El Salvador, and Guatemala, as well as Jordan, the Andean community, Korea, the Caribbean community, the Dominican Republic, Singapore, and the Free Trade Area of the Americas. Without the provision for the exchange of services, there is really no impact or capability for the expeditious transfer of personnel between Canada and the other member country. I have had the opportunity of speaking with Mr. Paul Bennoit, the Senior Policy Advisor for the Minister of International Trade, the Honourable Dave Emerson. Mr. Bennoit advised me that the Peru agreement had been concluded in January 2008. However, the paperwork and legal language are still being worked out at this time. Mr. Bennoit was unable to state specifically whether or not the trade agreement with Peru would have the same kind of service provisions that allowed for labour mobility as in NAFTA and CCFTA. However, he stated that these more recent agreements have been contemplating the exchange of services. It is anticipated that Columbia, Korea, and Singapore will also have provisions for this type of mobility.

However, as is identified in the list of occupations at pages 17 and 18, the occupations covered under these types of bilateral trade agreements are really only of the professional, scientific, or academic nature. These agreements so far have not contemplated for the movement of labour at the tradesperson or low-skilled level. It is interesting to note that of the occupations that are most sought after in Canada, namely the E-LMO list, the majority of the occupations are comprised of low-skilled labourers and tradespeople. Accordingly the creation of further bilateral trade agreements that are

predicated upon this current system will not assist greatly in addressing Canada's skilled labour shortage at the current time.

CONCLUSION

Canada's temporary migration movement is inextricably linked to the permanent immigration process both in law and in practice. The presumption that all persons are coming to live permanently in Canada is the litmus test against which all entrants to Canada are measured. Stricter scrutiny is given to those persons seeking to enter Canada from countries which require visas to enter and/or which have weaker economies. In situations where there is no ultimate possibility of obtaining permanent immigration status, the rate of refusal for temporary entry, whether as a worker, student, or visitor, is much higher. It is open to debate whether this presumption is an appropriate standard for temporary entry to a foreign country, but if facilitated movement between member nations is the designed goal, then this would need to be addressed. It is all the more necessary to examine the current system given Canada's current labour shortage to see whether our existing model is appropriate in our current economic environment.

A review of Canada's bilateral trade agreements as a means of exchange in labour between member nations is very telling. Canada is currently a signatory to the GATT, with 151 member nations and to six other bilateral agreements with the United States of America, Mexico, Chile, Europe, Costa Rica, and Israel. However, of these international trade agreements, only two, that of NAFTA with the United States and

Mexico and of CCFTA with Chile, allow for the exchange of both goods and services. It is the provision for the exchange of services which allows for facilitated exchange of workers between member nations. The proscribed occupations under these two agreements apply to only professionals, academics, and scientists. When measured against the most needed occupations within Canada's current labour shortage, only three occupations are common to both the E-LMO list of critical occupations and our bilateral trade agreements. If Canada is truly interested in facilitating the movement of labour as a means of addressing her current labour shortage, then these bilateral agreements, both present and future, will need to be modified to allow for the entry of skilled workers and tradespeople. Canada is currently in negotiations for further trade agreements with Jordan, the Andean community, Korea, the Caribbean community, the Dominican Republic, the Central America Four (Honduras, Nicaragua, El Salvador, and Guatemala), Singapore, and the Free Trade Area of the Americas. It is unknown whether these pending negotiations contemplate an exchange of both goods and services which would facilitate the movement of labour between member nations.

The majority of the temporary worker movement in Canada does not arise as a result of Canada's bilateral trade agreements with other countries. Given Canada's present labour shortage, it is not only worth re-examining the potential of our bilateral trade agreements to address this current problem, but also of examining the other means for obtaining temporary work permits, harmonizing the various government departments participating in the process for bringing foreign workers to Canada and developing and promoting a general facilitative approach for the entry of much needed foreign workers.

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ACRONYMS

AEO	Arranged Employment Opinion
CBSA	Canadian Border Service Agency
CCFTA	Canada-Chile Free Trade Agreement
CIC	Citizenship and Immigration Canada
CEC	Canadian Experience Class
E-LMO	Expedited Labour Market Opinion
GATT	General Agreement on Tariffs and Trades
HRSDC	Human Resources and Social Development
IRPA	Immigration and Refugee Protection Act
LMO	Labour Market Opinion
NAFTA	North American Free Trade Agreement
PNP	Provincial Nominee Program
SAP	Simplified Application Process