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BUSINESS IMMIGRATION LAW

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MOVERS AND IMMIGRATION
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IMMIGRATION BASICS

Immigration Status

3 categories of people who are legally authorized to live and work in Canada:

- **Citizens – always have the right to work;**
- **Permanent Residents – entitled to live and work indefinitely (some requirements may apply); and**
- **Temporary Residents (with Work Permits) – authorized to enter Canada for limited periods and purposes.**

We will consider the latter two categories today.

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IMMIGRATION BASICS

Temporary Residents (Work Permit holders)

Objective of the Temporary Foreign Worker Program is to select foreign workers based on 'short-term', often 'immediate', labour demand and to add workers temporarily to the host country labour force.

Work Permit holders are usually restricted to:

- **a particular employer,**
- **geographic location,**
- **profession or vocation.**

IMMIGRATION BASICS

Temporary Residents (Work Permit holders)

Service Canada administers the standard labour market test which allows work permit issuance upon consideration of the local labour market.

Employment must be 'likely to have a neutral or positive effect on the labour market' before a positive Labour Market Opinion (LMO) can be issued.

Demand for foreign workers has grown:

- **On December 1, 2006 there were 171,844 temporary foreign workers with Work Permits;**
- **Ten years earlier the figures were 75,560 and 77,294 respectively.**
- **This represents a 122% increase over ten years**

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IMMIGRATION BASICS

Temporary Residents (Work Permit holders)

Factors considered in the Labour Market Opinion test are:

- **Whether the work is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;**
- **Whether the work is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;**
- **Whether the work is likely to fill a labour shortage;**
- **Whether the wages and working conditions offered are sufficient to attract Canadian citizens and permanent residents, and to retain them in that work;**
- **Whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and**
- **Whether the employment is likely to adversely affect the settlement of any labour disputes in progress or the employment of any person involved in the dispute.**

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IMMIGRATION BASICS

Temporary Residents (Work Permit holders)

In most instances, the Canadian employer must advertise the position in a national newspaper, a local newspaper and a trade journal.

Central aspects of the LMO assessment include:

- **The local labour market demand for the position,**
- **The appropriateness of educational, experience and language requirements requested by the employer; and**
- **The wages and other remuneration that the employer is offering.**

At every step in the LMO process the Service Canada Foreign Worker Recruitment Office scrutinizes the employer's hiring practices, processes and decision.

IMMIGRATION BASICS

Permanent Residents

There are 3 categories of permanent immigrants:

- **The economic class (skilled workers, business immigrants, provincial nominees and live-in-caregivers including members of their immediate family);**
- **The family class (spouses and partners, children, parents and grandparents of the sponsors); and**
- **The protected persons category (government assisted and privately sponsored refugees, convention refugees and pre-removal risk assessment process grantees).**

For much of the past decade, immigration levels ranged between 200,000 and 250,000 per year. On a per capita basis (as compared to Australia and the United States) these levels are high.

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IMMIGRATION FOCUS

Permanent Residence

The Permanent Residence break down is in favour of economic immigration with an approximate ratio of 40% economic to 60% all other categories.

By comparison, in the United States family reunification accounts for 70 %or more of total permanent immigration; only 17% of immigrants fall into an economic migrant category.

IMMIGRATION FOCUS

Permanent Residence

The backbone of the economic class is the Federal Skilled Worker Program with its 'points' assessment mechanism. Skilled workers are selected under a system that favours individuals with:

- **Training and experience in skilled occupations,**
- **Facilities in both official languages,**
- **youth; and**
- **post secondary education.**

In the past, immigrants have been chosen on basis of their 'human capital' - skills and abilities *likely* to facilitate their establishment in the Canadian economy.

Recently introduced programs, such as the Canada Experience Class, focus more on Canadian work experience and education and the worker's proven ability to establish in Canada.

IMMIGRATION PROBLEM

“High Skill” vs. “Low Skill”

Canadian economic immigration policy is heavily weighted in favour of highly skilled immigrants. Yet there is growing evidence that lower skilled temporary and permanent workers are, and will be, needed.

The CFIB study found that:

- **28.3% of respondent small and medium-sized enterprises found that candidates with high school or less were hard to find**
- **26.5% considered candidates with private institute training to be the most difficult to find whereas a similar share, 26.8% stated that community college graduates were the hardest to find**
- **Only 18.4% indicated that university graduates were the hardest to find**

IMMIGRATION PROBLEM

NOC – The National Occupation Classification

In Canada, lower levels of formal training are defined as occupations that usually require at most a high school diploma or a maximum of 2 years of job-specific training according to the National Occupation Classification (NOC) system and are coded at the NOC “C” or “D” skill level.

The number of workers in skill level D (elemental and labour) roughly doubled in the third quarter of 2006.

The situation for foreign workers entering at skill level C is also consistent with industry data, indicating that the share of workers at this level is rising and now accounting for the largest group of all workers identified with a skill level.

A Long Haul Truck Driver (NOC #7411) is considered “low skilled”.

The recent legislative changes to Canada’s immigration economic program do not address this shortcoming directly, but rather indirectly touch upon the problem.

IMMIGRATION PROBLEM

The Fit

In the past few years there has been growing discussion of the 'fit', or “misfit” between Canadian immigration policy and labour market demands:

Despite favourable global migration trends Canada's present selection system is out of sync with the labour market; and underperforming.

IMMIGRATION PROBLEM

Demographics

According to the Conference Board of Canada, in less than 20 years there will be 'zero growth' in Canada's natural population.

Canada's birth rate is 1.4 children per woman and is moving toward lower levels; and

While the baby boomer phenomenon is not unique to Canada, what distinguishes Canada is the relative size of the baby boomer generation and its potentially rapid exit from the labour market.

IMMIGRATION PROBLEM

The Moving Industry

According to the Saskatchewan Trucking Association the trucking industry is being hampered by a steady decline in long haul drivers.

Like national figures this trend has been significantly amplified by the following factors:

- **Increasing number of baby boomers that are retiring; and**
- **the shrinking size of families as compared to the post war era.**

In response to mounting concern and criticism, politicians have introduced a growing list of modifications to 'assist employers experiencing difficulty filling job vacancies due to labour market shortages'.

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POSSIBLE SOLUTIONS

Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC “C” and “D”)

In 2007, the Department of Human Resources and Social Development Canada (HRSDC)/Service Canada (SC) introduced a Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D):

The Pilot applies where there is a demonstrable shortage of Canadians citizens and permanent residents available;

It allow for the temporary entry of foreign workers in Canada for up to a maximum period of 24 months.

After 24 months the Foreign Worker must then return to the country of permanent residence for a minimum of four months before being eligible to apply for another Work Permit.

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POSSIBLE SOLUTIONS

Key Pilot Requirements

Program requirements include:

- **Demonstrating comprehensive and on-going efforts to recruit Canadian youth, Aboriginal peoples, recent immigrants and Canadians in areas of high unemployment;**
- **Showing efforts to hire unemployed Canadians through HRSDC and provincial employment programs;**
- **Consulting with the local union if the position is covered under a collective agreement;**
- **Sign an employer-employee contract outlining wages*, duties, and conditions related to the transportation, accommodation, health and occupational safety of the foreign worker;**

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POSSIBLE SOLUTIONS

Key Pilot Requirements Con't

- **Covering all recruitment costs related to the hiring of the foreign worker;**
- **Helping the worker(s) find suitable, affordable accommodation;**
- **Paying full transportation costs for the foreign worker to and from his/her home country;**
- **Providing medical coverage until the worker is eligible for provincial health insurance coverage; and**
- **Registering your worker under the appropriate provincial worker compensation/ workplace safety insurance plans.**

When large numbers of foreign workers are being requested, the Employer must provide a comprehensive human resources plan.

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POSSIBLE SOLUTIONS

Saskatchewan PNP - Employer Direct Program

In response to the trucking industry's steady decline in qualified drivers, in 2003 the Saskatchewan Trucking Association, in partnership with Saskatchewan Immigrant Nominee Program and HRSDC undertook an initiative to recruit foreign workers.

To date the program has brought more than 250 families to Saskatchewan.

POSSIBLE SOLUTIONS

Saskatchewan PNP - Employer Direct Program - Eligibility

Some of the requirements of Saskatchewan trucking firms are:

- **Being in operation in Saskatchewan for at least five years;**
- **Having no compliance issues with the National Safety Code (NSC);**
- **Submitting a Long-Haul Trucking recruitment and settlement plan that will describe the company's plans for:**
 - Recruitment and screening foreign driver applicants;**
 - Orientation and training foreign drivers recruited; and**
 - Settlement support for immigrant employees and their families; and**
- **Meeting Service Canada requirements, which include obtaining a Service Canada Labour Market Opinion and providing a Human Resource plan for each driver who applies.**

The requirements are fairly complex; refer to Application Guide for Saskatchewan Trucking firm in your materials for more detail.

POSSIBLE SOLUTIONS

Saskatchewan PNP Employer Direct Program – Transition to Permanent Residence

A key benefit is the foreign worker's ability to transition to permanent residence.

The offer of permanent employment must provide wages and benefits and other terms of employment equal to those the organization pays, or would pay, to Canadians or permanent residents of Canada with similar skills and experience.

POSSIBLE SOLUTIONS

Manitoba Provincial Nominee Program - Employer Direct

This is priority assessment stream that helps Manitoba employers hire foreign workers for jobs they are unable to fill with a Canadian citizen or permanent residents;

It also offer the possibility of transition to Permanent Residence.

Two ways to apply:

- **Applicants can immigrate to Manitoba on the strength of an offer of a long-term, full-time job from a Manitoba employer who has pre-approval from the MPNP to recruit workers from outside Canada; or**
- **A foreign worker already working in Manitoba on a temporary work permit, who has been offered a long-term job, can apply.**

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POSSIBLE SOLUTIONS

Manitoba Provincial Nominee Program Employer Direct – Requirements

To be considered for nomination one must demonstrate:

- **A formal offer of long-term, full-time job with a Manitoba employer;**
- **The training, work experience and language ability required for the job offered (including any license or certification required in the country of residence);**
- **The intention and the ability to settle permanently in Manitoba.**

Receiving a work permit does not guarantee that the foreign worker will receive a permanent resident visa; however, if successful in obtaining a nomination, the applicant may then apply for permanent residence on a fast tracked basis.



OVERVIEW OF EMPLOYER OBLIGATIONS AND WORKER RIGHTS - Authority and Applicability

Foreign Workers are generally subject to the same employment protections as citizens and permanent residents; as their numbers increase we can expect that there will more focus, regulation and enforcement of the foreign worker's rights.

Most occupations are covered under provincial and territorial laws and workers are protected by provincial employment standard legislation;

The laws on hours of work and overtime (extra time or time worked after regular hours) are therefore different depending on the province or territory.

OVERVIEW OF EMPLOYER OBLIGATIONS AND WORKER RIGHTS - Authority and Applicability

However, Federal labour and employment laws covers:

- the federal government;
- banks;
- companies that transport goods between provinces;
- telecommunications companies; and
- Most businesses owned and run by the federal government.

OVERVIEW OF EMPLOYER OBLIGATIONS AND WORKER RIGHTS - Employment Terms, Conditions and Termination

As with permanent residents and citizens, generally speaking:

- **Employer must give written notice or pay in lieu of notice before terminating employment;**
- **Employers do not have to warn workers when they are being let go for a “just cause” (for example, serious misconduct or missing work without good reason);**
- **Employers are not typically required to provide a place for the foreign worker to live in Canada but there are exceptions.**
- **Again, the laws are different in each province and territory. Moreover, immigration programs are increasingly ‘building-in’ specific worker protections.**

OVERVIEW OF EMPLOYER OBLIGATIONS AND WORKER RIGHTS - Health and Safety

Generally speaking, all workers, irrespective of immigration status, have the right to a safe and healthy workplace.

Provincial, territorial and federal governments have independent legislation and ways of looking into health and safety matters.

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CLOSING REMARKS

Despite recent changes to Canada's economic immigration program designed to improve the 'fit' between labour market demand and immigration policy, there remains a double standard when it comes to 'high' and 'low' skilled workers.

While there is growing recognition of the low skilled worker's short and long-term place in the economy, the Recent legislative changes are, by in large, are silent.

CLOSING REMARKS

As such, strategy and planning will remain critical in recruiting such foreign workers.

- The key mechanism for bringing such workers to Canada as temporary workers remains the Pilot Program;
- The Saskatchewan and Manitoba PNP Programs represent other options and have the benefit of a transition route from temporary worker to permanent resident.

As a final word, remember that Canada's immigration program is in a state of transition;

it is a critical time to influence government politicians and policymakers and encourage change that will benefit the industry and country over the long-term.