



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# OP 7(b)

## Provincial Nominees

## OP 7b Provincial Nominees

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## **OP 7b Provincial Nominees**

### **Updates to chapter**

#### **Listing by date:**

##### **2010-12-13**

The previous Appendix B was renamed Appendix A

Appendix A – Provincial Nominee Program contacts at visa offices was deleted.

##### **2010-03-15**

Changes were made throughout the chapter to reflect the regulatory amendments as per Operational Bulletins 076, 079 and 080. Moreover, the following sections have also been revised:

Section 3 – Table 1 has been expanded to include additional relevant Acts and Regulations.

Section 3.1 – Expanded to include additional relevant forms.

Section 6.3 – Clarification on the acceptable format of the provincial nomination certificates.

Section 7.6 – Three new sub-sections were added:

The "Schedule 4A – Economic Classes – Provincial Nominees – Business Nominees" form;

Changes in the family composition during processing; and

Changing immigration category.

Section 7.7 – Added, entitled Processing special cases.

Section 7.8 – Three new sub-sections were added (entitled Inadmissibility, Inadmissibility for misrepresentation (A40) and Refusal letters).

Section 8 – Table 3 has been added and clarifications were made on coding.

Contact information in Appendix A and Appendix B have been updated.

##### **2003-11-21**

Changes were made to OP 7b – Provincial Nominees, Appendix A and Appendix B.

##### **2003-08-01**

Minor changes were made to the contact information in Appendix B of chapter OP 7b.

## OP 7b Provincial Nominees

### 1. What this sub-chapter is about

**Note:** This chapter is divided into two sub-chapters: OP 7(a) - Quebec Skilled Workers and OP 7(b) - Provincial Nominees.

Canada has entered into bilateral agreements with all provinces (except Quebec) and with the Yukon and Northwest Territories (see Appendix B for program contacts) to allow those provinces to nominate individuals to become permanent residents based on the provinces' assessment of the nominees' ability to contribute to the economic growth and development of that province.

This sub-chapter explains what the provincial nominee class is and how to process applications.

Hereinafter, the word province refers to both provinces and territories.

### 2. Program objectives

The Provincial nominee class is designed to enable provinces to support the immigration of persons who have expressed an interest in settling in their province and who the province believes will be able to contribute to the economic development and prosperity of that province and Canada.

### 3. The Act and Regulations

This section contains references to the *Act*, its *Regulations* and the forms associated or mentioned in this chapter.

**Table 1**

For information about	Refer to
Federal-provincial agreements	A8
Selection of a member of the economic class	A12(2)
Becoming a permanent resident	R71.1
Provincial nominee class	R87
• Exclusion from the provincial nominee Class	R87(5) and R87(6)
• Definitions	R87(9)
• Transitional provisions	R87(10) and R87(11)
• Requirements for accompanying family members	R87(12)

#### 3.1. Forms required

The forms required are shown in the following table.

**Table 2**

Form title	Form number
Guide for Provincial nominees	IMM EP7000
Application for Permanent Residence in Canada	IMM 0008EGEN
Schedule 1: Background/Declaration	IMM 0008Esch1
Additional family information	IMM 5406
Economic Classes - Provincial nominees	IMM 0008Esch4
Economic Classes - Provincial nominees - Business Nominees	IMM 0008Esch4A
Visa office-specific forms	See list on CIC's Web site
Use of a representative	IMM 5476

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### 4. Instruments and delegations

Nil.

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### 5. Departmental policy

The provincial nominee rules recognize that provincial governments are best positioned to determine their specific economic needs with respect to immigration.

Immigration officers can assume that a candidate nominated by a province does, in the view of the provincial officials, intend to reside in the nominating province and has a strong likelihood of becoming economically established in Canada.

However, the immigration officer may become aware of information that might bring these assumptions into question. In these cases, it is open to the immigration officer to ultimately refuse to issue a visa to the provincial nominee. Refusals of provincial nominees are discussed in Section 7.6 of this chapter.

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#### 5.1. Applicants with valid temporary status in Canada

A foreign national who has been issued a permanent resident visa in the Provincial Nominee Class and who is a temporary resident in Canada must, to become a permanent resident, present their permanent resident visa to an officer at a port of entry or at a Citizenship and Immigration Canada (CIC) office in Canada (refer to R71.1).

A foreign national outside Canada who has been issued a permanent resident visa must present their visa at a port of entry, upon entry to Canada, to become a permanent resident.

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#### 5.2. Order of admission of the applicants

Accompanying family members of provincial nominee applicants may only become permanent residents at the same time as, or after, the principal applicant has become a permanent resident. In other words, family members of principal applicants cannot become permanent residents before the principal applicant (refer to R87.1).

All accompanying family members of principal applicants in the provincial nominee class, who have been issued permanent resident visas and are seeking admission to Canada on or after September 2, 2008, may become permanent residents only if the principal applicant has become a permanent resident in accordance with the regulations in effect as of September 2, 2008.

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#### 5.3. Passive investment and immigration-linked investment

A passive investment occurs when an individual invests capital in a business or organization without being actively involved in its management. Such an investment is prohibited under the *Immigration and Refugee Protection Regulations*. Foreign nationals are therefore precluded from being considered members of the provincial nominee class if the nomination was based on their provision of capital or their participation in an immigration-linked investment scheme.

A foreign national may still be considered a member of the Provincial Nominee Class if:

- the capital provided to a business is not made primarily for the purpose of deriving interest, dividends or capital gains;
- the foreign national controls, or will control, at least 33 ⅓ percent of the equity in the business, or has made a minimum of \$1 million equity investment in the business;
- the foreign national will participate actively, on an ongoing basis, in the management of the business; and
- the terms of investment in the business do not include a redemption option.

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As is consistent with the federal business classes, the percentage of equity controlled by both the principal applicant and their spouse or common-law partner will be considered.

### Exclusions

R87(5) excludes from the provincial nominee class any applicant:

- whose nomination was based on the provision of capital (passive investment); or
- who intends to participate or who has participated in an immigration-linked investment scheme.

These exclusions are meant to prevent the provincial nominees program from undermining the federal immigrant investor program.

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## 6. Definitions

### 6.1. "Passive Investment Proposal"

A passive investment proposal involves an investment by a foreign national that has as one of its objectives to facilitate or lead to the nomination of the foreign national by the province, and the foreign national's successful immigration to Canada. Characteristics of such a proposal would include:

- the foreign national will not have active, ongoing or direct responsibilities in managing or operating the enterprise financed; or
- the terms of investment include a redemption option exercisable after a specified period of time; or
- the foreign national will not reside in the nominating province.

Officers are strongly encouraged to inform International Region/RIM at [CIC-Nat-operational-RIM-TFW@cic.gc.ca](mailto:CIC-Nat-operational-RIM-TFW@cic.gc.ca) if they become aware of a new passive investment scheme.

### 6.2. Immigration-linked investment scheme

"Immigration-linked investment scheme" is defined in R87(9). The definition includes any strategy or plan where:

- the agreement or arrangement was entered into primarily for the purpose of acquiring status or privilege under the Act; or
  - one of the objectives is to facilitate immigration to Canada; and
  - one of the objectives of the promoters of the strategy or plan is to raise capital.
- Officers are strongly encouraged to inform International Region/RIM at [CIC-Nat-operational-RIM-TFW@cic.gc.ca](mailto:CIC-Nat-operational-RIM-TFW@cic.gc.ca) if they become aware of a new immigration-linked investment scheme.

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**Note:** In cases of investment schemes, R87(6)(b) requires that the provincial nominee applicant controls a percentage of equity in the business equal to or greater than 33⅓ percent or makes an equity investment in the business of at least \$1,000,000. These requirements are consistent with active and ongoing management of a business as set out in R87(6)(c).

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### 6.3. Provincial nomination certificate

This certificate is issued by the government of a province, under a provincial nomination agreement, to an applicant who intends to reside in that province. The documentation goes

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directly from the province to the visa office. It should not arrive via the applicant or any agent working on the applicant's behalf.

It has been agreed that provinces will forward nomination information to the visa offices in a spreadsheet format via Entrust. The spreadsheet must contain the same information about each candidate as would a separate nomination certificate. In addition, the visa office has to be satisfied that the spreadsheet is indeed coming from the responsible provincial or territorial authority.

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### 7. Processing provincial nominees

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#### 7.1. Forms required

Provincial nominees must complete the IMM 0008EGEN application, the IMM 0008Esch4/sch4A and any other required forms and documents as instructed in the Guide for Provincial Nominees IMM EP7000.

#### 7.2. Roles and responsibilities

Provinces have the authority and responsibility to establish their own criteria for nomination, insofar as the criteria are not incompatible with national immigration policy, while the federal government maintains its responsibility for applying statutory admissibility criteria and exercising ultimate selection authority as described in the Regulations.

CIC is responsible for:

- assessing the candidates' admissibility;
- assessing their eligibility under R87; and
- rendering a final decision on their eligibility as members of the provincial nominee class (R87(2)).

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#### 7.3. Receiving the provincial nomination certificate

When an individual is nominated by a province for selection in the provincial nominee class, the province sends the certificate of nomination directly to the visa office.

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#### 7.4. Receiving the application for immigration

Some provinces will ask the applicant to complete the immigration application and send it directly to the appropriate visa office. Other provinces may choose to assist the nominee with the completion of the application and send the nominee's application to the visa office on his or her behalf.

In either case, the visa office may create a file before receipt of the nomination spreadsheet.

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#### 7.5. Transitional provisions

In accordance with the regulatory amendments described in Section 5.3, **all applications for permanent residence in progress** at the federal level prior to September 2, 2008 will be assessed according to the regulation in effect immediately prior to September 2, 2008, as will all nomination certificates issued on or before September 1, 2008.

Please note that the application for permanent residence **does not** need to have been received by September 2, 2008; only the nomination certificate itself must have been issued as of September 1, 2008, or earlier.

**New applications** with a nomination certificate issued on or after September 2, 2008 are subject to the current regulation.

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### 7.6. Processing the application

When a visa office receives a certificate of nomination under the provincial nominee class, the officer should proceed to issue medical instructions and carry out normal security screening procedures as soon as possible, provided a complete application has been received.

#### Monitoring and compliance

Officers should request additional documentation or clarification from the applicant or the nominating province if they are not satisfied that all criteria will be met by the applicant.

If the nomination certificate is not a sufficient indicator that a foreign national can economically establish in Canada, an officer may substitute their evaluation of the likelihood of the foreign national to become economically established in Canada for the nominating certificate. Such a substitution requires that the officer consult with the government that issued the certificate and also requires the concurrence of a second, appropriately delegated, officer.

The intention to reside in the nominating province should be reaffirmed in all cases. This is especially important when it is anticipated that a significant time lag may occur between nomination and visa issuance.

Officers who have reason to believe that an applicant, whose nomination certificate was issued after September 2, 2008, was nominated on the basis of a passive investment, should proceed to interview the client and/or request additional documentation to satisfy R87(5), (6) and (9) requirements.

When all requirements have been met, the officer may proceed to issue the permanent resident visa.

#### The "Schedule 4A – Economic Classes – Provincial Nominees – Business Nominees" form

The Schedule 4A form has been developed to capture:

- background information about applicants nominated in a business, entrepreneur, self-employed or similar stream; and
- details of their business experience and proposed business activities in Canada.

Officers should remember that it is within the province's mandate to make a determination as to the likelihood that a nominated individual will make an economic contribution to the province. The purpose of the information captured on Schedule 4A is not to encourage reassessment of the province's nomination decision. Rather, the information provided on this form should be examined for consistency with the rest of the application and the applicant should be invited to address any concerns which arise. If the officer is concerned that the applicant may have provided different information to CIC than to the province, the province should be consulted. If the applicant possesses wealth which appears to be inconsistent with their business and personal history, the officer should request further clarification.

In contrast to federally-selected investors and entrepreneurs (R88(1)), there is no explicit legal requirement for provincial nominee applicants, even those applying in a business or similar stream, to show that their assets were legally obtained. As a result, until now, detailed information has not been collected about provincial nominees' business experience and acquisition of assets. This has made it difficult at times to assess some aspects of admissibility. Schedule 4A is designed to address this gap. Applications should not be refused simply because the source of the applicant's funds is unclear, nor should they be refused for non-compliance simply because the applicant refuses to reveal their source of funds. Since the *Immigration and Refugee Protection Act* (IRPA) does not require that the officer consider this information for selection purposes, it could be difficult to defend refusals based purely on a failure to provide information. However, all applicants, including provincial nominee class candidates, must establish that they are not inadmissible. In this regard, they should be required to account for their activities and the

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source of their funds when questions about admissibility arise and officers should insist on receiving satisfactory information. Operational instructions published in RIM 03-072 provide more detailed information; visa offices with questions about source of funds are welcome to consult National Headquarters (NHQ). NHQ will support refusals in cases where an officer is not satisfied as to the applicant's admissibility and has provided the applicant with the opportunity to address these concerns.

### Changes in the family composition during processing

Under R87(2)(a), only the principal applicant must be named in the nomination certificate. Although many provinces also list the applicant's accompanying dependants on the certificate, there is no actual legal requirement for them to be listed. As a result, there is no need for a new or amended nomination certificate if the applicant's family composition changes during processing. As a courtesy, the visa office should inform the province of a change in the applicant's family composition but a new certificate should not be requested in these circumstances.

### Changing immigration category

It sometimes happens that an applicant who has applied in another category, but whose application is not yet in process, is nominated by a province. R10 requires that every application be made within one of the classes prescribed by the Regulations and there is no mechanism under the legislation by which the immigration category can be changed once an application has been submitted. In all cases, an applicant who wishes to be assessed in the provincial nominee class must submit an application in that class, along with the appropriate fee.

Therefore, an applicant who has applied in another category and who is subsequently nominated by a province, must submit a new application as a provincial nominee.

- If the initial application has not been paperscreened, the processing fee can be credited toward the new provincial nominee application instead of being refunded (as per operational instructions published in RIM 06-026).
- If the initial application has been paperscreened, no refund is possible.
- If the applicant does not wish to withdraw the initial application, processing on both applications may continue but only one permanent resident visa can be issued to an applicant. Before the processing of an application can be finalised, any other permanent residence applications in process submitted by the same applicant must be withdrawn.

### 7.7. Processing special cases

Based on the general provisions of Federal-Provincial-Territorial agreements concerning provincial nominees, a nomination certificate is considered to be a determination that the applicant's admission will be of economic benefit to the province and that the applicant will be able to become economically established in Canada. Generally speaking, it is not the policy intent that visa officers look behind the provincial nomination decision. Situations do arise, however, in which the visa officer is not fully satisfied of the applicant's ability to become economically established, despite the nomination certificate. Two common scenarios are:

#### Overaged dependants

As in other immigration classes, a provincial nominee principal applicant may wish to include in their application a son or daughter who does not meet the definition of "dependent child" and who, for that reason, cannot be included as a family member. In some cases the nominating authority may nominate the overaged dependant child in their own right. Where the dependant has no work experience and may not have knowledge of either official language, the possibility of a refusal using substituted evaluation arises, on the basis that the applicant's ability to become economically established has not been demonstrated.

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There is no definition in the legislation of "become economically established," leaving the term open to interpretation. There is also no indication of the exact moment when an applicant must become economically established: immediately upon landing or after an initial period of adjustment. However, it is clear, from the way in which the term is used throughout the economic classes, that to become economically established means to join and participate in the labour market in Canada. It is also clear that the selection criteria do not apply to the provincial nominee class in the same way as they apply to federal skilled workers and that it is the overall intention of the legislation and the Federal-Provincial-Territorial agreements to allow the provinces some latitude in their nomination decisions. For all of these reasons, visa officers should, on a case-by-case basis, carefully evaluate the cases of overaged dependants nominated as provincial nominee candidates in their own right. They should refuse if they have strong reason to believe that the applicant is very unlikely to become economically established, even in the medium term and with the assistance of their other family members. On the other hand, it is consistent with the legislation to approve cases where there is some likelihood of successful settlement within a reasonable time.

If a visa is issued to an overaged dependant with no previous work experience, **it is vitally important to code the applicant as a new worker using NOC 9914.0.** Dependants with no previous work experience are the only provincial nominee applicants who should be coded as new workers. Coding them in this way makes it possible to monitor the number of such cases.

### **Individuals with no intention of joining the labour market**

The most common scenario involves older individuals who have a close tie to the province which motivates them to retire there (usually, they have a close relative, such as a son or daughter, residing in the nominating province). Some individuals have stated to visa officers quite openly that they do not intend to join the labour market in the province. Others have stated that they intend to seek work or create a business, but have not been able to satisfy the officer that they have a genuine intention of doing so.

The provincial nominee class is defined in the legislation as an economic class where the applicant is assessed on the basis of their ability to become economically established. As noted above, to "become economically established" means, at a minimum, to support oneself by participating in the Canadian labour market. If the officer is not satisfied that the individual has the intention of participating and that they will be able to participate, the application should be refused. To "become economically established", participation in the labour market must be in a way which allows the individual to fully support themselves, not merely contribute to the costs of their upkeep. This means that part-time or casual work would not normally meet the requirement to participate in the labour market in the sense it is intended here.

Such refusals are consistent with the legislation and policy intent and will be supported by NHQ.

### **Temporary resident visas and work permits**

Applicants sometimes apply for temporary resident visas (TRV) to make exploratory trips to Canada. Some provinces require prospective applicants in certain categories to make such a visit before nomination can occur. Individuals applying for TRVs for such purposes are subject to the same requirements as persons travelling for other purposes. Applicants or their representatives have occasionally argued that if the visit is required by the province, the visa officer should assess only the admissibility of the applicant, not their bona fides. There is no legal basis whatsoever for this argument. Clearly, a TRV issued to facilitate an exploratory visit may be abused as easily as a TRV issued for any other purpose.

That being said, officers should apply the dual-intent provisions and be cognizant of the fact that an applicant who is likely to be nominated by a province may well be less motivated to abuse their visa than one who has fewer prospects of obtaining legal permanent admission to Canada. Officers must carefully consider all the information available to them and make a reasonable decision on the basis of that information.

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Section 5.27 of FW 1 deals with the issuance of work permits to provincial nominees. Under R204(c), work permits can be issued to prospective or actual provincial nominees. The applicant must present a letter from the province stating that they have been nominated and requesting a work permit. It is not necessary for the visa office to have received the nominee's application for permanent residence before issuing a work permit. Spouses of provincial nominees are entitled to open work permits regardless of the skill level of the principal applicant.

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### 7.8. Refusing the application

There are three bases upon which a provincial nominee who meets all statutory admissibility requirements can be refused a visa:

- The officer has reason to believe that the applicant does not intend to live in the province that has nominated them;
- The officer has reason to believe that the applicant is unlikely to be able to successfully establish economically in Canada;
- The officer has reason to believe that the applicant is participating in, or intends to participate in, a passive investment or an immigration-linked investment scheme as defined in R87(5) to R87(9) of the Regulations.

In each case, the officer must have some evidence to support this belief and overcome the presumptions implied by the provincial nomination. Every provincial nominee agreement obliges the immigration officer to consult with an official of the nominating province regarding the intention to refuse before the refusal is actually made (Please see Appendix B for Provincial Contact Information).

If the officer, after consulting with the province, still intends to refuse, R87(4) requires that a second officer concur with the decision to refuse, before it can be made official. Both officers' names should be clearly recorded in the CAIPS notes.

#### Inadmissibility

Like all other applicants, provincial nominees must not be inadmissible to Canada. In order to follow procedural fairness, officers must make applicants aware of any concerns about their admissibility and must provide them with an opportunity to address those concerns. Responsibility for the assessment of inadmissibility for the purpose of IRPA is solely that of the federal government; there is no need for consultation with the nominating province before refusing an application on the basis of inadmissibility. The province should nonetheless be copied on the refusal letter.

If the nominating province provides input directly or via the applicant in response to a procedural fairness letter addressed to the applicant, that input should be considered along with the applicant's own input. Provincial input is, however, not determinative; the decision must be rendered by the visa officer.

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**Note:** All extrinsic information, including information received from the province, must be disclosed to the applicant if it will be considered negatively by the visa officer. The applicant should be given an opportunity to respond.

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#### Inadmissibility for misrepresentation (A40)

The application of A40 in provincial nominee cases does not differ substantially from procedures in all other immigrant cases. The nominating province should receive a copy of any procedural fairness letter and the applicant should be aware that the province has been provided with a copy. If the applicant provides information which addresses the officer's concerns in a satisfactory way, processing can resume. If the officer's concerns are not adequately addressed by the applicant, the officer can proceed to a refusal in the same way as in any other immigration class and send a copy of the refusal letter to the nominating province (as instructed below).

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In some cases, the nominating province may wish to withdraw the nomination certificate but where a visa officer is satisfied that misrepresentation has occurred and the applicant is found inadmissible under A40, the case can be refused whether or not the nomination certificate is withdrawn. Nevertheless, before invoking A40, visa officers must carefully assess the relevance and materiality of the misrepresentation. Visa officers should consult International Region/RIM at [CIC-NAt-operational-RIM-TFW@cic.gc.ca](mailto:CIC-NAt-operational-RIM-TFW@cic.gc.ca).

### Refusal letters

In all cases, refusals should be communicated to the applicant in writing, **with a copy to the nominating province**. Note that in any case where a refusal is based on the lack of (or withdrawal of) a provincial nomination certificate, the legal reference should be to R87(2), as per the template letter provided on International Regions' intranet [Web site](#).

**Refusal letters addressed to provincial nominees should never cite A20(2).** This subsection is specific to Quebec cases only.

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### 7.9. Becoming a permanent resident

To become a permanent resident, any foreign national outside Canada needs to present their permanent resident visa at a port of entry to Canada.

As per policy described in Section 5.1 of this chapter, applicants whose permanent resident visa is issued while they are in Canada with a valid temporary resident status may:

- contact the Call Centre to request an appointment at a local CIC office to become a permanent resident at that location; or
- leave Canada and become a permanent resident upon re-entry to Canada at a port of entry.

The template letters that accompany the permanent resident visas for provincial nominees must be amended by the visa offices to include the following paragraph:

*Please note that if you are already in Canada and have a valid temporary resident status, you now have the option of obtaining your permanent resident status in Canada as opposed to leaving Canada and re-entering at a port of entry. Please contact CIC's Call Centre at 1 888 242-2100 as soon as possible to arrange an appointment with the Citizenship and Immigration office nearest to your place of residence. (You cannot call this number if you are outside Canada.)*

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### 8. Coding provincial nominees

All applications submitted under the provincial nominee class must be clearly identified to allow for quality assessment and control.

**Table 3 - Immigration category code**

CODE	DESCRIPTION
PV2	Provincial nominee processed abroad *Synthetic NOC Codes should be used as instructed in <u>CAIPS Coding Aid</u> , namely for Investors (0001.0) and Entrepreneurs (0002.0). New Worker (9914.0) should apply to overage dependants without work experience and with a separate nomination certificate.

There has been some inaccurate coding of provincial nominees that has had a negative impact on our ability to assess the success of the program. The two most frequent problems are as follows:

- While provinces have different reasons for nominating individuals (some because of occupational skills they possess, some because of their business acumen, some because of their willingness to settle in under-populated regions), **all** provincial nominees are to be considered members of the provincial nominee class for federal coding purposes. Some officers have in the past erroneously coded provincial nominees with business skills as entrepreneurs or self-employed, for example. The immigration category in CAIPS must be PV2 for all applicants who are being selected at a visa office on the basis of a certificate of nomination by a province.
- The nominating province should always be accurately coded and this coding must remain unchanged throughout the landing process. There have been many cases where provincial nominees nominated by one province indicate upon landing that they are destined to another province, and Canada Border Services Agency officers have taken it upon themselves to change the province of destination on the file. It has been found that in most of these cases, the new permanent resident is simply visiting friends or family on their way to their new home, and most do end up reporting to and settling in the province that nominated them.

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### Appendix

#### Appendix A – Provincial Nominee Program provincial contacts

**Note:** Individual names are for the use of CIC staff only. Public inquiries should be referred to the appropriate provincial website or mailing address.

Province	Contact Information
Alberta <a href="http://www.albertacanada.com/immigration/immigrant/ainp.html">www.albertacanada.com/immigration/immigrant/ainp.html</a>	Angela Keane Senior Program Officer Alberta Immigrant Nominee Program Tel: 780 422-7201 Fax: 780 427-6560  Email: <a href="mailto:angela.keane@gov.ab.ca">angela.keane@gov.ab.ca</a>  Employment and Immigration 9 <sup>th</sup> Floor, Telus Plaza North Tower 10025 Jasper Avenue Edmonton, AB T5J 1S6
British Columbia <a href="http://www.pnp.gov.bc.ca">www.pnp.gov.bc.ca</a>	Michael Chew Director Strategic Occupations Unit Tel: 604 775-2215 Fax: 604 660-4092 Email: <a href="mailto:Michael.Chew@gov.bc.ca">Michael.Chew@gov.bc.ca</a>
Manitoba <a href="http://www2.immigratemanitoba.com/browse/index.html">www2.immigratemanitoba.com/browse/index.html</a>	Larry DeBlaere Tel: 204 945-4214 Fax: 204 948-2256 Email: <a href="mailto:larry.deblaere@gov.mb.ca">larry.deblaere@gov.mb.ca</a>  Immigration and Multiculturalism Division Manitoba Provincial Nominee Program 7 <sup>th</sup> Floor, 213 Notre Dame Avenue Winnipeg, MB R3B 1N3
New Brunswick <a href="http://www.gnb.ca/immigration/index-e.asp">www.gnb.ca/immigration/index-e.asp</a>	Beverly Woznow Tel: 506 453-8625 Fax: 506 444-6729 Email: <a href="mailto:beverly.woznov@gnb.ca">beverly.woznov@gnb.ca</a>  New Brunswick Provincial Nominee Program P.O. Box 6000 Fredericton, NB E3B 5H1
Newfoundland and Labrador <a href="http://www.nlppn.ca/">www.nlppn.ca/</a>	Debbie Sheppard Tel: 709 729-2540 Fax: 709 729-7381 Email: <a href="mailto:dsheppard@gov.nl.ca">dsheppard@gov.nl.ca</a>

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	Office of Immigration and Multiculturalism Department of Human Resources, Labour and Employment Provincial Nominee Program Viking Building 136 Crosbie Road, P.O. Box 8700 St. John's, NL A1B 4J6
Northwest Territories <a href="http://www.nominee.ece.gov.nt.ca">www.nominee.ece.gov.nt.ca</a>	Benjamin Scott Tel: 867 873-7948 Fax: 867 873-0200 Email: <a href="mailto:benjamin_scott@gov.nt.ca">benjamin_scott@gov.nt.ca</a>
Nova Scotia <a href="http://www.novascotiaimmigration.com/nova-scotia-nominee-program">www.novascotiaimmigration.com/nova-scotia-nominee-program</a>	Michael Johnson Tel: 902 424-8686 Fax: 902 424-7936 Email: <a href="mailto:johnsomi@gov.ns.ca">johnsomi@gov.ns.ca</a>  Nova Scotia Office of Immigration 1741 Brunswick Street, Unit 110A P.O. Box 1535 Halifax, NS B3J 2Y3
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Administrative Review Council

**Decision Making:  
EVIDENCE, FACTS  
AND FINDINGS**

**Best-practice guide 3**

August 2007

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## Preface

Most administrative decisions that affect individuals and organisations are made by primary decision makers—front-line administrators in government agencies. Only a minority of these decisions are reviewed by internal review officers, ombudsmen, courts or tribunals. The quality of administrative justice experienced by the public depends largely on primary decision makers ‘getting it right’.

Central to good decision making is decision makers’ understanding of the legal and administrative framework in which decisions should be made. In turn, this depends on whether primary decision makers receive adequate training in relation to that framework. To help agencies develop suitable training programs, in 2004 the Administrative Review Council published *Legal Training for Primary Decision Makers: a curriculum guideline*.

Using the curriculum guideline as the foundation, the Council has now produced this series of best-practice guides. They are designed for use as a training resource and as a reference for primary decision makers in Commonwealth agencies. The legal framework in which state and territory and local government agencies operate is broadly similar, but the guides do draw attention to areas where there are important differences.

Guide 3—*Decision Making: evidence, facts and findings*—deals with the role of primary decision makers when receiving evidence, determining questions of fact and accounting for their findings. The other guides in the series cover the following areas:

- Guide 1—*Decision Making: lawfulness*—provides an overview of the legal requirements for lawful decision making, including requirements that have developed through the grounds for judicial review.
- Guide 2—*Decision Making: natural justice*—discusses the implications of natural justice (or procedural fairness) for decision makers and its connection with public service values and standards of conduct relating to conflict of interest.
- Guide 4—*Decision Making: reasons*—looks at the requirements of two important Commonwealth Acts that impose on many decision makers a duty to provide reasons for their decisions.
- Guide 5—*Decision Making: accountability*—outlines a range of administrative law accountability mechanisms that can be used to review primary decisions;

this includes judicial review, merits review, and investigations by the Ombudsman and other investigative bodies such as the Human Rights and Equal Opportunity Commission and the Privacy Commissioner.

The general principles discussed in the guides might be modified by the legislation that establishes particular agencies or gives agencies their decision-making powers. Agencies wishing to modify or customise the guides for the purpose of training their staff should apply to the Administrative Review Council for permission.

The information provided in the guides is of a general nature: it is not a substitute for legal advice.

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## Introduction

Administrative decisions are based on facts, and an important element of decision making is making findings about those facts. Many facts needed to support a decision are clear and uncontroversial, but in other cases it is necessary to obtain and evaluate information.

This guide deals with the legal requirements for information assessment and fact finding. Some errors in fact finding are legal errors—in the sense that they are grounds on which a court might set aside a decision. Although there are important exceptions, a breach of one or more of the following general requirements can amount to a legal error. A decision maker must do the following:

- determine all material questions of fact—those questions of fact that are necessary for a decision
- not base a decision on a fact without evidence for that fact
- ensure that every finding of fact is based on evidence that is relevant and logically supports the finding
- not base a decision on a finding that is manifestly unreasonable
- observe natural justice
- comply with any statutory duty to give a written statement of reasons for the decision.

Not all errors in fact finding are legal errors. For example, it is not necessarily a legal error to make a mistake when evaluating inconsistencies in the evidence or when drawing factual inferences from other facts.

A court will review a decision only on the ground of legal error. It will not set a decision aside simply because it prefers a different decision or factual finding. The Ombudsman, internal review officers, and some appeals tribunals and investigatory bodies can examine errors in fact finding as well as legal errors. For example, they can consider whether a decision is based on incorrect information or attaches too much or too little weight to particular evidence.

## Facts needed to make a decision

A statutory power to make a decision usually depends on the existence of certain 'material facts'. For example, the material facts in a statutory power to grant a seniors concession to an applicant who is an Australian resident aged over 60 years and not in paid employment are the age, resident status and employment status of the applicant. The facts are material in the sense that the existence or non-existence of each one can affect the decision.

It is necessary to analyse legislation in order to determine what facts are material to the decision that is to be made. The legislation itself often sets out factual matters that must be considered—such as age, income and employment status. Otherwise, the material facts are implied by considering the scope and purpose of the legislation. Agency guidelines and manuals usually say what the agency takes to be the material facts for each type of decision.

As well as material facts, there are 'relevant facts'—facts affecting the assessment of the probability that a material fact exists. Relevant facts are identified by breaking down a material fact into sub-questions. For example, legislation might require a decision maker to determine whether a claimant has incurred a loss as a result of their own carelessness. To make a finding about that material fact, the decision maker needs to make findings about relevant facts such as the nature and circumstances of the event that caused the loss and the conduct of the claimant and other people involved. The factual findings should form a chain of reasoning that leads logically from relevant facts through material facts to the decision.

Once all material and relevant facts have been identified, the decision maker can distinguish between 'known facts' (facts that have already been established) and 'facts in issue' (facts about which it is necessary to make a finding on the basis of the evidence). Known facts are factual information that is accepted by the decision maker and by the person or people who will be directly affected by the decision. This might include, for example, personal particulars provided by an applicant on an application form that are accepted as correct or on which the applicant is given the benefit of the doubt. A fact in issue is one about which there is disagreement or insufficient evidence to satisfy the decision maker that the fact exists.

## Drawing inferences

Some facts can be logically inferred, or deduced, from other facts on the basis of strong probability, without the need for direct evidence. If, for example, the known facts are that a person worked in Ireland in 2005 and in Australia in 2006, it could

be inferred that the person travelled to Australia at some time between those dates. Many gaps in direct evidence are filled by inferences.

An inference that might be adverse to a person who will be affected by a decision should first be put to that person, so that they have a chance to respond. If, for example, a decision maker infers from the evidence that a person caused loss or injury to another deliberately rather than accidentally, they should notify the person that they propose to draw the inference and give the person an opportunity to refute it. They can do this by asking them direct questions about their intent when they acted.

## Evidence

Evidence is not necessarily proof. It is information, documents and other material that can be used to demonstrate the existence of a fact or the truth of something. It can take many forms—information provided in an application form or email, a fingerprint, information provided orally by a person, and so on. It can also be the decision maker's own observations—for example, of a site, a demonstration, or someone's demeanour when making a statement or answering questions. Evidence is amenable to testing and evaluation and can be accepted or rejected when it comes to making findings.

Findings in relation to the facts in issue must be based on evidence that is relevant and logically capable of supporting the findings. They must not be based on guesswork, preconceptions, suspicion or questionable assumptions. This does not preclude a decision maker from taking account of 'notorious facts', which are part of ordinary experience or common knowledge—for example, that each person's handwriting is unique.

Evidence can be provided orally or in documentary form and includes electronic communications and data. When evidence is provided orally—as during an interview or telephone call—the decision maker should make a file note or written record of the interview at the time or soon afterwards, while the memory is fresh. The particulars recorded should be the name, position title and address of the person spoken to, the date, time and place of the conversation, and the main pieces of information provided.

For record-keeping purposes, it is a good idea to ask that the information provided be confirmed in writing or supported by documents. For example, if a person produces an original document as evidence, the decision maker should take a photocopy of it for their file and make a note that it is a true copy of the original. Evidence in the form of emails and electronic documents should be printed and kept on file.

Information provided by an applicant is evidence and may be accepted as establishing facts that are likely to be true or that are not material. In the interest of efficiency, agencies generally try to narrow the facts in issue and to limit their requirements for further evidence.

When it comes to what kind of evidence is regarded as sufficient to prove certain facts, agencies' practice varies. For example, one agency might accept a recent pay slip as proof of a person's income, whereas another might require additional evidence, such as an employer's group certificate or a notice of tax assessment. Requirements can also vary depending on the consequences of the decision, the risk of deception, and the difficulty of obtaining better evidence.

For most administrative purposes, a person may give evidence in the form of a statutory declaration, which is a solemn statement a person makes and declares to be true before a witness authorised under the *Statutory Declarations Act 1959* (Cth) and the Statutory Declaration Regulations 1993 or similar state or territory legislation. A person who wilfully makes a false statement in a statutory declaration commits an offence that, under the Commonwealth legislation, is punishable by imprisonment. Some legislation requires that particular evidence be provided in this form.

## Obtaining evidence

### Responsibility for providing information

Some statutes oblige applicants to provide the information relevant to the making of a decision. For example, a statute might require an applicant to lodge an application in 'the prescribed form', meaning a form of application prescribed in the associated regulations. The prescribed form usually details the information the applicant must provide.

Unless the statute creates a specific duty, an applicant is not legally obliged to prove a fact or to provide information. Of course, if the applicant wants a favourable decision it is in their interest to provide the required information. Failure to provide it means the decision maker might be unable to make the findings of material fact that will support a favourable decision. Since the applicant is under a practical necessity, rather than a legal obligation, to provide information, it is unhelpful to refer to this as an 'onus (or burden) of proof'.

## Making inquiries

Administrative decision makers are generally entitled to investigate the facts before making their decision. They can, for example, take statements from witnesses, ask questions and obtain documents, although the extent to which they do this depends on the type of decision to be made. In some areas of administration decision makers decide on the basis of what is presented to them; in others they seek out information and, in doing so, might be assisted by other officers.

If administrators are expected to have an investigative role, they might be given coercive statutory powers—such as the power to enter and inspect premises, to take away records, and to require a person to answer questions and provide documents.

Unless legislation or court decisions provide otherwise, there is no general legal duty to conduct inquiries into a matter raised by an applicant or another party to the decision. Normally, it is up to the applicant to establish their case, which includes providing evidence in support.

If a decision maker is unwilling to investigate a fact it is useful to tell an unrepresented person what kind of evidence they could provide to substantiate their case. For example, they might ask the person to provide a medical report to confirm the reason for an absence or a receipt to confirm their ownership of specific goods.

In four cases the law recognises a limited duty to make inquiries:

- A decision maker should obtain evidence that is centrally relevant to their decision and readily available to them. For example, if a phone call or letter will resolve a question of fact about whether a person kept an appointment, failure to make the inquiry could be considered a ‘manifestly unreasonable’ failure that amounts to a legal error.
- A decision maker should investigate a fact if their power depends on the existence or non-existence of the fact. For example, if the decision maker has a statutory power to cancel a permit granted after a certain date they might need to investigate a party’s claim that the permit was granted before that date.
- If the applicant is in some way disadvantaged in presenting their case—as a result of, say, language difficulties, youth or disability—there may be a duty to provide extra assistance when obtaining evidence.
- Legislation that empowers the decision maker to act on ‘reasonable suspicion’ might create an ‘implied’ duty of inquiry. For example, if the decision maker exercises a statutory power to detain or quarantine a person on reasonable

suspicion that they have a communicable disease there is an implied duty to make inquiries into any matter that appears to contradict the facts supporting that suspicion.

## **Assessing the evidence**

An administrative decision maker is not bound by the rules of evidence that regulate the admission and evaluation of evidence by courts. Administrative decision making is subject to a different standard: findings of fact must be based on logically probative evidence—material that tends logically to prove the existence or non-existence of a fact. For example, rumour or speculation is not logically probative evidence because it does not tend rationally to prove what it asserts.

An administrative decision maker can receive most kinds of evidence, even if that evidence would not be admissible in a court. Some of the rules of evidence prevent courts receiving certain types of evidence on the ground that the evidence is inherently unreliable, that it would be unfair to admit the evidence, or that the evidence should be excluded for policy reasons because it was unlawfully or improperly obtained. Decision makers are not bound by those rules, but they do provide useful guidance when evaluating evidence. The considerations of fairness and reliability on which the rules are based are also relevant in administrative fact finding.

## **Hearsay and opinion evidence**

One type of evidence that can be received is hearsay evidence—a report by one person of what another person has said. For example, if an applicant's neighbour says the applicant told her he was working, this is hearsay evidence that the applicant was working. In evaluating hearsay evidence, the decision maker should take into account that such evidence is generally regarded as less reliable than evidence given by someone who has first-hand knowledge of the facts alleged.

Another example of where the rules of evidence can provide guidance is in the evaluation of opinion evidence. In a court a non-expert witness is not permitted to give evidence of their opinion on expert matters. As an administrator, the decision maker is not precluded from considering a person's non-expert opinion about, say, the value of their land, but the decision maker might decide to accord that opinion less weight than the expert opinion of a qualified valuer.

## **Natural justice and fact finding**

Administrators are not bound by the rules of evidence, but in many cases they are bound to observe the requirements of natural justice, or 'procedural fairness'. Most decisions that directly affect the interests of individuals and corporations are subject to natural justice, although the requirements can be modified by statute.

Natural justice requires that a person whose interests might be adversely affected by a decision be notified in advance that a decision is to be made and be given an opportunity to respond. In particular, the person must be given a chance to rebut any evidence or information (including factual information) that is adverse to their case or prejudicial to them personally. It makes no difference whether another party provided the evidence or information or it was obtained as a result of the decision maker's own inquiries.

Natural justice does not require that a person be kept informed while inquiries are continuing if doing so would undermine the decision maker's access to further evidence. Disclosure can be deferred until the inquiries are complete. The affected person must, however, be given adequate time to comment on the evidence obtained before findings of fact are made.

When putting adverse evidence to an affected person or witness, it might be necessary for the decision maker to probe their response by asking further questions. The decision maker should take care to avoid doing this in a way that gives the appearance of prejudgment or bias—for example, by aggressive questioning, expressions of impatience or gestures of disbelief. It is generally preferable to use questions that begin with words such as 'why', 'when', 'how' and 'did you', rather than questions in the form of a proposition or statement. For example, 'Did you sign this document?' is preferable to 'You signed this document, didn't you?'

## **A conflict in evidence**

Evidence should be analysed closely and evaluated to determine whether there is any conflict in relation to a material fact. Evidence is not all of equal weight. Assessment of the weight of evidence involves the application of logic, commonsense and experience.

## **The standard of proof**

Whether evidence is sufficient to prove a fact must be determined in accordance with a standard. Courts apply two standards of proof—the criminal standard and

the civil standard. In criminal proceedings before a court the offence charged must be proved 'beyond reasonable doubt'. In civil proceedings a fact must be proved 'on the balance of probabilities'; a fact is proved to that standard if the court is satisfied it is more likely than not that the fact is true.

Generally, it is the civil standard that applies in administrative fact finding. There is, however, an important qualification: in court proceedings there are usually two parties who can put forward conflicting evidence, and the court must decide which facts are more likely than not to be true. In administrative decision making the decision maker is responsible for determining all material questions of fact and basing each finding of fact on logically probative evidence. The question to be decided is whether, on the basis of the logically probative evidence, the decision maker is reasonably satisfied that a particular fact is more likely than not to be true.

If a fact in issue involves serious wrongdoing, is inherently unlikely or has grave consequences, better evidence might be required to establish the fact. For example, it would be unsound to make a finding based solely on uncorroborated hearsay evidence that a person forged a document.

A few statutes stipulate special standards that cut across the normal categories. An example is military compensation legislation, which provides that a claim for an injury or disease related to a member's service must be accepted if a reasonable hypothesis connecting the injury or disease to the service exists and cannot be excluded beyond reasonable doubt.

## **Evenly balanced evidence**

In some cases the evidence may be too evenly balanced to support a definite finding of fact. In court proceedings this situation is resolved by rules relating to the onus of proof, which determine who must prove a fact. One of the parties—usually the applicant—has an obligation to prove the material facts on which their case is based. That party bears the risk that the evidence could be insufficient. For example, if *A* sues *B* for a debt, *A* must prove that the sum was advanced to *B* as a loan. If *B* denies there was a loan and *A* cannot prove it, *A* loses the case.

As a general rule, in administrative proceedings nobody bears an onus of proof in that sense. If the evidence is inconclusive, the legislation should be analysed to see what question must be decided. For example, if the question is whether the applicant meets the statutory requirements for receiving a particular benefit, the benefit can be granted only if the evidence allows the decision maker to be reasonably satisfied that the applicant qualifies. If the decision maker is not so satisfied they must refuse the application.

Although there is no general onus of proof, some statutes impose on a person a duty to prove a specific fact. For example, the *Freedom of Information Act 1982* (Cth) provides that a Minister or an agency that has refused a request for access to a document generally has the onus of establishing that the refusal was justified in proceedings for review of the decision by the Administrative Appeals Tribunal.

An onus of proof may also be inferred from the nature of the power being exercised. If a breach of discipline is alleged, for example, the onus of proving the breach rests with the person making the allegation.

## **Expert evidence**

In some areas of public administration it is common for affected parties to submit expert evidence—such as a property valuation or a report from a medical consultant—in support of their case. A decision maker is not bound to accept this evidence, even if there is no other expert evidence before them.

Expert evidence usually consists of a factual component and opinion evidence. The factual component can be evaluated by examining the adequacy of the expert's research and inquiry and the reasonableness of the inferences and conclusions drawn. The opinion component can be evaluated by, for example, considering the factual basis for the opinion, the expert's qualifications and area of expertise, and whether the expert seems impartial and objective.

For example, if medical experts disagree about the diagnosis of a person's illness, the decision maker might prefer the opinion evidence of the expert who, in the decision maker's view, conducted more thorough tests and examinations, was better informed about the patient's medical history, or was better qualified in that medical speciality. Provided the decision maker does not rely on particular information without first disclosing it to the affected person, the decision maker may evaluate the evidence in the light of their own professional knowledge.

Although a decision maker may evaluate expert evidence, they should be wary of relying on their own non-expert opinion in a matter that requires expert judgment. For example, if a medical practitioner gives a diagnosis of an applicant's illness on the basis of tests the practitioner conducted, it would be unsound for a decision maker to prefer a diagnosis they made on the basis of observing the applicant.

## **Honesty and truth**

When there are conflicting versions of a factual matter it does not necessarily follow that someone is lying: it is possible for people to perceive and remember

events differently. A finding that a person is untruthful or not credible is potentially damaging to them and should be avoided when possible. It is generally better to focus on where the truth lies, rather than on who is to be believed.

A decision maker is entitled to take account of a person's demeanour when they make a statement or answer questions, but there is no sure way of reading non-verbal cues such as facial expression, body language and tone of voice. For example, a person who avoids eye contact is not necessarily lying: the behaviour could stem from a number of different causes—such as a physical impairment or a cultural belief that it is disrespectful to return someone's gaze. Another potentially misleading cue can arise when a person is hesitant or appears uncomfortable when making a statement or answering questions: the nervousness might be due to a factor other than dishonesty.

If a person has lied about one thing it does not necessarily follow that everything they say should be disbelieved. A decision maker must consider why the person lied and whether the same motive might cause them to lie about something else. For example, a person might lie about certain things in order to avoid a loss of face but be truthful about other things that do not arouse the same feelings.

A decision maker should take care when asking apparently irrelevant questions simply to test a person's reliability as a witness. For example, a person who claims to have witnessed an event or conversation might be asked to describe the weather at the time or the room in which the conversation took place. Their inability to answer these questions correctly might reveal little about the reliability of their testimony in relation to the relevant matters.

A better way of evaluating a witness's statement is to examine its consistency with other evidence. A statement is more likely to be true if it accords with known facts, the documentary evidence, or other evidence from a source independent of the witness. The decision maker should also note whether the witness's statement is internally consistent and whether it accords with what the witness has said on other occasions.

The best way of probing inconsistencies is to ask questions. If a decision maker has evidence that contradicts the witness they should put the substance of that evidence to the witness—or, if that is not possible, to the affected person who is relying on the witness's statement—and offer them an opportunity to explain.

If a witness varies their account of the facts in response to questions, the decision maker needs to assess the reasons for the change. Inability to maintain a coherent and consistent account might suggest that the witness is prevaricating. On the other

hand, it might be concluded that the witness has an honest but flawed memory of the events.

If inconsistencies emerge this does not necessarily mean that the witness's statement is false. There could be another explanation. If the inconsistencies are unexplained, it might be useful if the decision maker prepares a summary of the conflicting evidence and seeks the opinion of a more senior officer.

## **Making findings of fact**

Accounting for a decision, including the findings of fact, is an important part of a decision maker's function. Full and accurate records should be kept—including copies of documentary evidence, notes of inquiries, findings of fact, and reasoning. The decision maker might not need to give full details of fact finding when notifying the affected person of their decision, but good record keeping will help with providing a fuller justification if challenged.

Agency records can be scrutinised by the Ombudsman, other bodies such as the Privacy Commissioner and the Human Rights and Equal Opportunity Commission, agency review officers, courts, and appeals tribunals. People affected by a decision can gain access to the records under the Freedom of Information Act or upon appeal. The records should reveal fair, rational and professional administration.

The record of a decision must include the findings of material fact, the evidence on which the findings are based, and the evaluation of the evidence. Not every fact an affected person puts in issue will be a material question of fact on which a finding must be made. It might, however, be desirable to resolve a question of fact that an affected person considers to be of central importance. Otherwise, the person might feel aggrieved that their submissions appear to have been ignored.

The findings in relation to material facts are the crucial points on which a decision maker's decision turns. They should make sure that natural justice has been observed in connection with the findings and that the findings are well supported by evidence and reasoning. The legislation should be checked to ensure that all relevant matters, and no irrelevant ones, have been considered.

If there is a conflict in the evidence, the decision maker should explain why they prefer one account over another. It is unwise simply to say, 'I prefer the evidence of person X' or 'I disbelieved person Y'. Instead, they might say, for example, that the account provided by person X was supported by particular documentary evidence or that person Y had not been consistent in their account. The reasons for the

decision should refer specifically to the particular items of evidence on which the findings are based.

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to the Legislative Assembly  
of British Columbia

# **Code of Administrative Justice 2003**

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## INTRODUCTION

In order to enhance the meaningfulness, credibility and influence of the Ombudsman's scrutiny of the actions of authorities, it is important and fair that the Ombudsman provide standards by which his own determinations can be understood and, if need be, criticized. Making these standards explicit also encourages reasoned dialogue between the Ombudsman and the authorities.

First drafted in 1982 and subsequently amended in 1984, the Code of Administrative Justice was created by the first British Columbia Ombudsman Karl Friedmann. It provided a focus for the work of the Ombudsman for almost two decades. Shortly after I became Ombudsman, I decided that it would be useful to update and reissue the Code, which, along with our 2000 Annual Report (which explains how we interpret our discretion to investigate), would assist the public and authorities to understand how our Office interprets and applies the **Ombudsman Act** in our day-to-day operations. I would also like to take this opportunity to express my appreciation to all of the staff who have reviewed the 2003 Code and provided their comments and suggestions. In particular, I would like to thank my General Counsel, Greg Levine, who devoted many hours to this project and who was instrumental in ensuring its success.

Section 23 of the **Ombudsman Act** RSBC 1996, c.340 provides a guide to the matters upon which the Ombudsman must report if he finds problems in the administration of authorities.

The Code is based on s. 23(1) of the **Ombudsman Act** which states:

- 23 (1) *If, after completing an investigation, the Ombudsman is of the opinion that*
- (a) *a decision, recommendation, act or omission that was the subject matter of the investigation was*
- (i) *contrary to law,*

- (ii) *unjust, oppressive or improperly discriminatory,*
  - (iii) *made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory,*
  - (iv) *based wholly or partly on a mistake of law or fact or on irrelevant grounds or consideration,*
  - (v) *related to the application of arbitrary, unreasonable or unfair procedures, or*
  - (vi) *otherwise wrong,*
  - (b) *in doing or omitting an act or in making or acting on a decision or recommendation, an authority*
    - (i) *did so for an improper purpose,*
    - (ii) *failed to give adequate and appropriate reasons in relation to the nature of the matter, or*
    - (iii) *was negligent or acted improperly, or*
  - (c) *there was unreasonable delay in dealing with the subject matter of the investigation,*
- the Ombudsman must report that opinion and the reasons for it to the authority and may make the recommendation the Ombudsman considers appropriate.*

What follows are an outline and discussion of key terms of the Code and the principles which underlie them. The principles themselves constitute a Code which facilitates consideration and evaluation of the administrative actions of authorities under the Ombudsman's jurisdiction<sup>1</sup>.

Each principle is illustrated with hypothetical examples. Cases such as these may have occurred and may well occur but they are only used to illustrate principles. The examples should not be taken as factual or as referring to any given case, authority or person. Some of the examples might illustrate more than one principle.

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<sup>1</sup> Recommendations, decisions, acts and omissions are administrative actions or failures to act which implement or fail to implement government policies or apply or fail to apply statutes, regulations or by-laws to particular situations.

## 1. CONTRARY TO LAW (s.23(1)(a)(i))

It is significant that the first ground upon which the Ombudsman is to make findings is whether or not an action is contrary to law. Institutional adherence to the rule of law is critical in fair administration. While the courts may be the ultimate arbiters of the meaning of laws and whether or not they have been violated, the Ombudsman is empowered to offer his views as to whether or not actions are contrary to law.

An action or failure to act will be contrary to law if it is unauthorized, contrary to statutory directive or common law doctrine, or in breach of the order or direction of a court or tribunal.

### a. Unauthorized acts

**Principle:** Unauthorized acts are those beyond the jurisdiction or power of an authority. Such acts have no constitutional basis, legislative authorization, or common law justification.

**Example:** A public body charges a fee for a service. It does so pursuant to policy but the policy exceeds the power or jurisdiction of the public body. In the absence of any statutory authority or authorization by an enactment the public body has acted contrary to law.

### b. Failure to comply with statutory directives

**Principle:** An authority acts contrary to law when it fails to comply with statutory directives.

**Example:** An institution fails to inform a person of his right to appeal despite a clear requirement in an enactment to

provide that information. Such a failure is clearly contrary to law.

**c. Failure to follow common law doctrines**

**Principle:** An authority acts contrary to law if it is in breach of rules or duties of law established by courts.

**Example:** A ministry fails to fulfill the terms of a contract. This is breach of contract which is a failure to follow a common law doctrine, and hence it is contrary to law.

**d. Failure to comply with the order of a court or tribunal**

**Principle:** An authority acts contrary to law when it fails to comply with the order of a court or tribunal directed specifically to the authority, unless the authority has taken the legal steps required to challenge the order or to have its effect suspended.

**Example:** An agency interprets a court order to say that a payment must be made to the agency within one month when the order clearly states that it can be paid within a two-month period. While the agency has administrative reasons for its interpretation, it cannot alter a court order. Such an alteration without court authorization is clearly contrary to law.

## **2. UNJUST (s.23(1(a)(ii) and (iii))**

To be just is to be impartial, equitable and fair and to make well-founded decisions<sup>2</sup>. Being unjust has substantive as well as procedural aspects.

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<sup>2</sup> e.g. see *The New Shorter Oxford English Dictionary* [1993], at 1465

The merits of a decision may be questionable or the process in arriving at a decision or act may be flawed and both circumstances may result in injustice. Conversely, valid claims may be unjustly dismissed for procedural or technical reasons.

a. **Substantive Injustice**

Generally that which is substantive has a firm basis and is significant or important and, in law, things which are substantive relate to rights, duties and merits<sup>3</sup>.

**Principle:** Where an authority is exercising a discretionary power the merits of its decision may be reviewed on the basis that it has made the wrong choice of a governing law, right, rule, or policy.

**It is unjust for an otherwise valid claim to be defeated because of the claimant's failure to adhere to procedural requirements, if such failure does not prejudice any other person or authority.**

**Administrative decisions should be made on the basis of the real merits and justice of the case.** If the failure to comply with the procedural requirement does not interfere with the authority's ability to reach such a decision, the authority should have the discretion to waive the procedural defect.

**Sometimes it is appropriate in reviewing administrative decisions to assess the evidence in order to reach independent conclusions about the merits of a case.** Upon arriving at an understanding of the case which differs from that of the authority and the

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<sup>3</sup> e.g. see *The New Shorter Oxford Dictionary* [1993] at 3124

authority is unable to explain why this understanding is wrong, the authority will be seen to have erred in its choice of inference in determining the factual issues.

**Example:** A public agency holds an employee responsible for the agency's inappropriate or illegal actions. Such action works a substantive injustice on the employee.

**b. Formal injustice**

Formal injustice is related to defects in the reasoning process which produce a decision, as opposed to the correctness of the decision, although it may well have a bearing on correctness.

**Principle:** **Administrative justice requires consistency in the application of determinative principles and standards. When the law spells out a test to apply, or when an authority has adopted a reasonable policy as a guide to the exercise of its discretion, the test or policy ought to be applied so that similar cases are treated in a similar way. Otherwise the authority acts arbitrarily, and an arbitrary decision is an unjust decision.**

Although there may not be a stated policy guideline, a determining principle may be inferred from an authority's decisions in similar cases in the past. An authority's previous decisions cannot be binding on it as precedent. However, it ought to treat similar cases similarly, unless there is sound reason for treating them differently.

A decision which is not supported by sufficient evidence is arbitrary and therefore unjust.

A failure to consider relevant factors can lead to arbitrary decisions and is therefore unjust. Relevant factors may

include factual considerations, as well as governing principles. In addition, a decision-maker should address the correct issue in the case.

**Example:** A ministry applies a policy respecting refunds inconsistently and indeed arbitrarily thus denying some people benefits to which they are entitled while ensuring others receive the benefits. Such a practice constitutes a formal injustice.

### 3. OPPRESSIVE (s.23(1)(a)(ii) and (iii))

Oppressive behaviour is behaviour that is burdensome, unreasonably harsh, or cruel<sup>4</sup>. Oppression is the act of unjustly exercising power or the abuse of discretionary authority<sup>5</sup>.

Oppressive acts are judged by their effects, not the motives of those who do them. There are two instances which are particularly problematic in administrative matters. They are: setting unreasonable preconditions and bullying.

#### a. Unreasonable preconditions

**Principle:** A precondition is oppressive when it has the effect of unreasonably overburdening a person in the pursuit of his legal entitlement.

**Example:** An agency requires a person to incur a debt to another institution or government without explaining why, and how the debt will occur. This may be seen as oppressive.

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<sup>4</sup> e.g. see *The Dictionary of Canadian Law* [1995], at 843; *The New Shorter Oxford English Dictionary* [1993], v.2, at 2010

<sup>5</sup> e.g. see *Black's Law Dictionary* [1999] at 1121

**b. Abuse of Power**

**Principle:** An act or decision is oppressive when the authority uses its superior position to place the complainant at an unreasonable disadvantage.

**Example:** An agency requires people to attend at its office to apply for a service, refuses to deal with people by phone or mail and only deals with a small number of people who do manage to show up at its office. In so doing it inconveniences people, makes them vulnerable to its processes and abuses its position. Such behaviour is oppressive.

**4. IMPROPERLY DISCRIMINATORY  
(s.23(1)(a)(ii) and (iii))**

Discrimination in a general sense is the act of distinguishing or making distinctions<sup>6</sup>. Making distinctions is at times necessary to accomplish useful and meaningful public administration. Such general discrimination should be distinguished from discrimination in a legal sense which is inappropriate distinguishing of people based on personal characteristics and which imposes burdens or disadvantages on those so distinguished<sup>7</sup>.

**Principle:** Discrimination is improper if it is not reasonably required for the attainment of the overall purpose of the administrative or legislative scheme which it is intended to serve or if it is inconsistent with the

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<sup>6</sup> e.g. see The New Shorter Oxford English Dictionary [1993], at 689

<sup>7</sup> e.g. see *The Dictionary of Canadian Law* [1995], at 338

**distinguishing criteria established in an enactment or in a policy pursuant to an enactment.**

**Example:** An institution requires an illiterate person to communicate in writing when written communication is not required to achieve a particular purpose. This may be seen as improperly discriminatory.

## **5. MISTAKE OF LAW (s.23(1)(a)(iv))**

Mistake of law is typically seen as an error in regard to a general rule of law or an error relating to the legal consequence, relevance or significance of a set of facts or circumstances<sup>8</sup>. Making a mistake of law should be distinguished from acting contrary to law as it is an attempt to follow the law but is based on a mistake, i.e. "an error, misconception, misunderstanding or erroneous belief"<sup>9</sup>.

**Principle:** An authority makes a mistake of law when it misperceives or misinterprets a provision of an enactment or a common law rule.

**Example:** Although entitled by statute to require a party to its process to pay costs to another party, a tribunal misinterprets the allowable amounts of such costs and the basis for the awards. Such a misinterpretation is a mistake of law.

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<sup>8</sup> e.g. see *The Dictionary of Canadian Law* [1995] at 755

<sup>9</sup> *Black's Law Dictionary* [1999] at 1017

## 6. MISTAKE OF FACT (s.23(1)(a)(iv))

As noted above, a mistake is an error, misconception or erroneous belief. It can be seen also as a wrong or incorrect view and/or erroneous supposition<sup>10</sup>. Mistake of fact then is a misapprehension or misunderstanding of the facts, circumstances or evidentiary base of a case or situation. A mistake of fact is "a mistake about a fact that is material to a transaction or matter or issue" <sup>11</sup>.

**Principle:**     **A mistake of fact occurs when an authority is mistaken as to the existence of a certain fact or facts. A mistake of fact is a question of perception or knowledge on the part of the authority.**

A mistake of fact may occur when a wrong inference or conclusion of fact results from the authority's lack of knowledge of evidence which, if known, would have resulted in a different conclusion of fact.

**Example:**     An agency fails to determine that a person meets the criteria for entitlement to a benefit because it misinterprets the information provided about that person. This is a mistake of fact.

## 7. IRRELEVANT GROUNDS OR CONSIDERATION (s.23(1)(a)(iv))

Something is relevant when it applies to the matter in issue<sup>12</sup>. Conversely it is irrelevant when it is inapplicable to a matter or does not tend to

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<sup>10</sup> e.g. see *The New Shorter Oxford English Dictionary* [1993] at 1794,1795

<sup>11</sup> *Black's Law Dictionary* [1999] at 1017

<sup>12</sup> e.g. see *The Dictionary of Canadian Law* [1995] at 834

prove or disprove a matter<sup>13</sup>. Giving attention to extraneous matters and circumstances may be seen as acting on irrelevant considerations<sup>14</sup>.

**Principle:**     **An act of an authority is based on irrelevant grounds or considerations when it pays attention to and utilizes extraneous matters, circumstances, policies and rules.**

**Example:**     An agency denies a benefit based on an individual's work record but work record is not one of the criteria outlined in legislation and policy as a basis for such a decision. The agency has clearly based its decision on an irrelevant consideration.

## **8.    ARBITRARY PROCEDURE (s.23(1)(a)(v))**

To be arbitrary is to act upon one's will or for one's own pleasure or to act on mere opinion or preference<sup>15</sup>. An arbitrary decision is founded on prejudice or preference rather than on reason or fact <sup>16</sup>.

An arbitrary procedure would be a process or procedure which is without foundation in law or fairness and which reflects mere convenience or preference or prejudice of whoever established the process or procedure.

**Principle:**     **An authority invokes or utilizes an arbitrary procedure when it uses a procedure which fails to adhere to relevant principles of natural justice and**

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<sup>13</sup> e.g. see *Black's Law Dictionary* [1999] at 834

<sup>14</sup> e.g. see D. Jones and A. de Villars *Principles of Administrative Law* [1999] at 164 to 166

<sup>15</sup> e.g. see *The New Oxford Shorter English Dictionary* [1993] at 107

<sup>16</sup> e.g. see *Black's Law Dictionary* [1999] at 100

**which is designed for mere convenience of the authority or is based on preference or prejudice.**

**Example:** A ministry allows a service to continue in one area but denies the service to another area even though both areas seem to have similar concerns and situations. The ministry has no clear policy for allocating the service. Its procedure thus appears arbitrary.

## **9. UNREASONABLE PROCEDURE**

### **(s.23(1)(a)(v))**

To be reasonable is to exercise sound judgment, to be sensible or to act with reason<sup>17</sup>. Unreasonable activity by institutions will be those actions taken, decisions made or standards adopted which no sensible authority or institution would do, make or adopt<sup>18</sup>.

**Principle:** **An unreasonable procedure is one which fails to achieve the purpose for which it was established.** This test focuses on the rationale for a procedure and the results it produces or is likely to produce. The term may be seen as a synonym for an incompetent procedure on the basis that such a procedure is an absurdity and thus contrary to reason.

**Example:** An agency involves relatives of the applicant in its decision to grant assistance to an individual. While the agency is concerned that others who know the individual should know of her circumstances, its practice is not a

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<sup>17</sup> e.g. see The New Shorter Oxford English Dictionary [1993] at 2496

<sup>18</sup> e.g. see The Dictionary of Canadian Law [1995], at 1026

reasonable requirement as the assistance is solely for the individual. This could be seen as an unreasonable procedure.

## 10. UNFAIR PROCEDURE (s.23(1)(a)(v))

To be fair is to be impartial and just<sup>19</sup>. A fair hearing is one that is unbiased and allows a party to a dispute to adequately state his/her case<sup>20</sup>. In law, fairness is an outgrowth of the idea of natural justice which incorporates those key notions of unbiased decision-making and affording opportunities to be heard<sup>21</sup>. Increasingly, the law is acknowledging as well that reasons are a necessary element of fairness<sup>22</sup>.

Decision-making procedures are the primary focus of Ombudsman findings under this heading.

**Principle:** There are three main elements of procedural fairness:

**An adequate opportunity for the person affected to be heard before the decision is made.**

What constitutes an adequate opportunity will vary according to the circumstances. The degree of formality required will generally relate to the seriousness of the consequences of the decision for the individual concerned and his or her ability to use the available procedures. For example, an oral, in-person hearing will be demanded more for a prison disciplinary decision than it will for a

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<sup>19</sup> e.g. see Black's Law Dictionary [1999] at 614

<sup>20</sup> e.g. see The Dictionary of Canadian Law [1995] at 432

<sup>21</sup> e.g. see D. Jones and A. de Villars Principle of Administrative Law [1999], Ch.8

<sup>22</sup> e.g. see Baker v. Canada (Minister of Citizenship and Immigration) [1999] 2 SCR 817

decision whether to grant a parade permit. The existence of meaningful review will also be a factor tending to reduce the need for formality. The impact of the decision on the community may dictate a formal hearing. At a minimum, fairness will usually require adequate notice of the proposed action, as well as of the criteria to be applied, plus an opportunity to make representations. In some cases of emergency it may not be possible to give much or any notice of the proposed action. However, in such cases adequate review procedures should be available.

**An unbiased decision-maker**

Good faith and an open mind are qualities of the decision-maker which are essential to maintaining the integrity of public administration. The decision-maker should not have any interest in the outcome of the decision nor should s/he show any pre-judgment of the issue to be decided.

**Example:** An agency fails to notify an individual who may be affected by its decision about his property and surrounding property. Failure to notify denies the individual an opportunity to make representations about the decision.

## **11. OTHERWISE WRONG (s.23(1)(a)(vi))**

Something is wrong when it is unjust, improper, lacking in rectitude, or inequitable<sup>23</sup>. A wrong may be a breach of a duty or a violation of

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<sup>23</sup> e.g. see The New Oxford Shorter English Dictionary [1993] at 3732

another's rights<sup>24</sup>. In a broader sense wrong is injury<sup>25</sup>. "Otherwise" means in other respects or in a different way<sup>26</sup>.

**Principle:** This is a residual ground upon which findings may be made. It reflects a concern with harm, injury, incorrect behaviour and results which are not captured in the preceding grounds.

**Example:** An official states that a person should be grateful for anything she gets under a program which in fact entitles her to benefits. It is inappropriate to make such statements in the exercise of a public duty.

## 12. IMPROPER PURPOSE (s.23(1)(b)(i))

That which is improper may be "incorrect, unsuitable or irregular" <sup>27</sup>. Acting for an improper purpose implies acting in an unauthorized way or with an inappropriate intent or motive. Acting for an improper purpose is a serious abuse of discretion<sup>28</sup>.

**Principle:** An authority has acted for an improper purpose in the following situations:

- a) When an act or decision is motivated by favouritism or personal animosity towards the individual who is directly affected.

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<sup>24</sup> e.g. see *Black's Law Dictionary* [1999] at 1606

<sup>25</sup> e.g. see *The Dictionary of Canadian Law* [1995] at 1366

<sup>26</sup> *The Oxford Desk Dictionary* [1995] at 407

<sup>27</sup> *Black's Law Dictionary* [1999] at 761

<sup>28</sup> e.g. see D. Jones and A. de Villars, *Principles of Administrative Law*, Ch. 7

- b) **When there is an intention on the part of the authority to promote an objective other than that for which a power has been conferred on it.**

**Example:** An agency refuses to consider the bids of two suppliers because two other firms are favoured by the agency for a variety of reasons, some of them related to the actual work. Such favouritism is inappropriate and acting on it serves an improper purpose.

### **13. ADEQUATE AND APPROPRIATE REASONS (s.23(1)(b)(ii))**

Reasons are the basis for judgments. Formally, "reasons" provide the rationale behind and justification for decisions or actions. They provide a summary of analysis and are a means to facilitate understanding as well as a means to allow meaningful appeal of such decisions and actions.

Adequate reasons will be those which are sufficient to allow an understanding of the issues considered and the decisions reached.

Appropriate reasons will be logically linked to the questions with which the decision-maker dealt.

**Principle:** In assessing the adequacy and appropriateness of reasons, three major factors are important:

- a) **whether the person's concerns are addressed directly and completely;**
- b) **whether the reasons plainly state the rule upon which the decision proceeds and whether the rule as applied to the facts logically produces the decision reached; and**

- c) **whether the reasons are comprehensible to the recipient.**

**Example:** A public body denies a person a license but initially does not explain why the license is not forthcoming. There is an appeal process but the person has no basis on which to appeal in the absence of any reason. When he presses the public body for information he is told he is denied because "that is the way things work." There is in such a situation a lack of appropriate, adequate and comprehensible reasons.

## **14. NEGLIGENCE (s.23(1)(b)(iii))**

In general, one is negligent when one is "inattentive to what ought to be done" <sup>29</sup>. In law, one is negligent when one fails "to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance"<sup>30</sup>. Negligence is conduct which "falls below the standard required by society" and it is also a cause of action in law<sup>31</sup>.

**Principle:** **An authority is negligent if it fails to meet a standard of care it owes to the public. Negligence in administration is the failure to exercise proper care or attention in the performance of a public duty.**

In deciding whether a duty arises, it is important to ascertain whether the complainant was dependent on the authority. Such dependence is strongly indicated if the authority is in a superior position because of its exclusive access to information, its expertise, its ability to require the

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<sup>29</sup> The New Oxford Shorter English Dictionary [1993], at 1899

<sup>30</sup> Black's Law Dictionary [1999] at 1058

<sup>31</sup> A. Linden, *Canadian Tort Law* (1997) at 98

person to perform some act prejudicial to his interests, etc. It is reasonable to expect an authority to recognize a situation in which the person with whom it is dealing is dependent on it and to exercise sufficient care in the circumstances to avoid damaging or prejudicing the person's position. The exact duty that an authority owes a person or the public at large will depend on the circumstances of the case. Although an authority may not consider that it has a duty of care, or it may not have previously addressed the duty, such a duty may still be seen to exist.

**Example:** A public institution provides a service to the public which among other things includes educational benefits. The institution fails to inform the individuals who accept the benefits of all of the associated financial costs. Relying on the general statements of the institution, individuals apply for and utilize the benefits and then find themselves in debt. The institution may be seen to be negligent in its delivery of the service and the information provided to the public about the benefits of the service.

## 15. ACT IMPROPERLY (s.23(1)(b)(iii))

As noted above in s.12, that which is improper is "incorrect, unsuitable or irregular"<sup>32</sup>. Improper actions may be intentional or reckless.

**Principle:** An authority acts improperly when it intentionally or recklessly breaches a duty which it owes towards a person and thereby results in adverse consequences for him or her. The element of intention or recklessness distinguishes this ground from negligence.

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<sup>32</sup> Black's Law Dictionary [1999] at 761

Sometimes there will be a breach of an official rule or policy governing the situation. If so, this will be strong evidence that an authority which departs from the policy or rule knew or ought to have known that it was in breach of duty and, therefore, intended to cause the resulting harm.

**Example:** Informed of the impact of not providing information about a person's status to another institution, an official does not bother to provide the information in a timely manner. Ignoring the importance of this matter, the official puts off sending the information for two months beyond a stated deadline. The delay costs the person several thousand dollars. Given that the official knows the potential impact his behaviour is reckless.

## 16. UNREASONABLE DELAY (s.23(1)(c))

To delay is to postpone, put off or slow down<sup>33</sup>. Delay may be part of the exigencies of the modern state. While sometimes it maybe unavoidable, it should not be burdensome, infringe on rights or entitlements or unduly affect public services.

**Principle:** Delay is unreasonable whenever service to the public is postponed improperly, unnecessarily or for some irrelevant reason.

**Example:** A tribunal takes three years on a case for which it would normally take six weeks. The tribunal is unable to provide an explanation for the delay. Such delay is unreasonable on its face.

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<sup>33</sup> e.g. see Black's Law Dictionary [1999] at 437; The Dictionary of Canadian Law [1995] at 310





Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# FW 1

## Foreign Worker Manual

Canada

## FW 1 Temporary Foreign Worker Guidelines

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### Updates to chapter

#### Listing by date:

##### 2011-01-20

#### Section 5.17 – Work without a work permit R186(p) – Health care students

- Updated section with information on requirements for medical students destined for the province of Quebec and Saskatchewan.

#### Section 5.25 – Work permits requiring a Labour Market Opinion (LMO) R203

- Updated as per OB 225A – IT workers

#### Section 5.27 – Agreements – R204

- Updated 'Provincial Programs and Pilots related to TFW Annexes – R204(a) – T13' section.

#### Section 5.31 - Canadian Interests: Significant benefit—Intra-company transferees R205(a), C12

- Section A, General Requirements, 4<sup>th</sup> bullet – clarification that being 'employed' can mean via payroll or by contract.

#### Section 5.32 - Canadian interests: Significant benefit—Emergency repair personnel R205(a), C13

- Removed text "but only for the period in which the equipment is still under warranty"

#### Section 5.34 - Canadian interests: Reciprocal employment—International Experience Canada (IEC) – R205(b), C21

- Under "Conditions of work permit" added text to clarify that applications to CPC-Vegreville to change conditions may be submitted either online or by mail.
- Under "Application processing", removed the reference to the need for some foreign nationals to apply for a TRV

#### Section 8.2 – Strike Situations

- Added additional information and clarification of R200(3)(c)

#### Appendix D - General Agreement on Trade in Service (GATS)

- Second paragraph, added reference to Section 5.2 and 5.31.
- Clarified section "Conditions for Admission" pertains to Professionals

##### 2010-08-31

This is the sixth update to this chapter bringing all TFW instructions up to date.

#### Section 5.2 – Work without a work permit R186(a) – Business Visitor:

- Removed second paragraph under *After-Sales Service* as it is similar to 3<sup>rd</sup> paragraph.
- Moved second example of business visitor from under *Not Business Visitors (NAFTA Professionals and Other Service Providers)* section up to the end of *General Criteria* section.
- Inclusion of rental agreements under *After-Sales Service* and *Warranty or service agreements*.
- Removed some redundancy under *Employees of Foreign companies Contracting Canadian Companies*.

#### Section 5.8 – Work without a work permit R186(g) – Performing Artists:

- Clarification to section "*Time-Limited Engagement*" referred to in R186(g)(i).

## FW 1 Temporary Foreign Worker Guidelines

- Documentation and fees – “they are” was changed to “this is”.

### Section 5.9 – Work without a work permit R186(h) – Athletes and coaches:

- Revisions for better clarification.

### Section 5.11 – Work without a work permit R186(j) – Public speakers:

- 4<sup>th</sup> paragraph clarification regarding guest sport instructors coming to teach weekend seminars.

### Section 5.13 – Work without a work permit R186(i) – Clergy:

- Moved text pertaining to *Processing work permit applications from religious workers* to section 5.39.

### Section 5.17 – Work without a work permit R186(p) – Health care students:

- Clarification in last sentence of 1<sup>st</sup> paragraph.

### Section 5.25 – Work permits requiring a Labour Market Opinion (LMO) R203:

- Moved information on *LSP Language Requirements* and referenced to new section 8.3.
- Removed *National Confirmation Letters* section.
- Updates from OB 210 included in *Information Technology Workers* section.
- Updated text under *Cooperation between HRSDC and CIC and Canada Border Services Agency (CBSA)*.

### Section 5.26 – Work permits exempt from an LMO (Exemption codes):

- Clarification provided in first sentence by changing “have” to “require”.

### Section 5.27 – Agreements – R204:

- Clarification provided in section *Agreements not listed*.
- Under *Work Permit Instructions*, provided clarification for last sentence under *Extensions*
- 2. *Temporary Foreign Worker Nominated by a Province (TFW-PNP)* – updated last paragraph under ‘Notes’.
- Revised dates for provincial pilots under section *Provincial Programs and Pilots related to TFW annexes – R204(a) – T13*.

### Section 5.30 – Canadian interests: Significant benefit – entrepreneurs/self-employed candidates seeking to operate a business R205(a), C11.

- *Permanent resident applications* – clarification in middle of paragraph.
- *Temporary resident applications* – removed repetitive text in paragraph; clarification added to ‘Note’.
- Removed text under *Provincial Nominees* heading and added reference to section 5.27
- Added new heading for *Work Permit Duration*.

### Section 5.31 – Canadian interests: Significant benefit – intra-company transferees R205(a), C12

- Added ‘TIP’ under part ‘A’ *General requirements* regarding leniency for previous part-time work.
- Under ‘E’ *Other requirements*, added new second bullet regarding recent corporate acquisitions or mergers, and referenced to Appendix I for more information on ICTs.
- Simplified table under *Comparison of IRPA General Provisions and NAFTA/CCFTA*.

### Section 5.32 – Canadian interests: Significant benefit – Emergency repair personnel R205(a), C13:

- Included commercial equipment and clarified period in which the exemption is valid.

## FW 1 Temporary Foreign Worker Guidelines

Section 5.33 – Canadian interests: Reciprocal employment, C20 General guidelines R205(b):

- Added useful 'TIP'.

Section 5.34 – Canadian interests: reciprocal employment – International Experience Class (IEC) (formerly known as the International Youth Programs and International Exchange Programs) R205(b), C21:

- Entire section updated.

Section 5.37 – Work related to a research, educational or training program R205(c)(i), C30:

- Added reference to OP 12, section 5.22.
- Added clarification to second 'Note'.

Section 5.38 – Public policy, competitiveness and economy R205(c)(ii):

- Removed text under title "B - Spouses or common-law partners of foreign students C42" and referenced to OP 12, section 5.22.

Section 5.39 – Canadian interests: Charitable or religious work R205(d), C50:

- Moved text regarding difference between a charitable worker and a volunteer to second paragraph from under heading *Work at religious or charitable camps*.
- Inserted text removed from section 5.13 pertaining to *Processing work permit applications from religious workers*.

Section 5.40 – Self-support R206:

- Added new heading *Family members* with information regarding work permits for family members of refugee claimants.
- Added reference to section 9 under *Medical results* heading.

Section 5.41 – Applications in Canada R207:

- In second paragraph, added reference to section 10.1 for information on medicals pertaining to open work permits.

Section 5.42 – Humanitarian reasons R208:

- Added clarification in second paragraph under *Eligibility*.

Section 6 – LMO Validity and Duration of Employment as per the LMO

- Revised text under headings *Applications received past the LMO expiry date* and *Duration of employment as per the LMO* according to updated OB 152.

Section 8.1 – Individuals named in an immigration warrant:

- New section

Section 8.2 – Strike Situations

- New section as per OB 86.

Section 8.3 – Assessing Language Requirements:

- New section as per OB 171.

Section 9.1 – Occupations in which protection of the public health is essential R30(1)(b):

- Clarification added to second sentence and first bullet.

Section 9.2 – Six-month rule R30(1)(c):

## FW 1 Temporary Foreign Worker Guidelines

- Clarification added to first sentence.

### Section 9.4 – At the POE:

- Clarification added to second and third paragraphs.

### Section 11.2 – Categories of work with validity periods which may not be exceeded:

- For *Professionals*, added note clarifying that there is no limit to number of extensions that can be issued as per Appendix G, section 3.7.

### Section 13.8 – Rail Grinder Operators, rail welders or other specialized track maintenance workers:

- Added new item under *Guidelines for unique situations*.

### Appendix A – Artistic/Performing Arts:

- 2<sup>nd</sup> paragraph under *Circus performers*, starting with "Exception:" - "admitted" was changed to "authorized to enter Canada".
- Film and recording studio users - "admitted", was changed to "authorized to enter Canada".
- Guest artists coming to perform on Canadian television or radio - "admitted" was changed to "authorized to enter Canada".
- World Wrestling Entertainment (WWE) - "admitted" was changed to "authorized to enter Canada".

### Appendix D – General Agreement on Trade in Service (GATS):

- Replaced the words "natural persons" in second sentence with "individuals".

### Appendix E – International Experience Canada – C21:

- Major revisions and updates to tables.

### Appendix F – Military Personnel and family members:

- 2<sup>nd</sup> paragraph under "Military Training Assistance Programme (MTAP)" – "may be admitted" was changed to "authorized to enter Canada".

### Appendix G – North American Free Trade Agreement (NAFTA):

- Added same "TIP" under section 4.3 as was added to section 5.31 regarding leniency for previous part-time work for intra-company transferees.
- Added clarification in second paragraph under section 6.2 Investors, to be consistent with changes made in Round 5 for Traders.

### Appendix H – Sales:

- Direct sales organizations - "admitted" was replaced with "authorized to enter Canada".

**2010-02-23**

This is the fifth of several updates to this chapter which will bring all TFW instructions together.

### Section 5.8 – Work without a work permit R186(g) – Performing artists – FRENCH VERSION ONLY:

- Changed "réalisateurs de film" to "producteurs de films" for consistency with Appendix A.

### Section 5.9 – Work without a work permit R186(h) – Athletes and coaches

## FW 1 Temporary Foreign Worker Guidelines

- Under *Professional and semi-professional coaches and athletes*, removed reference to outdated "North American Soccer League" and replaced with more current "Canadian Soccer League" and "Major League Soccer" leagues.
- Deleted *Professional and Semi-professional Referees* text and moved it to section 5.14 as it fits better under R186(m).

Section 5.10 – Work without a work permit R186(i) – News reporters, media crews:

- Removed bullets under headings "For North American media crews" and "For Non-North American media crews" pertaining to crew size and length of stay as per OB 133.

Section 5.14 – Work without a work permit R186(m) – Judges and Referees:

- Changed title of the section to *Judges, referees and similar officials*.
- Clarification and additional text regarding officials involved in "professional" events.

Section 5.15 – Work without a work permit R186(n) – Examiners and evaluators:

- Added the word "university" to add clarification.

Section 5.23 – Application for a work permit on entry R198:

- In first paragraph under the table, replaced the word "should" with the word "shall" to be consistent with IRPR 200(1). Removed the paragraph pertaining to BSO's option to refer cases to CPC-Vegreville if faced with resource and time challenges.

Section 5.25 – Work permits requiring a Labour Market Opinion (LMO) R203:

- Removed the Note regarding "National Confirmation Letter for Canada Research Chair Positions..." which was under the heading "Information Technology Workers".

Section 5.27 – Agreements (R204):

- In the table listing non-trade agreements (R204 – T11), added *Canada-U.S. Understanding of Arrangement, Telefilm*, and *U.S. Government Personnel* as these were already mentioned elsewhere in the manual as T11 exemption uses.

Section 5.31 – Canadian Interests: Significant benefit – Intra-company transferees R205(a)C12:

- (A) General/General requirements, fourth bullet – added info on maximums as a reminder when processing extensions.

Section 5.34 – Canadian interests: Reciprocal Employment – International Youth Programs R205(b) C21:

- Name of program changed to "International Experience Canada" (IEC). See also changes to tables in Appendix E.
- Section information updated.

Section 5.37 – Work related to a research, educational or training program R205(c)(i), C30:

- Added more info to point #7, to include holders of CERC positions as well as CRC.

Section 5.38 – Public policy, competitiveness and economy R205(c)(ii):

- Item 'B' – Eligibility – revised to include private institutions in first bullet;
- in FRENCH version only – in 'Note' above Eligibility section, removed the word 'universitaires';
- Item 'D' – Post-doctoral fellows and award recipients, C44 – added flexibility for applicants whose thesis defence may not be complete, however have still completed the requirements for a Ph.D.

Appendix A – Artistic/Performing Arts:

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- Sixth bullet – updated wording to be more accurate of the R186(i) policy.
- Under the heading *Film Co-Producers*, updated the links for Telefilm.

### Appendix C – Diplomats:

- Under section 5 – *Family members of foreign representatives in Canada* – added info on definition of 'family member' and Office of Protocol Circular Note 0643 regarding criteria that must be met by applicants for accreditation.
- *Household Domestic Worker Employment Agreement (HDWEA)* – circular 2494 replaces circular 579 – includes updates to 1.B) Live-In Caregiver Program; new section 13 *Method of Payroll Payment*; and information about cash payments no longer being accepted.

### Appendix E – International Youth Programs – C21.

- Name of program (and section) changed to "International Experience Canada". See also section 5.34 for text revision.
- Table updated; SWAP table updated; moved "chantiers jeunesse" countries under "multi-lateral exchange" heading; new program "Go International".

### Appendix G – North American Free Trade Agreement (NAFTA):

- Section 1.4 – What NAFTA does – clarification on last bullet for TRV required nationals.
- Section 3.4 – *What documentation must a professional present to support an application?* – Added clarification to 9th paragraph regarding the assessment of qualifications pertaining to the specific job.
- Section 5 – Traders – updated for clarity

### 2009-10-30

This is the fourth of several updates to this chapter which will bring all TFW instructions together.

### Section 5.8 – Work without a work permit R186(g) – Performing Artists

- Added "rodeo contestants" to the "Entry without a work permit" column; added "rodeo performers" to the "Work permit and LMO required" column; re-formatted a portion of the table for clarification.

### Section 5.10 – Work without a permit R186(i) – News reporters

- Included updates from OB 133 (Foreign Media Crews) in section "Media crews on tourism promotional tours"

### Section 5.24 – Application for a work permit after entry R199

- Added clarification to second bullet.

### Section 5.25 – Work Permits Requiring a Labour Market Opinion (LMO) R203

- Under "LSP Language Requirements", additional text was added to clarify limits when assessing level of ability for the job.
- Under the "Exclusions" heading, added a reference to LCP chapters.

### Section 5.30 – Canadian interests: Significant benefit – Entrepreneurs/self-employed candidates seeking to operate a business R205(a), C11

- Added fourth point under heading "Long-term self-employed applicants"
- Added more information regarding partial ownership under the heading "Sole or partial ownership"

## FW 1 Temporary Foreign Worker Guidelines

Section 5.31 – Canadian Interests: Significant benefit—intra-company transferees R205(a), C12

- A) General: Clarification added to fourth bullet under "General requirements"; added "Guidelines for assessing start-up companies"
- C) Qualifying relationship between the employer and temporary foreign worker – added additional information after last line of last paragraph
- E) Other requirements – added clarification to first bullet i.e. "outside Canada"

Section 5.38 - Public policy, competitiveness and economy R205(c)(ii) – (A) Spouses or common-law partners of skilled workers, C41

- Clarification was added to the fourth bullet i.e. "...or plan to physically reside, ...while working."

Section 6 - Determining the expiry date of work permits relative to dates on LMOs

- Changed title of section to "LMO Validity and Duration of Employment as per the LMO"
- Updates from OB 152 included.
- Added clarifications to the "Example of a case;" and removed the words "at least" to clarify that "...the work permit will be authorized for a period of 24 months..."
- Added tip at end of section on issuing work permits for longer duration periods

Appendix C – Diplomats

- Updated the lists under "Of the United Nations or any of its agencies", "International organizations in which Canada is a member" and "Other offices".

Appendix E – International Youth Programs – C21

- Updated the list to include additional programs under the new Canada-Poland Agreement.
- Added "Canadian UK Exchange (CANUKE) between ASET and CAFCE" under "Multi-lateral Exchange, International Co-operative Education"

### Listing by date:

**2009-09-29**

This is the third of several updates to this chapter which will bring all TFW instructions together.

General revisions throughout the chapter include:

- "CEC" was changed to "LMO exemption" or "exemption";
- "HRSDC Confirmation" was changed to "LMO" (Labour Market Opinion);
- "HRCC" was changed to "Service Canada";
- "POE officer" was changed to "BSO" (where appropriate);
- "Foreign Affairs" was changed to "DFAIT";
- "Emergency Preparedness Canada" was changed to "Public Safety Canada";
- "RHN" was changed to "HMB"; and
- minor changes were made in sections 5.31, 8, and 11.2 to reflect new FTAs (i.e. Canada-Peru) coming into existence in addition to the NAFTA and CCFTA.

Section 5.1 – Overview – definition of 'work' [R2]

- Wording was clarified to be consistent with R2 wording.
- 'Wages and commissions' – the first sentence was removed because 'work' was already defined above.

Section 5.9 – Work without a work permit R186(h) – Athletes and Coaches

- Clarification was added that the "Major Junior A" league is also considered amateur.

## FW 1 Temporary Foreign Worker Guidelines

### Section 5.17 – Work without a work permit R186(p) – Health care students

- Links were added to OP 11, Section 9 and OP 15 to the note at the end of the section.

### Section 5.20 – Work without a work permit R186(s) – Crew

- A heading and text was added for "Corporate Aircraft".

### Section 5.23 – Application for a WP on entry R198 – persons who must apply outside Canada

- Clarification was added to the second bullet regarding medicals – FNs, visa exempt or not, should apply at a visa office if they require a medical (see also section 9.4).

### Section 5.25 – Work permits requiring a Labour Market Opinion (LMO) R203

- Updated fifth paragraph and link regarding industry-specific programs with information about Sector Council support.

### Section 5.26 – Work permits exempt from an LMO (Exemption Codes)

- The table has been updated regarding international agreements and to support the new exemption codes replacing T10 as per OB 145.

### Section 5.27 – Agreements – R204

- Changes were made to reflect OB 145: provincial authority to select TFWs and other provincial pilots not in place. In addition, FTAs (NAFTA, CCFTA, GATS) were removed from the non-trade agreements table and a new table was created for FTAs, which will also support future FTAs coming into effect.

### Section 5.31 Canadian Interests: Significant benefit—ICTs R205(a), C12

- (A) – General Requirements - Clarification was added to second bullet; and
- (F) – International Agreements – "NAFTA/CCFTA" was changed to "FTA" to make it more generic because Chile is no longer the only FTA in place that is similar to the NAFTA. Updated the table to support the implementation of the Canada-Peru FTA.

### Section 6 - Determining the expiry date of work permits relative to dates on LMOs

- A note was added that HRSDC is no longer extending LMOs.

### Section 9.4 - At the POE

- Clarification was added regarding medicals – FNs, visa exempt or not, should apply at a visa office if they require a medical (see also section 5.23).

### Section 9.6 – In-Canada extension requests

- Removed first paragraph. If no medical is on record from when a POE officer issued a WP, CPC-V would NOT assume a medical was done, they would request the required medical.

### Section 10.2 – Who can be issued an open work permit?

- Fixed the link in the last two bullets (changed from section '5.39' to '5.38').

### Section 11.2 – Categories of work with validity periods which may not be exceeded

- Updated the table to support new FTAs coming into effect in addition to the NAFTA and CCFTA.
- Added 'Live-In Caregiver Program' to the table and inserted a reference to OP 14.
- Post-graduate employment – Added 'Can be used only once', changed maximum duration to three years and inserted a reference to OP 12.

### Section 13.7 – United States government personnel

## FW 1 Temporary Foreign Worker Guidelines

- Updated "USINS" to "U.S. Citizenship and Immigration Services (USCIS)" and "U.S. Customs" to "U.S. Customs and Border Protection (CBP)".

### Appendix B – Canada-Chile Free Trade Agreement

- Changed title to "International Free Trade Agreements".
- Revised the appendix and the implementation of the Canada-Peru FTA as per OB 124.

### Appendix C – Diplomats

- Updated the 'Canadian Employment Standards' table of wages and overtime pay as per DFAIT instructions and updated the References/links at the end of the appendix.
- Section 3 – Private servants of foreign representatives – removed the last 3 paragraphs and inserted references to OP 14 and IP 4.

### Appendix G – NAFTA

- Section 3.8 – Removed an incomplete note concerning the definition of "Profession".
- Section 4.3 – Clarified the second bullet point.

### 2009-08-28

This is the second of several updates to this chapter which will bring all TFW instructions together.

### Section 3.1 – Required forms

- Removed forms IMM 5581 and IMM 5582 from the list as they have been replaced by the e-application system.

### Section 5.10 – Work without a work permit R186(i) – News Reporters

- Added an exception for management and clerical personnel of Special Events that are six months or less in duration

### Section 5.13 - Work without a work permit R186(l)—Clergy

- Corrected section reference from 5.38 to 5.39 – Charitable or religious work

### Section 5.26 - Work permits exempt from LMOs (confirmation codes) - Table

- Revised text for T21, T22, T23, and T24 to allow for new FTAs

### Section 5.31 (D) - Canadian Interests: Significant benefit—intra-company transferees R205(a), C12 – Qualifying job positions – Specialized knowledge workers

- Added helpful 'tips'

### Section 5.34 - Canadian interests: Reciprocal employment—International youth exchange programs R205(b), C21

- Changed program name to "International Youth Programs"
- Revised by DFAIT

### Section 5.39 - Canadian interests: Charitable or religious work R205(d), C50

- Incorporated updates from OB 64
- Fixed CRA link to charitable organizations

### Section 13.2 – Camp Counsellors

- Incorporated updates from OB 64
- Fixed designated country link

## FW 1 Temporary Foreign Worker Guidelines

### Section 13.4 – Foreign camp owner or director

- Re-worded

### Appendix E – International student and young worker employment

- Changed title to "International Youth Programs"
- Revised by DFAIT

### Appendix G – NAFTA – section 3.7 – How long can a work permit be issued

- Incorporated updates from OB 85 (duration of work permit for professionals)

### 2009-07-13

This is the first of several updates to this chapter which will bring all TFW instructions together.

### Section 4.0 – Instruments and delegations

- Reference to IL3 for delegations

### Section 5.1 – Departmental Policy: Overview

- Amended definition for examples of activities not considered to be work

### Section 5.7 – Departmental Policy: Work without a permit R186 (f) – On-campus employment

- Reference to OP 12, 5.20

### Section 5.17 – Departmental Policy: Work without a permit R186 (p) – Health care students

- Clarification on students not included in this exemption

### Section 5.22 – Departmental Policy: Work without a permit R186 (u) – Implied status

- Added reference to OP11, 24

### Section 5.25 – Departmental Policy: Work permits requiring HRSDC confirmation R203

- Modifications to Low Skilled Pilot instructions. Updates from OB 113 incorporated.

### Section 5.37 – Departmental Policy: Work related to a research, educational or training program R205 (c) (i), C30

- Modified exclusions as it applies to foreign students
- Modified definition of foreign nationals in medical training who require work permit and labour market opinion

### Section 5.38 – Departmental Policy: Public policy, competitiveness and economy, R205 (c)(ii)

- Section C – Reference to OP 12, 5.24
- Section E – Reference to OP 12, 5.23

### Section 5.39 – Departmental Policy: Canadian interests: Charitable or religious work R205 (d), C50

- Further definition of when this exemption applies

### Section 13.2 – More guidelines for unique situations: Camp counsellors

- Further definition of when this exemption applies

### 2009-05-05

## FW 1 Temporary Foreign Worker Guidelines

Appendix E – International Student and Young Worker Employment: Alphabetical List by Country, Alphabetical List by Program, SWAP and WHP

- Clarifications were made to the Canada-Germany Youth Mobility Programs.

2008-06-11

Appendix E – International Student and Young Worker Employment, Alphabetical List by Country

- Replaced the 12-month validity period with 24 months for the SWAP and WHP programs with Australia.

Appendix E – International Student and Young Worker Employment, Alphabetical List by Program: SWAP

- Replaced the 12-month validity period with 24 months for the SWAP program with Australia
- Replaced the 12-month validity period with 6 months for the SWAP program with Italy.

Appendix E – International Student and Young Worker Employment, Alphabetical List by Program: WHP

- Replaced the 12-month validity period with 24 months for the WHP program with Australia.
- Replaced the 12-month validity period with 6 months for the WHP program with Italy.

Appendix J – Temporary Foreign Worker Units: Expanded Services

Added appendix with new information on TFWUs.

2008-04-21

Please refer to new Operational Guidance in section 5.25 of this Chapter.

2007-12-05

**Section 5.25 – Information Technology Workers**

- added new link to OM FW99-03 entitled Facilitated Processing of Employment Authorizations for Information Technology Workers.

**Section 5.34**

- Replaced faulty hyperlink;
- Changed acronym ACEE to PCEE;
- **Canadian Interests: Reciprocal Employment – International Youth Exchange Programs R205(b) C21**
- added “where applicable” to second paragraph to underscore that some agreements are being negotiated without numerical limits.

**Section 5.38 – Spouses or common-law partners of skilled workers, C41**

- added information on location of NOC skills levels;
- replaced faulty hyperlink;

## FW 1 Temporary Foreign Worker Guidelines

- renumbered and renamed Canadian interests: Public Policy, Competitiveness and Economy, R205(c)(ii). Subsequent sections renumbered accordingly.
- **Section 5.39 – Canadian interests: Charitable or religious work, R205(d)C50**
- **Section 5.40 – Self-support, R206**
- **Section 5.41 – Applicants in Canada, R207**
- **Section 5.42 – Humanitarian reasons, R208**

### **Appendix G — Section 4– NAFTA – Intra-Company Transferees**

- added “outside Canada” to 4<sup>th</sup> bullet to clarify context of continuous employment.

**2007-06-29**

#### **Section 5.2 – Work without a work permit R186(a) – Business visitor**

- added general criteria
- added information on after-sales service of equipment or machinery controlled by computers
- added guidelines on who is not a business visitor
- added guidelines on employees of companies contracted by Canadian companies

#### **Section 5.7 Work without a work permit R186(f) – On-campus employment**

- the need for officers to include a notation on the study permit is emphasized

#### **Section 5.9 Work without a work permit R186(h) – Athletes and Coaches – Spouses**

- changed “spouses” to “spouse” to clarify that only one spouse is eligible

#### **Section 5.11 Work without a work permit R186(j) – Public speakers**

- added information on commercial speakers

#### **Section 5.12 Work without a work permit R186(k) – Convention Organizers**

- clarified R186(k) does not apply to Canadian events

#### **Section 5.13 Work without a work permit R186(l) – Clergy**

- added list of documents that can help officers determine the genuineness of a job offer
- added section on processing work permit applications from clergy, ministers and priests

#### **Section 5.15 Work without a work permit R186(n)**

- replaced “scholars” with “students”

#### **Section 5.17 Work without a work permit R186(p) – Health care students**

- added instructions concerning foreign medical students destined to British Columbia, Ontario or Alberta

#### **Section 5.20 Work without a work permit R 186(s) – Crew**

- guidance added on ineligible foreign truckers

#### **Section 5.25 Work permits requiring an LMO R203**

- added details on contents of HRSDC website
- added a section on the Low Skill Pilot Project

## FW 1 Temporary Foreign Worker Guidelines

- under National Confirmation Letters, added a section on Information Technology Workers concerning acceptable degrees
- removed reference to National Confirmation for Canada Research Chairs, which has been replaced by the application of Labour Market Opinion (LMO) exemption C30 for all research chair positions
- added reference to Section 6 for information on determining work permit expiry dates relative to dates on LMOs

### Section 5.29 Canadian interests: Significant Benefit – General Guidelines R205(a) C10

- added information assessing significant social or cultural benefit to Canada

### Section 5.30 Canadian interests: Significant benefit – Entrepreneurs/Self-employed candidates seeking to operate a business R205(a) C11

- added Quebec CSQ cases to section on temporary resident applicants

### Section 5.31 Canadian Interests: Significant benefit – Intra-company transferees R205(a) C12 Restructured section and added information on:

- general requirements
- qualifying relationship between Canadian and foreign employer
- qualifying relationship between employer and temporary foreign worker
- qualifying job positions
- elimination of 25% residency rule
- one year work permit for multiple specific projects
- harmonization of NAFTA and general provisions (added work permit cap)

### Section 5.34 Canadian Interests: Reciprocal employment – International Youth Exchange Program R205(b) C21

- added weblink
- clarified DFAIT's role
- added information on repeat participation

### Section 5.35 Canadian Interests: Reciprocal employment – Academic exchanges R205(b) C22

- added information on visiting professors

### Section 5.37 Work related to a research, education or training program

- added research chairs at Canadian universities
- replaced the term "Program 1" with "Work related to graduation requirements"
- clarified requirements for foreign trained medical interns, externs and resident physicians
- added that provision applies
- added that work practicum for career colleges and language schools not more than 50% of total program of study
- Subsection A - work permits for spouses or common-law partners of skilled workers - added physical residency requirements
- Subsection B - work permits for spouses or common-law partners of foreign students - clarified that C42 and C43 applies only to students of Canadian universities
- Subsection C - post graduation employment - does not apply to graduates of distance learning programs - applies only to students of Canadian educational institutions located in Canada - clarified calculation of 90 day application period - added CIDA student requirements
- Subsection D - post-doctoral fellows and award recipients - added information on occupation coding
- Subsection E - off-campus employment - added information on work permit validity and work permit remarks

## FW 1 Temporary Foreign Worker Guidelines

Section 6 – New section on expiry dates of work permits relative to LMO dates

Section 9.4 – Added information on the need to apply abroad when medical is required

Section 11.2 – Categories of work with validity periods which may not be exceeded

Appendix E – International Student and Young Worker Employment

- updated table

Appendix G – NAFTA

- intra-company transferees - harmonized with general provisions

Appendix H – Sales

- added information on conventions

Created new Appendix I on mergers and acquisitions

### **2007-03-06**

Modifications were made to section 5.39 E of the chapter concerning "Off-Campus Employment", to reflect a change in policy indicating that the time spent by a foreign student in a co-op term can now be counted as part of the time spent on full-time studies when applying for an off-campus work permit.

### **2006-04-28**

Section 5.39E – The guidelines regarding off-campus employment pilot projects have been replaced by a new set of instructions for the national Off-Campus Work Permit Program for International Students.

### **2006-01-24**

Section 5.2 – The guidelines regarding personal employees of non-residents have been clarified to provide a clearer focus on whether the worker is 'predominantly outside Canada' as required for the work permit exemption.

Section 5.25 – Notification has been added that HRSDC has extended the national labour market opinion for Canada Research Chair positions to July 2007.

### **2005-07-28**

Section 5.2 – Guidelines regarding members of boards of directors entering Canada as business visitors have been added.

Section 5.8 – Slight modifications to the performing artist guidelines have been made, including the addition of guidelines regarding "time-limited engagement."

Section 5.9 – Clarification regarding professional and semi-professional athletes and coaches has been added.

Section 5.23 – Instructions regarding persons who may apply for a work permit at the POE have been amended to reflect the August 2004 regulatory change.

## FW 1 Temporary Foreign Worker Guidelines

Section 5.24 – Instructions regarding persons who may apply for a work permit in Canada have been amended to reflect the August 2004 regulatory change. In addition, guidelines have been added regarding existing work permit holders applying at the POE.

Section 5.25 – HRSDC national confirmation letter for exotic dancers was removed. Reference to HRSDC low-skilled program is included.

Section 5.27 – The Fulbright Program between Canada and the United States (U.S.) was added to the list of international agreements. Other agreements which have expired were removed from the list.

Section 5.31 – Clarification that an intra-company transferee does not have to be a current employee of the company transferring them was added. The transferee must have worked for the company for one year during the three-year period before the work permit application is made.

Section 5.38 – Further clarification regarding eligibility of institutions for C30 was added.

Section 5.39 – Various modifications were made to C43, post-graduation employment provisions, including an allowance for part-time and self-employment.

Section 5.41 – Further clarification regarding the interpretation of "unenforceable removal order" was added.

Section 8 – Under "Procedures," officers, when issuing a Visitor Record, are advised to refer to R186 or to the fact that a person is "authorized to work." Additional instructions have been included in a note regarding Temporary Resident Visa (TRV) issuance and coding.

Sections 9.5, and 10.1 – Any medical restriction should be noted on the work permit, but not the client's medical condition which determined the restriction.

Appendix A – Guidelines regarding the interpretation of "bar, restaurant, or similar establishment" have been added, along with guidelines regarding festivals and WWE camera operators.

Appendix C – The FAC circular notice regarding household domestic workers was replaced with Circular Note No. 0579. The major change is the removal of the requirement for these workers to be functional in one of Canada's official languages.

Appendix E – Various minor changes to the International Young Workers Exchange Programs have been made.

Appendix G – "Actuary" has been included under the profession of "Mathematician", and Plant Pathologist has been included under the profession of "Biologist".

### 2004-11-12

Additions have been made to sections 5.26 and 5.39 of the Temporary Foreign Worker Guidelines (FW 1) Manual. These new sections provide guidelines for issuing work permits to certain international students under pilot projects for off-campus work and extensions of post-graduation employment.

Specifically, the amendments are as follows:

Section 5.26 now includes off-campus employment in the list of "Exemption Codes."

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Section 5.39 now includes instructions in Section C for processing applications for one-year extensions of post-graduation work permits under pilot projects with certain provinces. A new section has been created at the end of 5.39 (Section E) to provide instructions on issuing work permits for off-campus work to international students under pilot projects with certain provinces.

### 2004-08-30

Amendments have been made to sections 5.27, 5.30, and 5.39 of the Temporary Foreign Workers Guidelines (FW 1) Manual. These changes are all in respect to provisions for the issuance of work permits to provincial nominee candidates and their spouses.

Specifically, they are:

Section 5.27 provides for the issuance of a work permit, without requiring an LMO from HRSDC, to any applicant who has been nominated for permanent residence by a province.

Section 5.30 now contains provisions for the issuance of work permits to foreign nationals being considered for provincial nomination on the basis of their intention to undertake business activity in the province.

Section 5.39 provides for the issuance of open temporary work permits to spouses of provincial nominees who hold valid work permits, irrespective of the skills category under which the nominees' occupation falls.

All staff who have responsibilities for the issuance of temporary work permits are urged to review these new sections. As well, in reading these sections, staff should keep in mind that all other relevant provisions of the FW manual with respect to the issuance of work permits continue to apply.

### 2003-09-10

A minor correction has been made to the FW manual, Appendix G: North American Free Trade Agreement, Annex A, University, College and Seminary Teachers.

**There is a \$150.00 processing fee for a work permit.**

### 2003-06-23

In Section 5.39, move Note under the title for C42.

### 2003-05-13

Major additions/changes introduced to the FW 1 manual recently published:

Section 5.2 Work without a permit (R186(a)) – Business visitor

- specifies document requirement for after-sales service (same as for NAFTA)
- addition of intra-company training and installation activities that meet business visitor requirements

Section 5.8 Work without a permit (R186(g)) – Performing artists

- "Employment Relationship" as used in 186(g)(ii) is defined

Section 5.11 Work without a permit (R186(j)) – Public speakers

- "Seminar" and "Commercial speaker" are defined

Section 5.25 Work permits requiring an LMO (R203)

- updated Web addresses given for national confirmation letters

## FW 1 Temporary Foreign Worker Guidelines

- cooperation between HRSDC and Citizenship and Immigration Canada (CIC). This section was added to encourage communication between the two departments and to give some examples of where it would be appropriate.

### Section 5.29 Canadian Interests: Significant benefit – General guidelines (R205(a)), C10

- text clarified to provide more flexibility on using C10 where there is economic benefit demonstrated

### Section 5.30 Canadian interests: Significant benefit – Entrepreneurs/ Self-employed candidates seeking to operate a business (R205(a)), C11

- temporary resident applicants—additional flexibility added to guidelines, and a reference to the importance of provincial endorsement in assessing cases
- sole or partial ownership of a business—additional flexibility given inability of HRSDC to provide formal LMOs. Additional questions provided to aid officers in considering these applications.

### Section 5.31 Canadian interests: Significant benefit – Intra-company transferees (R205(a)), C12

- paragraph on non-qualifying business relationships added
- eligibility criteria chart
- more detailed explanation of senior managers added
- extensive editing of the eligibility criteria for specialized knowledge workers for the sake of clarification; does not constitute a fundamental change

### Section 5.37 Work related to a research, educational or training program (R205(c)(1)), C30

- The program for "Scientists...invited by any Canadian institution...provided the Minister of State for Science and Technology has...issued letters of acceptance" was eliminated (formerly #3 on the list). This was not used and no approval structure was or is in place.

### Section 5.40 Canadian interests: Charitable or religious work (R205(d)), C50

- additional note: Paragraph defining the difference between a charitable worker (who needs a work permit) and a volunteer (who does not)

### Appendix A Artistic/Performing Arts

Paragraphs were added on guest artists coming to perform on Canadian television or radio, and the World Wrestling Entertainment (WWE).

Appendix G NAFTA - The actual text of the agreement was removed and a link to the text is provided.

## FW 1 Temporary Foreign Worker Guidelines

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### 1. What this chapter is about

This chapter explains the Regulations and CIC policy with respect to temporary foreign workers. It also provides guidelines that will assist officers in interpreting the Regulations and explain the programs that fit under these Regulations.

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### 2. Program objectives

To facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities.

To protect the health and safety of Canadians and to maintain the security of Canadian society.

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### 3. The Act and Regulations

Immigration objectives	A3(1)(g)(h)(i)
Application before entering Canada	A11(1)
Obligation answer truthfully	A16(1)
Obligation relevant evidence	A16(2)
Examination by officer	A18(1)
Obligation on entry	A20(1)(b)
Temporary resident	A22(1)
Dual intent	A22(2)
Right of temporary residents	A29(1)
Obligation temporary resident	A29(2)
Work and Study in Canada	A30(1)
Loss of temporary resident status	A47
Contravention of Act employing foreign national not authorized to work	A124(1)(c)
Contravention of Act due diligence must be exercised by employer	A124(2)
Definitions of "work" and "work permit"	R2
Medical examination required	R30
Passports and travel documents	R52
Issuance of temporary resident visa	R179
Conditions imposed on members of a crew	R184
Specific conditions	R185
No work permit required	R186
Business visitors	R187
Worker class	R194
Worker	R195
Work permit required	R196
Application before entry	R197
Application on entry	R198
Application after entry	R199
Issuance of work permits	R200
Application for renewal	R201
Temporary resident status	R202
Economic effect	R203
International agreements	R204
Canadian interests	R205

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No other means of support	R206
Applicants in Canada	R207
Humanitarian reasons	R208
Invalidity	R209

### 3.1. Required forms

The forms which may be required are shown in the following table:

Form Title	Number
Work permit	IMM 1442, 1102B
Application to Change Conditions or Extend my Stay or Remain in Canada (paper and e-Application)	IMM 1249E
Application for a work permit	IMM 1295B
NAFTA application for Trader/Investor Status (work permit)	IMM 5321B
Advanced notification of Performing Artists	IMM 0060B
Medical Report Form	IMM 1017E
Medical Surveillance Undertaking	IMM 0535B
Use of Representative/Release of Information	IMM 5476B
Verification Form (E-Application)	(formerly IMM 5581)
Student Acknowledgement and Consent Form (E-Application)	(formerly IMM 5582)

## 4. Instruments and delegations

Refer to the appropriate annexes in the delegation annexes in the designation and delegation instrument (IL3) listing the delegations.

## 5. Departmental policy

### 5.1. Overview

The Regulations specify that the **worker** class is a class of persons who may become **temporary residents**. A worker may be authorized to work without a work permit R186, or may be authorized to work by the issuance of a work permit pursuant to Part 11 of the Regulations.

#### Definition of "Work" [R2]

"Work" is defined in the Regulations as an activity for which wages are paid or commission is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

#### "Wages or commission"

This includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.

#### What is an activity that "competes directly"?

Officers should consider whether there is entry into the labour market. Questions to consider:

- Will they be doing an activity that a Canadian or permanent resident should really have an opportunity to do?
- Will they be engaging in a business activity that is competitive in the marketplace?

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If the answer to either of these questions is 'yes', the foreign national intends to engage in a competitive activity, which would be considered "work".

**Examples of "work" include, but are not limited to:**

- a foreign technician coming to repair a machine, or otherwise fulfil a contract, even when they will not be paid directly by the Canadian company for whom they are doing the work;
- self-employment, which could constitute a competitive economic activity such as opening a dry-cleaning shop or fast-food franchise. (A self-employed person may also be considered to be working if they receive a commission or payment for services);
- unpaid employment undertaken for the purpose of obtaining work experience, such as an internship or practicum normally done by a student.

**What kind of activities are *not* considered to be "work"?**

- An activity which does not really 'take away' from opportunities for Canadians or permanent residents to gain employment or experience in the workplace is not "work" for the purposes of the definition.

**Examples of activities for which a person would not normally be remunerated or which would not compete directly with Canadian citizens or Permanent Residents in the Canadian labour market and which would normally be part-time or incidental to the reason that the person is in Canada include, but are not limited to:**

- volunteer work for which a person would not normally be remunerated, such as sitting on the board of a charity or religious institution; being a 'big brother' or 'big sister' to a child; being on the telephone line at a rape crisis centre. (Normally this activity would be part time and incidental to the main reason that a person is in Canada);
- unremunerated help by a friend or family member during a visit, such as a mother assisting a daughter with childcare, or an uncle helping his nephew build his own cottage;
- long distance (by telephone or internet) work done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada;
- self-employment where the work to be done would have no real impact on the labour market, nor really provide an opportunity for Canadians. Examples include a U.S. farmer crossing the border to work on fields that he owns, or a miner coming to work on his own claim.

There may be other types of unpaid short-term work where the work is really incidental to the main reason that a person is visiting Canada and is not a competitive activity, even though non-monetary valuable consideration is received. For instance, if a tourist wishes to stay on a family farm and work part time just for room and board for a short period (i.e., 1-4 weeks), this person would not be considered a worker.

We recognize that there may be overlap in activities that we do not consider to be work and those activities which are defined as work not requiring a work permit in R186. However, the net effect (no work permit required) is the same.

### **Part 9, Division 3 – Work without a permit**

R186 and R187 describe the types of work which a foreign national is authorized to do without having to obtain a work permit.

### **Part 11, Division 2 – Application for work permit**

The general rule is that a foreign national must apply outside Canada for their work permit, however, R198 and R199 describe the situations where a work permit may be obtained at the POE or within Canada, respectively.

### **Part 11, Division 3 – Issuance of work permits**

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R200 outlines all of the criteria and provides authority for the issuance of a work permit. R203 to R209 provide the eligibility criteria.

### 5.2. Work without a work permit R186(a)—Business visitor

R187 defines the criteria for entry as a business visitor. This broad category facilitates the entry of persons to Canada who intend to engage in business or trade activities, and parallels the NAFTA business visitor criteria. (See Appendix G) R187(3) provides the general criteria that must be met, and R187(2) provides specific examples, which are meant to be illustrative. Included in this category are persons providing after-sales service. (See Appendix H)

#### General Criteria

- There must be no intent to enter the Canadian labour market, that is, no gainful employment in Canada.
- The activity of the foreign worker must be international in scope, that is, there is the presumption of an underlying cross-border commercial activity, e.g. after sales service;
- There is the presumption of a foreign employer:
  - The primary source of the worker's remuneration remains outside Canada
  - The principal place of the worker's employer is located outside Canada
  - The accrual of profits of the worker's employer is located outside Canada.

#### Example:

A U.S. based company provides marine maps and computer software to commercial and private mariners, including sports fishermen. The U.S. company has no subsidiaries or affiliates in Canada. The company wants to map the Lake of the Woods, most of which is in Canada, using sophisticated marine mapping devices. The end product will be marine maps and computer software that will assist mariners in navigating the Lake of the Woods. These products will be commercially available to anyone who wants to purchase them. In order to do this, the company needs to send two of their employees along with a boat load of this equipment to circumnavigate the Lake of the Woods, take depth and other readings, and return to the U.S. with their findings. Their findings will in turn be used to produce the marine maps and computer software. Since there is no Canadian employer contracting for their services, and since the U.S. company will be the direct beneficiary of the foreign worker's efforts, business visitor criteria are satisfied.

#### After-sales service

After-sales services include those provided by persons repairing and servicing, supervising installers, and setting up and testing commercial or industrial equipment (including computer software). "Setting up" does not include hands-on installation generally performed by construction or building trades (electricians, pipe fitters, etc.). R187 also applies to persons seeking entry to repair or service specialized equipment, purchased or leased outside Canada, provided the service is being performed as part of the original or extended sales agreement, lease/rental agreement, warranty, or service contract.

After-sales service also includes situations where the sales agreement or purchase order is for a software upgrade to operate previously sold equipment, a service person coming to Canada to install, configure, or give training on the upgraded software should receive consideration as a business visitor, as long as the after sales service activity is clearly articulated in the new sales agreement or purchase order. A sales agreement or purchase order for upgraded software is a new contract for a new product. The fact that the upgraded software will be used to operate older equipment that may no longer be under warranty or under a service agreement, is irrelevant.

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Service personnel coming to perform service work on equipment or machinery that is either out of warranty, or where no service contract exists, continue to require an LMO and a work permit.

As with NAFTA, **hands-on building and construction work is not covered by this provision.**

### **Warranty or service agreement**

Service contracts must have been negotiated as part of the original sales or lease/rental agreements or be an extension of the original agreement. Service contracts negotiated with third parties after the signing of the sales or lease/rental agreement are not covered by this exemption. If, however, the original sales agreement indicates that a third company has been or will be contracted to service the equipment, R187 applies. Where the work is not covered under a warranty, a work permit and an LMO is required.

### **Not Business Visitors (NAFTA Professionals and Other Service Providers)**

Where a Canadian employer has directly contracted for services from a foreign company, the employee of the foreign company performing the services for the Canadian company requires a work permit.

This situation arises most often in the context of NAFTA. The service provider is not to be considered a business visitor simply because they are not directly receiving remuneration from a Canadian source. Since there is a contract between the Canadian company and the foreign worker's employer there is a labour market entry. Since that foreign employer is receiving payment for the service that is being provided, it is deemed that the worker is receiving payment from a Canadian source. Consequently, the worker cannot receive consideration as a business visitor.

#### **Example:**

A Canadian airport undergoing expansion engages the services of an American architectural firm located in the U.S. The American architectural firm sends one or more of their architects to Canada to work on the project on site. Since the architects are working in Canada, and since their American employer is receiving payment for their services, the architects do not meet the business visitor criteria and cannot receive consideration as business visitors.

### **Documentation**

As was the case for persons providing service under NAFTA, all business visitors coming in to do after-sales service for work periods of longer than two days must be documented on a Visitor Record. This requirement serves both as a facilitation and a control measure. (See Appendix G, section 2.6.11.)

### **Supervisors**

This provision also covers persons who enter Canada to *supervise* the installation of specialized machinery purchased or leased outside Canada, or to supervise the dismantling of equipment or machinery purchased in Canada for relocation outside Canada. As a guide, one supervisor can normally be expected to supervise five to ten installers or other workers.

### **Trainers**

R187(2)(b) also covers persons entering Canada to provide familiarization or training services to prospective users or to maintenance staff of the establishment after installation of specialized equipment purchased or leased outside Canada has been completed. It also covers intra-company trainers and trainees.

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### **Intra-company training and installation activities**

When a person is coming to provide training or installation of equipment for a branch or subsidiary company, they are considered to be business visitors. The same prohibition against hands-on building and construction work as for after-sales service applies. The foreign national should maintain their position in their home branch and not be paid by the Canadian branch above expenses. This provision may also apply to a trainer or specialized installer under an after-sales contract by the foreign branch (with the same conditions applying), as long as the service is provided company-wide and not just for the Canadian office.

### **Board of Directors' meetings**

A person attending a meeting as a member of a board of directors may enter as a business visitor. Normally these people attend quarterly meetings. They are legally charged with the responsibility to govern an organization or corporation by, for example:

- selecting and appointing a chief executive officer;
- governing the organization by setting broad policies and objectives;
- accounting to shareholders for products, services and expenditures.

While a board member may be well remunerated for their advice and expertise, they are considered to be business visitors under R187. There is a great deal of international mobility in this activity, and there is no real direct entry into the Canadian labour market.

### **Employees of short term temporary residents**

Persons employed in a personal capacity *on a full-time basis* by short term temporary residents, for example as a domestic servant, personal assistant or nanny (caregiver), would generally meet the business visitor criteria in R187(3)(a) and (b) and may enter as such. If the visiting employer extends their stay in Canada such that their employee is no longer considered to be working predominantly outside Canada or their employee's primary source of remuneration can no longer be considered to be outside Canada, then that personal employee is no longer considered to be a business visitor and may be required to seek a work permit and an LMO to continue working. A stay of longer than 6 months would normally be found to exceed the threshold required by R187(3)(b).

### **Employees of Foreign Companies Contracting Canadian Companies**

There are situations where foreign companies contract Canadian companies to provide services for them in foreign jurisdictions. It is not uncommon, where distances are great, that the foreign company will send one or more of their employees to Canada to ensure that the Canadian company is doing the job that they are contracted to do in a manner that meets the approval of the foreign company. Sometimes, these foreign nationals may be in Canada for up to two years.

Where a foreign company sends an employee to Canada to control or inspect the quality of a product that they have contracted, the foreign employee should receive consideration as a business visitor as long as:

- That employee remains an employee of the foreign company;
- That employee remains on the payroll of the foreign company;
- The foreign company remains the beneficiary of the employee's efforts;
- The foreign company's principal place of business remains outside Canada.

Example:

A foreign infrastructure company is building a new university in the foreign country. The foreign company contracts a Canadian architectural firm to do the architectural work. The foreign

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company wants to send one or more of their engineers to Canada to ensure that the work of the Canadian architectural company is being done according to their standards and desires. The foreign employees may be in Canada for up to two years.

The fact that they will be in Canada for more than six months is irrelevant, since their principal place of business remains outside Canada.

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### 5.3. Work without a work permit R186(b)—Foreign representatives

R186(b) applies only to foreign representatives and to their personal servants who have been accredited by the Department of Foreign Affairs and International Trade (DFAIT). It applies only to the official functions of the foreign representative or servant. Also included in this category are diplomatic representatives to UN organizations such as the International Civil Aviation Organization (ICAO), and the UNHCR. (See Appendix C.)

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### 5.4. Work without a work permit R186(c)—Family members of foreign representatives

Family members of persons who have been accredited with diplomatic status may work without a permit if they are issued a "no objection letter" by the Protocol Department of DFAIT. Such persons may also seek a work permit in order to satisfy potential employers that they have the right to work. (See Appendix C.)

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### 5.5. Work without a work permit R186(d)—Military personnel

R186(d) applies to military and civilian personnel in possession of movement orders outlining that they are coming to Canada from countries designated under the terms of the *Visiting Forces Act*. For a list of such countries, refer to Appendix F. Military personnel should not be confused with "Military Attachés" who are diplomatic agents in diplomatic missions. The accreditation of military personnel is coordinated by the Department of National Defence.

Military personnel and civilian components coming to Canada under the terms of the *Visiting Forces Act* as staff or to attend any school or training unit are considered on active duty. They are exempt from work or study permits.

Military personnel designated under the VFA are also exempt from requirements for a passport under R52, from a temporary resident visa under R190, and from foreign national medical examinations under R30. These exemptions do not apply to civilian components or to family members. Civilian components and family members are, however, exempt from the temporary resident visa fee R296(b).

See Appendix F for procedures on processing military personnel and their family members.

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### 5.6. Work without a work permit R186(e)—Foreign government officers

Canada has concluded agreements with other nations that provide for periods of employment in each other's territory at the federal or provincial levels. Officers come to work for a department or agency of the Government of Canada or of a province. They do not work for a foreign mission or international organization and are not accredited by DFAIT.

Officers at the EX (executive) level of government should be in possession of a contract from the Public Service Commission (PSC) outlining the terms of the agreement, which may or may not be reciprocal. PSC involvement is not required for positions below the EX level, however, for assignments of longer than three months, a formal letter of agreement should be signed by the deputy head of the department, an authority in the officer's organization, and the officer coming to Canada.

On arrival at a POE they should be given temporary resident status for the duration of the contract. Requests for extension, though not normally required, should be facilitated.

**Family members:**

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Family members of exchange officers who qualify for admission under R186(e) who have non-reciprocal contracts require an LMO. However, spouses may qualify for an exemption under the Spouses of Skilled Workers Program R205(c)(ii), C41.

(See section 5.38)

Family members of exchange officers authorized to enter Canada under R186(e) who have a Public Service Commission contract which is reciprocal are exempted from requiring an LMO under R205(b), C20. Fee exemption applies. Open work permits may be issued.

### 5.7. Work without a work permit R186(f)—On-campus employment

See OP 12, Section 5.20

### 5.8. Work without a work permit R186(g)—Performing artists

The table below outlines which types of activities according to CIC/HRSDC meet the requirements of R186(g), and which types of activities will require an LMO and work permits.

Entry without a work permit	Work permit and LMO required
<ul style="list-style-type: none"> <li>Foreign-based musical and theatrical individuals and groups and their essential crew, working outside bars and restaurants;</li> <li>street performers (buskers), DJs working outside a bar, restaurant or similar establishment;</li> <li>a foreign or traveling circus;</li> <li>guest artists (not employed) within a Canadian performance group for a time-limited engagement;</li> <li>World Wrestling Entertainment (WWE) wrestlers (&amp; similar groups);</li> <li>persons performing at a private event, such as a wedding;</li> <li>air show performers;</li> <li>artists attending or working at a showcase.</li> <li>rodeo contestants, e.g. bronc-riders, steer-ropers, barrel racers</li> </ul> <p><b>Note:</b> The following persons will be granted entry as visitors pursuant to Regulations other than R186(g):</p> <p>Business visitors:</p> <ul style="list-style-type: none"> <li>film producers;</li> <li>film and recording studio users (limited to small groups renting studios not entering the labour market);</li> </ul> <p>Guest speakers:</p>	<ul style="list-style-type: none"> <li>Bands performing at bars, pubs, restaurants, etc.;</li> <li>exotic/erotic (new NOC title) dancers performing in a bar or club;</li> <li>actors, singers, crew, etc. in Canadian theatrical productions, shows, circuses;</li> <li>any individual involved in making films, TV, internet and radio broadcasts (with the exception of co-production agreements where actors, etc. will be issued work permits exempt from an LMO under R204, exemption T11);</li> <li>any individual who will be in an employment relationship with the organization or business contracting for their services in Canada;</li> <li>a performer in a Canadian-based production or show.</li> <li>rodeo performers, e.g. side show workers</li> </ul>

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| <ul style="list-style-type: none"><li>• persons doing guest spots on Canadian TV and radio broadcasts.</li></ul> |  |
|--|--|

### "Time-limited engagement" referred to in R186(g)(i)

For a guest artist performing with a Canadian group, a "time-limited engagement" allows for flexibility, but as a general guideline, an unlimited number of rehearsals and performances over a two-week period are reasonable. A longer duration is also possible, as long as the expectation of a "time-limited engagement" is apparent. However, a foreign national who rehearses and performs with a Canadian orchestra for an entire season, for example, would need a work permit and an LMO.

### "Employment relationship" referred to in R186(g)(ii)

A foreign performing artist would not be in an employment relationship if they were merely hired to perform a single concert or short series of concerts. For example, if a couple hired a band to perform at their wedding, or a festival hired a singer to perform twice in a weekend, there is no employment relationship created even where contracts are signed. Alternatively, if a dinner theatre hired a foreign singer/dancer to perform five nights a week on a weekly basis (four weeks or longer), an employer-employee relationship would be created and a work permit and an LMO would be required. Or, if a city contracted a foreign puppeteer to do three shows a day in a park for a whole summer, this would also be considered an employment relationship. Essentially, contracts for short-term 'gigs' would not create an 'employment relationship' between an artist and the organization contracting for their services and R186(g)(ii) would be met. A longer-term contract, where the performer is expected to perform on a regular basis and usually in the same venue, would be considered an employment relationship, and a work permit and LMO would be required.

### Documentation and fees

Officers may use the Advanced notification of performing artists IMM 0060B as needed. However, (as for pre-IRPA) this is not a regulatory requirement. Fees for individual work permits apply. In cases where members of a performing group of greater than three persons require work permits, the (\$450) group fee will apply when the group applies at the same time in the same place.

For further information on artistic occupations and guidelines, including a list of the types of establishments considered to be "bar, restaurant or similar establishment", see Appendix A.

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## 5.9. Work without a work permit R186(h)—Athletes and coaches

R186(h) allows foreign professional or amateur athletes to compete in Canada as members of a team or as individuals, and foreign athletes to be members of Canadian amateur teams. It also allows foreign coaches and trainers of foreign amateur or professional athletes to participate at sports activities or events held in Canada. Examples of persons who would meet the requirements of this Regulation include:

- full or part-time coaches or trainers of foreign athletes;
- amateur players on Canadian teams (includes major junior A level and lower teams) (e.g., athletes authorized to enter Canada under this category for a whole season should be documented on a Visitor Record);
- foreign pet owners entering their own animals in a show (e.g., dog handlers);
- jockeys racing horses from foreign-based stables;
- racing car drivers;
- persons attending professional team tryouts.

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**Note:** If, upon entry and in anticipation of acceptance to a professional team, an athlete wishes to obtain a work permit for the season, officers may issue a work permit according to the guidelines below.

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### **Professional and semi-professional coaches and athletes**

Full or part-time paid coaches and trainers, and professional or semi-professional athletes working for professional Canadian-based teams require work permits, however, given the international mobility in this field, they may be exempt from an LMO pursuant to R205(b), C20, as long as the applicant can prove reciprocity exists for the particular occupation in their home country.

A full-time coach is a worker who earns significant income from coaching - enough to support themselves. A part-time coach, earns a significant portion towards supporting themselves in Canada.

Professional Canadian teams, for which foreign athletes would require a work permit, include, but are not limited to, those in: the National and American Hockey Leagues, the Canadian Football League, Major League Baseball and its affiliates at the A, AA and AAA levels, the National Basketball Association, the Canadian Soccer League as well as the Major League Soccer league.

### **Spouses**

Professional athletes are classified under Skill Level B in the National Occupational Classification, and, as such, their spouse is eligible for an LMO-exempt work permit pursuant to R205(c)(ii), C41.

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## **5.10. Work without a work permit R186(i)—News reporters, media crews**

### **Updates from OB 133 included**

R186(i) applies to news reporters and their crews coming to Canada for the purpose of reporting on events in Canada. Journalists working for print, broadcast or Internet news service providers (journals, newspapers, magazines, TV shows, etc.) are eligible, provided the company is not Canadian. Employees of a foreign news company who are resident correspondents are included, however, this does not include managerial or clerical personnel. Exception: Managerial and clerical personnel are included for special events that are six months or less in duration.

### **Blimps**

From time to time, companies bring in blimps such as the "Goodyear Blimp" to assist in the media coverage of major sporting events. The landing crew enters by land in order to set up the specialized equipment necessary for the safe operation of the blimp while it is in Canada. The members of this landing crew should be treated as part of the broadcast crew for the purposes of entry into Canada, and require no work permit.

### **Media crews on tourism promotional tours**

Media crews (including writers, print, video, film and broadcast journalists, as well as technicians such as camera operators) producing travelogues, documentaries or tourism promotional material, require work permits. However, when dealing with these applications, officers are reminded to begin their assessment by reviewing the definition of work. In some cases, foreign media crews on tourism promotional tours may not be entering the Canadian labour market; then the criteria of section 186(a) of the IRPR – Business Visitor - might apply.

Foreign media crews that do NOT meet the business visitor criteria will require work permits. They should be assessed against R205(a) – LMO exemption for Canadian interests: Significant benefit (C10). The requirements listed below for media crews must also be met.

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Media crews not meeting the conditions of Business Visitor or C10 must continue to obtain LMOs and apply for work permits. It is the responsibility of the appropriate sponsoring organization representing the employer (airlines, hoteliers, tourism associations, operators, etc.) to obtain the necessary approval from the local Service Canada office for any job offers.

### For North American media crews:

- the crews must be taking part in a promotional tour at the invitation of Canada's federal, provincial or territorial government, or at the invitation of a municipality or region. The invitation must be presented at the time of application for the work permit (in many instances, the letter of invitation will originate from a Canadian mission in the U.S.);

### For Non-North American media crews:

- the final product must be for distribution in and viewing by non-North American markets and audiences.

Media crews not meeting the above conditions must obtain work permits and LMOs. It is the responsibility of the appropriate sponsoring organization representing the employer (airlines, hoteliers, tourism associations, operators, etc.) to obtain the necessary approval for any job offers from the nearest Service Canada (SC) office. Generally, a three-week lead-time is necessary for SC to determine the availability of suitably qualified workers. Sponsoring agencies in Canada are expected to undertake reasonable efforts to identify the availability of suitably qualified Canadians and/or permanent residents, with SC assistance where necessary. This includes contacting the respective union or guild representing the occupations for which the foreign workers are being requested.

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### 5.11. Work without a work permit R186(j)—Public speakers

R186(j) includes both guest speakers for specific events (such as an academic speaker at a university or college function) and commercial speakers or seminar leaders provided the seminar to be given by the foreign speaker entering under this provision does not last longer than five days.

A 'seminar' is defined as a small class at a university, etc. for discussion and research, or a short intensive course of study, or a conference of specialists. Commercial speakers are people who sell tickets or registrations to people who come to hear them speak on a particular topic.

Commercial speakers have a vested interest in the event at which they are speaking. Typically, they rent commercial space in a hotel, advertise, charge admission, deliver the event and then leave Canada. If they are doing this for no more than five days on one trip, they can enter under R186(j). This regulation covers situations where the speaker is speaking to multiple groups, as long as the duration of the speaking events is no more than five days, not counting travel time in the case of multiple engagements.

Not included in R186(j) are commercial speakers who are hired by a Canadian entity to provide training services, or guest instructors of a particular sport coming to teach weekend seminars. Training activities are viewed as providing a service to Canadians, and therefore are considered an entry into the labour market. In these cases, other entry options must be explored including HRSDC/SC LMOs or the NAFTA Professional category which allows for professionals to provide training services under some circumstances.

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### 5.12. Work without a work permit R186(k)—Convention organizers

R186(k) applies to persons organizing a convention or conference, and to administrative support staff of the organizing committee. The types of event which are covered are association and corporate meetings and congresses, incentive meetings, trade shows or exhibitions and consumer exhibitions/shows. It should be noted that R186(k) does not apply to "hands on" service providers such as those who provide audio-visual (A/V) services, installation and dismantling, show decorating or services, or exhibit builders.

Convention organizers working for a Canadian event cannot receive consideration under R186(k). A Canadian event is one being held by an organization which is located in Canada. The organization must be actively doing business in Canada. A Canadian event may be conducted by a branch or a subsidiary of a foreign based organization.

See Appendix H, which includes guidelines for sales and other jobs related to conventions.

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**Note:** Persons/delegates attending a conference or meeting are exempt from the requirement for a work permit pursuant to R186(a).

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### 5.13. Work without a work permit R186(l)—Clergy

R186(l) applies to persons whose employment will consist mainly of preaching of doctrine, presiding at liturgical functions or providing spiritual counselling, either as an ordained minister, a lay person, or a member of a religious order.

Religious or charitable work requires a work permit, but is LMO exempt (see Section 5.39, Charitable and religious work R205(d), C50)

Persons seeking entry under the authority of R186(l) should be able to provide documentation to support their request for entry that addresses:

- the genuineness of the offer of employment of the religious denomination that seeks to employ them, and
- their ability to minister to a congregation under the auspices of that religious denomination.

In exceptional cases, officers may require more information to assess the genuineness of the job offer. Any of the following information may be of assistance:

- Certificate of Incorporation in the province or territory of destination;
- proof of registration as a charity or non-profit organization with Canada Revenue Agency (CRA) under the *Income Tax Act*;
- a statement from the religious organization showing:
  - date and place of founding of the religious organization;
  - length of time in continuous operation in the province or territory of destination;
  - description of the structure of the organization, including names and addresses of officers in the province of destination and any affiliation with a larger religious group;
  - the size of the adult congregation;
  - number of clergy employed;
  - address or the regular meeting place of the congregation;
  - scheduled days and hours of worship.
- copies of relevant sections of the Constitution and by-laws of the religious organization that provide for the ordination, appointment and dismissal of ministers or clergy;
- financial statements for the past fiscal year;
- copy of residential lease if a residence is not supplied for the foreign national;
- proof of ordination or appointment of the foreign national;
- letter of authorization from the governing official of the denomination that includes:
  - the current status of the foreign national with the denomination;

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- recognition of the foreign national's entitlement to minister to the denomination's congregation;
- name and mailing address of church or congregation to be served;
- arrangements for remuneration or care of the foreign national;
- description of exact duties and hours to be worked.

Most religions will be registered as charities or non profit organizations under the *Income Tax Act* and also under provincial or territorial laws.

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### 5.14. Work without a work permit R186(m)—Judges, referees and similar officials

R186(m) applies to judges, referees and similar officials involved in an international amateur sports competition, or an international cultural or artistic event or competition, or an animal or agricultural competition.

#### Amateur sports competitions/events

For judges, referees and similar officials involved in an international amateur sports competition, the event should be organized by an international amateur sporting association and should be hosted by a Canadian organization. Events may include international or university games, winter or summer Olympics, etc. An "amateur" sports competition is generally defined as one in which the participating athletes are not paid to compete or otherwise participate in the event, although there may be exceptions to this definition.

#### Cultural or artistic competitions/events

Judges or adjudicators of artistic or cultural events such as music and dance festivals are also included, as are judges for animal shows and agricultural competitions.

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**Note:** Referees of professional sports competitions require a positive LMO issued by HRSDC and work permits, except for leagues that have reciprocal arrangements for Canadian referees. "Professional" sports competitions are generally defined as competitions in which the participating athletes are paid to compete or otherwise participate in the event, although there may be exceptions to this definition. National Hockey League (NHL) referees who are U.S. citizens or permanent residents qualify for work permits under such a reciprocal arrangement, and may be issued work permits pursuant to R205(b), CEC C20. In cases where high-level professional sports (e.g. NHL, NBA, Major League Baseball, etc...) have reciprocity, CEC 20 can be granted to judges and referees at top-level professional competitions.

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### 5.15. Work without a work permit [R186(n)]—Examiners and evaluators

Eminent individuals who direct the studies and review the work done by university students that are under their tutelage will, on occasion, enter Canada to review their student's thesis and papers. R186(n) also includes foreign professors and researchers seeking entry to evaluate academic university programs or research proposals [including evaluation of proposals from organizations such as the Natural Sciences and Engineering Research Council of Canada (NSERC)].

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### 5.16. Work without a work permit R186(o)—Expert witnesses or investigators

R186(o) applies to experts who are entering to conduct surveys or analyses to be used as evidence, or persons who will be expert witnesses before a regulatory body, tribunal or court of law.

### 5.17. Work without a work permit R186(p)—Health care students

Foreign students, registered at foreign educational institutions outside Canada, in fields such as medicine, occupational and physical therapy, nursing and medical technology may do their clinical clerkships or short-term practicums in Canada. Written permission from the body that regulates the particular health field is required in order to ensure that Canadian health care students are placed for clinical practice first. The primary purpose of the practicum must be to acquire training in the related field; therefore these positions will often be unpaid and should be of no more than four months' duration.

Foreign students in residency, extern or fellowship positions in Canadian clinical settings are not included in this exemption.

**Note:** A medical extern is a doctor or medical student who is partaking in a clinical learning opportunity generally known as Externship. Externships are generally offered by educational institutions to give students short practical experiences in their field of study. In medicine it generally refers to a visiting physician who is not part of the regular staff. Typically externs:

- Have some extent of contact with patients
- Perform some procedures
- Usually cannot write formal orders
- Do not receive an academic credit for the externship

Further to consultation with provincial Colleges of Physicians and Surgeons, requirements for medical students destined to specific provinces are:

<u>Province</u>	<u>Letter from College of Physicians &amp; Surgeons required</u>	<u>Note</u>
Alberta	No	Acceptance from university in Alberta sufficient
British Columbia	No	Acceptance from university in B.C. sufficient
Ontario	No	Does not wish to be involved
Quebec	Yes	'Lettre d'admissibilité' required from le Collège des médecins du Québec
Saskatchewan	No	Acceptance from university in SK sufficient; college does not wish to be involved.

For medical students destined to Ontario: The College of Physicians and Surgeons in Ontario has informed CIC that it does not want to be involved in these cases, and it does not object to foreign health students working in medical teaching institutions in Ontario. This non-involvement can be interpreted as approval from the regulatory body, which will enable visa officers to process the application without written approval for each case. Notes in the Computer-Assisted Immigration

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Processing System (CAIPS) for approved cases should reflect the position of 'no objection' and the rationale, so when the student is seeking to enter Canada, the POE is aware that the matter of 'approval from a regulatory body' has been explored and no involvement from the regulatory body for this occupation has been interpreted as the required approval (or that university acceptance is sufficient).

For medical students destined to British Columbia: The College of Physicians and Surgeons in British Columbia has advised CIC that the College licenses all foreign medical students who arrive under R186(p) for short-term practicums, whether at the under-graduate or post-graduate level. The College and the universities have special procedures in place that are strictly adhered to. Acceptance by the university is sufficient proof that the College has given approval.

For medical students destined to Alberta: The College of Physicians and Surgeons of Alberta has advised that it treats undergraduate medical students doing electives in Alberta the same as out of province undergraduates. They must first register with the undergraduate elective office at either the University of Alberta or the University of Calgary, which then provides applicants with all the information the university requires and also provides them with the College's undergraduate elective application for registration.

The entire process is handled through the university, which then notifies the College of Physicians and Surgeons to finalize the registration. In essence, proof of acceptance by a university in Alberta (Edmonton or Calgary) is sufficient evidence of approval by the regulatory body, that is, the Alberta College of Physicians and Surgeons.

For medical students destined to Quebec: le Collège des médecins du Québec advised that the foreign student must always obtain a "lettre d'admissibilité" (admissibility letter) from the "Collège des médecins du Québec", to perform any short internships in Québec. The issuance of a letter from a University is not sufficient to authorize the student to perform a short internship.

For medical students destined to other provinces and territories: If the College of Physicians and Surgeons for that province has not provided the student with written approval, the visa office should contact the Operational Management and Coordination Branch for assistance in determining whether the province or territory has elected to be involved in health care student practicums for international students.

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**Note:** Persons entering Canada to perform this type of work are required to pass an immigration medical exam according to R30. (See section 9 of this manual, see also OP 11 section 11, and OP 15 section 5).

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### 5.18. Work without a work permit R186(q)—Civil aviation inspector

R186(q) applies to flight operations inspectors and cabin safety inspectors who enter the country temporarily while inspecting safety procedures on commercial international flights. These inspectors are employed by the recognized aeronautical authority conducting the inspections, and would be in possession of valid documentation and/or identification establishing that they are aviation inspectors carrying out inspection duties.

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### 5.19. Work without a work permit R186(r)—Aviation accident or Incident inspector

R186(r) applies to accredited representatives or advisors participating in an aviation accident or incident investigation conducted under the authority of the *Canadian Transportation Accident Investigation and Safety Board Act*. Any country that is requested by the country conducting the investigation to provide information, facilities, or experts is entitled to appoint an accredited

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representative and one or more advisors to assist the accredited representative in the investigation. The country of the operator, the country of registry and the countries of design and manufacture would normally be represented.

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### 5.20. Work without a work permit R186(s)—Crew

R186(s) applies to crew members working on vehicles of foreign ownership and registry such as truck drivers, bus drivers, shipping and airline personnel, who are engaged primarily in the international transport of cargo and passengers. Their duties must be related to the operation of the means of transportation or the provision of services to passengers.

#### International Trucking

R186(s) applies to truck drivers who are delivering and/or picking up goods across the U.S. and Canadian border, insofar as they do not pick up and deliver from one location to another within Canada.

Foreign truck drivers involved in international hauling should not generally become involved in the loading and unloading of their cargo when such is being delivered directly to a warehouse in Canada from a U.S. destination or picked up in Canada for direct movement to the United States.

The exception is when drivers who have expertise in the handling of loads such as chemicals, furniture, livestock, etc., are responsible for the loading and unloading of their vehicles. Another exception is in cases where drivers will occasionally assist in the handling of their cargo in a non-warehouse situation (such as movers offloading furniture to a house at the end of an international move), especially when no other assistance is available. These practices and exceptions prevail on both sides of the U.S./Canada border.

Foreign truck drivers who are employed by Canadian trucking companies to pick up goods in Canada for delivery to the United States, and who are operating Canadian owned and registered vehicles, cannot receive consideration under R186(s), since both the company and vehicle are Canadian. Nor can independent foreign truckers working under contract to Canadian trucking companies receive consideration under R186(s), since they are being employed by a Canadian company.

#### Corporate Aircraft

The following scenario would qualify under R186(s): where an American company executive is travelling aboard the company's aircraft from the U.S. to Toronto for a meeting and stopping over in Montreal to pick up another meeting participant, the aircraft would meet the definition of being "engaged primarily in international transportation". The travel of the additional meeting participant from Montreal can be considered "non-commercial", "non-paying" and incidental to the purpose of the trip of the American executive. The crew member, i.e. the pilot, would not require a work permit.

The key element of this scenario is that the aircraft must be a corporate aircraft, solely owned or leased by the corporation specifically for the transport of company personnel on company business. It may not be a charter aircraft or a commercially available flight. Any passengers carried from point to point in Canada must be incidental to the purpose of the trip. Stopping to pick up friends or family members for shopping, cultural, musical or sports events etc., would not qualify as incidental.

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### 5.21. Work without a work permit R186(t)—Emergency service providers

The intent of R186(t) is to facilitate the admission of persons who come to Canada for the purpose of rendering services in times of emergency. These services should be aimed at preserving life and property. The emergency may be the result of natural disasters such as floods,

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tornadoes, earthquakes, and fires. It may also be the result of industrial or commercial accidents threatening the environment or it may simply be a medical emergency where admission should be facilitated to preserve life regardless of whether it involves one or more persons.

Agreements, such as the *Agreement between the Government of Canada and the Government of the United States on Co-operation in Comprehensive Civil Emergency Planning and Management* (1986), and the *Insurance Bureau of Canada's Claims Emergency Response Plan* (1982) are aimed at facilitating the admission of persons rendering emergency services to either country. Among such persons there may be doctors or medical teams, as well as appraisers and insurance adjusters.

The Insurance Bureau of Canada has developed an emergency response plan to bring in U.S. insurance adjusters/appraisers to assist in the rapid handling of insurance claims in major emergencies. In the event of large-scale disasters, such a response is critical in augmenting existing Canadian services in order to ensure swift economic recovery and stability.

There may also be times when people seek entry under an agreement with Public Safety Canada. All persons responding to such emergency situations may be authorized to enter Canada as visitors regardless of whether there is an agreement in existence or not.

### 5.22. Work without a work permit R186(u)—Implied status

R186(u) allows for persons to continue working under the conditions of an expired work permit, as long as they applied for a new work permit before the original work permit expired and have remained in Canada. Once the decision has been made, the client will either have to leave Canada or will continue as a worker who holds a valid work permit.

See also OP 11, section 24.

### 5.23. Application for a work permit on entry R198

Persons who may apply at a POE (provided they are not identified in the 2 <sup>nd</sup> column)	Persons who must apply outside Canada
<ul style="list-style-type: none"><li>• All nationals or permanent residents of the U.S., and residents of Greenland and St. Pierre and Miquelon (contiguous territories);</li><li>• Persons whose work does not require an LMO</li><li>• Persons whose work requires an LMO, as long as it has been issued before the worker seeks to enter.</li></ul>	<ul style="list-style-type: none"><li>• All persons who require a TRV;</li><li>• All persons who require a medical examination – whether TRV required or visa-exempt – unless valid medical examination results are available at the time of entry;</li><li>• International youth exchange program participants other than U.S. citizens or permanent residents, unless approved by the responsible visa office (that administers the DFAIT-granted quota) abroad (exemption code C21). (See Section 5.34.);</li><li>• Seasonal agricultural workers;</li><li>• Live-in caregivers.</li></ul>

Persons who hold a valid work permit, who wish to change their conditions or renew their work permit should apply inland, pursuant to R199. However, urgent situations do arise where clients need to change employers, or quickly renew a work permit which will soon expire. If a person seeking entry into Canada meets the requirements of R198 and R200, their work permit application shall be processed at the POE.

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Persons whose work permits expire while they are out of the country must be facilitated at the POE if they are eligible to apply there pursuant to R198. They must provide the officer at a POE with sufficient documentation to satisfy the officer that the client meets the requirements for the category in which they are applying.

### 5.24. Application for a work permit after entry R199

#### Persons who may apply from within Canada

- Holders of work or study permits and their family members;
- Persons currently working in Canada under the authority of R186, not requiring a work permit who are applying for secondary employment in Canada as long as they are not business visitors;
- Holders of temporary resident permits (TRPs) valid for a minimum of six months and their family members;
- Refugee claimants and persons subject to an unenforceable removal order;
- In-Canada permanent resident applicants and their family members who are members of the following classes, determined eligible for PR status: live-in-caregiver, spouse or common-law partner, protected persons, H&C;
- Persons whose work permits were authorized by a mission abroad, where the permit was not issued at a POE;
- Mexican citizens who have been admitted to Canada as temporary residents may apply for a work permit under any NAFTA category. U.S. citizens admitted as temporary residents may apply in Canada under the Professional or intra-company transferee NAFTA categories only. These provisions are in accordance with reciprocal arrangements;
- Foreign nationals who have the written permission of DFAIT to work at a foreign mission (embassy, consulate or high commission) in Canada.

### 5.25. Work permits requiring a Labour Market Opinion (LMO) R203

R203 provides the authority for officers to issue work permits on the basis of an LMO from HRSDC. This Regulation provides broad authority for HRSDC to weigh several factors in assessing the impact on the Canadian labour market. Traditional factors such as wages and working conditions and the availability of Canadians or permanent residents to do the work in question, as well as whether skills and knowledge transfer would result from confirming the foreign worker and whether the work is likely to create other jobs for the benefit of Canadians or permanent residents.

Also important is the fact that HRSDC can provide an LMO regarding whether the issuance of a work permit to a foreign national will have either a neutral or positive effect. In certain situations, this allows the HRSDC officer to confirm unpaid employment.

For details on the HRSDC LMO process see  
[http://www.hrsdc.gc.ca/en/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/index.shtml).

Through this Web site officers can also see details of specific instructions for film and entertainment, academics, agricultural workers including the Seasonal Agricultural Workers Program (SAWP), the Low-Skill Pilot, the Live-In Caregiver Program (LCP), provincial occupations under pressure lists, and oil sands construction workers in Alberta.

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Officers should also be aware that there are several sector councils in key sectors of the economy, including automotive, aviation, biotechnology, child care, environment, mining, petroleum, policing, and steel which HRSDC supports under the Sector Council Program. Information is available at [http://www.hrsdc.gc.ca/eng/workplaceskills/sector\\_councils/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/sector_councils/index.shtml).

### **Pilot Project for Hiring Foreign Workers in Occupations that Require Lower Levels of Formal Training**

(Includes updates from OB 113)

In July 2002, Human Resources and Skills Development Canada (HRSDC), supported by Citizenship and Immigration Canada (CIC), established the *Pilot Project for Hiring Foreign Workers in Occupations that Require Lower Levels of Formal Training* (previously called the Low skilled pilot or LSP). The process introduced by the pilot project allows employers to obtain an LMO for job offers at skill levels C and D listed in the National Occupational Classification (NOC).

For more info, , see the HRSDC website:

[http://www.hrsdc.gc.ca/en/workplaceskills/foreign\\_workers/lowskill.shtml](http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/lowskill.shtml).

#### Basic HRSDC requirements for the LSP

HRSDC requires that all applications within the LSP have a contract, signed by both the employer and the employee, which outlines the employer's obligation towards the foreign worker. These obligations are the same for all LSP applications and include: wages, working conditions, roundtrip transportation costs, medical coverage, assistance in finding suitable accommodations, and payment of all costs related to hiring the TFW.

Pilot highlights:

- Employers can apply for an LMO for jobs at skill levels C & D listed in the (NOC), for a maximum duration of up to 24 months.
- Job qualifications include a high school diploma at most, or maximum of 2 years of job-specific training.
- Initially, after 24 months of employment in the LSP, temporary foreign workers were to return to their country of permanent residence for at least 4 months before applying for another work permit under the Low Skill Pilot (i.e. 24 months in, 4 months out). The requirement to return home has since been rescinded.
- Employers pay return air-fare, ensure that affordable and suitable accommodation is available, provide temporary medical insurance coverage for the duration of the employment, register workers with provincial workplace safety insurance plans, sign an employer-employee contract and demonstrate continued efforts to recruit and train Canadian workers.

#### Assessment of LSP work permit applications

- Assessment of an applicant's ability to do the job may be part of the WP assessment as there is less education to prove ability.
- WP assessment includes but is not limited to: IRPR 179, IRPR 200, bona fides and dual intent (see OP 11, section 5.4).
- When assessing applications in the LSP, officers should continue to exercise their judgement in making well-informed decisions.

#### LSP - Language Requirements (see section 8.3)

#### Applications from spouses/dependent children

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Applicants may wish to have their spouses and dependent children accompany them to Canada.. In these cases, the officer should consider the applications as a single unit, rather than assessing each separate from the others.

The applicant's spouse is not eligible for an open work permit and requires an LMO if applying for a work permit. Also, as temporary residents, any children may be required to pay international student rates to attend school. These costs, as well as the cost of travel to Canada, health coverage and family accommodations, may have to be borne by the applicant since the employer, under the LSP, is obliged to provide these only for the applicant. The onus is on the applicant to demonstrate to the officer that they are capable of meeting these expenses.

### Processing considerations

Although the LSP provides lower-skilled workers an opportunity to work temporarily in Canada, it does not afford them any priority in the processing queue. Applications within the LSP should be processed in the same queue as other WP applications and be completed on a "first come, first served" basis.

### Coding

Officers are to enter "LSP" as a Special Program code in FOSS or CAIPS on initial work permits and extensions. This will assist immigration officers in Canada when reviewing applications for work permit extensions. It is also important for statistical and policy development purposes.

### Exclusions

The Low-Skill Pilot does not apply to the Live-In Caregiver Program (LCP) – see OP14 and IP4 - or the Seasonal Agricultural Worker Program (SAWP).

### Additional Reporting

Information collected at the missions on the LSP movement should be forwarded to International Region, to [cic-nat-operational-rim-tfw@cic.gc.ca](mailto:cic-nat-operational-rim-tfw@cic.gc.ca) and the appropriate geographic desk, so that an accurate picture of the overall low-skilled movement can be drawn and appropriate adjustments made.

### **Information technology workers**

#### **Updates from OB 225A included**

In response to the need of employers to fill critical shortages in the software industry, CIC collaborated with HRSDC, Industry Canada and the Software Human Resource Council (SHRC) on the development of a pilot project to streamline the entry of workers whose skills are in high demand in the software industry and whose entry into the Canadian labour market would have no negative impact on Canadian job seekers and workers.

NOTE: This facilitated process for IT workers is currently in place in Quebec and British Columbia only. Employers wishing to hire IT workers in other provinces or territories, are required to apply for a Service Canada LMO

To qualify, applicants must be offered a job in one of seven skilled occupations. For information on the job descriptions, see <http://www.cic.gc.ca/english/work/itw-jobs.asp>.

- Applicants should hold Bachelor's degree, or a post-secondary diploma/certificate of two years or more with a computing element.
- Per Diem payment, in addition to the salary offered, is acceptable when considering salary ranges for each of the seven job descriptions.

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### **Duration of work permits and extensions issued under the facilitated process**

A 12-month maximum duration is in effect for these occupations in provinces still supporting the facilitated process.

### **Spouses**

Spouses or common-law partners of these information technology workers may be eligible for an open work permit under exemption C41 (see FW1, 5.38)

For additional information, see the following link:

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/communications/ITendNotice.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/ITendNotice.shtml)

### **Cooperation between HRSDC/SC and CIC and Canada Border Services Agency (CBSA)**

The temporary foreign worker program is unique in that its delivery relies on the close cooperation of three different departments. Officers are encouraged to contact HRSDC in cases where more detail regarding the job offer would assist the decision, and likewise are encouraged to respond to HRSDC queries in a timely manner.

When an officer receives a work permit application without an LMO, in some cases it may be helpful to consult directly with HRSDC before advising the applicant to have their employer submit an application to them. In all cases where the applicant is advised to have their employer seek an LMO, they should be given a letter, which the employer can submit along with their application to HRSDC. The referral letter should have the contact information of the immigration or visa officer, so that HRSDC can follow up, if needed.

There may be many situations where communication (separate from, or in addition to, issuance of an LMO) between HRSDC and CIC/CBSA can facilitate the decision-making process and improve client service. Some common situations where communication is recommended are listed below:

- Officers intend to recommend to the worker that their employer seek an LMO in cases where the work does not meet traditional criteria (i.e., where the work is unpaid, or there are other economic considerations besides the labour market). A discussion of whether it is better to confirm or apply C10 (see Section 5.29) may be useful in cases where facilitation is warranted.
- The officer would like some advice on the local labour market to assist them in making a decision on a self-employed temporary foreign worker. (See Section 5.30, C11.)
- The officer is considering applying C10 or C50 (see Section 5.39) for work which will provide a social or cultural benefit, or which may be charitable, and local labour market information will assist them in making a decision.

HRSDC officers may in turn contact CIC (the relevant visa office, POE or inland office) if they believe an LMO exemption would apply, and wish to verify this before sending the employer (and the foreign worker) directly to CIC.

A record of communications with HRSDC should be noted in the client's electronic file.

For information on how to determine work permit expiry dates relative to the dates found on an LMO, see Section 6.

Officers should process work permit applications in accordance with the regular requirements for temporary foreign workers. (See procedures in section 8 below.)

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### 5.26. Work permits exempt from an LMO (Exemption codes)

Updates from OB 145 (now expired) included.

R204 to R208 provide the regulatory authority to issue a work permit to a worker who does not require an LMO. The LMO Exemption Codes are listed in the following table.

#### LMO Exemption Codes

Regulation	LMO Exemption Code	X-ref to 1978 Regulations Code
<b>R204 International agreements</b>		
a) Canada-International		
Non-Trade	T11	n/a
Trader (FTA)	T21	B21
Investor (FTA)	T22	B22
Professional/Technician (FTA)	T23	B23
Intra-company transferee (FTA)	T24	B24
GATS Professional	T33	B25
b) Provincial-International	T12	n/a
c) Canada-Provincial/Territorial	T13	n/a
<b>R205 Canadian interests</b>		
a) Significant benefit	C10	E19
i) Entrepreneurs	C11	E01, E03, E05
ii) Intra-company transferees (including GATS)	C12	E15, B26
iii) Emergency repairs	C13	A09
b) Reciprocal employment	C20	E99
i) Youth Exchange Programs	C21	E35
ii) Exchange Professors, Visiting Lecturers	C22	E40
c) Designated by Minister		D10
i) Research, educational or training programs	C30	D20, D30, D35
ii) Competitiveness and public policy		
A. Spouses of skilled workers	C41	E14
B. Spouses of students	C42	E07
C. Post-grad employment	C43	E08
D. Post-doctoral fellows and award recipients	C44	E45
E. Off-campus employment (Pilot)	C25	n/a
d) Charitable or religious work	C50	E20, E25
<b>R206 Self-support</b>		
a) Refugee claimants	S61	A02
b) Persons under an unenforceable removal order	S62	A01, A04, A05, A06, A07, A10, A11, A13
<b>R207 (PR) Applicants in Canada</b>		
a) Live-in-caregiver class	A70	A01
b) Spouse or common-law partner class	A70	A01

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c) Protected persons under A95(2)	A70	A03
d) Section A25 exemption	A70	A01
e) Family members of the above	A70	(same code as principal applicant)
<b>R208: Humanitarian reasons</b>		
a) Destitute students	H81	C05
b) Holders of a TR Permit valid for minimum of six months	H82	F01, F02, F03, E02

### 5.27. Agreements – R204

Updates from OB 145 (now expired) included.

Summary: work permits are generally required, but exempt from an LMO. (See section 5.26.)

Canada concludes agreements that involve the movement of foreign personnel to Canada. Admission of foreign workers under these agreements benefits the Canadian economy and serves to meet other objectives aimed at foreign policy, culture, trade and commerce. Officers should ensure that the terms of the agreements are respected and that only those types of workers stipulated in the agreements gain access to Canada. Persons who are entering just for meetings pursuant to these agreements may be authorized to enter Canada as business visitors.

#### Agreements not listed in the table below

Instances will occur where workers will be coming forward pursuant to a valid agreement that may not be on the list. In such cases, admission should be facilitated if workers can satisfy the officer that there is an agreement that covers their admission. Not included under these agreements are diplomatic agreements with United Nations Organizations, such as the International Civil Aviation Organization (ICAO). Persons entering under diplomatic agreements may be facilitated under R186(b). (See Appendix C.)

#### International Free Trade Agreements – R204(a)

Persons authorized to enter Canada under the North American Free Trade Agreement (NAFTA) or other FTAs parallel to the NAFTA, are authorized to enter under exemption codes T21 for Traders, T22 for Investors, T23 for Professionals and T24 for intra-company transferees.

Persons authorized to enter under the General Agreement on Trade in Services (GATS) are authorized to enter under exemption codes T33 for Professionals. GATS intra-company transferees are authorized to enter under the general provision R205, C12.

#### Canada-International Non-Trade Agreements – R204(a) – T11

Agreement	Description
Airline Personnel	Numerous bilateral air transport agreements exist between Canada and other countries. A separate arrangement is in place dealing with EI/Al Airlines security guards on aircraft and at the airport. Procedures in this respect are discussed in Section 13.1, Airline Personnel.
Airline Telecommunication & Information Services (SITA)	This organization, located in Montreal, has a mandate of developing the fields of transmission and processing all categories of information necessary for airline operation and to study any related problems to promote air transportation safety and dispatch reliability in all countries. They cooperate with IATA, ICAO and other governmental and non-governmental bodies in these fields. Given the benefits of having the North American and Caribbean headquarters of SITA in Canada, CIC has undertaken to facilitate such foreign workers as SITA deems necessary to engage.

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Artists Residencies Programme between Canada/US/ Mexico	Canada has entered into an agreement with the U.S. and Mexico for an exchange of artists. Selected by an international jury, a maximum of ten artists from the United States and ten artists from Mexico will come to Canada annually as guests of Canadian institutions for up to two months. Applicants will be in possession of a letter from the National Endowment for the Arts or from the DFAIT. If clarification is required, officers should contact the Arts and Letters Division, DFAIT, at (613)992-5726.
Canada-Bermuda MOU, Professional Trainees	<p>Temporary employment in Canada under the terms set out in the Memorandum of Understanding between Canada and Bermuda. Procedures are as follows.</p> <p>People seeking to engage in employment in Canada pursuant to this MOU must:</p> <ul style="list-style-type: none"> <li>• possess Bermuda status and normally reside in that country;</li> <li>• be graduates of a professional course of a recognized Canadian university or other appropriate Canadian post-secondary institution;</li> <li>• have completed their academic training, but not yet have taken up their profession in Bermuda; and</li> <li>• be selected by a designate of the Bermudian Government to engage in employment meeting the following requirements: <ul style="list-style-type: none"> <li>• the functions and duties of the position must provide practical experience solely in the profession in which that worker has recently completed academic training and in which that worker will engage upon returning to Bermuda;</li> <li>• the worker must not engage in employment in Canada for a period in excess of two years unless otherwise mutually agreed upon by Canadian parties concerned on a case by case basis.</li> </ul> </li> </ul> <p>Documentation required:</p> <ul style="list-style-type: none"> <li>• a written employment offer;</li> <li>• evidence from the appropriate provincial or Canadian professional licensing or regulatory body indicating that it has no objection to the applicant exercising their profession in Canada;</li> <li>• a statement that the applicant will return to Bermuda to pursue their profession upon completion of the term of employment.</li> </ul>
Canada-U.S. Understanding of Arrangement	<p>U.S. IRS employees</p> <p>(See section 13.7 of this manual for more information)</p>
Churchill Research Range	Agreement between Canada and the U.S. on the joint use, operation and maintenance of the Churchill Research Range.
Cooperative Waterfowl Survey & Banding Program	The program is conducted by the Canadian Wildlife Service and the United States Fish and Wildlife Service. Program participants include biologists, research personnel and airline pilots who generally come as teams of two or more to participate in ecological surveys, often in isolated areas.
Public Safety Canada	Emergency service providers are facilitated under R186(t), (see Section 5.21). However, from time to time, there are agreements in place with Public Safety Canada for foreign workers to come to Canada for the purpose of

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	incidents which are not of an emergency nature. The person will be in possession of a letter referring to an agreement. If clarification is required, officers should contact the office of Public Safety Canada in Ottawa at (613) 991-7077.
Film Co- Production	All temporary workers entering Canada to take employment under the terms of a film co-production agreement between Canada and any foreign country. (See Appendix A.)
Fulbright Program between Canada and the U.S.	Foundation for Educational Exchange between Canada and the United States of America; this organization facilitates academic (both work and study) exchanges for participants. Work permits are fee exempt [R299(2)(h)]. See OP12, section 6.6 for more information
International Air Transport Association (IATA)	Headquartered in Montreal, IATA is an association of over 220 of the world's airlines. The Government of Canada completed a Memorandum of Understanding regarding IATA operations in Canada in 1987. Included in the MOU is a commitment to facilitate issuance of work permits made to officers, employees or specialists contracted to IATA.
International Pacific Halibut Commission	Sea and port samplers employed to conduct research at various ports in British Columbia during the halibut season. Their entry is pursuant to the Pacific Halibut Fishery Regulations, a Canada/U.S. Agreement.
Jamaica: Seasonal Agricultural Program, Liaison Officers	Canada has a Memorandum of Understanding with the Jamaican Government concerning the Commonwealth Caribbean Seasonal Agricultural Workers Program (signed in 1994). The agricultural workers themselves must have LMOs, however, there is provision in the Operational Guidelines of the agreement for the Jamaican government to appoint one or more agents to Canada to ensure the smooth functioning of the program. Liaison Officers appointed to work at the Jamaican Liaison Service office in Toronto would qualify under this exemption.
Malaysia, Professional Accounting Trainees	<p>Malaysia recognizes the professional standards of the Canadian Institute of Chartered Accountants and wishes to ensure that Malaysian students acquire the educational and technical knowledge to meet these standards by articling upon graduating from Canadian institutions of higher learning in the field of business programs related to accounting.</p> <p>Through a Memorandum of Understanding, the Government of Canada has agreed that Malaysian nationals who have completed the appropriate academic professional training in Canada from a recognized Canadian university or post-secondary institution may take employment for the purpose of gaining practical experience before assuming their profession as chartered accountants in Malaysia.</p> <p>To engage in employment pursuant to the Memorandum of Understanding, the worker must:</p> <ul style="list-style-type: none"> <li>• be a Malaysian national and normally reside in Malaysia;</li> <li>• be a graduate of a professional course of a recognized Canadian university or other appropriate Canadian post-secondary institution in the field of business programs related to accounting;</li> <li>• have completed their academic training, but not yet taken up their profession in Malaysia; and</li> <li>• be certified by a designate of the Malaysian Government to engage in employment meeting the requirements of employment as outlined below.</li> </ul>

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	<p>To be considered eligible, the employment must:</p> <ul style="list-style-type: none"> <li>• provide practical experience solely in the profession of chartered accountant, a profession in which the worker will engage upon returning to Malaysia;</li> <li>• be pursuant to the MOU only for the period necessary to be received as a chartered accountant, which shall not exceed three years unless otherwise mutually agreed upon by the parties concerned (to be assessed on a case by case basis).</li> </ul> <p>Listed below are the documents that applicants must submit:</p> <ul style="list-style-type: none"> <li>• a written employment offer which can be obtained through the efforts of the worker or with the assistance of the Government of Malaysia;</li> <li>• evidence that the appropriate provincial or Canadian professional licensing or regulatory body governing chartered accountants has no objection to the worker articling in Canada;</li> <li>• a statement from the applicant that they intend to return to Malaysia to pursue their profession upon completion of employment;</li> <li>• a statement from (a representative of) the Malaysian Government certifying participation in the program.</li> </ul> <p>The documentation required to obtain a work permit is presented to the visa office unless the worker is already in Canada and is able to obtain a work permit in Canada.</p>
North Atlantic Treaty Organization (NATO)	<p><b>Note:</b> Persons entering Canada to take employment at facilities located at Foley Lake, Nova Scotia or Carp, Ontario. Their stay in Canada may be for many years and consequently long-term work permits may be issued pursuant to R204 (see Appendix F).</p> <p><b>Note:</b> NATO nations are covered by the Status of Forces Agreement (taken from the <i>Visiting Forces Act</i>). Military personnel coming to Canada under NATO, including the civilian component, are exempt from a work permit pursuant to R186(d).</p>
North Pacific Marine Science Organization (PICES)	<p>This is an intergovernmental scientific body whose members encompass Canada, U.S.A, Japan, China, the Russian Federation and the Republic of Korea. The organization promotes and co-ordinates marine scientific research, and as such, brings in scientists under Intern or Visiting Scientist programs. The Secretariat of PICES is housed at the Institute of Ocean Sciences of Fisheries and Oceans, in Sidney, British Columbia.</p>
Organization for Economic Co-operation & Development (OECD)	<p>The Organization for Economic Co-operation and Development (OECD). Exchanges are arranged in Canada through the Public Service Commission. Individuals are provided with copies of the International Assignment Agreement as it relates to their assignments and should be in possession of their agreement when seeking entry. A work permit may be issued for the length of time specified in the agreement. Alternatively, if the individual qualifies under R186(e), they may be authorized to enter Canada as a visitor.</p>
Pacific Salmon Commission (PSC)	<p>The PSC is an international scientific body created to implement the <i>Pacific Salmon Treaty</i>, signed in 1985 between the governments of Canada and the United States. As with the Halibut Commission, samplers and scientists should be allowed an LMO-exempt entry.</p>
Roosevelt	<p>Persons entering Canada from the United States to take employment under</p>

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Campobello International Park	the terms of the Agreement between the Government of Canada and the Government of the United States relating to the establishment of the Roosevelt Campobello International Park. Supporting documentation: an offer of employment from the Park's Commission. Fee exempt.
Scientific and Technical Cooperation Agreement between Canada and Germany	In 1971, Canada and Germany entered an agreement to facilitate and encourage scientific and technological cooperation and exchanges of information and personnel between the agencies, organizations and enterprises in the public and private sectors of the two countries. Fields of cooperation may vary from year to year.
Téléfilm	Telefilm administers coproduction agreements on the Canadian government's behalf. The official coproduction agreements enable Canadian producers and their foreign counterparts to pool their creative, artistic, technical and financial resources to co-produce films and television programs that enjoy the status of national productions in each of the countries concerned.  See Appendix A – Film co-producers – for more information
U.S. Government Personnel	See section 13.7 of this manual for more information.

### Canada-International Free Trade Agreements – R204(a)

North American Free Trade Agreement (NAFTA)	See <b>Appendix G</b> T21, T22, T23, T24
Canada-Chile FTA Canada-Peru FTA	See <b>Appendix B</b> T21, T22, T23, T24
General Agreement on Trade in Services (GATS)	See <b>Appendix D</b> T33 (and C12 under general provisions as per R186(a) and R205(a))

### Provincial-International Agreements – R204(b) –T12

There are currently no agreements that influence the issuance of work permits.

### Canada-Provincial Agreements – R204(c) – T13 (Note: T10 is no longer used as of August 14th, 2009)

<http://www.cic.gc.ca/english/department/laws-policy/agreements/index.asp>

Includes updates from OB 145.

#### 1. Temporary Foreign Worker Provincially Selected (TFW-PS)

Under the terms of Temporary Foreign Worker Annexes that have been negotiated with certain provinces/territories, provinces have the authority to have the requirement for a labour market opinion waived for work permit applicants named in a written request from the province or territory. This authority is based on section 204(c) of the IRPR. Provisions respecting this

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authority might vary slightly from province to province and for greater certainty the wording in the appropriate annex should be referred to.

To date, Ontario and Alberta have such agreements in effect, they can be seen at the following links:

Canada-Ontario Immigration Agreement - TFW Annex 2008 -

<http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/index-ont.asp>

Agreement for Canada-Alberta Cooperation on Immigration -

<http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/index-alberta.asp>

### Role of the provinces

In exercising its R204(c) authority, a province will provide the visa office with a letter containing the necessary details such as the name(s) and birth date(s) of the individual(s) selected for the specific job, information about the employer and place of work, the duration of the job, and how it fits in with the employer's broader operations. A copy of this letter will be attached to each TFW's application and upon receipt – whether at a visa office or, for visa-exempt workers, at a port of entry (POE) – the application shall be assessed for each individual as per usual procedures. TFW-PS applicants do not require a nomination certificate.

### Work Permit Instructions

TFW-PS applications shall be processed like other TFW work permit applications, on a first come first serve basis.

**REMARKS:** TFW-PS should be entered in the "Remarks" field to facilitate differentiating between this and the PNP provincial selection type.

**EXTENSIONS:** Maximum two-year extensions (or duration stated in the letter) may be issued provided the province has supplied the TFW with another letter affirming that the worker still meets the criteria for recommendation. Although no maximum number of extensions was specified in the Agreements, a general guideline of three 2-year extensions for each TFW-PS can be used.

## 2. Temporary Foreign Worker Nominated by a Province (TFW-PNP)

It has been agreed with the provinces that have entered into provincial nominee agreements that a person who has been nominated by a province for permanent residence and has a job offer from an employer based in that province may be issued a work permit without requiring an LMO. In order for this provision to be applied, the application for the work permit must include a letter from the provincial government that confirms:

- that the foreign national has been nominated for permanent residence by the province; and
- that the nominated individual is urgently required by the provincial-based employer who has made the foreign national a job offer.

The duration of the work permit should be equivalent to the duration of the job offer.

"TFW-PNP" should be entered in the "Remarks" field to facilitate differentiating between the PNP and the TFW-PS provincial selection types.

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**Note:** If there are any obvious potential medical or security concerns, these should be dealt with before any work permit is issued.

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**Note:** It is not necessary that the application for permanent residence of the foreign national has been received by CIC for the work permit to be issued. The letter from the province is sufficient to trigger this LMO exemption.

For provinces without nominee agreements (NWT and Nunavut) the legislative authority for the exemption is R205(a).

### Provincial Programs and Pilots related to TFW Annexes – R204(a) – T13

Ontario	Pilot Project for Working Age Dependent Children of Workers Destined to Ontario – OB 123 – July 1st, 2009 to July 30, 2012*. Special Program Code – 'WDP'
Ontario	Pilot Project for foreign spouses and dependent children of high-skilled Canadians or Permanent Residents returning to work in Ontario – OB 229 – September 15 <sup>th</sup> , 2010 to March 15 <sup>th</sup> , 2012*. Special Program Code – 'RCS'
Alberta	Pilot Project for Working Age Dependent Children of Workers Destined to Alberta – OB 122 - July 1st, 2009 to July 30, 2012*. Special Program Code – 'WDP'
	Alberta Pilot Project for Spouses and Common-Law Partners of Long-Haul Truck Drivers – OB 146 – August 17th, 2009 to July 30th, 2012*. Special Program Code – 'LTD'

\*These dates refer only to the period in which qualifying work permits must be received, not to the duration of the work permits. The terms of the pilot will apply only to qualifying foreign nationals as described in the Operational Bulletins. All relevant work permits must be coded with exemption code T13 and with the appropriate Special Program code in order to support an effective evaluation of the pilot.

### 5.28. Canadian Interests: Significant benefit—Overview R205(a)

Guidelines for general admission under this category are provided in Section 5.29 (exemption code C10). Guidelines are also provided for the admission of three other categories of worker, which are considered to be beneficial and not requiring of an LMO. These are Entrepreneurs (C11), intra-company transferees (C12), and persons providing emergency repairs (C13).

For more information, see:

- section 5.29, Canadian interests: Significant benefit—General guidelines R205(a), C10
- section 5.30, Canadian interests: Significant benefit—Entrepreneurs/self-employed candidates seeking to operate a business R205(a), C11
- section 5.31, Canadian interests: Significant benefit—intra-company transferees R205(a), C12
- section 5.32, Canadian interests: Significant benefit—Emergency repair personnel R205(a), C13

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### 5.29. Canadian interests: Significant benefit—General guidelines R205(a), C10

In considering LMO exemptions before issuing a work permit, officers should keep in mind the general principle: Authorizing a foreign national to work in Canada has an impact on the Canadian labour market and economy. And, generally speaking, officers should be reluctant to issue a work permit without the assurance from HRSDC that the impact on Canada's labour market is likely to be neutral or positive. Most exemptions from the need for a positive HRSDC labour market opinion are very specific and clearly defined such as the policy for spouses of some foreign workers and students, or the Regulations regarding issuance of work permits for refugee claimants, or regarding international agreements.

However, circumstances sometimes present officers with situations where an LMO is not available, and a specific exemption is not applicable, but the balance of practical considerations argues for the issuance of a work permit in a time frame shorter than would be necessary to obtain the HRSDC opinion. R205(a) is intended to provide an officer with the flexibility to respond in these situations. It is imperative that this authority not be used for the sake of convenience, nor in any other manner that would undermine or try to circumvent the importance of the LMO in the work permit process. It is rather intended to address those situations where the social, cultural or economic benefits to Canada of issuing the work permit are so clear and compelling that the importance of the LMO can be overcome.

Officers should look at the social/cultural benefit of authorizing entry to Canada for persons of international renown, examining whether a person's presence in Canada is crucial to a high-profile event, and whether circumstances have created urgency to the person's entry.

For requests for work permits based on significant economic benefit, where entry into the labour market is concerned, all practical efforts to obtain HRSDC's opinion should be made before C10 is applied. Foreign nationals submitting an application for consideration under C10 should provide documentation supporting their claim of providing an important or notable contribution to the Canadian economy.

#### **Assessing significant social or cultural benefit**

The foreign national's proposed benefit must be significant, meaning it must be important or notable. Officers should rely heavily on the testimony of credible, trustworthy, and distinguished experts in the foreign national's field and any objective evidence. The foreign national's past record is a good indicator of their level of achievement. Thus, the foreign national's past track record in their field should be strong and distinguished. It would be helpful to show that the foreign national can immediately be recognized as a leader in their field.

#### **Objective measures for "significant social or cultural benefit"**

- an official academic record showing that the foreign national has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of their ability;
- evidence from current or former employers showing that the foreign national has significant full time experience in the occupation for which he or she is sought; significant in this context can be taken to mean ten or more years experience;
- has been the recipient of national or international awards or patent;
- evidence of membership in organizations requiring excellence of its members;
- having been the judge of the work of others;
- evidence of recognition for achievements and significant contributions to the field by peers, governmental organizations, or professional or business associations;
- evidence of scientific or scholarly contributions to the field by the foreign national;
- publications authored by the foreign national in academic or industry publications;

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- leading role of the foreign national in an organization with a distinguished reputation.

As before, a defensible rationale for the use of R205(a), C10 should be entered in the CAIPS notes or on the FOSS remarks screen. This is important both for assisting the Case Processing Centre - Vegreville (CPC-V) in dealing with requests for renewals, and for audit purposes.

### 5.30. Canadian interests: Significant benefit—Entrepreneurs/self-employed candidates seeking to operate a business R205(a), C11

Applicants who have, or may have, a dual intent (see OP11, section 5.4) to seek status as a worker and then eventually as a permanent resident, must satisfy the officer that they have the ability and willingness to leave Canada at the end of the temporary period authorized under R183.

#### Permanent resident applicants

If a permanent resident applicant has met the definition of "entrepreneur" or "self-employed" (R97 to R101) and has been selected, they may be issued a work permit if there are compelling and urgent reasons to authorize the entry of the person before processing is complete. They must demonstrate that their admission to Canada to begin establishing or operating their business would generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents pursuant to R205(a). It is expected that it would be a rare applicant who could satisfy an officer that their entry into Canada would provide a significant benefit before their eligibility for permanent residence has been assessed. It should be noted that any 'early admission' entrepreneurs must also satisfy the officer that they meet the requirements of A22(2), that they 'will leave Canada by the end of the period authorized for their stay', if their permanent residence application is ultimately refused. A work permit should not be granted to remedy concerns relating to processing times, particularly if serious questions such as source of funds remain outstanding.

#### Temporary resident applicants

For applicants who do not intend to reside permanently in Canada, R205(a) may be difficult to satisfy if the profits and economic spin-offs generated by the enterprise do not remain in the Canadian economy. However, there will be situations where the business or the intended period of work is genuinely temporary, i.e., the applicant intends to leave Canada after starting a business, and either close the business (it being seasonal), or hire a Canadian to operate it. Significant benefit must still be demonstrated. However, benefit to a self-employed worker's Canadian clients may also be considered in this case, particularly if the worker is providing a unique service. If the applicant intends to start or buy a business where their own temporary status may be indefinite (i.e., permanent), officers should encourage the person to apply for permanent residence. There may also be self-employed workers who can demonstrate significant social or cultural benefits who intend to work in Canada for only a temporary period.

**Note:** Special considerations apply when the application for a work permit comes from a foreign national who is being considered by a provincial government for nomination as a permanent resident. Provinces sometimes identify foreign nationals as potential provincial nominees, based on their intention to undertake business activities in their province, and request they be issued a work permit to undertake entrepreneurial activity **prior to** the actual nomination of the foreign national. This is because they wish to see the potential nominee initiate their business plan as a demonstration of genuineness of intention, before actually nominating the person.

**Note:** Special consideration is also applicable to entrepreneurs and self-employed individuals destined to Quebec, where a Certificate of Selection for Quebec (CSQ) has been issued, but the foreign national is not yet a permanent resident. While Quebec does not have a Provincial

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Nominee Program, special consideration is applicable on the basis of the Canada-Quebec Accord.

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### Provincial Nominees

See section 5.27 – R204(c)

### Work Permit Duration

The initial work permit can be issued for a maximum of two years, and subsequently extensions are possible only if a proof of selection by a province is provided. It is expected that the province will decide during this two-year period whether or not to nominate the person (see Section 5.27).

**Note:** It is not necessary that the application for permanent residence of the foreign national be received by CIC for the work permit to be issued. The letter from the province is sufficient to trigger this LMO exemption.

### Long-term self-employed applicants

Persons who have repeatedly been issued work permits over several years in the self-employed category should, in addition to satisfying the indicators of general economic stimulus, be able to provide evidence of the following:

1. registration of their business as a legal entity in Canada;
2. demonstration that the profits of the business remain predominantly in Canada or proof that other significant benefits have accrued to Canada;
3. proof that all appropriate federal, provincial and local tax returns have been filed.
4. proof that they meet the temporary requirement of A22(2) – will leave Canada at the end of the period authorized for their stay.

### Factors in considering 'significant benefit'

In cases where significant benefit is being argued, officers may wish to consult organizations in Canada who can provide an opinion. For example, if an applicant wishes to be self-employed in the tourism industry, officers should contact the provincial tourism authority to determine whether the activity would be beneficial or actually impinge on Canadian service providers. Other sources of information and advice include local Canadian Chambers of Commerce, and HRSDC (who, while unable to formally confirm self-employment, should have knowledge of the local labour market situation). Examples of indicators of 'significant benefit' include: general economic stimulus (such as job creation, development in a regional or remote setting or expansion of export markets for Canadian products and services) and advancement of Canadian industry (such as technological development, product or service innovation or differentiation, or opportunities for improving the skills of Canadians).

### Sole or partial ownership

Irrespective of permanent residence requirements, ideally, the issuance of work permits for entrepreneurs should only be considered when the applicant controls at least 50% of the business in question. However, there may be cases where a person owns a slightly smaller stake and will be coming to work in the business. In these cases, a partial owner with an ownership share of less than 50% would be required to apply for a work permit as an employee (rather than as an entrepreneur) and thus may require an LMO. An employer-employee relationship must be established to issue an LMO. A virtual, or having the appearance of an, employer-employee relationship is not a true reflection of a business operation. See section 5.31 (C) below for the guidelines for assessing employer/employee relationships. HRSDC cannot offer a formal LMO in

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cases where there is no job offer or wages, but they can provide informal assistance to officers processing these applications, such as supplying information on known employers who have applied for an LMO or an Arranged Employment Opinion (AEO) in the past, which can help verify whether the business is an existing concern in Canada, whether there are existing employees, whether there are similar businesses in existence, etc.

Questions to consider in determining whether R205(a) is met (whatever percentage of the business in Canada is owned) are similar to the factors laid out in R203:

- Is the work likely to create a viable business that will benefit Canadian workers or provide economic stimulus?
- Does this worker have a particular background or skills that will improve the viability of the business?

Just because a person owns shares in a business does NOT mean that they will meet the requirements of R205(a). A work permit may only be issued if significant benefit would result from the work of the applicant in Canada.

If there are multiple owners, generally only one owner would be eligible for a work permit pursuant to R205(a), unless exceptional circumstances can be demonstrated. Any further work permit applicants require an LMO. While CIC does not want to discourage investment in Canada, these guidelines are intended to prevent transfer of minority shares solely for the purpose of obtaining a work permit.

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### 5.31. Canadian Interests: Significant benefit—intra-company transferees R205(a), C12

#### A) General

The intra-company category was created to permit international companies to temporarily transfer qualified employees to Canada for the purpose of improving management effectiveness, expanding Canadian exports, and enhancing the competitiveness of Canadian entities in overseas markets.

The entry of intra-company transferees is guided by the IRPA regulations and the general provisions of this section, and is supplemented by provisions contained in international trade agreements for citizens of signatory countries. Harmonization of IRPA and NAFTA intra-company transferee provisions means that there are now no differences in terms of entry requirements and work permit durations.

- Qualified intra-company transferees require work permits and are LMO exempt under R205(a), C12, as they provide significant economic benefit to Canada through the transfer of their expertise to Canadian businesses. This applies to foreign nationals from any country.
- Regulation 204(a) provides LMO exemption code T24 for qualified intra-company transferees who are citizens of a country that has signed an international agreement with Canada, namely NAFTA (and similar FTAs) and the GATS, and supplements the IRPA general provisions.

#### General requirements

Intra-company transferees may apply for work permits under the general provision if they:

- are seeking entry to work in a *parent, subsidiary, branch, or affiliate* of a multi-national company;
- will be undertaking employment at a *legitimate and continuing* establishment of that company (where 18-24 months can be used as a reasonable minimum guideline);

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- are taking a position in a *Executive, Senior Managerial, or Specialized Knowledge* capacity;
- have been employed (via payroll or by contract) by the company outside Canada in a similar full-time position (not accumulated part-time) for one year in the three-year period immediately preceding the date of application. Extensions may be granted up to the 5 and 7 year maximums referred to in the tables at the end of this section (5.31) and in the table in section 11.2.

**TIP:** If the applicant has not had full-time work experience with the foreign company, the officer should consider other factors before refusing the applicant solely on this basis, such as:

- Number of years of work experience with the foreign company;
  - The similarity of the positions. For example, is the applicant coming to work for a short period of time versus coming from a part-time position to a full-time long-term position?
  - The extent of the part-time position (i.e., 2 days/week versus 4 days/week)
  - Does it appear to be an abuse of the ICT provision?
- are coming to Canada for a *temporary* period only;
  - comply with all immigration requirements for temporary entry.

### **TIP: Guidelines when assessing Start-Up Companies**

#### Requirements for the Company

- Generally, the company must secure physical premises to house the Canadian operation, particularly in the case of Specialized knowledge. However, at times, in cases of a Senior Manager/Executive, it would be acceptable that the address of the new start-up has not been secured yet – for example, when it is counsel's address until a time that the executive can purchase or lease a premise.
- Must furnish realistic plans to staff the new operation
- Must have the financial ability to commence business in Canada and compensate employees

#### Requirements for the Workers

- Executives/managers:
  - company must demonstrate that it will be large enough to support executive or management function
- Specialized Knowledge:
  - company must demonstrate that it is expected to be doing business
  - work must be guided and directed by management at the Canadian operation

#### Duration of Work Permits

- Initial Work Permit: 1 year
- For renewals, evidence should be provided that:
  - the Canadian and foreign companies still have a qualifying relationship
  - the new office has engaged in the continuous provision of goods or services for the past year
  - the new office has been staffed

### **B) Qualifying relationship between the Canadian and foreign employer**

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The Canadian and foreign enterprises must be legal entities that have a *parent, subsidiary, branch or affiliate* business relationship. Both the Canadian and foreign companies must be, or will be doing business.

**Doing business** means regularly, systematically, and continuously providing goods and/or services by a parent, branch, subsidiary, or affiliate in Canada and the foreign country, as the case may be. It does not include the mere presence of an agent or office in Canada. For instance, a company with no employees which exists in name only and is established for the sole purpose of facilitating the entry of intra-company transferees would not qualify. (See Appendix G for an explanation of terminology.) Evidence of the fact that a company is actively doing business such as annual reports (for public companies), articles of incorporation, profit/loss statements, partnership agreements, licence to do business, business tax returns and registration with Canada Customs and Revenue Agency as an employer, may be useful. Both the Canadian and the foreign branches of the company must be doing business for the duration of the intended stay in Canada of the intra-company transferee. The foreign national employee must be able to transfer back to the foreign company at the end of their assignment in Canada.

**Business enterprise** means any entity constituted or organized under applicable law, and either privately-owned or owned by the government, including any corporation, trust, partnership, sole proprietorship, joint venture or other associations.

Also included are religious, charitable, service, or other non-profit organizations which must demonstrate that it is a firm, corporation, or other legal entity that has a parent, subsidiary, branch or affiliate relationship. Therefore, there is no difference in this regard to commercial entities. Both the Canadian and foreign entities must be legal entities. For intra-company transferee classification, ownership and control are the factors which establish a qualifying parent, branch, subsidiary, or affiliate relationship. Ownership means the right of possession with full power and authority to control. Control means the right and authority to direct management and operations of the entity.

Definitions of **enterprise, parent and subsidiary, branch and affiliate** are the same as in NAFTA (See Appendix G, 4.4).

For guidelines on mergers and acquisitions, including sample employer information to assist officers in cases of change of employer's name, see Appendix I.

The focus for intra-company transferees in the event of a merger or acquisition is establishing that a qualifying relationship remains, even though there have been changes in ownership. The onus is on the applicant to provide evidence that this is the case.

A **qualifying relationship** remains if the Canadian and foreign entities continue to meet the definition of parent, subsidiary, affiliated or branch companies. If the entities no longer meet the requirements for these relationships, then any foreign intra-company transferee currently working for the Canadian entity would not qualify to continue working for the new entity.

If the qualifying relationship remains, foreign intra-company transferees may continue to work for the new entity on the strength of their existing work permit. Where there is a change in the name and entity, this should be reflected on any work permit renewal and in FOSS remarks. There may be implications for other federal and provincial partner agencies, such as the Canadian Revenue Agency or Service Canada. The source of the foreign national's salary and benefits is **not** a factor to be taken into consideration.

### **C) Qualifying relationship between the employer and temporary foreign worker**

**Must take a position in Canada** under intra-company transferee provisions means that an employer-employee relationship with the Canadian branch of the company to which they are

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being transferred must exist. The essential element in determining this relationship is the right of the employer to order and control the employee in the performance of their work. While full-time employment by the Canadian branch is anticipated, there is no requirement that the foreign national perform full-time service in Canada. An executive, for example, could divide normal working hours between offices in Canada and the U.S. There is no requirement that the foreign national be paid from the Canadian entity, however, this is usually the case.

Evidence that an employer is a legal entity may be articles of incorporation, partnership agreements, license to do business, evidence of registration with CRA as an employer.

Non-qualifying business relationships would be those based on contracts, licensing arrangements and franchise agreements. Associations between companies based on factors such as ownership of a small amount of stock in another company, exchange of products or services, licensing or franchising agreements, membership on boards of directors, or the formation of consortia or cartels do not create affiliate relationships between the entities.

An applicant seeking entry to open a new office on behalf of the foreign enterprise may also qualify, after having established that the enterprise in Canada is expected to support a managerial or executive position or, in the case of specialized knowledge, is expected to be doing business. Factors such as the ownership or control of the enterprise, the premises of the enterprise, the investment commitment, the organizational structure, the goods or services to be provided and the viability of foreign operation should be considered. The financial ability to support the new business should also be taken into consideration.

### D) Qualifying job positions

#### Executives and senior managers

As in NAFTA, this group includes persons in the senior executive or managerial categories, in possession of a letter from a company conducting business in Canada, identifying the holder as an employee of a branch, subsidiary, affiliate or parent of the company which is located outside Canada. The holder must be transferring to a Senior Executive or Managerial level position at a permanent and continuing establishment of that company in Canada for a temporary period.

**Executive capacity** means that the employee primarily:

- directs the management of the organization or a major component or function of the organization;
- establishes the goals and policies of the organization, component, or function;
- exercises wide latitude in discretionary decision-making; and
- receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

**Managerial capacity** means that the employee primarily:

- manages the organization, a department, subdivision, function, or component of the organization;
- supervises and controls the work of:
  - other managers or supervisors;
  - professional employees, or
  - manages an essential function within the organization, or a department or subdivision of the organization.
- has the authority to hire and fire, or recommend these and other personnel actions, such as promotion and leave authorization; if no other employee is directly supervised, functions at a *senior* level within the organization hierarchy or with respect to the function managed; and,

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- exercises discretion over the day-to-day operations of the activity or function for which the employee has the authority.

In general, executives and managers plan, organize, direct, or control the activities of a business, or a division of a business (e.g. Vice President of Marketing), either independently or through middle managers. They are frequently responsible for the implementation of the policies of a business. More senior persons, either alone or in conjunction with a board of directors, may formulate policies which establish the direction to be taken by the business.

**Functional managers** in the intra-company transferee context, manage an essential function in the company, but do not necessarily manage staff. Essential function generally means a function that is indispensable or important to achieving the organization's goals. A functional manager must operate at a senior level within the organization or within the function managed, and have discretion over the day-to-day operations of the function. Factors that may support functional manager status include:

- providing coordination and guidance to other managers;
- having responsibility over assets or sales with a large dollar value;
- directing the work of subcontracted firms.

Excluded will be persons who are in positions that are more accurately defined as junior management. Positions defined as managing supervisor, supervisor, or foreman, or persons with managerial sounding titles only, would not qualify. A first line supervisor is not considered to be acting in a managerial capacity unless the employees who are being supervised are professionals. A functional manager does not primarily perform tasks required in the production of a product or in the delivery of a service.

All persons included should be in the NOC group 0 applying to Management Occupations. Only those persons whose positions are defined as Senior Managers who plan, organize, direct or control a business should be included. This exemption is not available to persons whose positions are more accurately defined as middle managers. As a result:

- ☐ NOC groups 0013 to 0016 should be included;
- ☐ NOC groups 01 to 09 may be included depending on the responsibility of the position.

### Specialized knowledge workers

The worker must demonstrate "specialized knowledge" of a company's product or service and its application in international markets, **or an advanced level** of knowledge or expertise in the organization's processes and procedures (product, process and service can include research, equipment, techniques, management, or other interests).

The determination of whether a worker possesses specialized or advanced knowledge does not involve a test of the Canadian labour market, that is, it is possible to have similarly employed Canadian workers. However, officers must ensure that the knowledge that the applicant possesses is not general knowledge held commonly throughout the industry and that it is truly specialized.

**Specialized knowledge** is unusual and different from that generally found in a particular industry. The knowledge need not be proprietary or unique, but it should be uncommon.

**TIP:** A person who possesses specialized knowledge would usually be in a position that is critical to the well-being of the enterprise.

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As a general guide, specialized knowledge may involve a person's familiarity with a product or service which no other company makes, or that other companies make, but differently. For example, the knowledge required to sell, manufacture or service a particular product is different than that of other products to the extent that the Canadian branch would experience significant disruption of business in order to train a new worker to assume those duties. Similarly, an eligible applicant could have knowledge of a particular business process or methods of operation that are unusual. The knowledge is not generally identified and is of some complexity, meaning that it cannot be easily transferred to another individual in the short term. Specialized knowledge would normally be gained by experience with the organization and used by the individual to contribute significantly to the employer's productivity or well being. **Evidence of such knowledge must be submitted.**

Some characteristics of a worker who has specialized knowledge are:

- possesses knowledge that is valuable to the employer's competitiveness in the market place;
- uniquely qualified to contribute to the Canadian employer's knowledge of foreign operating conditions;
- knowledge has been gained through extensive prior experience with the employer;
- has been utilized as a key employee abroad in significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position.

**TIP:** The test is whether the applicant possesses such knowledge, not whether it exists in Canada.

**Advanced knowledge** is complex or high-level knowledge; not necessarily unique or known by only a few individuals (or proprietary), but knowledge that would require a specific background and/or extensive experience with the employer who is transferring the worker, or experience from within the same industry. The person may possess key knowledge which enables them to contribute to the Canadian office's ability to operate competitively in another country.

**TIP:** The knowledge need not necessarily be truly "proprietary" in the sense of "the company actually owns the knowledge", yet it has to be knowledge beyond what is commonly found within the industry. It could be non-proprietary knowledge that a particular company applies in a unique way that makes it knowledge beyond what is common in the industry.

### Additional Guidance

When determining if a Temporary Foreign Worker (TFW) indeed holds specialized knowledge, officers can use the following questions to better guide their opinion/decision:

- What level is the position's NOC? What diploma was required for the position?
- What is the applicant's knowledge of the company (proprietary) versus regular knowledge?
- What duration of experience was necessary to actually acquire said knowledge?

**TIP:** A good case for specialized knowledge could involve high skill NOC codes (A, B and 0), with the appropriate degree and extensive experience in a company. For a person with a high-skill NOC code position, an appropriate degree and only one year in a company, a case has to be made by the client as to how the person has proprietary knowledge (years of experience in the field, with other companies or just out of school but has acquired knowledge of components specific to the company).

Requests for a C-12 exemption for specialized knowledge for a position with a low-skill NOC code should be looked at in greater detail. The truly specialized knowledge in lower-skill NOC code

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positions should have been gained through many years of work in the domain, although one year of experience with the company may also be sufficient in some cases.

- How many years of experience does the TFW have with the foreign company?
- How many years of experience does the TFW have in the industry?

**TIP:** The longer the experience, the more likely the knowledge is indeed "specialized". Although the TFW may have only one year of experience with the foreign company, they may be considered to have proprietary knowledge beneficial to the Canadian company if they demonstrate comprehensive knowledge of a specific facet of the company (which may have been acquired within that year or had worked on extensively) accompanied by studies in the appropriate field AND/OR years of experience in an associated industry.

- Does the TFW's salary – when considered along with years of experience – support the claim?

**TIP:** Job offers must present salaries that are realistic in terms of Canadian wage-levels for the occupation concerned.

- What is the size of the business?
- What level of training is needed for a position that requires "specialized knowledge"?

**TIP:** If the specialized knowledge can be obtained by a short period of in-house or on-the-job training, it likely is not very "specialized". If the person must take a series of progressively more complex training, perhaps combined with hands-on experience over a somewhat extended period of time and perhaps under the direction of a more experienced person, it is more likely that the knowledge is "specialized".

- Have any of the following documents been provided to prove the claim of specialized knowledge: an outline of why specialized knowledge applies, a resume, reference letters, letters of support from the company?

**TIP:** It is the responsibility of the applicant to show that an employer needs them in Canada and to show what sort of specialized technical or managerial expertise they have that could not be sourced within a reasonable period of time or at a reasonable cost from within Canada.

### Other Considerations

The duration of the job offer is not a criterion that should influence the opinion. For example, a three month offer does not mean specialized knowledge is not required or may not be beneficial to Canadian employees in such a short period.

In the final analysis, it is a question of credibility. Officers will be required to assess all the information presented to them and then use their good judgement to come to a decision. The onus is always on the applicant to support their application with credible documentation and explain in full the purpose and scope of their work in Canada, either in writing or at an interview.

### E) Other requirements

Eligibility criteria applicable to both the senior managerial and specialized knowledge categories are:

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- applicants in the intra-company category must have worked continuously outside Canada (full-time, not accumulated part-time) for at least one year within the previous three years in a similar position for the company that plans to transfer them to Canada. As in NAFTA, the applicant does not have to be currently an employee of the company that plans to employ them;
- In the context of a recent corporate acquisition or merger, it is not a requirement that the applicant has worked for the named sending company for a year provided that the applicant has been working for one of the affiliates for at least one year in the previous three years as long as the new "successor entity" can demonstrate that it has assumed the interests and obligations, assets and liabilities of the original owner, and continues to operate the same type of business as the original owner.

### Example:

A US Software Design Company (ABC LTD) wishes to transfer an applicant to its affiliate in Canada. This U.S. company recently acquired a smaller software design company in the US and wishes to transfer an employee from the acquired company to its affiliate in Canada. The applicant has been working continuously with the smaller company for over 10 years in a highly specialized technical position similar to the one he will assume in Canada. Since ABC LTD has assumed the interests and obligations of the smaller software company and continues to operate the same type of business, the applicant may be considered for intra company transfer.

(See Appendix I – Guide to Mergers and Acquisitions for more information)

- \* intra-company transferees are not necessarily required to re-locate to Canada, however, they are expected to actually occupy a position within the Canadian branch of the company; there should be a clear employer-employee relationship with the Canadian company, and the Canadian company should be directing the day-to-day activities of the foreign worker; this is especially important for employees working at client sites and not at the parent, branch, affiliate, or subsidiary;
- \* if an applicant is not going to take a position in a Canadian branch, officers should examine whether they might better be classified as a business visitor, which includes provisions for after-sales service (See Section 5.2, Work without a work permit R186(a)—Business visitor).

Rather than issuing multiple short-term permits for each specific project, a work permit for a maximum duration of one year may be issued for a number of specific projects. This applies to projects taking place at the company premises in Canada or at a client site (generally seen as applicable for persons the company needs to transfer for their specialized knowledge). Long-term work permits, more than one year, in the intra-company transferee category should not be issued for service personnel living outside Canada whom the company wishes to parachute into a client site of the international company on an as-needed basis.

### Documentation requirements:

- \* confirmation that the person has been employed (via payroll or by contract) continuously (full-time, not accumulated part-time) by the enterprise outside Canada for one year within the three-year period immediately preceding the date of application;
- \* outline of the applicant's position in an executive or managerial capacity or one involving specialized knowledge (i.e. position, title, place in the organization, job description);
- \* in the case of "specialized knowledge", evidence that the person has such knowledge and that the position in Canada requires such knowledge;
- \* outline of the position in Canada (namely, position, title, place in the organization, job description);
- \* indication of intended duration of stay; and
- \* description of the relationship between the enterprise in Canada and the enterprise in the foreign country; the officer may request tangible proof to establish the relationship between the Canadian and foreign organization wishing to make the transfer.

## F) International Agreements

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### FTA intra-company transferees

Appendices B and G provide terminology explanations relevant to the general provisions and elaborate on documentary requirements, however, the criteria are essentially the same as the general criteria. For applicants eligible under the NAFTA or other FTAs similar to the NAFTA category, officers should process them under R204(a), T24, instead of R205(a).

**Note:** The duration for a T24 NAFTA work permit is now the same as the general provisions under IRPA (See table Section 11.2).

### GATS intra-company transferees

The GATS criteria are essentially the same as the general criteria. All 150 member countries of the World Trade Organization (WTO), are thus eligible for the commitments that Canada has granted with respect to temporary entry (including entry of 'specialized knowledge workers'). Therefore, CIC has expanded the general criteria in order to achieve transparency and an easier decision-making process for officers. Even where the applicant may meet the more specific criteria under GATS, they should be processed under the general provision, R205(a), C12.

### Comparison of IRPA General Provisions and NAFTA and other FTAs

The tables below illustrate the harmonization of the general provisions with NAFTA provisions.

## EXECUTIVES

### Executives, intra-company transferees:

- \* direct the management of the company or a major component or function of the company
- \* establish the goals & policies of the company, component or function

**Doing business:** regular, systematic, and continuous production of goods or delivery of services

## MANAGERS

### Senior managers, intra-company transferees:

- \* manage the company, or a department, subdivision, function, or component of the company
- \* manage:
  - other managers or supervisors
  - professional employees, or
  - an essential function

**Doing business:** regular, systematic, and continuous production of goods or delivery of services

## SPECIALIZED KNOWLEDGE WORKERS

### Specialized knowledge workers, intra-company transferees:

- have *special knowledge* of the company's product or service and its application in international markets, or an *advanced* level of knowledge of the company's processes and procedures;
- normally have knowledge related to the proprietary interests of the company.

**Doing business:** regular, systematic, and continuous production of goods or delivery of services.

## Free Trade Agreement (FTA)

- North American Free Trade Agreement (NAFTA)
- Canada-Chile Free Trade Agreement
- Canada-Peru Free Trade Agreement

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<b>General Immigration Provision</b>  <b>C12</b>	<b>FTA</b>  <b>T24</b>
<b>Citizenship:</b> no restrictions	<b>Citizenship:</b> US or Mexican (NAFTA); Chilean (CCFTA); or Peruvian (and permanent residents) (Canada-Peru FTA)
<b>Employment criteria:</b> continuous employment for 1 year (full-time) within the previous 3 years in a similar position with the company outside Canada. Note: As in NAFTA, the applicant does not have to be currently an employee of the company that plans to employ them.	<b>Employment criteria:</b> continuous employment for 1 year (full-time) - or six months for the Canada-Peru agreement - within the previous 3 years in a similar position with the company outside Canada.
<b>Other criteria:</b> <ul style="list-style-type: none"> <li>* Companies:               <ul style="list-style-type: none"> <li>◦ must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements);</li> <li>◦ both must be doing business</li> </ul> </li> <li>* Employee:               <ul style="list-style-type: none"> <li>◦ must be working in a similar position with the company in a foreign jurisdiction</li> <li>◦ is taking employment at a permanent and continuing establishment of that company</li> </ul> </li> </ul>	<b>Other criteria:</b> Same as General Provisions
<b>Documents required for entry:</b> <b>From worker:</b> <ul style="list-style-type: none"> <li>* proof of citizenship</li> <li>* documentation from <i>Employer</i></li> </ul> <b>From employer:</b> <ul style="list-style-type: none"> <li>* confirmation that the employee has been employed (via payroll or by contract) in a similar position by the company continuously for 1 year (full-time) within the 3-year period immediately preceding the application</li> <li>* outline of the employee's position outside of Canada: job title, place in the company, job description, duties</li> <li>* outline of the employee's intended position in Canada</li> <li>* arrangements for remuneration</li> <li>* length of employee's intended stay in Canada</li> <li>* description of the qualifying relationship between the Canadian and the foreign company</li> <li>* evidence that both companies are doing business</li> </ul> <b>Additional documents required from employer for specialized knowledge workers:</b>	<b>Documents required for entry:</b> <b>From worker:</b> <ul style="list-style-type: none"> <li>• proof of citizenship (the Canada-Peru agreement allows for <u>permanent residents</u> as well)</li> <li>• documentation from <i>Employer</i></li> </ul> <b>From employer:</b> Same as in General Provisions, except: <ul style="list-style-type: none"> <li>• confirmation that the employee has been employed (via payroll or by contract) in a similar position by the company continuously for 1 year (full-time) - or <u>six months for the Canada-Peru agreement</u> - within the 3-year period immediately preceding the application</li> </ul>

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<ul style="list-style-type: none"><li>* documentation establishing the employee's specialized knowledge</li><li>* confirmation that the position in Canada requires such knowledge</li></ul>	
<b>Duration of stay:</b> Executives and Managers: maximum 7 years; initial work permit may not exceed 3 years Specialized knowledge workers: maximum 5 years; initial work permit may not exceed 3 years	<b>Duration of stay:</b> Same as General Provisions
<b>Application for work permits:</b> POEs or visa posts; renewals through CPC-V	<b>Application for work permits:</b> Same as General Provisions

### Breaks in Canadian service

Most foreign nationals who have worked in Canada under the intra-company transferee category may again receive consideration under this category if they have been on an assignment with a branch of the same company in a foreign jurisdiction for at least 12 months. This includes all NAFTA applicants pursuant to T24 and specialized knowledge applicants under C12. Please refer to Section 11.2.

For example, a foreign national who worked in Canada as a specialized knowledge worker for two years for the Canadian entity, then transferred to an Australian branch of the same company for two years, would be eligible for consideration under the intra-company transferee provisions as a specialized worker for another five-year period. The initial work permit could only be for a three-year duration under C12.

### Intra-company transferee duration of work permit limit

After intra-company transferees have reached their maximum work permit duration (seven years for executives and senior managers and five years for specialized knowledge workers), they must complete one year of full-time employment in the foreign company outside Canada if they wish to re-apply as an intra-company transferee. This requirement, which exists in NAFTA, applies to all intra-company transferees, whether they enter under the IRPA general provisions of R205(a) or under international trade agreement provisions of R204(a). It also applies to foreign nationals who wish to switch from a work permit issued under R205(a) to a work permit issued under R204(a).

Harmonization of NAFTA and the general provisions will help employers in human resource planning and simplify the administration of intra-company transferees provisions for foreign nationals and immigration and visa officers.

#### 5.32. Canadian interests: Significant benefit—Emergency repair personnel R205(a), C13

Emergency repair personnel are persons whose admission is required in Canada to carry out emergency repairs to industrial or commercial equipment in order to prevent disruption of employment. They require work permits, and are exempt from an LMO. They should be in possession of a letter, telex or fax indicating that the nature of their work is an emergency.

#### 5.33. Canadian interests: Reciprocal employment, C20 General guidelines R205(b)

R205(b) allows foreign workers to take up employment when reciprocal opportunities are provided for Canadian citizens to take temporary employment abroad. Exchange programs offer the opportunity of gaining international experience and allow the cultural exchange of both foreign

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and Canadian participants and their employers. Entry under reciprocal provisions should result in a neutral labour market impact.

There are formally-recognized reciprocal programs such as the DFAIT-managed International Experience Canada program (discussed below). However this provision also allows for admission of workers in other cases where reciprocity is demonstrated by the Canadian employer (or specific program administrator). Academic institutions may initiate exchanges under C20 as long as they are reciprocal, and licensing and medical requirements (if applicable) are met. A copy of the exchange agreement between the Canadian and foreign parties must be provided by the applicant, or a letter from the receiving Canadian institution, or work contract. *Bona fide* evidence of reciprocity will allow the officer to issue a work permit. The onus is on the institutions and/or applicants to demonstrate that reciprocity exists.

**TIP:** A useful tool can be a company's "Global Mobility Policy" within their HR directives; this often describes and demonstrates that reciprocity exists.

### 5.34. Canadian interests: Reciprocal employment—International Experience Canada (IEC) (formerly known as the International Youth Programs and International Exchange Programs) R205(b), C21

#### Background

In response to the recommendations of the Department of Foreign Affairs and International Trade (DFAIT), the Department of Employment and Immigration (predecessor of CIC and HRSDC) and the Secretary of State (predecessor of Canadian Heritage), Cabinet approved the creation of an international travel and exchange program in 1967. Since 1986, DFAIT has had the federal responsibility of managing the International Experience Canada (IEC) program, previously known as the International Youth Programs and the International Exchange Programs. The mission of IEC is to foster close bilateral relations between Canada and other countries through cultural exchanges that give participants a mutual understanding of the other culture through a travel, life and work experience abroad.

Canadians and foreign nationals between the ages 18 and 35 can benefit from the IEC program under: 1) bilateral arrangements on youth mobility established by the Canadian government and foreign governments; and 2) organizations recognized and monitored by DFAIT that support youth mobility, such as SWAP, AIESEC, IAESTE and Mennonite Central Committee of Canada, which have multilateral arrangements with partners in over 50 countries. DFAIT also facilitates a number of inter-institutional exchanges (See Appendix E for details).

Applications from foreign nationals are reviewed first by DFAIT and then by CIC at missions abroad. Qualified foreign nationals holding a valid Letter of Introduction (LOI) may receive a work permit under the Labour Market Opinion (LMO) exemption code C21 upon their arrival at a Canadian Port of Entry (POE). IEC participants are exempted from the work permit application processing fee [R299(2)(i)], and, where applicable, the temporary resident visa processing fee [R296(2)(d) & R297(1.1)]. However, qualified foreign nationals are subject to an IEC Program Participation Fee (PPF) of \$150CDN [approved under the *Financial Administration Act* and the *User Fees Act*]. This fee is to be collected by DFAIT. DFAIT does not finance or subsidize any applicants or participants under IEC.

In 2010, DFAIT (IEC unit) introduced a Standard Operational Procedures (SOP) manual to improve the management of the IEC program worldwide. Relevant DFAIT, CIC and CBSA officers are encouraged to consult this manual which is available by request through DFAIT (IEC unit).

#### Role of DFAIT / CIC / CBSA

- DFAIT-NHQ (IEC unit) negotiates, in consultation with CIC-NHQ, a treaty, memorandum of understanding or diplomatic exchange with foreign governments to establish bilateral

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arrangements on youth mobility. Each October, DFAIT-NHQ also determines annual numerical limits, in consultation with CIC-NHQ, for the admission of foreign participants to Canada.

- **DFAIT staff at missions abroad** promotes this program to the general public abroad and must be the first and last points of contact to foreign IEC applicants. DFAIT staff receives the IEC application packages, verifies that the applicants meet IEC's program requirements, and collects the IEC Program Participation Fee (PPF) from qualified applicants. DFAIT staff then transfers all applications that satisfy IEC's program requirements to the appropriate CIC unit for further processing. In cases where fraudulent information is found, DFAIT staff also transfers these applications to the appropriate CIC unit and notifies CBSA of the cases.
- **CIC unit at missions abroad** receives applications transferred from DFAIT staff and processes them in accordance with the *Immigration and Refugee Protection Act* (IRPA). The CIC unit sends out letters of refusal or a LOI to successful applicants. The validity period of LOIs issued to participants under the working holiday category is 12 months. The validity period of LOIs issued to participants under employer-specific categories is determined based on the terms of their contract of employment. CIC staff should also include any other relevant information in the Remarks section in CAIPS (e.g., if a participant is accepted under the International Co-op or the Young Professional category, CIC staff should indicate in the Remarks the participant's career-related field).
- **CBSA officers at POE** review the LOI and may issue a work permit (LMO exemption code C21). CBSA officers may refuse to issue a work permit if the LOI holder cannot to show proof of health insurance that is valid for the entire duration of their expected stay (NOTE: Proof of health insurance is a program criteria under IEC). CBSA officers at POEs may refuse entry to Canada if the applicant cannot provide a proof of health insurance or is deemed inadmissible to Canada. CBSA should enter "open" under the "Employer" section of the work permit for participants under the Working Holiday category.

A Memorandum of Understanding (MOU) between DFAIT and CIC establishes the division of roles and responsibilities between the two departments. The MOU also prescribes a formula in which a substantial part of the revenue generated by the Program Participation Fee (PPF) is transferred to CIC-NHQ to fund resources required by CIC at missions abroad for processing the work permit component of IEC applications.

### Application Processing

An IEC application package consists of two components: 1) IEC's program requirements as set by DFAIT; and 2) immigration requirements for a work permit as set by CIC (in most cases, CIC's [IMM1295b] is used). Under IEC, applicants may not use a representative to conduct business with DFAIT on their behalf.

All foreign nationals should submit their IEC application package from outside of Canada. They may not apply to participate in the program when entering Canada. U.S. citizens may submit their work permit application when entering Canada [R198(2)(c)] (See Note below). All application packages must be sent directly to the proper DFAIT unit at the mission and NOT to the CIC unit. If a CIC unit receives an IEC application package directly, this application should be forwarded to the proper DFAIT unit at the mission.

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**Note:** Although Canada and the U.S. currently do not have a formal bilateral arrangement concerning youth mobility, U.S. citizens may benefit from the IEC program through recognized organizations such as SWAP. They may apply for a C21 work permit at a Canadian consulate or POE [R198(2)(c)] as long as they hold a valid acceptance letter from the recognized organization. See "Organizations supporting youth mobility" under Appendix E.

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**Citizenship and residency:** Foreign nationals applying under a bilateral arrangement must be a citizen of one of the countries with which Canada holds a bilateral arrangement on youth mobility. Some bilateral arrangements require that the applicant be residing in the country of their citizenship at the time of application (See "Formal Bilateral Arrangements" under Appendix E for details). Other bilateral arrangements allow applicants to submit their application to the Canadian mission responsible for the country where they are present and have been legally admitted [R11(2)]. However, these applicants must be advised to submit their application to the Canadian mission responsible for their country of citizenship to avoid confusion and lengthy processing times.

Foreign nationals applying under a Canadian organization recognized by DFAIT (IEC unit) may submit their application to any Canadian mission abroad. The Canadian organization representing these foreign nationals must first contact DFAIT (IEC unit) to find out the appropriate contact of the DFAIT unit at the mission. See "Information" below for details.

**Dependant(s):** As an IEC program requirement, applicants may not list a dependant or dependants (i.e., common-law partner/spouse and child(ren)) on their application to benefit from the IEC program. This means that an applicant and his/her family members may not benefit from the IEC program as a family unit under one IEC application. However, this does not prevent dependant(s) from submitting their own individual request to come to Canada (e.g., spouse may submit his/her own application to benefit from the IEC program).

The spouse/common-law partner of an IEC participant is not eligible to obtain an open work permit by virtue of the participant's IEC application. The LMO exemption code C41 only applies to spouses/common-law partners of workers under CIC's Temporary Foreign Workers Program (NOC Levels 0, A & B).

Likewise, the child(ren) of an IEC participant is/are not eligible to obtain a study permit by virtue of the participant's IEC application. They must submit their own application for a study permit if they intend to study in Canada.

**IEC categories:** In general, foreign nationals fall under one of the following three overarching IEC categories:

- **Working Holiday** – for applicants whose intention is to travel in Canada and work in order to supplement their financial resources.
- **International Co-op** – for applicants who are registered post-secondary students in their home country and whose intention is to fulfill part of their academic curriculum in Canada by completing a pre-arranged work placement that is related to their field of study.
- **Young Professionals** – for applicants whose intention is to gain work experience in Canada under a pre-arranged contract of employment in support of their career development.

Different countries may have different names for these categories as well as variations (e.g., the MOU between Canada and the Republic of Korea only offers the working holiday category). In general, work to be performed by foreign nationals under IEC is remunerated.

**Conditions of work permit:** participants under the working holiday category may receive an open work permit with a validity period of 12 months (See Appendix E for details); participants under the one of the other two categories may receive employer-specific work permits with a suggested validity period that reflects the length of their contract of employment. Participants holding an employer-specific work permit must submit an application either online or by mail to CPC-Vegreville if they wish to change the conditions imposed on their work permit (e.g., changing the employer).

(Use the following link for instructions on how to do this:

<http://www.cic.gc.ca/english/information/applications/extend-worker.asp>). The validity period of a C21 work permit may not exceed the validity period of the participant's passport. IEC participants

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may not request to extend their stay under IEC unless the extension is within the original authorized period of stay as per their LOI.

### **Repeat participation**

In general, foreign nationals applying under a bilateral arrangement are permitted to benefit from the IEC program twice in their lifetime. They generally need to apply under a different category (i.e., Working Holiday, International Co-op Young Professionals) each time. The two stays must be discontinuous. See "Formal Bilateral Arrangements" under Appendix E for details.

The guidelines on repeat participation vary for foreign nationals applying under a Canadian organization. See Appendix E for details.

### **Organizations supporting youth mobility**

IEC also recognizes with a number of organizations that have multilateral arrangements with partners in foreign countries.

For a complete list and where they operate, see Appendix E under Multilateral Exchanges.

### **Information**

For questions and information regarding the IEC program, please send an email to: [experience@international.gc.ca](mailto:experience@international.gc.ca).

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#### **5.35. Canadian interests: Reciprocal employment—Academic exchanges R205(b), C22**

Academia is a field where exchanges and mobility are very common, especially at the recent post-graduate level. (Post-doctoral fellows and award recipients are now facilitated under R205(c)(ii), C44). Strict job-for-job reciprocity is not necessarily required. CIC recognizes that opportunities exist for Canadians to take similar positions in foreign educational institutions, and therefore allows for the application of R205(b), C22 for the situations described below:

##### **Guest lecturers**

Work permits exempt from an LMO under R205(b), C22 may be issued to guest lecturers. They are defined as persons invited by a post-secondary institution to give a series of lectures and who occupy a temporary position of a non-continuing nature (which does not comprise a complete academic course) for a period of less than one academic term or semester.

##### **Teachers, elementary and secondary**

Persons who are engaged by educational institutions as elementary and secondary teachers coming to Canada under reciprocal exchange agreements arranged between foreign educational authorities and Canadian provincial governments or school boards may be issued work permits under this category as well.

Included are pre-school, elementary and secondary school teachers coming to Canada under the Reciprocal Exchange Agreement between New Zealand and the province of Ontario. It should be noted that family members of Australian and British teachers coming to Canada under the terms of a Reciprocal Exchange Agreement may be issued work permits under the general C20 category.

##### **Visiting professors**

Visiting professors may be issued work permits pursuant to R205(b), C22. They are people working for a period of not more than two academic years to take a position with a post secondary institution and who retain their position abroad. Visiting professors may also include those on

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sabbatical who are doing collaborative research with a Canadian post-secondary institution. They would be paid by the foreign university that employs them outside Canada.

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### 5.36. Canadian interests: Reciprocal employment—General examples R205(b), C20

#### Canada World Youth Program

This is an international exchange involving young people from a number of foreign countries whose brief living and working experience in Canada provides them and their Canadian hosts with a better appreciation of different cultures. Participants normally spend from 89 to 110 days in Canada and "work" full-time for the entire period at a variety of jobs, including farm work and social/community services, e.g., schools institutions, for the aged and handicapped. The "work" performed is strictly voluntary.

Participants will receive open unrestricted work permits (fee exempt). For this reason, they must have a medical examination..

Supporting documentation: a letter from Canada World Youth.

#### Cultural agreements

Persons entering Canada to take employment under the terms of cultural agreements between Canada and the following countries: Belgium, Brazil, Germany, Italy, Japan and Mexico. Fee exempt.

Cultural agreement between the Government of Canada and the Government of the French Republic

Allows for temporary employment under the cultural agreement between the Government of Canada and the Government of the French Republic, or under the terms of any educational, cultural, scientific, technical or artistic agreement made between France and a province of Canada within the framework of that agreement, provided that the applicants present to the officer a letter of acceptance by the appropriate governing body. Fee exempt.

Supporting documentation: letter from the appropriate governing body.

#### Cultural exchange between the Government of Canada and the People's Republic of China

Under the terms of the cultural exchange program relating to the arts, archives, libraries, journalism, radio, television, film, literature, translation, architecture, social sciences and sports. Fee exempt.

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### 5.37. Work related to a research, educational or training program R205(c)(i), C30

(see also OP 12, section 5.22)

The following academic or training programs and research activities are designated as work which can be performed by a foreign national based on the criteria listed in R205(c)(i), C30:

1. foreign students, (excluding those coming to work in medical residency or extern positions with the exception of those in the field of veterinary medicine), whose intended employment forms an essential and integral part of their course of study in Canada and this employment has been certified as such by a responsible academic official of the training institution and where the employment practicum does not form more than 50% of the total program of study.
2. special program students under the sponsorship of the Canadian International Development Agency (CIDA) when the intended employment is part of the student's program arranged by CIDA;

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3. persons coming to Canada to work temporarily for the International Development Research Centre of Canada;
4. persons sponsored by Atomic Energy of Canada Ltd., as distinguished scientists or post-doctoral fellows;
5. persons sponsored by the National Research Council of Canada (NRC) and the Natural Sciences and Engineering Research Council of Canada (NSERC) as distinguished scientists or scholars coming to participate in research for the NRC and the NSERC;
6. persons coming from Commonwealth Caribbean countries for training under the terms of the Official Development Assistance Program administered by the Canadian International Development Agency.
7. holders of research chair positions at a Canadian university, nominated for their research excellence, and partially or wholly funded by federal or provincial governments. This includes holders of Canada Research Chair (CRC) positions AND Canada Excellence Research Chair (CERC) positions.

This provision applies to both privately and publicly funded institutions. **It applies only to persons who hold study permits, except for the case of minors in high school who do not require study permits but who require work experience in order to graduate.** (See British Columbia example, below.)

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**Note:** This provision only applies to course requirements of *Canadian* institutions, for students actually studying in Canada. A foreign student who comes to Canada for a year or a term may qualify for C30 if the employment forms an essential and integral part of their course of study in Canada. If the employment is only a requirement of the foreign institution, C30 does not apply.

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In cases such as these, the letter provided by the educational institution should establish clearly that the work is a normal component of the academic program which all participants are expected to complete in order to receive their degree, diploma or certificate. The most commonplace example would be undergraduate co-op programs at universities and colleges. An open work permit should be issued with the academic institution listed as the employer. In cases where several work periods are necessary throughout the academic course (e.g., five work terms and eight study terms for a degree), the work permit should be valid for the same period as the study permit.

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**Note:** Additional eligibility criteria: For the purposes of C30, an educational institution is a university, college, or school, and does not necessarily have to have degree granting authority; for example, such as a private language school offering a co-op program. Professional/technical associations which offer courses are not eligible.

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**Foreign nationals coming temporarily to Canada to occupy post-graduate medical training positions including medical residents, externs or fellows, who have contact with patients, require a work permit and a positive or neutral Labour Market Opinion from Service Canada.**

### **Career colleges and language schools**

Students (who hold study permits) attending career colleges or language schools (e.g. ESL/FSL) may also be eligible under this exemption, if there is a work practicum component to their study program. Some of the common elements to look for when these students apply under C30 include the following:

- written evidence from the school that a work component is required for successful completion of the course of study (such evidence may be in the form of a letter from the school, or a copy of the school's curriculum);

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- details of the work to be performed. Normally, the work will be supervised, and involve a specific number of hours per term or semester. The work may be unpaid at times. The school should be in a position to name the businesses or types of businesses involved in this kind of study/work program;
- The work practicum cannot comprise more than 50% of the total program of study

### Province of British Columbia

The Province of British Columbia requires all high school students in grades 11 and 12 to obtain work experience in order to graduate. This requirement applies to students at all institutions authorized by the Ministry of Education to grant high school diplomas, whether a private or public institution.

In these cases, the employer is the school or school district, the location of employment is British Columbia and the employment is open.

Although it has been indicated to B.C. school authorities that the school should provide a letter to this effect, it is not imperative. If an officer knows that the student is registered at the Grade 11 and/or 12 levels in BC, and the student submits an application, a work permit concurrent with the study period should be granted under exemption C30. Note, however, that only those students who meet the requirements of R199 (work permit applications after entry) will be eligible to apply inland.

Fee exempt.

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### 5.38. Public policy, competitiveness and economy R205(c)(ii)

The following programs are designated as work that can be performed by a foreign national based on the criteria listed in R205(c)(ii).

#### A. Spouses or common-law partners of skilled workers, C41

Spouses or common-law partners of skilled people coming to Canada as temporary foreign workers may themselves be authorized to work without first having a confirmed job offer. Eligibility requirements of the principal foreign worker which allow the spouse to qualify for a work permit are as follows:

- The principal foreign worker must be doing work which is at a level that falls within National Occupational Classification (NOC) Skill Levels 0, A or B. See the NOC site on HRSDC's web page at <http://www23.hrdc-drhc.gc.ca/2001/e/generic/welcome.shtml>. The skill levels can be found in the Matrix on the left-hand side of the screen.
- These skill levels include management and professional occupations and technical or skilled tradespersons.
- The principal foreign worker must either hold a work permit that is valid for a period of at least six month's duration, or, if working under the authority of R186 without a work permit, must present evidence that they will be working for a minimum of six months.
- The principal foreign worker and spouse must physically reside, or plan to physically reside, in Canada while working.

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**Note:** Spouses or common-law partners of work permit holders who have been nominated for permanent residence by a province will be entitled to open work permits for the duration of the work permit of the provincial nominee principal applicant, **irrespective of the skill level of the principal applicant's occupation**. While there is reluctance on the part of CIC and HRSDC/SC to support work permits for lower-skilled workers because their skills profile would not normally qualify them for permanent immigration to Canada, concerns regarding these persons going out of status and remaining in Canada illegally are mitigated when the foreign national has been nominated for permanent residence. If a province feels a foreign national is sufficiently needed in its labour market to nominate that person, then having that

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job filled is clearly important, irrespective of where in the NOC that particular job is classified. Since, in the long run, the spouse or common-law partner is going to be a member of the Canadian labour market anyway, allowing them to enter the market and begin work as soon as possible will hasten the integration process

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### **Work permit issuance:**

- The spouse's or common-law partner's work permit may be issued for a period that ends no later than the work permit of the principal foreign worker, or for the duration of employment of the principal worker.
- The spouse or common-law partner may be issued an "open" work permit, i.e., not job-specific.

### **B. Spouses or common-law partners of foreign students, C42**

See OP12, section 5.22

### **C. Post-graduation employment, C43**

See OP 12, section 5.24

### **D. Post-doctoral fellows and award recipients, C44**

Post-doctoral fellows hold a doctorate degree (Ph.D.) or its equivalent. They would be appointed to a time-limited position granting a stipend or a salary to compensate for periods of teaching, advanced study and/or research. It is work designed to obtain the highest expertise possible in a particular discipline and candidates are chosen on the basis of academic excellence.

The applicant must have completed, or expects to complete, their doctorate shortly and be working in a related field to that in which they earned, or are earning, their Ph.D. to be exempt from an LMO – as long as the Canadian university has accepted the person as a post-doctorate fellow. Note that physicians who are conducting post-graduate research, and who have *no* patient contact, may be included in this category.

Post-doctoral fellows can be either the direct recipients of an award or be offered a time-limited position to undertake research on behalf of or as part of a team of researchers. Universities vary in their methods and criteria used in assessing candidates and offering post-doctoral fellowships. Officers should assess the written offer from a responsible academic official (professor or higher) which will state the amount of remuneration, location, nature and expected duration of the term of employment, and will not be concerned with the source of remuneration.

#### **Occupational code**

Given the absence of an occupational code in the NOC for post-doctoral fellows, please use the applicant's specialty. For example, an applicant in Earth Sciences could be coded 2113 as a geologist or 2115.2 as a soil scientist.

Please DO NOT code post-doctoral fellows as post-secondary research assistants, NOC code 4122.1, as this creates internal problems at universities and impacts applications for permanent residence, since the educational and skill levels are lower.

### **Research award recipients paid by Canadian institutions**

Also eligible are holders of academic research awards involving work and remuneration by Canadian institutions where the award is granted strictly on the basis of academic excellence. The candidate must be the direct recipient of the award, i.e., the candidate must have a significant role to play or value to add to a particular research project, and not just be a member of a

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research team (doing data collection or principally involved in the more mundane aspects of the research being conducted).

### Research award recipients paid by foreign institutions

Holders of academic research awards of a foreign country and invited by Canadian institutions to conduct their activities in Canada, but who are supported by their own country, are also eligible.

**Note:** Persons who are doing self-funded research may meet the definition of business visitor and thus be eligible to work without having to obtain a work permit. There should be no displacement of Canadian or permanent resident workers, nor should there be any employer-employee relationship. In addition, the individual or the Canadian institution must not receive remuneration for the research.

### E. Off-campus employment, C25

See OP 12, section 5.23

### 5.39 Canadian interests: Charitable or religious work R205(d), C50

Includes updates from OB 64.

R205(d) LMO exemption applies to charitable or religious workers who are carrying out duties for a Canadian religious or charitable organization and whose duties while in the service of the Canadian religious or charitable organization would not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market. It does not apply to religious workers who are entering to preach doctrine or minister to a congregation, as these people can be authorized to enter Canada pursuant to R186(l).

The difference between a charitable worker (who needs a work permit) and a volunteer (who does not) centres around the definition of "work", and entry into the labour market. A charitable worker is usually taking a full-time position, and may be engaging in a competitive activity; an activity which meets the definition of 'work' even though there may be nominal remuneration (e.g., group home worker, camp counsellor, carpenter for 'Habitat for Humanity'). A 'volunteer' who is not entering the labour market, nor doing an activity which meets the definition of 'work' does not require a work permit.

See 5.13 for guidance on determining the genuineness of a job offer in this area.

**Note:** A non-profit organization is not necessarily a charitable one. A charitable organization has a mandate to relieve poverty, or benefit the community, educational, or religious institutions.

**Note:** Canada Revenue Agency (CRA) has a list of all Canadian charities in good standing available through their Web site at <http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html>. It is not sufficient for the foreign national to be simply working without payment for a CRA registered charity in order to be considered a charitable worker and exempt from the LMO requirement. The activities they are performing for the registered charity must also not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market.

An applicant may be considered to be engaging in charitable or religious work if they meet the following conditions:

- the individual will not receive remuneration, other than a small stipend for living expenses;
- the organization or institution which is sponsoring the foreign worker will not, itself, receive direct remuneration from any source on behalf of, or for, the services rendered by the foreign worker; and
- the work goes above and beyond normal work in the labour market, whether remunerated in some manner or not, for example:

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- ♦ organizations which gather volunteer workers to paint or repair the houses of the poor may qualify, provided that the work would not otherwise be done, i.e. if the recipients of this work are not able to hire a professional or do the work themselves.
- ♦ L'Arche, which relies on people to live full-time in a group home with people who have developmental disabilities; (Workers in the homes are remunerated, but they are committed to taking care of the disabled people on almost a 24-hour basis.)
- ♦ persons who are giving their time to community or religious organizations in a position which would not represent a real employment opportunity for Canadians or permanent residents. (Such work would entail a requirement to be part of, or share the beliefs of, the particular religious community in which they are working.)

The fee exemption code is E02, even if they are being remunerated.

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**Note:** Missionaries who will devote their full time to missionary service for the church or proselytizing may enter pursuant to R186(l). They should be attached to a congregation in Canada and this type of work should be a usual congregational activity. An example of this are Mormon missionaries, sent by the Church of Latter Day Saints.

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### Work at religious or charitable camps

Camp counsellors and other camp staff who are working at a religious or charitable camp do not require an LMO and may be issued work permits under C50, provided they and their employers meet the criteria above.

### Processing work permit applications from religious workers (that is clergy, ministers, priests)

#### At missions or POE

If a foreign national who is normally authorized to work under R186(l) applies to a mission or a POE for a work permit, the application must be considered under R200(1).

In the case of religious workers who are **not** described in R200(1)(c)(i) and (ii), the work permit application **must** be accompanied by an LMO. There is no exemption from the LMO requirement in these cases. The LMO exemption R205(a) (Canadian interests **C10**) does not apply in these cases. Please consult section 5.29 for more details on the use of R205(a).

If an application for a work permit is submitted without an LMO, and the applicant is not eligible for an exemption, officers should not issue a work permit. Instead, a temporary resident visa as applicable (at missions) or a visitor record (at POE) may be issued. The applicant should be informed that they may work in Canada without a work permit under R186(l), and that, if they still want a work permit, they can apply for a work permit under R199(b) after they enter Canada and once they have obtained an LMO.

#### At CPC Vegreville

Religious workers who are in Canada and who were initially authorized to preach doctrine or minister to a congregation pursuant to R186(l) may apply for work permits to CPC-V under R199(b) providing that they have first obtained an LMO. **If the applicant does not have an LMO, CPC-V should not issue a work permit.**

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### 5.40 Self-support R206

R206 allows persons who are in Canada seeking status as a refugee or protected person to work. They must demonstrate that they cannot otherwise support themselves, but are otherwise eligible for open work permits.

#### Family members

R206 does not include family members and, as such, family members of refugee claimants or of a person subject to an unenforceable removal order are not entitled to an open work permit; however, they can apply for a regular work permit (with a LMO) from within Canada as per R199.

#### LMO exemption codes:

Refugee claimants: S61, (Fee exempt)

Persons subject to an unenforceable removal order: S62, (Fees apply)

#### Evidence that the applicant requires public support

The onus is on applicants to prove that they are unable to subsist without public assistance. Officers may accept any evidence that satisfies them that the person meets this requirement. Proof may be, but is not limited to, a letter or cheque stub from the provincial social service department. It is not the intent that refugee claimants apply for social assistance before being issued a work permit.

In the absence of letters from social services, bank statements, etc., officers should look at the client history and application forms to determine whether or not they think applicants could support themselves without public assistance. For example, a foreign student making a refugee claim may not meet this criteria because the student was required to provide proof of funds to support the stay in Canada and return home. As well, opportunities already exist in the Regulations to allow students to work (i.e., destitute students, on-campus employment). On the other hand, claimants who entered as visitors with money, but have no one to assist them financially for the remainder of the time it takes to process a claim, would not likely be able to subsist without public assistance.

Officers may consider that this particular eligibility criterion has been met if there is any likelihood that the claimant might require public assistance.

#### What is the meaning of "unenforceable removal order"?

The following foreign nationals are eligible for a work permit pursuant to R206(b):

- persons who have been issued a removal order that is not in force or that has been stayed;
- persons whose removal orders cannot be enforced as soon as reasonably practicable because they are persons to whom a notification to apply for PRRA pursuant to R160 will be given by the Department. (See ENF 10, Section 15, Removals.). While they are subject to a removal order that is in force, **for the purposes of R206(b), the removal order is still 'unenforceable'.** [This is in keeping with the public commitment made in the Regulatory Impact Analysis Statement. Ref. Canada Gazette Part II, Vol. 136, 2002/06/14 (page 184).]

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**Note:** With the exception of persons described in A112(2), this includes persons who have demonstrated full and timely cooperation, but the Department has been unable to enforce their removal for reasons beyond the control of the applicant (for example, difficulty in obtaining a passport from the government of the foreign national).

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### Medical results

Refugee claimants are given medical instructions upon making their claim. A work permit may *not* be issued until the officer has received the results of the medical exam for the claimant.

Open work permits may be issued for persons whose results are M1, M2, M3 or M5, along with any occupational restrictions noted by the assessing physician.

Medical results M4 or M6: a work permit must not be issued, as protection of the public health or safety is at issue.

(See Section 9, "Assessing Medical Requirements".)

### Duration of work permit

The work permit should be valid for a period of 24 months from the date the applicant's claim was forwarded to the IRB. This period is based on an estimate of the time it takes to have a claim considered by the Board. Subsequent renewal periods may be for periods of 12 months, or less, depending on the circumstances of the applicant.

Both initial issuance and extensions of work permits may only be granted if the applicant has demonstrated compliance in pursuing their claim or appeal (i.e., not delayed the procedure through adjournments or no-shows).

For both refugee claimants and persons subject to an unenforceable removal order, the work permit ceases to be valid at the end of the validity period or when all legal *recourses that allow the person to remain in Canada* have been exhausted.

If the applicant is not a genuine temporary resident, R202 applies and the issuance of the work permit does not confer TR status. A statement to this effect should be included in the Remarks section of the work permit.

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#### 5.41 Applicants In Canada R207

R207 allows for applicants who have been determined eligible as members of certain in-Canada permanent residence classes and includes protected persons (whether they have applied for permanent resident status or not).

Open work permits may be issued – see Section 10.1 for instructions pertaining to medicals.

LMO Exemption Code: A70

- a) members of the live-in-caregiver class who have met the requirements for permanent residence outlined in R113;
- b) members of the spousal or common law class, who have satisfied an officer that they meet the requirements of R124;
- c) persons upon whom protection has been conferred in accordance with A95(2) (convention refugees, successful PRRA applicants, etc.);
- d) H and C: persons for whom an eligibility or admissibility requirement(s) has been waived under A25(1) such that they may become a permanent resident;
- e) family members of the above who are in Canada.

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#### 5.42 Humanitarian reasons R208

##### A. Destitute students

LMO Exemption Code: H81

## FW 1 Temporary Foreign Worker Guidelines

This applies to foreign students who, due to circumstances beyond their control, may find themselves unable to meet the cost of their studies in Canada, be it their day-to-day needs or their tuition. While academic institutions do grant some leeway on obligations such as tuition and residence fees, there may not be a source of relief for the subsistence of students in these circumstances unless they are allowed to work. R208 provides the opportunity for students to cover such difficult financial periods, should on-campus employment provided for under R186(f) prove to be insufficient.

### Eligibility

Each case should be considered on its own merit. Some cases will be self-evident such as cases of war, upheaval in home country, collapse of the banking system, etc., while others will require further explanation by the applicant, usually at an interview with an immigration officer.

An open work permit may be issued for the purposes of short-term relief only, and should coincide with the duration of the current term of study (not for the duration of the entire program of studies, or for the duration of the study permit)..

### B. Temporary resident permit (TRP) holders

LMO Exemption Code: H82

This applies to persons who have been issued a TRP to allow them to stay in Canada. If the TRP holder will be in Canada for a long period of time (six months or greater), and they have no other means of support (meaning no family support or other means of meeting their needs) they may be issued a work permit. In the case of permit holders who were refused AFL (Application for Landing), and who are waiting to become eligible for permanent residence, officers need not be too rigorous in determining whether applicants need to work because they have no other means of support. The integration of future permanent residents will be assisted by allowing them to work.

An open work permit may be issued that coincides with the validity period of the TRP.

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## 6. LMO Validity and Duration of Employment as per the LMO

Updates from OB 152 included.

**Note:** As of May 19, 2009, HRSDC established a maximum six-month LMO validity period (period during which an LMO may be used to apply for a work permit). HRSDC will also no longer be granting LMO extensions; instead, a new LMO application will be required in every case.

### LMO VALIDITY

The LMO validity, or expiry date, is indicated on the LMO under "Opinion Expiry Date".

On the **Employment Validation** screen, the field **Offer Valid To** date is also known as the LMO Expiry Date. This is the date by which a work permit application must be received by CIC or CBSA. Border Services Officers (BSOs) will finalize applications that have already been initiated overseas even if the LMO expiry date has passed – the missions will have ensured that the LMO expiry date was still valid at the time of the initial application receipt.

### **Applications received past the LMO expiry date:**

Work permit applications received with an expired LMO should be refused as per Section 203 of the IRPR.

## FW 1 Temporary Foreign Worker Guidelines

Applicants initiating a work permit application at a POE are required to have a valid LMO expiry date. If the LMO expiry date has passed, the LMO can no longer be used to support the work permit application.

In certain cases where an employer has specific timelines for a short employment opportunity, HRSDC/SC may issue LMOs that expire in less than 6 months.

The LMO expiry date does not affect the processing time needed by CIC after the LMO is submitted with a work permit application.

### Exception (Live-In Caregiver Program only)

LMO expiry dates of six months will apply **except** in the processing of live-in caregiver applications in Quebec. In Quebec, applicants first apply for an LMO and then, upon receipt of the LMO and before applying for a work permit, must apply for the Certificat d'acceptation du Québec (CAQ). Due to the timelines associated with the CAQ, these LMOs will always be valid for three months **following** the issuance of the CAQ, regardless of the LMO expiry date. Service Canada will indicate in Canada Immigration Centre notes (FOSS and CAIPS), that "the LMO is valid for three months after the CAQ is issued". Officers can refer to the date the CAQ was issued to determine if the request for a work permit was made within three months of that date.

### DURATION OF EMPLOYMENT AS PER THE LMO

The LMO expiry date should not be confused with the LMO duration of employment or the work permit expiry period (which may be longer in duration depending on the employment situation). The work duration in the LMO is the timeframe of work that the employer has requested and to which HRSDC has agreed.

The expectation is that CBSA/CIC officers will issue a work permit for the duration of work indicated in the LMO. However, in the case of passport expiry, a WP may be issued for a shorter duration than identified in the LMO. For example, if the LMO work duration is for two years, but the TFW's passport will expire in one year, then the officer will issue a work permit for one year. In cases of passport expiry only, provided the initial LMO and WP application were received before the opinion expiry date, TFWs will be able to renew their existing work permits at Case Processing Centre – Vegreville (CPC-V), without seeking a new LMO. That is, while the opinion expiry date of the LMO will have passed, the TFW met the initial timeframe for application and can therefore be extended up until the end of the duration time outlined in the initial LMO, provided the passport has been renewed accordingly. To assist officers working at CPC-V, CIC and CBSA officers are asked to record sufficient details in FOSS/CAIPS "remarks" where a WP is issued for a shorter duration than is indicated in the LMO.

When authorizing the work permit abroad, the visa officer calculates the **Work Permit Valid Until** date from the date the work permit is authorized, for the **Duration** of employment period approved by Service Canada, provided this is not limited by the validity of the passport or other statutory requirements.

Since there can be a difference of days or weeks between the time the visa officer authorizes the work permit abroad and the time the person appears at the POE, the visa officer should include in the **REMARKS** field in the CAIPS **Temporary Worker Processing** screen that the work permit should be issued at the POE for the **Duration** of employment approved by Service Canada, as per the **Job Details** screen.

For example, the visa officer abroad should specify in:

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**REMARKS:** Issue XX month WP from the date of entry.

**Note:** CBSA officers will primarily rely on the remarks to determine the duration of employment upon entry in Canada.

### Example of a case:

#### **Abroad**

The applicant received an LMO with job **Offer Valid To:** 31-12-2007, for a **Duration** of employment of 24 months. The work permit application must be received on or before the 31-12-2007 and the work permit to be authorized for a period up to the end of the proposed duration. If the applicant has indicated his intent to start work on December 1, 2007, the work permit will be authorized for a period of 24 months (the **Duration** of employment approved by Service Canada). The visa officer abroad will enter the work permit validity date in the **Work Permit Valid Until** field in the **Temporary Worker** screen, as 30-11-2009.

#### **POE**

The applicant arrives at the POE on December 30, 2007, rather than on December 1, 2007 as originally intended and has a passport valid for three years. The BSO should then issue the work permit from the date of entry in Canada, for the **Duration** of employment approved by Service Canada (specified in the **Job Details** screen) that is 24 months, until December 30, 2009. The BSO should, accordingly, change the date entered by the visa officer abroad in the **Work Permit Valid Until** field from November 30, 2009 to the new expiry date of December 30, 2009.

#### **TIP: Longer Work Permit Duration**

Providing requirements are met, officers should issue work permits for a longer rather than shorter duration. Where there is no reason to limit duration, officers should issue the work permit for the complete expected duration of the employment. It is in both the Department's and the client's best interest to minimize the number of extensions to be processed.

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## 7. Processing temporary foreign workers—Documents required with application

The following documents are required:

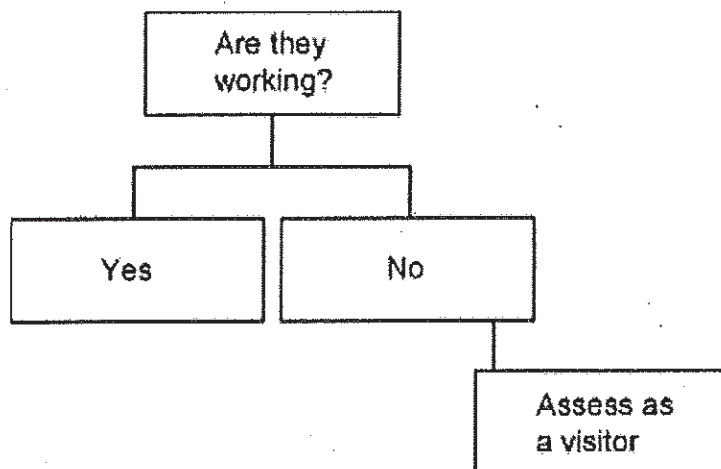
1. application form;
2. cost-recovery fee, or HPM receipt (unless fee exempt, see R299 for work permit fee and exemptions)
3. evidence that the eligibility criteria of R200(1)(c) are met (examples of such evidence might include job offers or contracts, LMOs, acceptance into a youth exchange program, etc.);
4. background documents showing the qualifications and experience of the applicant for the employment, if such evidence is required to satisfy the requirements of R200(3)(a);
5. proof of identity (With the exception of citizens and permanent residents of the U.S. and residents of St. Pierre and Miquelon, work permits may not be issued for a duration longer than the validity of the passport);
6. a copy of the applicant's current immigration document, if applying within Canada.

## FW 1 Temporary Foreign Worker Guidelines

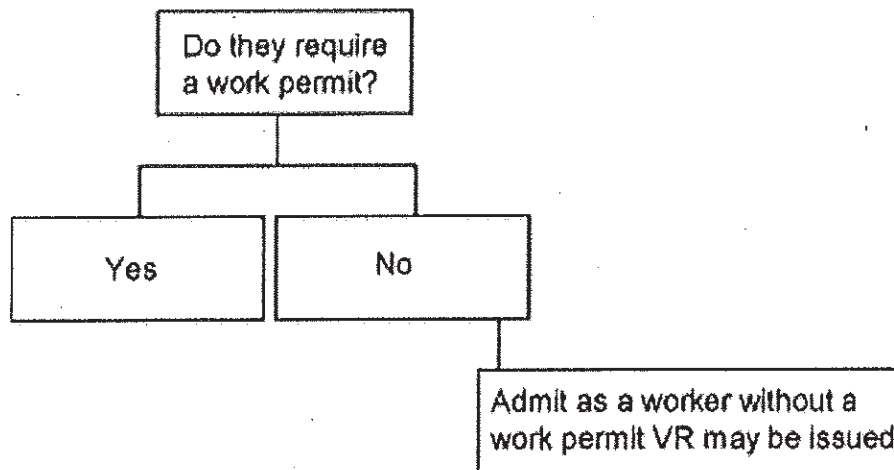
7. any other documentation required to satisfy the officer that the requirements of the Act or Regulations are met.

### 8. Procedure: Assessing temporary foreign workers

This flowchart takes officers through the decision making process from determining if the activity is work, to the documentation required, if any.



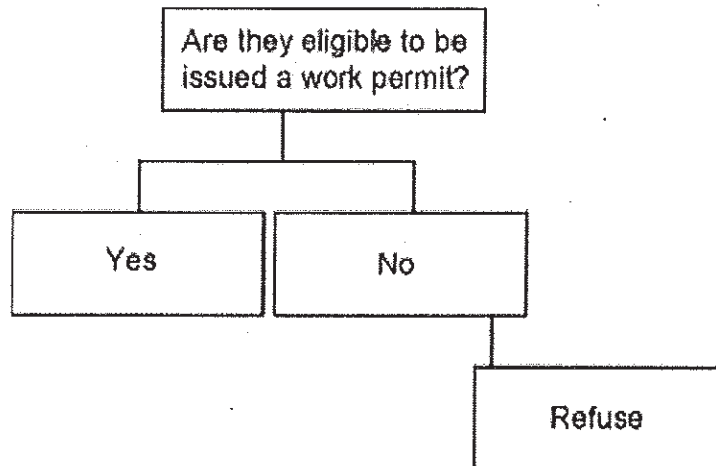
	Are they working?	
<b>Yes</b> Next question	Definition of R2 "work" Guidelines in policy section	<b>No</b> Assess as a temporary resident 1. examination 2. TRV or inland temporary resident manuals



	Do they need a work permit?	
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## FW 1 Temporary Foreign Worker Guidelines

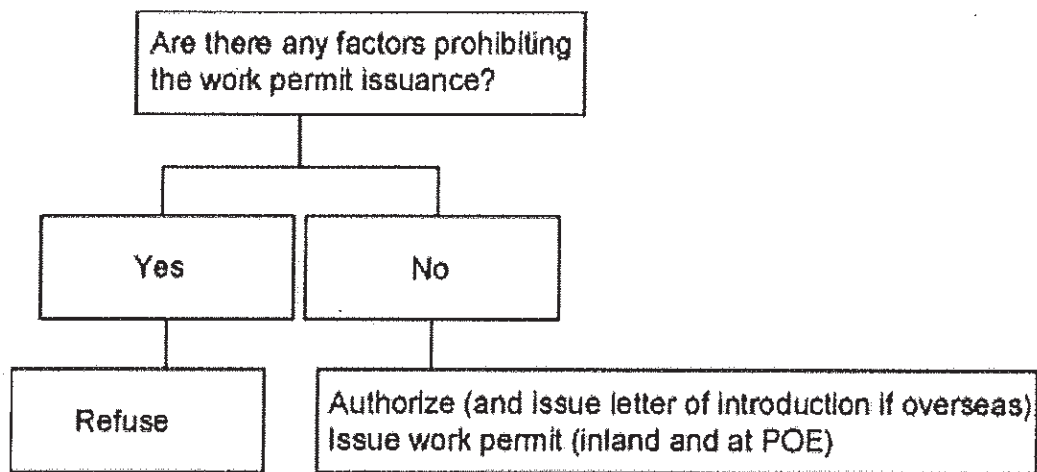
<b>Yes</b> <b>Next question</b>	<p>The following persons do not need a work permit under R186:</p> <ul style="list-style-type: none"> <li>• Business visitor</li> <li>• Foreign Representatives</li> <li>• Family Members of Foreign Representatives</li> <li>• Military Personnel</li> <li>• Foreign government officers</li> <li>• On-campus Employment</li> <li>• Performing Artists</li> <li>• Athletes and Coaches</li> <li>• Public Speakers</li> <li>• Convention Organizers</li> <li>• Clergy</li> <li>• Judges and Referees</li> <li>• Examiners and Evaluators</li> <li>• Expert Witnesses or Investigators</li> <li>• Health Care Students</li> <li>• Civil Aviation Inspector</li> <li>• Accident or Incident Inspector</li> <li>• Crew</li> <li>• Emergency service providers</li> <li>• Implied Status</li> </ul>	<p><b>No</b> Authorize entry as a FN authorized to work without a work permit. VR may be issued R186</p> <p>NOTE: For long-term temporary residents who may require a Social Insurance Number, the Visitor Record must state in the visible remarks that the person is "authorized to work in Canada," or make reference to R186.</p>
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	Are they eligible to be issued a work permit?	
<b>Yes</b> <b>Next question</b>	<p>a) Are they allowed to apply where they did? R200(1)(a)</p> <p>b) Will the foreign national leave Canada after</p>	<p><b>No</b> Refuse</p>

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<p>temporary stay? R200(1)(b)</p> <p>c) Is the foreign national eligible for WP issuance?</p> <ul style="list-style-type: none"> <li>• R203, LMO</li> <li>• R204 to R208, LMO Exempt</li> </ul> <p>d) If medical exam is required, has it been performed? R30</p> <p><b>(b) does not apply for S61, S62, nor A70/Protected persons</b></p> <p><b>Consider special work situations</b></p> <ol style="list-style-type: none"> <li>1. Airline personnel</li> <li>2. Camp Counsellors</li> <li>3. Canada-International FTAs</li> <li>4. Diplomats</li> <li>5. Fishing guides</li> <li>6. GATS</li> <li>7. International student and young workers exchange programs</li> <li>8. Military</li> <li>9. NAFTA</li> <li>10. <i>Oceans Act</i></li> <li>11. Performing artists</li> <li>12. Sales appendix</li> <li>13. U.S. government personnel</li> </ol>	
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	Are there any factors prohibiting work permit issuance? R200(3)	
Yes Refuse	a) Are there reasonable grounds to believe the	No Authorize (and issue letter of

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	<p>foreign national cannot perform the work sought (does not apply where open work permits may be issued) [R200(3)(a)].</p> <p>b) The worker needs a CAQ and does not have one [R200(3)(b)].</p> <p>c) Would the worker become a strike- breaker by issuance of work permit [R200(3)(c)]?</p> <p>d) If they will be a live-in-caregiver, have they not met the requirements in R112?</p> <p>e) Have they engaged in unauthorized work or study [R200(3)(e)]?</p> <p>Has the applicant met all admissibility requirements (A34-42)?</p>	<p>introduction if overseas) or issue work permit (inland and at POE).</p> <p>Take into consideration</p> <ul style="list-style-type: none"> <li>• Need for medical exam; R30</li> <li>• Need for TRV; (R190)[see <b>Note below</b>]</li> <li>• Open (Restricted/ unrestricted) or employer specific (See Section 10 below);</li> <li>• Conditions (including duration) (See Section 11 below)</li> </ul>
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**Note:** Correctly coded multiple entry visas should be issued (as long as there is no restriction noted in the IC2), valid for the same period as the work permit or passport, whichever expires first.

**Note:** It is not necessary to cancel a pre-existing visa in the passport, if the reason for its issuance remains valid (for example, a business person who has a long-term multiple-entry visa, who may also need a short-term work permit).

### 8.1 Individuals named in an immigration warrant

When an inadmissible individual fails to comply with a CBSA officer's request to appear at an enforcement office for reasons such as receipt of a PRRA determination or to enforce their removal from Canada at a port of entry the officer may issue a warrant for the arrest and detention of the individual. After a full investigation, if the individual cannot be located, a Canada-wide warrant for their arrest is entered on the Canadian Police Information Centre (CPIC) system, which is accessible to all law enforcement agencies and ultimately gives them the authority to arrest on the CBSA's behalf. This process is in place to ensure that individuals with active warrants for removal are apprehended as soon as possible and removed from Canada to maintain the integrity of the immigration program.

When an individual named in a warrant submits an application, CIC must inform the CBSA. Please refer to ENF7 – Investigations and Arrests, section 7.3 for guidelines on referral to CBSA.

[http://cicintranet/Manuals/index\\_e.asp?newpage=/Manuals/immigration/enf/index\\_e.asp](http://cicintranet/Manuals/index_e.asp?newpage=/Manuals/immigration/enf/index_e.asp) - link to ENF7

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### 8.2 Strike Situations – R200(3)(c) (OB 86)

R200(3)(c) of the IRPR prohibits employers' use of temporary foreign workers (TFWs) as strike-breakers. This interpretation is consistent with Canadian and provincial labour laws that protect the rights of those who are lawfully engaged in a strike or lockout.

The exception in R200(3)(c) allows a WP to be issued if all or almost all of those on strike are not Canadian citizens or permanent residents of Canada, providing such issuance does not contravene existing provincial legislation.

TFWs are entitled to be part of a lawfully authorized strike. Work permits cannot be revoked despite the occurrence of a labour dispute at the workplace. TFWs can be authorized re-entry on an existing valid WP as they are not applying for a new work permit and therefore, R200(3)(c) should not be applied.

In the case of a legal strike, TFWs have several means of recourse, including:

- Waiting out the strike with minimal strike pay (like others in the same situation);
- Returning home; or
- Finding another position where there are identified shortages in the labour market and proceeding with the normal work permit application process.

If the TFW is looking to find a new employer or to obtain secondary employment, they should be advised of the following:

- It is the TFW's responsibility to find a new employer and that employer's responsibility to apply for a labour market opinion (LMO) with Human Resources and Social Development Canada/Service Canada (HRSDC/SC).
- The normal process will be followed for both the LMO and WP applications.

If the TFW is concerned about falling out of status during the strike:

- The TFW should be advised to submit a completed Application to Change Conditions, Extend my Stay, or Remain in Canada to the address below, prior to the expiry of their current work permit. CIC will accept applications even though all requirements are not met at the time of submission. That is, the application should include all required documents and fees, with the exception of the LMO. The TFW should be advised to send the LMO to the same mailing address once received.

The mailing address is:

Citizenship and Immigration - Work Permit  
CPC-Vegreville  
6212 - 55th Avenue  
Vegreville, AB  
T9C 1W9  
Attn: Program Specialist

- CPC-V will log receipt of the application and then place the application on hold for four months. The TFW will have implied status during this time.
- CPC-V should inform the Temporary Resident Program Delivery Division (TRPD) in OMC of the applications, including any available information on the employer/union. Please send the

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information to [OMC-GOC-Immigration@cic.gc.ca](mailto:OMC-GOC-Immigration@cic.gc.ca), indicating "TFW-Strike Situation" in the subject line.

- OMC/TRPD will monitor the strike situation and inform CPC-V of any updates, including the end of the strike.
- If the TFW provides a valid LMO to CPC-V during the four-month period, CPC-V can finalize processing accordingly. CPC-V will not monitor the system for the presence of an LMO.
- Four months after receipt in CPC-V, the application will be finalized by CPC-V, whether the strike is over or not. If the LMO is still outstanding, CPC-V will contact the TFW to request the LMO, allowing 30 calendar days for reply. CPC-V will finalize processing once the outstanding LMO is received, or after 30 days if no reply is received.
- In this process, HRSDC/SC will continue to respect R203(3)(f), which states that one factor HRSDC must consider when providing an LMO is "whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute."

A TFW who is in a strike situation may approach the local CIC office or contact the Call Centre for assistance.

### 8.3 Assessing Language Requirements

#### (OB 170)

R 200 (3) (a) states that:

"An officer shall not issue a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought."

Immigration officers should not limit their assessment of language, or other requirements to perform the work sought, solely to those described in the Labour Market Opinion (LMO). However, the language requirement stated in the LMO should be part of the officer's assessment of the applicant's ability to perform the specific work sought because it is the employer's assessment on the language requirement(s) for the job.

Additionally, the officer can consider:

- the specific work conditions and any arrangements the employer has made or has undertaken to make to accommodate the applicant's limited ability in English or French and to address potential safety concerns if any; and
- terms in the actual job offer, in addition to general requirements set out in the National Occupational Classification (NOC) description for the occupation. This is applied in assessing the extent to which weak official language skills could compromise the applicant's "ability to perform the work sought"

An officer should NOT consider perceived challenges the applicant might face in interacting with the broader community, such as availing him/herself of community services, if this is not relevant to their job performance. Such a consideration is beyond the scope of the current legislation.

The same principles respecting official language capability and the applicant's ability to perform the work sought apply irrespective of the skill level of the intended occupation. There is no separate standard or criteria for applicants at NOC skill levels C or D.

An applicant's language ability can be assessed through an interview or official testing such as IELTS/TEF or in-house mission testing practice. In deciding to require proof of language ability,

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the officer's notes should refer to the LMO requirements, working conditions as described in the job offer and NOC requirements for the specific occupation, in determining what precise level of language requirement is necessary to perform the work sought. System notes must clearly indicate the officer's language assessment, and in the case of a refusal, clearly show a detailed analysis on how the applicant failed to satisfy the officer that h/she would be able to perform the work sought.

### Canada-Provincial/Territorial Immigration Agreements

Issues of language capacity and effective community orientation are being addressed through the TFW Annexes of some Canada-Provincial/Territorial Immigration agreements.

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## 9. Assessing medical requirements

R30(1) requires that certain temporary foreign workers pass a medical exam before undertaking work in Canada.

The exceptions to this requirement are noted in R30(2).

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### 9.1. Occupations in which the protection of public health is essential R30(1)(b)

Temporary foreign workers intending to work in a field where the protection of public health is essential require a medical examination. A work permit cannot be issued to them until they have passed the immigration medical examination, or still possess a valid medical certificate based on the most recent medical examination they were required to undergo within the previous 12 months. This applies to the following persons:

- occupations that bring the worker into close contact (more than three hours per day and/or risk of exchange of body fluids) with people, such as:
  - ♦ workers in the health services fields (e.g., physicians, physical therapists, massage therapists), including hospital staff and employees, clinical laboratory workers, patient attendants in nursing and geriatric homes, medical students authorized to enter Canada to attend university, or health care students authorized to enter under R186(p);
  - ♦ teachers of primary or secondary schools or other teachers of small children;
  - ♦ domestic workers or live-in caregivers;
  - ♦ workers who provide in-home care to children, the elderly, or the disabled;
  - ♦ day-nursery employees;

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**Note:** Camp counsellors from non-designated countries were eliminated from this list in May 2002.

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- agricultural workers from designated countries. (Please refer to Web site: <http://www.cic.gc.ca/english/information/medical/dcl.asp>)

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### 9.2. Six-month rule R30(1)(c)

Applicants who don't otherwise require a medical as per R30(1)(b), and who intend to be in Canada for more than six months, and have resided in a designated country for more than six months within the year preceding their arrival in Canada, are required to undergo a medical examination. The determining factor is not citizenship, but whether the person resided in a designated country in the preceding twelve months. Designated countries are noted at the following address: <http://www.cic.gc.ca/english/information/medical/dcl.asp>.

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### 9.3. Foreign nationals who are medically inadmissible may be admissible as temporary residents

Not all medical assessment results can be used interchangeably: A foreign national who is medically inadmissible as a permanent resident may be admissible as a temporary resident. The reverse may also be true if the temporary resident's medical condition improves between applications, such as when an active medical condition becomes inactive after treatment.

With some exceptions (noted below), when an applicant changes categories, a medical officer must assess medical examination results for the new category. If the first examination was less than a year earlier, a new examination may not be necessary, as a medical officer may be able to review the existing results in the new category. Otherwise, officers should issue instructions for a new examination in the new category.

The only exceptions are permanent residence applicants with M1, M2 or M3 profiles and temporary residents with M1 and M2 profiles. They do not need a medical officer to assess their examination results in the new category, provided that the medical assessment is still valid, i.e., within 12 months of the applicant's last immigration medical examination.

Officers must ask a medical officer to review examinations of temporary residents with M3 profiles who apply for permanent residence.

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**Note:** Applicants are responsible for informing officers if they applied before in a different category. This includes applications in Canada for extensions of status. Applicants must state where they applied and include the application file number, if known.

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### 9.4. At the POE

R198(2)(b) states that, in order to apply for a work permit on entry, a person must hold a valid medical certificate, if they require one.

Temporary workers who have undergone a medical examination within the previous 12 months, before arriving at the POE and possess a valid medical certificate are not required to undergo any further medical examination, unless officers have reason to believe that the person may not be admissible for medical reasons.

Temporary foreign workers who require a medical as per R30(1)(b), or who are from a designated country where medical examinations are required and will be working for more than six months in Canada, must apply for their work permit at a visa office – whether visa-exempt or not – unless valid medical examination results are available at the time of entry.

R198(2)(b) does not apply to foreign nationals who will be working in Canada for less than six months (and are not employed in a designated occupation for which a medical examination is required). However, this provision should not be used to circumvent the requirement to apply for a medical examination at a visa office prior to arrival.

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### 9.5. Conditions related to medical status

If a client falls within a group defined by R30, or where a client requests (and is eligible for) an **unrestricted** open work permit, medical instructions should be issued. An unrestricted open work permit may not be issued until proof is received that medical status is acceptable. The results of the medical examination will dictate whether an applicant may be issued an open work permit that is unrestricted, or one that has an occupational restriction due to health problems. (See Section 10.)

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**Note:** Any restriction (not the client's actual medical condition which led to the restriction) should be noted on the work permit.

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### 9.6. In-Canada extension requests

All temporary residents from designated countries, including foreign workers employed in occupations other than those described in Section 9.1 should be issued normal extensions for the time requested by the client, if approved, with medical instructions. Remarks on the visitor record must indicate "Additional condition: Must undergo immigration medical examination for further extensions to be considered."

No follow-up takes place unless and until the client applies again for a new document. In cases where it is felt appropriate, officers may impose conditions requiring the client to have a medical examination and prove compliance.

When the client has been previously assessed as M-3 and the medical narrative specifies that an update or extension is required, the case must be referred to the Health Management Branch (HMB) for review if the client is requesting an extension and the medical certificate has expired. In these cases:

- officers should send a fax message to the HMB indicating the Client ID, medical file number, date of last immigration medical examination and details about the extension request, particularly the duration of stay requested by the client;
- the file should be held for five working days to allow the HMB to respond to the request ;
- once RHN responds within the five-day time frame, their advice should be followed;
- if no response is received within five days, officers should issue the document and notify their Team Leader of non-response from the HMB.

It is very important that the Medical Report IMM 1017E, indicate if the client has had a previous medical examination for immigration purposes. Officers must check the client history or previous documents and if the person has had a previous medical examination, indicate "yes" in box #18 of the IMM 1017E.

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### 9.7. Medical surveillance

The office (whether CPCV, CIC, POE, or visa office) which requested the medical examination in connection with a temporary resident's application is, where required, responsible for issuance of the Medical Surveillance Undertaking IMM 0535B.

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### 9.8. Refugee claimants R30(1)(e)

Refugee claimants and the members of their family in Canada must undergo medical examinations before they can work in Canada. See Section 5.41, Self-support R206.

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### 9.9. Medical coding

Medical results are communicated in coded form. The various codes indicate the following results:

- M1 : Medical examination passed;
- M2 : Medical examination passed; requires in-Canada medical surveillance;
- M3 : Conditional pass. May change and, for temporary residents who remain in Canada; needs to be reassessed by health programs one year after first medical exam. Medical results expire one year from the date of the examination;
- M4 : Medical examination failed. Public health concerns. No expiry date;
- M5 : Medical examination failed. Excessive demand for services. No expiry date;
- M6 : Medical examination failed. Public safety concern. No expiry date.

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### 10. Open work permit

An open work permit enables the person to seek and accept employment, and to work for any employer for a specified period of time. An open permit may, however, restrict the occupation or location.

Open work permits should not be issued unless the person concerned may be issued a work permit that is exempt from an LMO.

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#### 10.1. Types of open work permits

There are two types of open permits that are presently used: those that are unrestricted, and those that restrict the occupation. Open work permits may be issued with or without occupational restrictions, depending on the applicant's medical status.

##### Open/unrestricted work permit

- the employer, location and the occupation are unrestricted; NOC coding 9999;
- issued to any eligible applicant who has passed a medical examination for immigration purposes with a result of M1, M2 or M3 (medical exam passed), or to persons who failed the medical examination (M5) but satisfy the criteria of R206 or R207(c) or (d).

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**Note:** Medical surveillance must be imposed for persons assessed as M2/S2. Remarks on the permit should indicate "medical surveillance required".

##### Open/occupation restricted work permit

- the employer is open (or unspecified), however, an occupation restriction must be specified as the person cannot work in jobs where the protection of the public health is required;
- issued to someone who has *not* completed an immigration medical examination;
- may apply for persons assessed as M3 or M5. The occupation restriction, where applicable, will be stated in the medical narrative (e.g., the physician may note that an epileptic should not be a pilot, work near open machinery or at heights). The restriction, not the actual medical condition, should be noted on the work permit. The restriction must be inserted in the "Remarks" section of the work permit.

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**Note:** Persons assessed as M4 or M6 (risk to public health or safety) are not allowed to work. If the condition is controlled, a new medical examination is required before a work permit may be issued.

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##### Conditions to be imposed for open/occupation restricted work permits

If a medical exam was not completed, one of the following conditions must be used. The specific occupation restriction will depend on whether or not the client has resided in a designated or non-designated country. (Please refer to Web site: <http://www.cic.gc.ca/english/visit/dcl.html>.)

i) For persons from non-designated countries, the following remark should appear on the work permit:

"Not authorized to work in: 1) child care, 2) primary or secondary school teaching, 3) health services field occupations."

ii) For persons from designated countries, the following remark should appear on the work permit:

"Not authorized to work in: 1) child care, 2) primary or secondary school teaching 3) health services field, 4) agricultural occupations."

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### 10.2. Who can be issued an open work permit?

Applicants in the following categories are eligible:

- persons described under R206(a) or (b), exemption code S61 or S62 (see Section 5.40);
- persons described under R207, exemption code A70 (see Section 5.41);
- persons described under R208(a) or (b), exemption code H81 or H82 (see Section 5.42);
- certain workers authorized to enter Canada on a reciprocal basis:
  - ♦ Canada World Youth Program participants, exemption code C20 (see Section 5.36);
  - ♦ certain international student and young worker exchange programs, C21 (some programs are employer-specific vs. being 'open');
  - ♦ family members of foreign representatives and family members of military personnel: LMO exempt, C20, where a reciprocal arrangement exists (see Appendix F and Appendix C);
  - ♦ professional athletes authorized to enter Canada on the basis of exemption C20, who require other work to support themselves while playing for a Canadian team (e.g., CFL);
- spouses of skilled workers, eligible under R205(c), C41 (see Section 5.38);
- spouses of foreign students, eligible under R205(c), C42 (see Section 5.38).

If a medical has not been completed, work permits should be open, or open/occupation restricted.

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## 11. Conditions, including validity period

General conditions are imposed on all temporary residents (including workers) by operation of R183. Individual conditions may be imposed by an officer under R185 as follows:

- a period of stay, or validity period of the work permit must be imposed;
- other conditions noted in R185(b) should be imposed depending on whether the work permit should be open or a medical examination has been completed (as per the instructions in Section 9 and Section 10).

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### 11.1. What should the validity period be?

In general, the longer the duration of temporary stay, the greater the onus will be on the individual to provide evidence of temporary purpose at the time an application for a work permit or extension is made.

Circumstances to be considered include the following:

- Passport Validity under R52(1); officers cannot issue a work permit or grant status as a temporary worker beyond the validity of the passport. Exceptions to this are noted in R52(2). An additional exception applies for work permits issued to those who may not have status as a temporary resident R202.

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**Note:** All other criteria noted below are subject to passport validity, unless (like U.S. nationals) they are excepted.

- LMO (subject to passport validity, officers should issue the work permit for the complete duration of the LMO taking into account CAQ validity where applicable);
- expected duration of employment in the job offer;
- maximum time allowed by any particular program or agreement in which the client is participating. (Some programs or agreements may limit the length of initial issuance, extensions or total length of employment in Canada. See Section 11.2.)

Providing requirements are met, officers should issue work permits for a longer rather than shorter duration. Where there is no reason to limit duration, officers should issue a work permit for the complete expected duration of the employment. It is in the Department's and the client's interest to lengthen the periods between times when clients require service, i.e. allowing a person

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to work, without having to submit renewal applications unnecessarily frequently, saves both the client's time and money, and the department's resources.

**Note:** If a TRV is necessary, it should be of the same duration as the work permit (or passport, if it will expire first) and it should allow for multiple entries, provided there are no restrictions noted in IC 2.

### 11.2. Categories of work with validity periods which may not be exceeded

Includes updates from OB 85.

Category	Validity period	Notes
Professionals	NAFTA (R204(a), exemption T23): Work permits may be issued for three years, with renewals by three-year increments. Other FTAs similar to the NAFTA: (R204(a), exemption T23): Work permits may be issued for one year, with renewals by one-year increments. GATS (R204(a), exemption T33): 90-day limit per 12-month period.	No limit on the number of extensions providing the individual continues to comply with the requirements (Appendix G, section 3.7)
Intra-company transferees	NAFTA (and other FTAs similar to the NAFTA) (R204(a), exemption T24), General Provisions under IRPA and GATS R205(a), (exemption C12): Work permits may be issued for the following periods: <ul style="list-style-type: none"> <li>• Executives and managers: max. 3 years, unless opening an office (1-year); 2-year renewals allowable; total period of stay may not exceed 7 years; *</li> <li>• Specialized knowledge transferees: max. 3 years, unless opening an office (1-year); 2-year renewals allowable; total period of stay may not exceed 5 years. *</li> </ul>	* For these cases, a minimum period of one year must pass after the time cap (max. total period of stay) before applicants are eligible to be issued a new work permit in these categories.
International Experience Canada Programs	R205(b), exemption C21. Most programs are 6 months or 1 year. See the table in Appendix E.	
Study permit holders	Work permits issued under R205(c)(i), C30, where the work is essential to the study program, should not exceed the validity date of the study permit.	
Spousal employment provisions	Work permits issued under R205(c)(ii) exemption C41 or C42 (or under R205(b), C20 in the case of spouses of military personnel or diplomats) should not exceed the duration of the principal applicant's stay in Canada.	
Post-graduate employment	R205(c)(ii), exemption C43 – Can be used only once; total employment up to a maximum of three years. (See OP 12 for details)	
Live-In Caregiver Program	The maximum validity of the work permit (and the maximum to which it can be extended under this program) is 3 years plus (+) 3 months.	Refer to OP 14, Section 5.10 for details
Refugee claimants, etc.	For work permits issued under R206, exemption S61 or S62, initial validity is 24 months, and	

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	renewals may be issued for one-year periods.	
Destitute students	R208, exemption H81, a work permit should be issued only to allow the study permit holder to complete their term.	
TRP holders	To be issued a work permit under R208, exemption H82, the temporary resident permit must be valid for a minimum of six months. The validity date of the work permit should not exceed the validity of the TRP.	
Special category countries	In most cases, foreign workers from these countries may be issued work permits beyond a one-year validity. See Appendix A of IC 2.	

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### 12. Quebec program

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#### 12.1. Canada-Quebec Accord

Under the terms of Article 22 of the *Canada-Québec Accord*, Québec's consent is required in order to grant entry to temporary foreign workers subject to LMO requirements.

Workers authorized to enter Québec require Québec's consent through the issuance of a "Certificat d'acceptation" (CAQ) in cases where the employment requires an opinion from LMO, and in cases of live-in caregivers who change employers and obtain new LMOs. No CAQ is required where the employment is LMO exempt.

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#### 12.2. Joint undertaking on temporary foreign workers

Under the terms of Section V.19 of the Accord, Canada undertakes to consult Québec on the identification of categories of temporary foreign workers who are exempt from HRSDC's labour market opinion, and to advise Québec of these categories as well as any changes which Canada intends to make to such categories.

Under the terms of Section V.20, Québec shall be responsible for:

- a) determining jointly with Canada whether there is a Canadian citizen or permanent resident available to fill the position offered to the temporary worker;
- b) providing prior consent for the granting of entry to any temporary foreign worker whose admission is governed by the requirements concerning the availability of Canadian workers.

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#### 12.3. CAQ requirement

Foreign nationals destined to work in Québec do not require a CAQ if they are:

- LMO exempt, or
- working for a period of five days or less (not necessarily consecutive days).

The CAQ is issued by the "Ministère d'Immigration et des Communautés culturelles du Québec (MICC)".

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#### 12.4. Issuance of CAQs

Procedures are in place to ensure the exchange of documentation between Canada and Québec where confirmation is required. An approval from Service Canada presented by an applicant destined to Québec has already been cleared with the Québec authorities and thus includes an approval from the province for the issuance of a CAQ.

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### 12.5. Joint confirmation procedures

Joint procedures can be summarized as follows:

1. an employer wishing to hire a temporary foreign worker submits the application form to the Service Canada, describing the nature of the employment and the skills required to perform the work;
2. an employer who first submits an application to the MICC is advised by Québec to submit the request to Service Canada;
3. after assessing the request, Service Canada sends the application and any background information to MICC indicating its intention to accept or refuse;
4. within ten days, MICC indicates its intention to accept or refuse to Service Canada, documenting its decision with background information, as necessary;
5. if either Canada or Québec can demonstrate that the employment will have a negative labour market effect, the employer's request is refused;
6. if both Canada and Québec agree that the employment can only be filled with a temporary foreign worker, the application is approved;
7. Service Canada sends the employer a letter confirming the decision to approve the application. The employer informs the potential employee who then contacts the processing office indicated in the letter of approval;
8. Service Canada confirms the approval with the appropriate visa or immigration office.

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**Note:** In order to extend a CAQ, a job offer must be re-confirmed.

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A CAQ may be valid for a maximum of 36 months. For occupations that have an Education/Training Factor (ETF) of less than 5, the CAQ may be valid for a maximum of 14 months.

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### 12.6. Countries served by MICC

The "Service d'Immigration du Québec" has offices throughout the world. A list is available at <http://www.immigration-quebec.gouv.qc.ca/anglais/index.html>.

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## 13. More guidelines for unique situations

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### 13.1. Airline personnel

There are provisions contained in the 1944 *Convention on International Civil Aviation* which allow for the largely unrestricted and expeditious entry of foreign air carrier personnel to the extent that such personnel is necessary to perform supervisory and technical duties connected with the operation of international air services. The agreement also embodies an element of reciprocity.

As outlined below, different requirements apply to flight crews, operational technical and ground personnel, and station managers:

- **flight crews** are exempt from work permits pursuant to R186(s);
- **operational, technical and ground personnel** of foreign commercial airlines require work permits, but are LMO exempt under R204, T11;
- **station managers** require a work permit but are exempt from an LMO under R205(a), C12, provided they meet the guidelines for intra-company transferees;
- foreign airline security guards (e.g., EI AI):

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- ♦ on aircraft: considered members of the crew, work permit exempt R186(s);
- ♦ at the airport: Those security guards stationed in the airports and who are responsible for checking passengers and their luggage before they board the aircraft require a work permit, but are exempt from an LMO pursuant to R205(a), C10.

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### 13.2. Camp counsellors

Includes updates from OB 64.

Counsellors at day or residential camps require LMOs for work permits. However, camp counsellors who are working in a volunteer capacity may be issued work permits pursuant to R205(d), C50 *provided they, their activities and their employers meet the criteria noted in the guidelines*. C50 work permits are fee exempt. Individuals do not require a high school diploma. The NOC Code is 5254.

SWAP and other Working Holiday Program participants may work at summer camps.

See Section 5.39 for counsellors working at religious or charitable camps.

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**Note:** Canada Revenue Agency has a list of all Canadian charities in good standing available through their Web site at <http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html>. It is not sufficient for the foreign national to be simply working without payment for a CRA registered charity in order to be considered a charitable worker and exempt from the LMO requirement. The activities they are performing for the registered charity must also not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market.

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#### Medical examinations for camp counsellors

Historically, **all** persons applying to enter Canada as camp counsellors have been required to undergo an immigration medical examination. However, as of May 2002, only potential camp counsellors who have resided in a designated country for six consecutive months, at any time during the one-year period immediately preceding the date of seeking entry or the application, will be required to undergo an immigration medical examination. This means that counsellors who have been living in the United States will not have to undergo an immigration medical exam before issuance of a work permit.

The designated country list is available at <http://www.cic.gc.ca/english/information/medical/dcl.asp>

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### 13.3. Camp counsellors in training

Camp counsellors in training (CITs) do not require work permits. They may pay a fee to attend camp as other campers; however, they are there, at least in part, to receive training during their stay with the intention of becoming a camp counsellor the following year.

Camp counsellors in training occasionally assist camp counsellors in their duties. They do not have any of the responsibilities of a camp counsellor and are under constant supervision by a camp counsellor. They do not meet the definition of "work" in the Regulations.

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### 13.4. Foreign camp owner or director

For a camp owner, director or their spouse, a work permit is required, but they are exempt from an LMO pursuant to R205(a), C11.

Other members of the foreign owner's family, should they wish to be employed by the camp, will be subject to the LMO requirement as per the guidelines for R205(a), C11 in Section 5.30.

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The above guidelines apply whether the camp is a children's recreational facility or a hunting or fishing camp.

### 13.5. Fishing guides

Cross-border employment of fishing guides has been an issue in the past, and in 1993 a joint working group of Canadian and U.S. immigration officials agreed that border lake issues should be dealt with in a spirit of facilitation.

This working group reached an agreement that recognized the legitimate nature of each country's labour certification process (confirmation) for fishing guides who want to operate in the other country. The temporary entry provisions of NAFTA do not apply to fishing or hunting guides. Both countries nevertheless agreed that there should be an effort to facilitate the movement of such guides by establishing rosters on each side that would identify vacancies. Due to the complexity and the resources required to implement the reciprocal roster system, it was never put into place. Instead Canada operates the following mechanisms:

- **Border lakes:** For fishing guides working on lakes which straddle the Canada - U.S. border, officers may issue seasonal work permits which are LMO exempt pursuant to R205(b), C20. This LMO exemption is based on the principle (and fact) that Canadian fishing guides are accorded a similar privilege to work on the U.S. side of a border lake. Seasonal work permits, specifying day use only, may be issued for guiding U.S. residents or persons staying at a U.S. facility.
- **Canadian employers:** U.S. fishing guides working for a Canadian employer (such as a resort) require an LMO for a work permit.
- **Canadian lakes:** A U.S. fishing guide who wishes to work on a lake which is fully inside the Canadian border requires an LMO for a work permit. For those guides who are self-employed (where there is no employer on either side), officers may issue an LMO-exempt work permit if the guide can demonstrate that the requirements of R205(a), C11 are met. Fishing guides must be able to demonstrate that their activities attract tourism or benefit Canadian citizens or permanent residents.

Consistent with the privilege of free navigation in the *Boundary Water Treaty*, American guides who cross the Canadian boundary line to get to a U.S. fishing destination are not required to report for examination by Canadian POE officials. U.S. fishing guides possessing an Ontario fishing licence, and fishing well across the boundary line within Canada, would *not* be considered to be incidentally in Canada, and do require a work permit. (See Border lakes, above.)

### 13.6. Oceans Act

Canada's territorial limit extends 12 miles from all Canadian ocean shorelines and within this limit normal immigration requirements apply. Within the 12 to 200 mile Exclusive Economic Zone (EEZ) of Canada, work permits are also required for temporary workers hired aboard any marine installation or structure (and its safety zone) that is anchored or attached to the continental shelf or seabed in connection with its exploration or the exploitation of its mineral or non-living resources. This includes any artificial island constructed, erected or placed on the continental shelf. This does **not** include vessels operating past the 12-mile territorial limit that are not "attached to" or the property of an artificial island, or anchored to the seabed.

See the following table for definitions that pertain to the *Oceans Act*.

Artificial island	Any man-made extension of the seabed or a seabed feature, whether or
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	not the extension breaks the surface of the superjacent waters
Continental shelf	The seabed and subsoil of those submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of 200 nautical miles from the inner limits of the territorial sea, whichever is the greater, or that extend to such other limits as are prescribed the <i>Oceans Act</i> .
Marine installation or structure	Any ship, offshore drilling unit, production platform, sub-sea installation, pumping station, living accommodation, storage structure, loading or landing platform, floating crane, pipe-laying or other barge or pipeline and any anchor, anchor cable or rig pad in connection therewith, and any other work within a class of works prescribed in the <i>Oceans Act</i> .

Temporary foreign workers need an LMO for a work permit if they are employed in any of the following locations:

- aboard any marine installation or structure attached or anchored to the continental shelf:
  - ♦ in connection with the exploration of that shelf; or
  - ♦ in connection with the exploitation of its mineral or other non-living resources;
- on or under any artificial island constructed, erected or placed on the continental shelf or seabed, for examples:
  - ♦ temporary foreign workers employed on drill ships or drill platforms that are anchored to the continental shelf for the purpose of searching for oil;
  - ♦ gravity based structure (GBS) production platforms used to extract crude oil within the 200- mile economic zone limit or the edge of the continental shelf.

### 13.7. United States government personnel

Work permit required. LMO exempt under R204, T11.

Official U.S. government personnel assigned to temporary postings in Canada may include officers of the U.S. Citizenship and Immigration Services (USCIS) and U.S. Customs and Border Protection (CBP), members of the International Joint Commission, U.S. grain inspectors and others.

U.S. pre-clearance officers working in Canada are not accredited.

The work permit case code is 20 - Worker, N.E.S. Officers should not use code 22 - official status.

U.S. government personnel arriving in Canada for the first time will be issued a work permit, on presentation of a "letter of introduction" from the appropriate agency identifying the assignment, its location and the number of years the employee will be assigned in Canada. Long-term work permits may be issued for the duration of the assignment. They are fee exempt pursuant to R299(2)(j). The occupational codes will be entered as follows:

- Supervisory Staff NOC 1228
- USCIS Inspectors NOC 1228
- U.S. Customs Inspectors NOC 1228
- U.S. Grain Inspectors NOC 2222
- International Joint Commission and others NOC 2263

CIC does not wish to restrict management of the U.S. Government agencies concerned from assigning staff to other locations in Canada for temporary duty. For this reason, officers should use the following terms and conditions. U.S. Government employees are:

- prohibited from attending any educational institution and taking any academic, professional or vocational training course, unless authorized;
- not authorized to work in any occupation other than stated; and

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- not authorized to work for any employer other than stated.

Notation to be included on the work permit: If transferred to another location on a permanent basis, a new work permit will be required for the new location.

### Family members

Work permit required, Case Type 20, but LMO exempt under R205(b), C20.

Pursuant to the reciprocal agreement between the United States and Canada, eligible family members may obtain work permits subject to medical requirements where the protection of public health is essential.

Family members are eligible for open/unrestricted work permits where medical requirements have been met. The expiry date should coincide with the U.S. Government employee's term of duty. They are exempt from cost recovery under Code E03.

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**Note:** A U.S. Government official seeking short-term entry for the purposes of performing duties and providing services for the U.S. Government in Canada may enter as a business visitor if the criteria are met.

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### U.S. Internal Revenue Service (IRS) employees

Work permit required, but LMO exempt pursuant to R204, T11.

IRS employees will periodically enter Canada to audit, collect and do criminal investigations. IRS representatives require a work permit, but are LMO exempt as they will be engaging in employment pursuant to an agreement entered into with a foreign country by or on behalf of the Government of Canada. They may be issued a one-year work permit.

## 13.8 Rail Grinder Operators, rail welders or other specialized track maintenance workers

Foreign nationals seeking to work as rail grinder operators per National Occupation Code (NOC) 7432, rail welders per NOC 7265 or other specialized track maintenance equipment operators may be eligible for exemptions to an LMO pursuant to R205(a), C10.

Eligibility for this exemption will be based on several considerations including:

- if the foreign national is coming to operate machinery which is crucial for performing the duties of a rail grinder operator, rail welder or other worker of specialized rail maintenance equipment and
- on the length of time the machinery is needed in Canada.

Specifically, if machinery required for these services is not available in Canada and must therefore be brought into Canada from a foreign country, foreign nationals trained to operate this equipment may be eligible to enter Canada with an LMO C10 exemption for the express and exclusive purpose of operating the imported machinery for the length of time it is required for providing rail track maintenance.

Canadian companies may contract foreign companies to perform rail maintenance for a period of time which may extend to a year or beyond. However, while the contract may be valid for one or several years, the machines are often only brought into Canada for weeks at a time to complete grinding or welding activities on Canadian rail lines before returning to their country of origin until they are needed in Canada once more. Therefore the length of the contract between the Canadian rail company and the foreign machine service provider may not be reflective of the actual time the machine is in Canada.

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### **Machines imported for durations exceeding one month**

In cases where the machine is in Canada on a sporadic basis, for days or 3 to 4 weeks at a time over the period of the contract validity, foreign nationals may enter Canada with the C10 LMO exemption in order to operate the machine. If, however, the machine is imported to Canada and remains in Canada for a continuous period exceeding one month in duration, the C10 exemption no longer applies and the foreign machine owner should normally undergo the LMO process in order to assess whether a Canadian is available to operate the machine on this ongoing basis.

### **C10 exemption only valid for short durations of work**

This exemption is only for foreign nationals required in Canada to operate the machinery for short periods of time. Foreign nationals coming to install, repair, maintain or uninstall rail grinder, rail welder or other rail maintenance machinery are not covered through this exemption but may qualify for different exemptions.

**TIP:** It is recommended (but not required at this time) that foreign national rail maintenance workers coming to Canada to operate specialized machinery present a border service officer with written confirmation from the Canadian employer stating that the machine is not available in Canada. The letter should be on company letter-head and signed by a senior officer of the Canadian company.

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### Appendix A Artistic/Performing Arts

#### Actors, Artists, Technicians, and similar workers in Film, Television, Theatre & Radio

The following list is not all-inclusive, but only provides examples of occupations subject to an LMO for work permits in the film and television industry:

- screen and television actors, unless part of a group making a motion picture under intergovernmental co-production;
- artists involved in taped television dramatic productions and live dramatic performances that are being filmed;
- technicians working in film theatre and television productions, unless they meet the requirements of R186(g);
- persons coming to do dubbing work in films;
- persons coming to make either a film, videotape or sound recording for use in advertising commercials;
- persons coming to participate in making a motion picture, documentary, no matter who finances the project, unless they meet the criteria for exemptions as outlined in this manual under R186(i) – News Reporters;
- persons temporarily occupying a permanent position at a permanent performing arts organization (i.e., those not considered to be *guest* artists).

#### Adjudicators, Artistic Field

Adjudicators at music and dance festivals do not require work permits pursuant to R186(m).

#### American Federation of Musicians (A F of M)

Musicians working under the Cultural Exchange Program between the Canadian and American components of the American Federation of Musicians (A F of M) do not have to obtain an LMO if they are members of the Federation and citizens of the United States. They must possess a letter from the Canadian office of the A F of M identifying them as participants in the cultural exchange program, and indicating that it would be appropriate for them to work in Canada provided they meet the usual requirements of a temporary resident.

To reflect the duration of the J-1 visa given to Canadians by the United States, the work permit may be issued for a maximum of three months from the original date of entry. All occupations are coded NOC 5133, Musicians and Singers. In situations where the requirements of R186(g) are met, no work permit is required.

#### Criteria

A work permit may be required, but an LMO is not required pursuant to R205(b), C20.

#### "Bar, restaurant or similar establishment" referred to in R186(g)(ii)

A performance in a bar, restaurant or similar establishment (see examples below) requires a work permit and an LMO. Officers must use their best judgement, and consultation with HRSDC is strongly encouraged. However, for the purpose of determining whether a venue is a bar, restaurant or similar establishment, officers may consider the following indicators:

A bar, restaurant or similar establishment

- hires performers primarily to attract customers who will purchase food and drinks. The primary function of the business is the sale of food and/or beverages;
- may require a cover charge or sell advance tickets for a particular performance;
- is open to serve patrons both before the performance and afterwards.

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A "bar, restaurant or similar establishment" may offer live, non-live, or a combination of live and non-live entertainment to its patrons. Non-live entertainment normally includes the work of a disc jockey, but exceptions may be made for 'star' performing DJs. A venue may still be considered a "bar, restaurant or similar establishment" even though it primarily offers live entertainment, occasionally offering a non-live entertainment event (for example, a band or other artist performs every night in a club, but one night a week it operates with a DJ as a dance club). Examining the liquor licence can provide an objective assessment of whether a place should be considered a "bar, restaurant or similar establishment", or whether it can be considered just a concert venue (and thus, exempt from the work permit requirement).

In situations where the classification of a venue is unclear, officers may look to the *liquor licence* of the establishment in order to discern the appropriate classification of the business. Information concerning the nature of the venue will be found **within** the licence document. Note that the nature of the venue is not necessarily reflected in the type of licence assigned to the venue. For example, a venue may be identified within the licence as operating as a concert venue, but possess a "Liquor Primary Licence of bars and pubs". In this case, the venue would still be considered a concert venue and not a "bar, restaurant or similar establishment" for the purposes of R186(g)(ii).

In situations where an establishment has no liquor licence and the classification of an establishment is unclear, officers are advised to look at the *municipal operating licence* of the establishment, in order to discern its appropriate classification.

There may be situations where a venue that would normally be considered a "bar, restaurant or similar establishment" may be considered a concert venue for a particular performance. For example, a local music or cultural association "rents" or "leases" a "club" on a night that the venue would not normally open, as a venue for the performance of a specific performer or group it has contracted with. Tickets are sold for that event (e.g., "The Moroccan Cultural Association presents **Sam** at Rick's Café" as opposed to "Rick's Café presents **Sam**"), and the venue opens and closes shortly before and after the performance (i.e., the operation of the business is tied directly to the performance). Even though the operators of the venue conduct their normal food and drinks business for the patronage of those attending the event, this may be considered a "concert" situation which warrants R186(g) work permit exemption.

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**Note:** Officers can request to see a copy of the licence, but it is the responsibility of the employer to establish that a venue is not a "bar, restaurant or similar establishment", if they wish to bring performers in under R186(g).

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**Examples of "bar, restaurant or similar establishment": NOT exempt under R186(g)(ii)**

- Bars
- Beer parlours
- Bistros
- Cabarets\*
- Cafes
- Cafeterias
- Coffee shops
- Lounges
- Nightclubs
- Pubs
- Restaurant
- Tapas bars
- Taverns
- Tea houses

\* A cabaret is defined as an establishment that offers both live and non-live entertainment

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**Examples of venues NOT considered to be a "bar, restaurant or similar establishment":  
Exempt under R186(g)(ii)**

- Auditoriums
- Banquet halls
- Bingo establishments
- Casinos (provided that the entertainer is not performing in a bar or restaurant located within the Casino)
- Comedy clubs\*
- Community centres
- Concert venues
- Convention centres
- Dinner theatre establishments\*
- Hotels (provided that the entertainer is not performing in a bar or restaurant located within the hotel)
- Legions
- Public parks
- Religious establishments (such as churches, temples and mosques)
- Shopping malls
- Sports arenas
- Theatres

\*Comedy clubs and dinner theatres are not considered to be a bar, restaurant or similar establishment, since their primary business function is the sale of live entertainment, and not food and/or beverages

### **Buskers**

Buskers include street performers or people performing at street festivals. In most cases they should meet the requirements of R186(g).

### **Circus performers**

Foreign travelling circus performers should, in most cases, meet the requirements of R186(g). However, in cases where the employer is Canadian, there is entry into the Canadian labour market, and an LMO is required.

Exception: Cirque de Soleil has demonstrated the significant benefit they bring to the local economy and have demonstrated that they look to find the best circus performers in the world. Therefore, foreign performers may be authorized to enter Canada under R205, C10.

### **Conductors**

Conductors include orchestra leaders, or people coming to conduct various concerts. If the conductor will be hired on a full-time basis by a Canadian orchestra, a work permit and an LMO is required. If they are a guest conductor, coming for just one or a few concerts, the conductor may work without a permit pursuant to R186(g).

### **Festivals**

Most jazz, folk, blues (etc.) festivals in Canada take place in the summer months and the performances are held outside. R186(g) clearly applies in these cases. However some performances which are part of the same festival do take place in bars. If festival performers are being paid by the festival organization and not by the bar or restaurant, it would be reasonable to apply R186(g), thus interpreting the bar as merely a concert venue. A flexible interpretation allows all of the festival performers to be treated in the same way.

## FW 1 Temporary Foreign Worker Guidelines

To verify that the performance taking place within a bar, restaurant or similar establishment is part of a festival, the performing artist's contract must be between the foreign worker and the festival organization. If the contract is between the worker and a party other than the festival, such as the owner of the bar or restaurant, the performing artist requires a work permit.

Also applicable are showcase events, similar to festivals, where the performers are not paid at all but, in fact, pay to be part of the festival (e.g., Toronto's North by Northeast Festival and Canadian Music Festival). These are events where the performers attend seminars and also have an opportunity to demonstrate to promoters and record industry executives how they perform in a live setting and what audience reaction they generate. The live settings are various bars that have agreed to participate in the showcase event. There is no payment by the bar owners for the performances.

### Film Co-producers

All temporary foreign workers entering Canada to take employment under the terms of a film co-production agreement between Canada and any foreign country are exempt from the need for an LMO. The temporary foreign worker must present a letter issued by the Canadian co-producer confirming that a co-production agreement has been signed and specifying what role the temporary foreign worker will fill in the production. The worker should also present a copy of their contract with the Canadian or foreign co-producer. Telefilm Canada plays a role in approving co-production agreements, and is available to confirm that an agreement exists, should this be necessary. (Telefilm Canada 1-800-567-0890, <http://www.telefilm.gc.ca/04/41.asp?lang=en&>)

For more information on entry procedures into Canada for participants of official co-productions, see the following link:

<http://www.telefilm.gc.ca/document/en/04/ProcedureImmigrationversionanglaise.pdf>

### Criteria:

Work permit required but LMO exempt under R204, T11.

### Film producers employed by foreign companies

Persons employed as producers by foreign film or television companies coming to produce a film or documentary entirely funded from abroad are exempt from work permits as persons who meet the criteria of a business visitor under R187.

### Film & recording studio users

Individuals and groups who purchase services or rent equipment furnished by recording and film studios in Canada may be authorized to enter Canada without work permits if they meet the criteria of R187.

### Guest artists coming to perform on Canadian television or radio

A strict reading of R186(g) might lead an officer to conclude that this Regulation does not apply and that work permits and LMOs are required in this situation. However, another interpretation is possible which better reflects CIC's policy intent: The musical guest artist, who is coming to perform on, for example, 'Open Mike', with Mike Bullard, or Canada AM, is primarily a guest artist. Although the show will be broadcast, the musician does not have a stake in it, nor are they really integral to the show. They are just a guest in this instance, and even though singing, should be authorized to enter Canada without a work permit in the same way they would if they were just talking on the show. Alternatively, if they were coming to act or sing a regular part in a Canadian television series, they require a work permit and LMO.

## FW 1 Temporary Foreign Worker Guidelines

### **Permanent positions in performing arts venues**

Persons coming temporarily to occupy permanent positions as members of permanent organizations such as theatres, dance groups, orchestras, house bands, etc., are required to hold work permits and LMOs. This includes persons coming as choreographers and announcers.

### **World Wrestling Entertainment (WWE)**

These performers and their accompanying essential crew may be authorized to enter Canada pursuant to R186(g) which includes a stipulation that the performance not be "primarily for a film production or television or radio broadcast". While most of their staged performances are broadcast live in a pay-per-view format and/or filmed for later commercial broadcast, this is not considered to be the primary purpose of the performance.

A substantial portion of the WWE's revenues from live events does stem from simultaneous or subsequent broadcast and film. However, a substantial portion is also received from ticket sales to the live events. Furthermore, if the primary intent of these performances were not to attract and entertain a live audience, then there would be no reason for the WWE to undertake the expense and inconvenience of offering a touring performance.

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**Note:** The R186(g) exemption does not apply to any WWE workers directly involved in the film, television or radio broadcast elements of the production. This includes all WWE camera operating positions.

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## FW 1 Temporary Foreign Worker Guidelines

### Appendix B International Free Trade Agreements (FTAs)

Updates from OB 124 included.

International FTAs cover trade in goods, services and investments. The agreements are modeled on the NAFTA Chapter 16 (see Appendix G). Like the NAFTA, the agreements contain provisions to facilitate, on a reciprocal basis, temporary entry for business persons, but allow each party to impose or continue to impose a visa on the citizens of the other party.

The FTAs in this appendix contain provisions similar to the NAFTA to grant temporary entry to four categories of business persons - Business Visitors, Professionals, Intra-company Transferees and Traders and Investors; differences are highlighted as they relate to Appendix G of this manual.

Exemption codes are applied as follows:

Business Visitor	N/A
Trader	T21
Investor	T22
Professional	T23
Intra-company Transferee	T24

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#### Reference

Section	Free Trade Agreement
1	Canada-Chile (CCFTA)
2	Canada-Peru

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#### 1. CANADA-CHILE FREE TRADE AGREEMENT (CCFTA)

##### Background

The basic NAFTA provisions remain the same in the CCFTA and are set out in Chapter K of the agreement.

There are, however, a number of minor differences, primarily in the appendices which support two of the categories of business persons - Business Visitors and Professionals.

The rules for Intra-company transferrees and Traders/Investors are the same.

##### Differences from Appendix G (NAFTA)

###### Business Visitors:

Like the NAFTA, Appendix K-03.I.1 of the CCFTA, which supports the Business Visitor category, does not provide an exhaustive list but illustrates the types of activities usually carried out by Business Visitors. No new activities were added to Appendix K-03.I.1 when compared to NAFTA,

## FW 1 Temporary Foreign Worker Guidelines

but the following activities were removed to reflect the bilateral agreement between Canada and Chile:

- harvester owners - under Growth, Manufacture and Production;
- transportation operators - under Distribution;
- Canadian and American brokers performing brokerage duties - under Distribution; and
- tour bus operators - under General Service.

### Professionals:

Professionals identified in Appendix K-03.IV.1 of the CCFTA (below) seek entry through pre-arrangement – as a salaried employee under a personal contract with a Canadian employer or through a contract with the professional's employer in their home country. Like the NAFTA list of Professionals in Appendix G of this manual, over 60 professionals are identified in the CCFTA list. Unlike Appendix K03.I.1 (Business Visitor), **Appendix K-03.IV.1 below contains an exhaustive list of professionals and cannot be interpreted.**

Each professional identified in the Appendix must hold the qualifications indicated in the Minimum Educational Requirements and Alternative Credentials applicable to the profession. **No new profession was added to the Appendix of the CCFTA.**

**The requirements applicable to NAFTA professionals were retained and continue to apply for the Chilean professions. However, for 14 of the professions, Chilean minimum education requirements and alternative credentials, such as the Chilean University Title, were added as alternatives to the requirements which are set out in NAFTA, in order to reflect the Chilean educational system.**

Changes were made to the minimum education requirements and alternative credentials for the following professions : Accountant, Lawyer, Librarian, Social Worker, Dietitian, Nutritionist, Occupational Therapist, Physician, Physiotherapist, Registered Nurse, Veterinarian and Geologist. See Appendix K-03.IV.1 of the CCFTA below.

**Note:** The CCFTA list of professionals compares to the General Agreement on Trade in Services (GATS) for the following professions: architect, engineer, forester, land surveyor; lawyer and urban planner. (See Appendix D for more information.)

### Appendix K-03.IV.1

#### PROFESSIONALS

PROFESSION <sup>1</sup>	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS <sup>2</sup>
General	
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A; or Contador auditor or Contador público (University Title) <sup>3</sup> .
Architect	Baccalaureate or Licenciatura Degree; or state/provincial licence <sup>4</sup>
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma <sup>5</sup> or Post-Secondary Certificate <sup>6</sup> , and three years experience
Disaster Relief Insurance Claims Adjuster (claims adjuster)	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years

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employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Economist (including Commercial Engineer in Chile)	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial licence
Forester	Baccalaureate or Licenciatura Degree; or state/provincial licence
Graphic Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/national licence
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Prov ince of Quebec)	LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years) or Abogado, or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. or Magister en Bibliotecología (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of speciality related to the consulting agreement
Mathematician (including Statistician)	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationalist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/Technologist <sup>7</sup>	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
Social Worker	Baccalaureate or Licenciatura Degree or Asistente Social/Trabajador social (University Title)
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree

## FW 1 Temporary Foreign Worker Guidelines

Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree
<b>Medical/Allied Professional</b>	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or Licenciatura en Odontologia; or state/provincial licence
Dietitian	Baccalaureate or Licenciatura Degree or Dietista Nutricional (University Title); or state/provincial licence
Medical Laboratory Technologist (Canada)/ Medical Technologist (Chile, Mexico and the United States of America) <sup>8</sup>	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Nutritionist	Baccalaureate or Licenciatura Degree or Nutricionista/Dietista Nutricional (University Title)
Occupational Therapist	Baccalaureate or Licenciatura Degree or Terapeuta Ocupacional (University Title); or state/provincial licence
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial licence
Physician (teaching or research only)	M.D. or Doctor en Medicina or Médico Cirujano/Médico (University Title); or state/provincial licence
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree or Kinesiólogo/ Kinesioterapeuta (University Title) ; or state/provincial licence
Psychologist	State/provincial licence; or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial licence, or Licenciatura Degree, or Enfermera (University Title)
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria or Médico Veterinario (University Title); or state/provincial licence
<b>Scientist</b>	
Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree or Geólogo (University Title)
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States of America)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree

## FW 1 Temporary Foreign Worker Guidelines

Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada and Chile)	Baccalaureate or Licenciatura Degree for Physicist; Oceanógrafo (University Title) for Oceanographer
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
<b>Teacher</b>	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

### NOTES

1. A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars.
2. Accountant: C.P.A.: Certified Public Accountant; C.A.: Chartered Accountant; C.G.A.: Certified General Accountant; C.M.A.: Certified Management Accountant  
Dentist: D.D.S.: Doctor of Dental Surgery; D.M.D.: Doctor of Dental Medicine  
Lawyer: LL.B.: Bachelor of Laws; J.D.: Doctor of Jurisprudence (not a doctorate); LL.L.: Licence en Droit (Québec universities and University of Ottawa; B.C.L.: Bachelor of Civil Law  
Librarian: M.L.S.: Master of Library Science; B.L.S.: Bachelor of Library Science  
Physician: M.D.: Medical Doctor  
Veterinarian: D.V.M.: Doctor of Veterinary Medicine; D.M.V.: Docteur en Médecine Vétérinaire
3. "University Title" means any document conferred by universities recognized by the Government of Chile and shall be deemed to be equivalent to the Minimum Education Requirements and Alternative Credentials for that profession. In the case of the profession of Lawyer (Abogado), the title is conferred by the Supreme Court of Chile.
4. "State/provincial licence" and "State/provincial/national licence" mean any document issued by a provincial or national government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.
5. "Post-Secondary Diploma" means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States of America.
6. "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of post-secondary education at an academic institution: in the case of Mexico, by the federal government or a state government, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law; and in the case of Chile, by an academic institution recognized by the Government of Chile.
7. A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.
8. A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

## FW 1 Temporary Foreign Worker Guidelines

### 2. CANADA-PERU FREE TRADE AGREEMENT (FTA)

#### Background

The Canada-Peru FTA was signed in 2008 and became effective August 1, 2009. Chapter 12 of the Agreement entitled *Temporary Entry for Business Persons* is modeled on the NAFTA but contains some differences, which are highlighted below.

These differences include:

#### 1) Permanent residents:

The inclusion of the permanent residents (not only citizens) of each country in the Canada-Peru FTA is different from the NAFTA ([see Appendix G, section 1.6](#)). Therefore, proof of permanent resident status is also an accepted document for presentation in support of an application.

#### 2) Business visitors ([Appendix G, sections 2.2, 2.6 and 2.7](#)):

- the addition of "Meetings and Consultations" to the categories of Business Visitors;
- the inclusion of after-lease servicing in addition to after-sales servicing; and
- under General Service, the addition of:
  - cook personnel (cooks and assistants) attending or participating in gastronomic events or exhibitions, or consulting with business associates;
  - information and communication technology service providers attending meetings, seminars or conferences, or engaged in consultations with business associates; and
  - franchise traders and developers who seek to offer their services.

#### 3) Intra-company transferees ([Appendix G, section 4](#)):

- employed continuously by the enterprise for **six months** (versus one year for NAFTA) within the three-year period immediately preceding the date of application for admission; and
- the intra-company transferees category has expanded to include a new category of "management trainee on professional development", meaning an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company.

#### 4) Professionals and Technicians ([Appendix G, section 3.2](#)):

- **professionals** are listed using a **negative list**, meaning that all professionals that meet the general definition of professionals are covered, except for the professionals included in the list in the chart below.
- **Note:** **professional** means a national of a Party who is engaged in a specialty occupation <sup>Error!</sup>  
Hyperlink reference not valid. **technicians** are listed using a **positive list**, meaning that only those technicians included on the list of technicians are covered (see the list below).

## FW 1 Temporary Foreign Worker Guidelines

Canada-Peru FTA	
<b>PROFESSIONALS - NOT covered</b>	
➤ All Health, Education, and Social Services occupations and related occupations:	
Managers in Health/Education/Social & Community Services	
Physicians/Dentists/Optometrists/Chiropractors/Other Health Professions	
Pharmacists, Dietitians & Nutritionists	
Therapy & Assessment Professionals	
Nurse Supervisors & Registered Nurses	
Psychologists/Social Workers	
University Professors & Assistants	
College & Other Vocational Instructors	
Secondary/Elementary School Teachers & Counsellors	
➤ All Professional occupations related to Cultural Industries, including:	
Managers in Libraries, Archives, Museums and Art Galleries	
Managers in Publishing, Motion Pictures, Broadcasting and Performing Arts	
Creative & Performing Artists	
Recreation, Sports and Fitness Program and Service Directors	
Managers in Telecommunication Carriers	
Managers in Postal and Courier Services	
Managers in Manufacturing	
Managers in Utilities	
Managers in Construction and Transportation	
Judges, Lawyers and Notaries except Foreign Legal Consultants	
<b>TECHNICIANS that are covered:</b>	
Civil Engineering Technologists and Technicians	
Mechanical Engineering Technologists and Technicians	
Industrial Engineering and Manufacturing Technologists and Technicians	
Construction Inspectors and Estimators	
Engineering Inspectors, Testers and Regulatory Officers	
➤ Supervisors in the following:	
Machinists and Related Occupations	
Printing and Related Occupations	
Mining and Quarrying	
Oil and Gas Drilling and Service	
Mineral and Metal Processing	
Petroleum, Gas and Chemical Processing and Utilities	
Food, Beverage and Tobacco Processing,	
Plastic and Rubber Products Manufacturing	
Forest Products Processing	
Textile Processing	
➤ Contractors and Supervisors in the following	
Electrical Trades and Telecommunications Occupations	
Pipefitting Trades	
Metal Forming	
Shaping and Erecting Trades	
Carpentry Trades	
Mechanic Trades	
Heavy Construction Equipment Crews	

## FW 1 Temporary Foreign Worker Guidelines

Other Construction Trades
Installers, Repairers and Servicers
Electrical and Electronics engineering Technologists and Technicians (includes electronic service technicians)
Electricians (includes industrial electricians)
Plumbers
Industrial Instrument Technicians and Mechanics
Aircraft Instrument, Electrical and Avionics Mechanics, Technicians and Inspectors
Underground Production and Development Miners
Oil and Gas Well Drillers, Servicers and Testers
Graphic Designers and Illustrators
Interior Designers
Chefs
Computer and Information System Technicians
International Purchasing and Selling Agents

### NOTES

1. A professional specialty occupation shall mean an occupation which falls within the National Occupation Classification (NOC) levels 0 and A.
2. These requirements shall be those defined in the NOC.

## FW 1 Temporary Foreign Worker Guidelines

### Appendix C Diplomats

#### 1. Diplomats, Consular Officers, Representatives, Officials (and their family members) accredited to Canada [R186(b) & (c)]

R186. A foreign national may work in Canada, without a work permit

(b) as a foreign representative, if they are properly accredited by the Department of Foreign Affairs and International Trade, and are in Canada to carry out official duties as a diplomatic agent, consular officer, representative or official of a country other than Canada, of the United Nations or any of its agencies or of any international organization of which Canada is a member.

**Note:** Diplomats entering Canada for the first time should not be referred for secondary examination. They have instructions to contact DFAIT in Ottawa for verification of credentials.

#### Definitions:

##### Properly accredited

This accreditation takes the form of a counterfoil in the individual's passport. In addition, every person over 16 years of age receives an identity card.

##### Diplomatic agent

Refers to a person in Canada who is accredited from a foreign state as a member of a diplomatic mission. Diplomatic missions are the foreign government offices established in the National Capital region, accredited to the Canadian Government to conduct diplomatic relations. Persons holding the rank of High Commissioner, Deputy High Commissioner, Ambassador, Chargé d'Affaires, Minister, Minister-Counsellor, First, Second or Third Counsellors, Counsellor, First Secretary, Second Secretary, Third Secretary, Attaché and Assistant Attaché are considered diplomats.

##### (Career) consular officer

Refers to a person in Canada who is accredited as a member of a consular post. Consular posts are foreign government offices established outside of the National Capital region to provide service to nationals of their community and liaise with Canadian officials on common points of interest (e.g., education, tourism, trade, etc.). Persons holding the rank of Consul General, Deputy Consul General, Consul, Deputy Consul, Vice-Consul and Consular agent are considered consular officers.

##### Of a country

Refers to a country, other than Canada, with which Canada has diplomatic relations and which has established a mission in Canada.

##### Of the United Nations or any of its agencies

The United Nations does not have an office in Canada, however, several of its agencies have offices throughout Canada. Members of these organizations will be accredited as representatives, senior officials or officials. Temporary or permanent staff of a U.N. organization in Canada are exempt from the requirement to hold a work permit pursuant to R179(b), irrespective of rank. All require an O-1 or D-1 visa, which is fee exempt. [Reference: Consular Manual 10.4.2(2)]

Members, officials or experts of the following United Nations agencies on U.N. businesses in Canada are accredited by Canada (this list is not exhaustive):

- International Civil Aviation Organization (ICAO) - Montreal
- United Nations High Commissioner for Refugees (UNHCR) - Ottawa

## FW 1 Temporary Foreign Worker Guidelines

- United Nations Educational, Scientific, and Cultural Organization (UNESCO) - Québec
- United Nations Environment Program (Convention on Biological Diversity) (UNEP) - Montreal
- Multilateral Fund for the Protection of the Ozone Layer under the Montreal Protocol (UNEP) – Montreal
- United Nations University – International Network on Water, Environment and Health (INWEH) - Hamilton

Persons entering Canada to take employment as officers of the Secretariat of ICAO require a letter of appointment indicating the person's official level at ICAO, signed by or on behalf of the Secretary-General of ICAO. Senior officers working for the Secretariat of ICAO are accredited. Experts on mission at ICAO are not.

### **International organizations in which Canada is a member**

These organizations are not agencies or subsidiaries of the United Nations. They are organizations created by agreements. Canada has agreed to host these organizations and give its members protection similar to that given to the members of United Nations agencies. Members of these organizations will be accredited as permanent representatives, senior officials or officials. Members of the following organizations have been accredited:

- Commonwealth of Learning (COL) - Vancouver
- Energy Institute of Countries using French as a Common Language (EICF) – Québec
- Inter-American Institute for Cooperation on Agriculture (IICA) – Ottawa
- International Atomic Energy Agency (IAEA) – Toronto
- North American Commission for Environmental Cooperation (NACEC) – Montreal
- North Pacific Anadromous Fish Commission (NPAFC) – Vancouver
- North Pacific Marine Science Organization (PICES) – Sidney, B.C
- Northwest Atlantic Fisheries Organization (NAFO) – Dartmouth
- Secretariat of the Egmont Group of Financial Intelligence Units (EGMONT) – Toronto
- Cospas-Sarsat Program (COSPAS - SARSAT) – Montreal

### **Other offices**

- Taipei Economic and Cultural Office Canada (TECO) – Ottawa, Toronto and Vancouver.
- Hong Kong Economic and Trade Office – (HKETO) Toronto
- Palestinian General Delegation (PGD) – Ottawa
- Sovereign Military Order of Malta – Canadian Association (SMOM) – Ottawa
- Office of the European Commission at Montréal (EC) – Montreal

Accreditation applies only to the permanent staff assigned to Canada, and not to short term temporary staff coming to Canada to work at an international meeting. Non-diplomatic staff of an international organization (whether UN or non-UN as listed above) coming to work at meetings, etc. do not require work permits if they meet business visitor criteria.

International organizations or their secretariats, such as the ICAO, are not entitled to employ locally-engaged staff other than Canadian citizens or permanent residents. Therefore, no temporary residents are entitled to work at an international organization as locally-engaged staff.

## **2. Foreign government officials not accredited to Canada**

Some foreign government officials are stationed in Canada as representatives of semi-official agencies and are not accredited by Canada. These officials are not part of diplomatic or consular missions and do not fall within R186(b). This includes organizations such as the Goethe Institute, IATA, the British Council and the National Tourist Office of Greece. Senior officials with these organizations require work permits, but may be eligible for an LMO exemption pursuant to R205(a) C12, if the criteria are met. Other officials and support staff require an LMO.

## FW 1 Temporary Foreign Worker Guidelines

United States pre-clearance officers working in Canada are not accredited. Refer to "United States Government Personnel", Section 13.7.

Foreign government officials seeking temporary entry for the purpose of performing duties and providing services for their government in Canada should be dealt with as business visitors under R186(a). There must be no sales to the public, or other entry into the labour market.

Government officials seeking entry to perform duties with a federal or provincial agency pursuant to an exchange agreement with Canada should be dealt with as visitors under R186(e).

### 3. Private servants of foreign representatives

Official status may be granted to the private servants of a member of a diplomatic mission, consular post or international organization. A "Household Domestic Worker Employment Agreement" (HDWEA) must be submitted by the employer either to the post or to DFAIT/Protocol. The post should not issue a visa until DFAIT/Protocol has approved the contract. The domestic worker or private servant is designated as being in the employ of a foreign representative, and permission to work in Canada is granted pursuant to R186(b).

Alternatively, applicants may seek to enter Canada as temporary workers under the Live-in Caregiver Program (LCP). (See OP 14 and IP 4.)

### 4. Locally engaged staff of diplomatic and consular missions

Locally engaged staff of diplomatic and consular missions will, in most instances, be citizens or permanent residents of Canada. However, policy permits diplomatic and consular missions, on the basis of reciprocity, to employ non-Canadian persons as locally-engaged staff, provided that there is no objection by DFAIT/Protocol.

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**Note:** DFAIT will not approve persons in Canada for the sole purpose of working as a locally-engaged employee of a diplomatic or consular mission. In addition, normally the person would be of the same nationality of the mission itself.

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Locally-engaged staff are not granted official status, nor are they granted any immunities, privileges or benefits under the provisions of the Vienna Convention. A work permit may be issued pursuant to R205(b), C20, noting the foreign mission as the employer.

U.N. and international organizations are not entitled to employ locally-engaged staff other than Canadian citizens or permanent residents (unless the foreign national already holds a work permit).

In summary:

- Persons wishing to work as locally engaged staff must submit a copy of the diplomatic note issued by DFAIT which states it has "no objection."
- Applicants must satisfy all the criteria of a 'temporary resident'.
- Applicants may apply within Canada pursuant to R199(i).
- A work permit that is exempt from an LMO may be issued, pursuant to R205, C20. The foreign mission is noted as the employer.

### 5. Family members of foreign representatives in Canada

R186: A foreign national may work in Canada, without a work permit

(c) if the foreign national is a family member of a foreign representative in Canada who is accredited with diplomatic status by DFAIT and that DFAIT has stated in writing that it does not object to the foreign national working in Canada;

**Workers who meet the definition above**

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Two conditions must be met for a foreign representative's spouse, son or daughter to work in Canada:

- They must be accredited by DFAIT (i.e., have a counterfoil in their passport). This shows the person meets the definition of family member of a foreign representative.
- They must have a letter of no-objection from DFAIT (normally only issued if there is reciprocal employment arrangement with that country). This shows that DFAIT has granted the person permission to work.

Family members who meet both conditions do not require a work permit before engaging in employment.

As per R1(3), for the purpose of R186(c), "family member" in respect of a person means:

- the spouse or common-law partner of the person;
- a dependent child of the person or of the person's spouse or common-law partner; and
- a dependent child of a dependent child referred to in paragraph (b).

The following is from DFAIT Office of Protocol's Circular Note #XDC-0643 – April 25, 2005, which outlines the criteria that must be met by applicants seeking accreditation of immediate members of the family of foreign representatives:

### 1. Children under the age of 19

The Department will continue to accept that children under the age of 19 qualify as "members of the family forming part of the household", provided that all of the following conditions are met, namely that the applicant:

- (a) is the unmarried son/daughter of the employee and/or of his/her spouse or common-law partner;
- (b) is physically living in the household of the employee, unless pursuing studies elsewhere in Canada or abroad;
- (c) is attending a local and recognized education institution on a full-time basis<sup>1</sup> or, if studying outside Canada, intends to join the family during school breaks and vacation.

### 2. Children between the ages of 19 and 25

A child having attained the age of 19 will qualify as a "member of the family forming part of the household" up until the 25th birthday if the applicant meets all of the following requirements, namely that he/she:

- (a) is the unmarried son/daughter of the employee and/or of his/her spouse or common-law partner;
- (b) is physically living in the household of the employee, unless pursuing studies elsewhere in Canada or abroad;
- (c) is wholly or substantially financially dependant on his/her parents;
- (d) has not established his/her own household or family; and
- (e) provides proof of enrolment in full-time studies in a recognized educational establishment and maintains this full-time status, whether studying locally or outside Canada.

The Department will consider extending accreditation beyond the age of 25 in the case of an unmarried son/daughter who is physically or mentally challenged or terminally ill and who is financially or emotionally supported by the accredited parent. The Department may

## **FW 1 Temporary Foreign Worker Guidelines**

however require that a certified medical certificate be submitted by the Diplomatic Mission during the accreditation process.

### **3. Adopted Children**

A person under 25 years of age whom the employee has legally adopted and who otherwise meets the policy requirements set forth in section 1 and 2 of this circular note will be eligible for accreditation only if proof of adoption is submitted and there is no suggestion that the adoption was obtained primarily with the objective of acquiring special status under the Vienna Conventions. Children to whom the relation to the principal or spouse is based on "custody" or "guardianship" are not eligible for accreditation.

### **4. Parents and in-laws of the principal**

Mothers and fathers as well as mothers-in-law and fathers-in-law will not normally be accepted as "member of the family forming part of the household". As a preliminary step, the Department expects that consideration for their accreditation be officially sought via the Office of Protocol prior to their effective entry into Canada and before they submit an application for a Temporary Resident Visa (TRV). In this regard, applicants will be eligible for special consideration if the Diplomatic Mission provides detailed justification, including but not limited to:

- (a) proof of financial dependency on the employee;
- (b) proof that they were physically and principally living with him/her as a dependant prior to entry into Canada;
- (c) proof of recognition as a dependant by the sending State (i.e. on the employee's travel orders); and
- (d) a written statement that they will not seek remunerated employment in Canada during the accreditation period.

With respect to the above, it would not be appropriate for Diplomatic Missions to seek accreditation in favour of parents and in-laws who are simply intent on travelling to Canada for the purpose of visiting the employee.

### **5. Peripheral family members and persons not covered under Canada's policy**

The Department must emphasize that accreditation of dependants is restricted to those covered under the above categories. As a result, the Department will not extend special status to nephews/nieces, grand-children and other extended members of the family, including those whose legal custody or guardianship was obtained prior or during the accreditation period of the employee.

While the Department does not in principle object to their presence in Canada, these individuals shall be required to apply for the appropriate Temporary Resident Visa (TRV) or study permit through a Canadian mission abroad, subject to all applicable immigration requirements.

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### Non-accredited family members

DFAIT will only issue a letter of no-objection to persons who are accredited. Should a person not be accredited, DFAIT will refer that person to immigration officials.

Family members who are not accredited may qualify for a student or a work permit under regular immigration requirements.

### Requirements for approval by DFAIT

DFAIT requires diplomatic and consular missions and international organizations in Canada to seek approval through diplomatic note or official letter for the employment of any member of the family forming part of the foreign representative's household.

DFAIT grants permission to work to those family members only in the following cases:

(a) The country has signed a Reciprocal Employment Arrangement (REA) with Canada. These arrangements allow for family members of Canadian foreign representatives abroad to be employed in the other country.

(b) The headquarters agreement of an international organization or UN organization includes an article stating that family members can work.

(c) Where DFAIT/Protocol is satisfied that circumstances warrant special processing, it has the discretion to approve such applications notwithstanding the absence of clearly established reciprocity.

### Immunities and work permit requirements

- All family members of foreign representatives are subject to administrative or civil jurisdiction during their hours of employment.
- Persons exempt under R186(c) are eligible to work from the moment they receive a no-objection note from DFAIT. (This permission to work is normally 'open', with the exception that for some countries the note may be 'job specific'.)
- Persons exempt from a work permit under R186(c) may request a work permit to facilitate their movement in the labour market (i.e., to assure prospective employers that they have the authority to work in Canada). Such a request should be facilitated. The work permit may be issued pursuant to R205(b), C20.
- There may be family members of foreign representatives who are *not* exempt from the work permit requirement under R186(c). However, they may be included under an REA and be given permission to work by DFAIT, who will issue a letter of no objection indicating this. The work permit may be issued pursuant to R205(b), C20.

### Procedures for issuance of a work permit (when requested or required)

- Persons must present a copy of the no-objection note issued by DFAIT (it normally indicates that reciprocity exists).
- Persons must present photocopies of the required pages of the passport, including a copy of the counterfoil. (Verification can be obtained by contacting DFAIT/Protocol at (613) 995-5957.)
- No restriction on the type of employment or on the employer should be imposed, except if indicated in the note. An open or, if a medical examination has not been passed, an open/occupation restricted work permit should be issued.
- The work permit may be issued in Canada pursuant to R199 and may be exempt from an LMO R205(b), C20, due to reciprocity.
- "This document does not confer status" should be written in the remarks section of the work permit.
- The case type should indicate "official status".

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**Note:** If a foreign representative's family member works without a no-objection letter from DFAIT, they cannot be reported under A44. Such infractions should be brought to the attention of DFAIT/Protocol, Diplomatic Corps Services by facsimile at 613 943-1075.

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### HOUSEHOLD DOMESTIC WORKER EMPLOYMENT AGREEMENT (HDWEA)

#### CIRCULAR NOTE NO. 2494 – DFAIT, Office of Protocol

The Department of Foreign Affairs presents its compliments to Their Excellencies the Heads of Diplomatic Missions and chargés d'affaires, a.i., and Heads of International Organizations accredited to Canada and Other Offices, and has the honour to provide herewith its revised policy regarding foreign domestic servants accompanying members of diplomatic missions, consular posts and international organizations and other offices in Canada. This Note supersedes all previous Circular Notes concerning the employment of foreign domestic servants.

With respect to the payroll process (see Part I, s. 12), the Department requests that payments to the employee be made by cheque or bank transfer. Cash payments are no longer considered an acceptable method of payment. This henceforth applies to all new contracts. Further, it would not be appropriate for prospective employers to sign a contract when they are financially unable to pay the wages specified in the employment contract.

On a general note, the Department would like to emphasize that it is the joint responsibility of the Head of Mission and individual employers to ensure compliance with the provisions of this Circular Note and the minimum provincial labour standards applicable to the private servants' working conditions.

The Department requests that the contents of this note be brought to the attention of all personnel on assignment in Canada and to the attention of appropriate authorities at the ministries of foreign affairs of sending states.

Nothing in this policy should be construed as preventing Canada from applying the provisions of this policy restrictively on a basis of reciprocity or circumstances of the bilateral relation.

The Department wishes to clarify that this Note does not apply to members of the service staff, the accreditation of whom continues to be governed in accordance with Circular Note XDC-0531 of April 27, 2005.

The Department of Foreign Affairs avails itself of this opportunity to renew to Their Excellencies the Heads of Diplomatic Missions and Chargés d'affaires, a.i., and Heads of International Organizations accredited to Canada and other offices the assurances of its highest consideration.

OTTAWA, November 27, 2009

#### PART I - POLICY

The Department of Foreign Affairs allows diplomats, consular officers or other official representatives to be accompanied during their posting to Canada by live-in domestic servants hired abroad. Domestic servants who do not live in the residence of the employer must be Canadian Citizens or Permanent Residents of Canada.

##### 1. DEFINITIONS

###### A) PRIVATE SERVANT

A private servant is a foreign domestic worker who resides with the employer and whose salary is the responsibility of the person for whom the private servant works; both parties being linked through a contractual relationship. A private servant is considered a "member of the suite" of the

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employer as defined by the Immigration and Refugee Protection Regulations **R186** and as such will not be required to obtain an employment authorization before arriving in Canada.

To qualify as a private servant, a written agreement in the form of the HDWEA must be signed by both parties. A copy of this agreement appears in Part III of this Note. The terms and conditions of employment agreed upon should respect Canadian labour standards (please note that in Canada minimum labour standards fall under provincial jurisdiction) and other requirements as set out in this Note.

A private servant must undergo a medical examination, even if his/her country is visa exempt, as required by the Immigration Regulations and must have a minimum of one year's experience as a domestic servant. It is also preferable for a private servant to have an understanding and basic speaking ability in one of the official languages of Canada, French or English, and we strongly encourage the employer to provide the servant with the means to undertake courses in one of the official languages to attain a speaking ability beyond this level. As a general rule, a private servant cannot be a blood relative of the employer or the employer's spouse. Neither can the private servant be accompanied by dependants.

A private servant who complies with all the requirements will be issued an official visa, even if his/her country is visa exempt.

While only one written agreement is to be signed with the employee, an addendum could be attached to the HDWEA form if it is necessary to include additional elements in the agreement that are not required by the Department. For example, the commitment of enrolment in second language courses.

### **B) LIVE-IN CAREGIVER PROGRAM**

This program is designed to allow a foreign domestic servant to apply for permanent resident status after the completion of two years of full-time employment as a live-in caregiver. Approval for employment under this program is given by Citizenship and Immigration Canada, with the participation of Human Resources and Skills Development Canada/Service Canada, provided the applicant meets the conditions of the program and provided that there are no Canadian Citizens or Permanent Residents who meet the requirements of the job.

A "Live-in Caregiver" is someone who works without supervision in a private household to provide care for children, care for seniors, or care for the disabled. A position such as driver, cook or housekeeper in a household would not meet the requirements of the program.

A successful applicant will receive an employment authorization allowing employment in Canada as a "Live-in Caregiver" from the appropriate Canadian mission overseas. After completing two years of full-time work as a live-in caregiver within three years of their date of entry to Canada, the program participant can apply for permanent resident status in Canada. To hire a live-in caregiver under this program the employer must apply for authorization from Human Resources and Skills Canada/Service Canada. Further information about this process can be found at: [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/lcpdir/lcpone.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lcpdir/lcpone.shtml).

A "Live-in Caregiver" will not enjoy any privileges and immunities under the Vienna conventions, or any other treaty or headquarters agreement.

Diplomatic Missions that require further information on this program should contact the Citizenship and Immigration Officer at the Office of Protocol of the Department of Foreign Affairs.

## **2. CATEGORIES OF OFFICIALS WHO MAY BRING INTO CANADA PRIVATE SERVANTS IN THE CAPACITY OF A FOREIGN REPRESENTATIVE**

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Unless specified otherwise to a foreign state, ambassadors/high commissioners, other members of the diplomatic staff, members of the administrative and technical staff, career heads of consular posts, other career consular officers, consular employees and senior officials of international organizations may bring private servants of any nationality to Canada. Members of the service staff are not entitled to bring private servants to Canada.

### 3. NUMBER OF PRIVATE SERVANTS ALLOWED

The number of private servants that may be brought to Canada during a posting will depend upon the rank of the official.

A) Ambassadors, High Commissioners may bring into Canada a maximum of **four** private servants.

B) Diplomatic agents of the rank of Deputy High Commissioner, Deputy Head of Mission, Ministers, Minister-Counsellors, Counsellors, Consuls General, Heads of International Organizations, permanent national representatives to international organizations in Canada may bring into Canada a maximum of **two** private servants.

C) All other diplomatic agents, Consular Officers as well as Senior Officials of International Organizations may bring **one** private servant into Canada.

D) Members of the Administrative and Technical staff and Consular Employees may bring **one** private servant into Canada.

Requests for additional private servants will be considered on a case-by-case basis, and only in exceptional circumstances. (See Part II for the procedure.)

### 4. LOCALLY-ENGAGED

It should be emphasized that a person who is a Canadian Citizen or Permanent Resident of Canada may be hired locally as a domestic servant without restriction. A locally-engaged employee will not be given an Official Acceptance by the Office of Protocol.

### 5. MINIMUM CANADIAN EMPLOYMENT STANDARDS

Through the HDWEA the employer voluntarily undertakes to respect Canadian employment standards in Canada, the employment standards are determined by provincial authorities. Part II of this Note outlines the minimum standards established by the provinces of Quebec and Ontario **and websites with contact details for the relevant ministries**. If the employer resides in another province the Office of Protocol will provide, upon request, information about the minimum standards in that province.

The Department would like to draw attention to the fact that, in Canada, there is a minimum age requirement for employment. The minimum age varies from province to province. The Department will not authorize the employment of a person under the minimum age.

### 6. LENGTH OF STAY

Initially, a private servant will be granted an official acceptance of two years with the possibility of yearly extensions to a maximum of seven years. The private servant will be required to leave Canada upon termination of the contract, at the end of the employer's posting or after seven years, whichever is earliest.

### 7. TRANSFER REQUEST

The transfer of a private servant to another employer will be permitted if both the parties requesting the transfer have respected the terms and conditions of the previous contract. In cases of transfer, the employee will not be allowed to receive any extensions beyond seven years from the date of the first engagement.

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### 8. NEW CONTRACT

A private servant who has been in Canada for the maximum period of seven years and who wishes to find a new employer and return to work in Canada under an official acceptance will be allowed to do so only after a stay abroad of at least six months and if the private servant has respected the terms and conditions of the HDWEA with the previous employer(s).

### 9. DEPENDENTS

A private servant is not entitled to bring dependants to Canada. A husband-and-wife team working for the same employer will be considered as two private servants. However this will only be possible in the case of employers who are allowed two or more private servants (see Part I section 3 A) & B)).

### 10. BLOOD-RELATIONSHIP WITH THE FAMILY OF THE EMPLOYER

The Department will not accept as a private servant, a person who is a close blood relative of the employer or the employer's spouse. However an employer is permitted to have as a private servant, a person who is a tribal relation. The office abroad will verify this element and advise the Office of Protocol accordingly before a visa is issued. Blood relationship means a first degree relationship with the employer and/or the employer's spouse. This includes grandparents, parents, brothers or sisters, nephews or nieces, sons or daughters or grandchildren.

### 11. EXPERIENCE REQUIREMENTS

The employee must have a minimum of one year of experience as a domestic or in that field of work and preferably an understanding and basic speaking ability in one of the official languages of Canada French or English. Experience gained from working in a context other than one of an employer-employee relationship will not necessarily be deemed as an acceptable experience. In short, the future employee must have the necessary qualifications to perform the tasks that are described in the HWDEA.

### 12. METHOD OF PAYROLL PAYMENT

The Department requests that all payments to the employee be done by either cheque or bank transfer. Cash payments are not permitted. In addition, the employee should receive a payroll statement. The Department may, at any time, request a copy of such statement as proof of payment from the employer.

It is the responsibility of the employer to ensure complete, accurate and timely payroll.

### 13. BREACH OF CONTRACT

A foreign official who fails to respect the terms and conditions of the HWDEA, including those relating to the method of payroll, will not be allowed further private servants. A private servant who violates the terms and conditions of the contract will not be allowed to change employers.

An employer may, however, change a private servant during the course of a normal posting on condition that the previous private servant has completed his/her contract, has transferred employer or has left Canada.

### 14. TERMINATION OF EMPLOYMENT

As far as is possible, the Office of Protocol should be informed by Diplomatic Note a minimum of two weeks in advance of the termination of a private servant's employment, together with details of the arrangements made for the person's departure from Canada. The identity card of the employee must be returned to the Office of Protocol, along with the employee's passport for an adjustment to the official acceptance.

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### PART II - PROCEDURES FOR PRIVATE SERVANTS

Whether the official is in Canada or still abroad, the employer is required to complete a HDWEA for each private servant brought into Canada.

#### 1. STEP ONE - SIGNATURE OF HDWEA

A person in Canada who wishes to bring a foreign domestic worker as a private servant, is required to complete the HDWEA.

##### INITIATION OF THE PROCEDURE

A) An HDWEA must be filled out and signed by the employer.

B) When the future employer is in Canada, **permission must be requested** from the Office of Protocol by Diplomatic Note to which is attached a copy of the HDWEA.

Once approved by the Office of Protocol the original HDWEA must be sent by the employer to the future employee for signature.

When the future employer is abroad, the HDWEA signed by the two parties should be forwarded directly to the Canadian mission along with the future employee's application for a visa. **The mission will fax a copy of the HDWEA to the Office of Protocol for its approval.**

C) It is the responsibility of the future employer to ensure that the original version of the HDWEA is provided to the future employee for submission to the Canadian mission abroad; a copy should be retained by the prospective employee.

D) The prospective employer must also keep a copy, as a copy must be attached to the Diplomatic Note requesting accreditation for the private servant.

#### 2. STEP TWO - VISA APPLICATION

The future employee must file an application for visa and attach the original of the HDWEA signed by both parties to the application. All private servants must go through the visa process irrespective of whether the country is visa exempt.

When a copy of the HDWEA has been sent **directly** to the Office of Protocol (see Part II (1)(B)), the Office of Protocol will inform in advance the Canadian mission that the future employee will present an application for visa, together with the original of the HDWEA signed by the two parties.

#### 3. STEP THREE - HDWEA APPROVAL

The HDWEA must be approved by the Office of Protocol. To be approved the HDWEA must meet the minimum Canadian labour standards. In cases where clarifications are needed, the information should be sought from the Citizenship and Immigration Officer at the Office of Protocol.

##### CANADIAN STANDARDS

The minimum standards to be respected for wages and benefits, accommodation and hours of work are based on minimum requirements established by federal and provincial authorities. The minimum standards in the provinces of Ontario and Quebec are outlined in the annex to this Circular Note. If the employer resides in another province the Office of Protocol will provide, upon request, information about the minimum standards in that province. A HDWEA that has terms and conditions of employment which are lower than Canadian minimum standards will not be approved, even if the HDWEA has been accepted by the prospective employee.

#### 4. STEP FOUR - REQUIREMENTS

The following requirements must be satisfied prior to the issuance of an entry visa:

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- the future employer qualifies for a foreign domestic servant;
- the future employer has not exceeded the number of foreign domestic servants allowed;
- the future employee is not a blood relative of the employer or the employer's spouse;
- the future employee is of the minimum age to work in the province of residence;
- the future employee has a minimum of one year of experience as a domestic or in that field of work;
- the future employee satisfies the requirement of a medical examination as set out in the Immigration Regulations;
- the future employee, preferably, has an understanding and basic speaking ability in one of the official languages of Canada, French or English;
- the length of stay requested for the future employee does not exceed the length of stay allowed under this policy;
- the employer and future employee have respected their obligations and the terms of previous HDWEAs;
- the future employee is not accompanied by dependents.

### 5. MEDICAL EXAMINATION

In each case, even for persons whose country is visa exempt, the private servant must undergo a medical examination as required by Immigration Regulations. The results will have to be known before the private servant is issued a visa, which is required in all cases.

A visa will not be issued to a private servant who is inadmissible to Canada for medical reasons.

### 6. ROLE OF THE CANADIAN MISSION ABROAD

The Canadian mission will evaluate the applicant's expertise and/or a possible blood relationship with the employer. It will inform the office of Protocol of those results. The Mission will also ensure that a medical examination is done.

A copy of the HDWEA will be faxed to the Office of Protocol of the Department of Foreign Affairs in Canada, which will ensure that it meets Canadian labour standards, and that the employer is entitled to a private servant. The Office of Protocol will advise the mission of its decision.

Where a diplomat is already in Canada, the Canadian mission abroad may confirm with the Office of Protocol the number of private servants already in the service of the employer or the circumstances surrounding the replacement.

The private servant will be issued an official visa, even if his/her country is visa exempt. Where such a visa is issued, a private servant does not need an employment authorization.

When a visa is granted to a private servant the original of the HDWEA must be sent by the Canadian mission to the Office of Protocol.

### 7. ARRIVAL IN CANADA

Upon arrival in Canada the private servant will be granted admission as a visitor. The mission should present the private servant to the Office of Protocol by way of a Diplomatic Note, together with a copy of the HDWEA signed by both parties, the passport, three passport size photos and two registration cards (Ext 231).

The private servant will then be issued an official acceptance by the Office of Protocol and will receive an identification card.

## HOUSEHOLD DOMESTIC WORKER EMPLOYMENT AGREEMENT

## FW 1 Temporary Foreign Worker Guidelines

### Prospective Employer

Name: \_\_\_\_\_

Title/rank and mission: \_\_\_\_\_

Residential address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

### Prospective Employee

Name: \_\_\_\_\_

Date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Male \_\_\_\_ Female \_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Marital Status:

Married \_\_\_\_ Separated \_\_\_\_ Single \_\_\_\_ Divorced \_\_\_\_ Other \_\_\_\_

Number of dependents: \_\_\_\_ children \_\_\_\_ other \_\_\_\_

- ❖ Please note that a domestic employee may not be accompanied by dependants.
- ❖ The minimum age requirement for a private servant has been set at 18.
- ❖ The Department will cease to recognize the official status of private servants who get married or become expectant in Canada.

### I - WORK BACKGROUND

1. Current employment: \_\_\_\_\_
2. Years of experience as a private servant: \_\_\_\_\_

### II - JOB REQUIREMENTS

1. Language

Outline the language to be spoken in house:

\_\_\_\_\_

Outline other languages spoken by the future employee:

Which official language of Canada does the future employee possess a knowledge of:

ENGLISH    FRENCH    NONE

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Indicate whether you plan to provide second language courses for your future employee:

ENGLISH      FRENCH      NONE

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### 2. Specialized Training

Outline specialized training taken by the private servant:

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### III- DUTIES

Proportion of time spent in:

- |                                   |         |
|-----------------------------------|---------|
| 1. Child Care                     | _____ % |
| 2. Home Care                      | _____ % |
| 3. Cooking                        | _____ % |
| 4. Miscellaneous responsibilities | _____ % |

### IV - TERMS AND CONDITIONS

**ALL SECTIONS MUST BE COMPLETED**

#### 1. DURATION

Duration of employment: \_\_\_\_\_

The duration of employment cannot exceed the duration of the posting of the employer.

The maximum length of stay as a private servant is 7 years at which time the private servant is required to leave Canada. (This includes time spent working for other diplomats).

Wages	Canadian Employment Standards	
	Ontario	Quebec
<p>Gross wage: \$ _____  Paid weekly _____ monthly _____.</p> <p>Wages will be paid by:  (a) cheque _____ or  (b) electronic funds transfer (bank transfers must credit a bank account in the name of the employee).</p> <p><b>CASH PAYMENT IS NOT ACCEPTABLE.</b></p> <p><b>ALSO, WHETHER WAGES ARE PAID BY CHEQUE OR BANK TRANSFER, THE EMPLOYEE SHOULD RECEIVE A PAYROLL STATEMENT. THE DEPARTMENT RESERVES THE RIGHT TO REQUEST A COPY OF SUCH STATEMENT AT ANY TIME DURING THE EMPLOYMENT PERIOD.</b></p> <p>Wages will be paid in _____ currency.</p>	<p>Effective March 31, 2009, minimum wage is:  \$9.50 per hour  \$418.00 per week of 44 hours  \$1811.33 per month (44 hour week)</p>	<p>Effective May 1, 2009, minimum wage is:  \$9.00 per hour  \$360.00 per week of 40 hours  \$1560 per month (40 hour week)</p>
Overtime salary	Canadian Employment Standards	
	Ontario	Quebec
<p>Overtime will be paid at \$ _____ per hour.</p>	<p>A minimum of one and one-half times (1.5) the regularly hourly rate of pay for each hour worked beyond 44 hours per week.</p> <p><u>E.g.:</u> \$14.25 per hour for an hourly wage of \$9.50.</p>	<p>A minimum of one and one-half (1.5) times the regular hourly rate of pay for each hour worked beyond 40 hours per week.</p> <p><u>E.g.:</u> \$13.50 per hour for an hourly wage of \$9.00.</p>
Compensatory Time	Ontario	Quebec

For overtime worked during a free period.	A minimum of one-and one-half times the free time for each hour worked during a period of free time.	A minimum of one-and one-half times the free time for each hour worked during a period of free time.
<b>Period of rest</b>	<b>Canadian Employment Standards</b>	
	<b>Ontario</b>	<b>Quebec</b>
One period of rest for every _____ consecutive hours should be given each week.  This period cannot be divided into shorter periods.	The employee is entitled to a minimum of:  a rest period of 24 consecutive hours per week,  <u>or</u>  a rest period of 48 consecutive hours every two weeks.	The employee is entitled to a minimum of:  a rest period of 32 consecutive hours.
<b>Free time</b>	<b>Ontario</b>	<b>Québec</b>
This standard applies even if the employer and employee have agreed in writing to extend the workday beyond the eight-hour daily maximum.	The employee must be permitted 11 hours of free time per day.	N/A
<b>Hours of work</b>	<b>Canadian Employment Standards</b>	
	<b>Ontario</b>	<b>Quebec</b>
The work day begins at _____ and ends at _____. This includes _____ hours of free time per day (meals and breaks)  Overtime wages shall be paid beyond the regular hours of work.		
<b>Vacation time</b>	<b>Ontario</b>	<b>Quebec</b>
Vacation time is given at a time agreeable to the employer, but must be given within the next 10 months.  _____ weeks of paid vacation per year will be given.  _____ sick days per month will be given.	At least two weeks after a 12-month period of employment.	At least two weeks after a 12-month period of employment.
<b>Vacation pay</b>	<b>Canadian Employment Standards</b>	
	<b>Ontario</b>	<b>Quebec</b>

	Should be four percent (4%) of the total wages earned during the twelve months of employment (which includes overtime and bonus).	Should be four percent (4%) of the total wages earned during the twelve months of employment (which includes overtime and bonus).
<b>Holidays</b>	<b>Ontario</b>	<b>Quebec</b>
<p>A minimum of 8 days per year.</p> <p>If an employee is required to work on a public holiday, the employer may substitute another working day with pay. This substitute day off must be granted not later than the employee's next annual vacation. If a substitute arrangement is not made, the employee must be paid at least time and one-half the regular rate for the hours worked, in addition to the regular day's pay for that holiday.</p>	<p>If a public holiday falls on an employee's day off or during an employee's annual vacation, that employee is entitled to another working day off with pay in place of the missed holiday. Or, if the employee agrees, compensation may take the form of an extra day's pay.</p>	<p>If a public holiday falls on an employee's day off or during an employee's annual vacation, that employee is entitled to another working day off with pay in place of the missed holiday. Or, if the employee agrees, compensation may take the form of an extra day's pay.</p>
<b>Weekly deductions and accommodation</b>	<b>Canadian Employment Standards</b>	
	<b>Ontario</b>	<b>Quebec</b>
<p>To qualify as a private servant the employee must reside in the employer's household.</p> <p>Room and board: an amount of \$_____ will be deducted monthly from gross salary for the cost of room and board.</p> <p><i>The amounts for room and board that may be deducted from the employee's salary are set by Canadian employment standards. However, these values may not be applied unless the room is occupied and the meals received.</i></p> <p>Accommodation provided will be _____ private _____ shared.</p> <p>Bathroom facilities provided will be _____ private _____ shared.</p> <p>Personal cooking and laundry facilities will be _____ private _____ shared.</p>	<p>The maximum weekly deduction for a private room and meals is \$85.25.</p> <p>The maximum weekly deduction for a non-private room and meals is \$53.55.</p>	<p>The maximum weekly deduction is \$40.00 per week for room and board.</p>
<b>Health Insurance</b>		
<p><u>The employer agrees to provide adequate health insurance. No amounts will be deducted from the employee's salary as compensation for the cost of the health insurance provided by the employer.</u></p>		
<b>Transportation</b>		
<p><u>Transportation costs to and from Canada for the private servant will be borne entirely by the employer. At no time may these expenses be deducted from the salary paid to the private servant.</u></p>		

**V- SIGNATURES (THIS AGREEMENT MUST BE SIGNED BY BOTH PARTIES)**

To be completed by the prospective employee:

I, \_\_\_\_\_, am the prospective employee identified in the present agreement and declare the following:

I understand the requirements, duties, terms and conditions of the offer of employment as outlined in the Household Domestic Worker Employment Agreement and accept them.

I hereby undertake to respect the following conditions:

- a) I will remain in the full time employment of the above-mentioned employer only.
- b) I will leave Canada upon termination of my employment or after a maximum of seven years whichever comes first.
- c) I will not, without just cause, leave the employment of this employer.
- d) I will undertake a medical examination prior to commencing employment and I give my permission to the Department of Foreign Affairs to disclose to my future employer my medical condition.
- e) I will undertake to keep payroll statements or proofs of payment from the employer.

\_\_\_\_\_  
Employee's signature

\_\_\_\_\_  
Date

To be completed by the prospective employer:

I, \_\_\_\_\_, am the prospective employer identified in the present agreement and declare the following:

I acknowledge my intention to abide by the terms and conditions of this Household Domestic Worker Employment Agreement and that failure to do so may result in denial of future requests.

I understand that with regard to the entry and temporary stay in Canada of my employee I am further required to:

- a) notify the Office of Protocol promptly of the date of arrival in Canada of my employee and of the commencement and termination of employment with me;
- b) notify the Office of Protocol promptly of the date and place of departure from Canada of my employee on the termination of employment and to ensure the means of travel for the return to their country of residence are provided;
- c) ensure that the travel documents of my employee are at all times valid and are acceptable for admission to the country of my employee's nationality or any other country;
- d) comply voluntarily with federal and provincial standards for wages and working conditions in the interests of my employee.
- e) provide, upon request from the Office of Protocol, the employee's payroll statements or other proof of payment to the private servant.

\_\_\_\_\_  
Employer's signature

\_\_\_\_\_  
Date

## VI-REFERENCES

Canadian employment standards Web sites:

### ONTARIO

<http://www.labour.gov.on.ca/english/es/index.html>

### QUEBEC

<http://www.cnt.gouv.qc.ca/en/home/index.html>

### ALBERTA

<http://employment.alberta.ca/SFW/1224.html>

### BRITISH COLUMBIA

[www.labour.gov.bc.ca/esb/](http://www.labour.gov.bc.ca/esb/)

### NEW BRUNSWICK

[www.gnb.ca/0308/index-e.asp](http://www.gnb.ca/0308/index-e.asp)

### NOVA SCOTIA

[www.gov.ns.ca/lwd/employmentworkplaces](http://www.gov.ns.ca/lwd/employmentworkplaces)

### MANITOBA

<http://www.gov.mb.ca/labour/standards/>

### SASKATCHEWAN

<http://www.labour.gov.sk.ca/LS/>

### NEWFOUNDLAND

<http://www.hrle.gov.nl.ca/lra/labourstandards/default.htm>

### PRINCE EDWARD ISLAND

<http://www.canadabusiness.ca/qol/bsa/site.nsf/en/su07223.html>

### YUKON

<http://www.canadabusiness.ca/qol/bsa/site.nsf/en/su07226.html>

### NORTHWEST TERRITORIES

<http://www.canadabusiness.ca/qol/bsa/site.nsf/en/su07095.html#tphp>

### NUNAVUT

<http://www.canadabusiness.ca/qol/bsa/site.nsf/en/su07097.html>

## Appendix D General Agreement on Trade in Service (GATS)

Like the NAFTA, the temporary entry of business persons under GATS can be facilitated without the need for an LMO. In the area of temporary entry of individuals, Canada requested and offered access for three categories of business persons: Business visitors, intra-company transferees and Professionals.

Both business visitors and intra-company transferees entering under GATS qualify under Canada's generally applicable immigration rules: R186(a) and R205(a) C12 (for more information, please refer to sections 5.2 and 5.31). However, there are unique rules for the entry of professionals under GATS. These professionals may be granted work permits pursuant to R204, T33 if they meet the criteria outlined below.

A GATS Professional is a person who seeks to engage, as part of a services contract obtained by a company in another Member nation, in an activity at a professional level in a profession set out below, provided that the person possesses the necessary academic credentials and professional qualifications, which have been duly recognized, where appropriate, by the professional association in Canada. The Professionals category is designed to facilitate the short-term entry of a limited list of professionals employed by service providers of Member nations, in those service sectors to which Canada has made commitments.

### CONDITIONS OF ADMISSION - PROFESSIONALS

#### Occupations covered

Group 1 includes six occupations: Engineers, Agrologists, Architects, Forestry professionals, Geomatics professionals and Land surveyors.

Group 2 includes three occupations: Foreign legal consultants, Urban planners and Senior computer specialists. Professionals in this group are subject to additional requirements pertaining to the prospective enterprise in Canada and the foreign service provider. As well, limits exist for the number of persons allowed entry under specific projects.

### GATS PROFESSIONAL OCCUPATIONS, TOGETHER WITH MINIMUM EDUCATIONAL REQUIREMENTS, ALTERNATIVE CREDENTIALS AND OTHER LICENSING REQUIREMENTS

GROUP 1		
Occupation	Minimum educational requirement alternative credentials	Other requirements
Engineer	Baccalaureate degree*	Provincial licence**
Agrologists	Baccalaureate degree in agriculture or related science plus four years of related experience	Licensing required in New Brunswick, Alberta & Quebec. Temporary licensing required in British Columbia.
Architects	Baccalaureate degree in architecture	Provincial licence and certificate required to practice
Forestry Professionals	Baccalaureate degree in forestry management or forestry engineering, or a provincial licence	Licensing as a forester or forestry engineer is required in Alberta, British Columbia & Quebec.
Geomatics Professionals***	Baccalaureate degree in surveying, geography or environmental sciences plus three years related experience.	
Land Surveyors	Baccalaureate degree	Provincial licence
GROUP 2		
Foreign Legal Consultants	Baccalaureate degree in law	Provincial licence
Urban Planners	Baccalaureate degree in urban planning	Provincial licence

Senior Computer Specialists	Graduate degree**** in computer sciences or related discipline and ten years of experience in computer sciences.	
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\* Baccalaureate means a degree from an accredited academic institution in Canada or equivalent.

\*\* Provincial licence means any document issued by a provincial government or under its authority which permits a person to engage in a regulated activity or profession.

\*\*\* Geomatics Professionals must be working in aerial surveying or aerial photography.

\*\*\*\* Graduate degree means at least a Master's degree from an accredited academic institution in Canada or equivalent. Academic equivalencies will be determined by the relevant equivalency services in Canada.

### **Validity period**

The time limit imposed is a maximum three months or 90 consecutive days within a twelve-month period.

### **Employment**

The applicant must be seeking entry pursuant to a signed contract between the foreign service provider and a Canadian service consumer, and must work in one of the service sectors listed above.

### **Credentials**

Applicants must have their academic credentials and professional qualifications recognized by the professional association in Canada before entry can be granted and must have been granted a licence (where applicable). See paragraph on credential and licensing requirements below.

### **Secondary employment**

Secondary employment is not permitted (prohibition on working for an employer who is not named on the authorization) and extension of the employment authorization as a GATS professional beyond the 90 days is not permitted.

### **CRITERIA**

The applicant must meet the following criteria:

1. Possess citizenship of a Member nation, or the right of permanent residence in Australia or New Zealand. Note that member nations (numbering 148 as of 2005) are listed on the World Trade Organization website at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm). Citizens of Observer nations are not eligible.
2. Deliver a service pursuant to a signed contract between a Canadian service consumer and a service provider of a WTO member nation. In the case of foreign legal consultants, urban planners and senior computer specialists, the foreign service provider must not have a commercial presence in Canada;
3. Possess professional qualifications in an occupation identified in the chart above.
4. NOT provide service in any of the following service sectors: education, health related services or recreational, culture and sports services.
5. Possess qualifications that have been recognized, where appropriate, by the professional association in Canada.
6. Comply with existing immigration requirements for temporary entry, including TRV requirements.

7. In the case of foreign legal consultants, urban planners and senior computer specialists, the employer in Canada must be engaged in substantive business.
8. In the case of senior computer specialists, a limit of ten entrants per project has been imposed.
9. Entry is for a period of 90 days.

#### **INTERPRETIVE NOTES**

##### **Personnel agencies:**

Where the contract is between a Canadian company and a foreign personnel placement or personnel supply agency to supply the Professional, entry may not be granted pursuant to the GATS, even where the occupation is listed in the professional category.

##### **Remuneration**

The Professional may or may not be remunerated in Canada.

##### **Doing business**

The Professional's foreign-based employer must have been established for a reasonable period of time and be actively "doing business". (See section 4.3 of Appendix G, Intra-company transferees, for a definition.)

##### **Legal Consultants, Urban Planners & Senior Computer Specialists**

In the case of Legal Consultants, Urban Planners and Senior Computer Specialists, our GATS commitments further specify that the Canadian company party to the contract must not be a personnel placement or personnel supply agency.

The fact that the employer in Canada must be engaged in substantive business is interpreted to mean that the enterprise is not a shell or established merely for the purpose of facilitating the entry of foreign workers. Officers will have to rely on information provided by the applicant and supported by documents from the employer in Canada.

The requirement that the foreign service provider not have a commercial presence in Canada can only be established by relying on information provided by the applicant. Officers should confirm that the professional is not seeking entry to provide services to their company or employer, which has established itself in Canada simply to facilitate the entry of its own employees.

As there is no central body responsible for regulating computer specialties, the entry of Senior Computer Specialist is restricted to individuals with a Masters Degree in a related discipline, as well as documented ten years experience in that field. The criteria was introduced as a control measure to ensure that only highly qualified experienced computer specialists are permitted entry under the GATS professional category.

The limit of ten entrants per project imposed on Senior Computer Specialists can be verified by relying on information provided by the foreign service provider or the service consumer in Canada.

#### **DOCUMENTATION REQUIRED**

- Citizenship of a Member nation (listed at [www.wto.org](http://www.wto.org)) or permanent resident status in Australia and New Zealand;
- Copy of a signed contract between the service provider and the Canadian service consumer; the contract may have been signed by a foreign service provider located in any Member nation or by a Canadian-based company established by that foreign service provider to sell its services in Canada;
- Documentation which provides the following information:
  - ♦ the profession for which entry is sought and province of destination;
  - ♦ details of the position (job description, duration of employment, arrangements as to payment); and

- ♦ the educational qualification or alternative credentials required to discharge job duties in Canada;
- Evidence that the applicant has professional qualifications as detailed in the chart (copies of degrees, diplomas, professional licences, accreditation or registration, etc.);
- Documentation from the appropriate professional association in Canada, indicating that the applicant's academic credentials and professional qualifications have been duly recognized; and
- Where required, a temporary or permanent licence issued by the appropriate provincial government.

#### **Credentials and licensing**

In processing applications from Professionals, it is essential that officers refer to the chart in order to understand what credentials are required for each occupation and which provinces issue licences for the practice of those occupations.

If a licence to practice in Canada is required, officers cannot issue a work permit unless the applicant has obtained, prior to arrival in Canada, a temporary or permanent licence from the appropriate province.

If the applicant presents a provincial licence, it is not necessary for officers to examine the documentation from a professional association or the applicant's professional qualifications as the province has already done that, except in the case of Foreign Legal Consultants, Urban Planners and Senior Computer Specialists where the foreign-based employer cannot be established in Canada.

If no licence is required to practice in Canada, officers cannot issue a work permit unless the applicant can produce documentation from an appropriate professional association in Canada, indicating that their academic credentials and professional qualifications have been recognized.

If the applicant presents such documentation from the appropriate professional association in Canada, it is not necessary for officers to examine the applicant's educational credentials as the professional association has already done that.

#### **IMMIGRATION DOCUMENTATION**

The work permit should be coded using Exemption Code T33.

Applications for work permits may be made at a visa office or at a POE (for applicants who do not require a temporary resident visa).

There is a firm time limit on the entry of GATS Professionals. They should be granted status for the period required to complete the work, up to a maximum of three months. Extensions must not be granted beyond three months.

## Appendix E International Experience Canada – C21

(See Section 5.34 of this manual for more information)

### I. Bilateral Arrangements between Canada and the following Countries/Territories:

Country/Territory	Available Categories	Age Eligibility	Type of work permit	Maximum validity period
Australia	- Working Holiday	18-30	open	24 months – may re-apply multiple times
	- Young Professionals - Co-operative education work placement - Co-operative education work placement (inter-institutional work-study agreement)	18-30	employer specific	24 months – may re-apply multiple times
Austria	- Canada-Austria Intra- & Partner-Company Training Program	No limit	employer specific: permanently employed by an Austrian company, training with Canadian partner, subsidiary or parent company	12 month
	- Canada-Austria Young Workers Exchange	18-30 (35 in exceptional circumstances) graduate of post-secondary program in forestry, agriculture or tourism	employer specific in field of studies (forestry, agriculture or tourism)	12 months
Belgium	- Working Holiday	18-30	open	12 months
Chile	- Working Holiday	18-35	open	12 months
	- Young Professionals (Supplementary graduate training) - Co-operative education work placement (Internship) - Co-operative education work placement (inter-institutional work-study agreement)	18-35	employer specific	12 months
Czech Republic	- Working Holiday	18-35	open	12 months
	- Young Professionals (Supplementary graduate training) - Young Professionals (Career development) - Co-operative Education work placement (Internships)	18-35	employer specific	12 months
Denmark	- Working Holiday	18-35	open	12 months
France	- Working Holiday	18-35	open	12 months
	- Young Professionals	18-35	employer specific	18 months
	- Co-operative Education work placement (Internship/On-the-job training)	18-35	employer specific	12 months
	- Student Summer Job	18-35	employer specific	3 months, summer period

Germany	- Working Holiday	18-35	open	12 months
	- Young Professionals - Co-operative Education work placement (Internship)	18-35	employer specific	12 months
Hong Kong	- Working Holiday	18-30	open	12 months
Ireland*	- Working Holiday (Programme A: students)	18-35	open	12 months (may re-apply multiple times)
	- Working Holiday (Programme B: non- students)	18-35	open	12 months
Italy	- Working Holiday	18-35	open	6 months
Japan	- Working Holiday	18-30	open	12 months
Korea	- Working Holiday	18-30	open	12 months
Latvia	- Working Holiday	18-35	open	12 months
Netherlands	- Working Holiday	18-30	open	12 months
	- Young Professionals (Youth workers exchange program)	18-30	employer specific	12 months
New Zealand	- Working Holiday	18-30	open	12 months
Norway	- Working Holiday - Student Working Holiday (student)	18-35	open	12 months
	- Working Holiday (non- student)			
Poland	- Young Professionals - Supplementary graduate training - Internships	18-35	employer specific	12 months
	- Co-operative Educational Work Placement (Inter- institutional work-study agreement)			
Spain	- Working Holiday	18-35	open	12 months
	- Young Professionals (graduates; non-graduates) - Co-operative Educational Work Placement (Inter- institutional agreements; Academic vacations)	18-35	employer specific	12 months
Sweden	- Working Holiday - Student Working Holiday (student) - Working Holiday (non- student)	18-30	open	12 months
	- Young Professionals (graduates; non-graduates) - Co-operative Education work placement	18-30	employer specific	12 months
Switzerland	- Young Professionals (graduates; non-graduates) - Co-operative Educational Work Placement (Internship/On-the-Job Training)	18-35	employer specific	18 months
United Kingdom**	- Working Holiday (Programme A: Student)	18-30	employer specific	12 months (may re-apply multiple

	Working Holiday Programme) Post-secondary students/recent graduates			(times)
	- Working Holiday (Programme B) General Working Holiday Programme)	18-30	open	12 months

\* Ireland: Participants from Ireland under the Canada-Ireland bilateral arrangement apply through SWAP partner (USIT). Participants can apply multiple times under Programme A as long as they maintain the student status.

\*\* UK: Participants from the UK under the Canada-UK bilateral arrangement apply through SWAP partner (BUNAC). Participants can apply multiple times under Programme A as long as they maintain the student status.

## II. Organizations supporting youth mobility:

IEC also recognizes under its program, a number of international and Canadian organizations that have overseas partners. Applications under these organizations must be submitted to DFAIT as missions abroad. Each year, IEC assigns a quota to these organizations; country-specific quotas are assigned to Go-International and SWAP for countries where a formal bilateral arrangement on youth mobility (i.e., treaties, memoranda of understanding and diplomatic exchanges) is absent and where the Working Holiday category is not included in the bilateral arrangement.

### A. International Association for the Exchange of Students for Technical Experience (IAESTE):

IAESTE is an international student exchange organization, founded in 1948 and has offices in over 80 countries. It helps post-secondary students from other countries to find a career-related work placement in Canada. For more information: <http://www.iaeste.org/>.

Country/ Territory	Age	Student Status	Type of work permit	Maximum validity period
IAESTE offices are present in over 80 countries. Participants do not have to be a citizen of these countries. Applications may be submitted to any Canadian mission abroad.	18-35	yes	employer specific	18 months – may re-apply multiple times

### B. AIESEC (in Canada known as International Association for Students of Economics and Commerce):

Recognized world-wide as AIESEC, it is a student-run organization that provides students and recent graduates with the opportunity to live and work in Canada in the fields of management, information technology, education and development. For more information: <http://www.aiesec.ca/en/>.

Country/ Territory	Age	Student Status	Type of work permit	Maximum validity period
AIESEC offices are present in over 109 countries. Participants do not have to be a citizen of these countries. Applications may be submitted to any Canadian mission abroad.	18-30	yes	employer specific	18 months – may re-apply multiple times

**C. Chantiers Jeunesse:** Chantiers Jeunesse is an international, student-run organization that facilitates youth exchanges through partnerships with over 32 countries. For more information: <http://www.cj.qc.ca/fr/index.html>.

Country/ Territory	Age	Student Status	Type of work permit	Maximum validity period
Chantiers Jeunesse has partnerships in over 32 countries. Participants do not have to be a citizen of these countries. Applications may be submitted to any Canadian mission abroad.	18-35	no	employer specific and/or open	12 months

**D. International Agricultural Exchange Association (IAEA) / Canadian Host Family Association (CHFA):** IAEA/CHFA is an international organization that offers farm work placements in Canada related to agriculture, horticulture and home management. For more information: (<http://www.agrventure.info/index.php>).

Country/ Territory	Age	Student Status	Type of work permit	Maximum validity period
IAEA is an international organization that operates in approximately 9 countries. Participants do not have to be a citizen of these countries. Applications may be submitted to any Canadian mission abroad.	18-30	no	employer specific (IAEA); participants may engage in employment for a host family that is approved by IAEA/CHFA.	12 months

**E. International Rural Exchange (IRE):** IRE is a Canadian organization with approximately 25 overseas partners that offers farm work placements for youth in the fields of agriculture, horticulture, equine activities and oenology. For more information: <http://www.irecanada.ca/>.

Country/ Territory	Age	Student Status	Type of work permit	Maximum validity period
IRE has partner organizations in approximately 25 countries. Participants do not have to be a citizen of these countries. Applications may be submitted to any Canadian mission abroad.	18-29	no	employer specific	3-12 months

**F. Mennonite Central Committee of Canada (MCC): / International Volunteer Exchange Program (IVEP):** The MCC / IVEP is a Canadian organization that collaborates closely with its American counterpart and has overseas partners in over 20 countries. While the work placements are unpaid, the

organization covers the travel and living expenses of its participants. For more information:  
<http://domino18.prominic.com/A5584F/SOLtoWeb.nsf/d0b0a8838c88417885256aa1005a5f52!OpenView>

Country/ Territory	Age	Student Status	Type of work permit	Maximum validity period
MCC / IVE has partner organizations in over 20 countries. Participants do not have to be a citizen of these countries. Applications may be submitted to any Canadian mission abroad.	18-30	no	employer specific	12 months

**G: GO International:** GO International is a Canadian organization that offers a working holiday program as well as an internship program with career-related work placements. In addition to the countries where Canada has a bilateral arrangement on youth mobility (see "I. Bilateral Arrangements" of this Appendix), GO International also has partners in countries listed below. Participants must be a citizen of the countries listed under "I. Bilateral Arrangements" of this Appendix or the table below. For more information: [www.gointernational.ca](http://www.gointernational.ca).

Country / Territory	Age	Student Status	Type of work permit	Maximum validity period
Argentina	18-35	yes	open	12 months
Brazil	18-35	yes	open	12 months
Ecuador	18-35	yes	open	12 months
South Africa	18-35	no	open	12 months
United Kingdom	18-35	no	employer-specific	Up to 12 months

**H: SWAP Working Holidays** (formerly Student Work Abroad Programs) facilitates international exchanges. In addition to the countries where Canada has a bilateral arrangement on youth mobility (see "I. Bilateral Arrangements" of this Appendix), SWAP also has partners in countries listed below (NOTE: the list also consists of countries where the Working Holiday category is not included in their bilateral arrangement with Canada). Participants must be citizens of the countries listed under "I. Bilateral Arrangements" of this Appendix or the table below. For more information: [www.swap.ca](http://www.swap.ca).

Country / Territory	Age	Student Status	Type of work permit	Maximum validity period
Argentina	18-35	yes	open	12 months
Austria	18-35	yes	open	12 months
Brazil	18-35	yes	open	12 months
Bulgaria	18-35	yes	open	12 months
Costa Rica	18-35	yes	open	12 months
Croatia	18-35	yes	open	12 months
Dominican Republic	18-35	yes	open	12 months
Ecuador	18-35	yes	open	12 months
Finland	18-35	yes	open	12 months
India	18-35	yes	open	12 months
Ireland (non-student)	18-35	no	open	12 months
Ireland (student)	18-35	yes	open	12 months

Jamaica	18-35	yes	open	12 months
Malta	18-35	yes	open	12 months
Malaysia	18-35	yes	open	12 months
Mexico	18-35	yes	open	12 months
Moldova	18-35	yes	open	12 months
Peru	18-35	yes	open	12 months
Philippines	18-35	yes	open	12 months
Portugal	18-35	yes	open	12 months
Romania	18-35	yes	open	12 months
Russia	18-35	yes	open	12 months
Slovakia	18-35	yes	open	12 months
Slovenia	18-35	yes	open	12 months
South Africa	18-30	no	open	12 months
Taiwan	18-35	yes	open	12 months
Thailand	18-35	yes	open	12 months
Ukraine	18-35	yes	open	12 months
United Kingdom (non-student)	18-35	no	open	12 months
United Kingdom (student)	18-35	yes	open	12 months
United States*	18-30	yes	open	12 months

**Note:** Where STUDENT STATUS is a requirement, candidates must be enrolled in full-time post-secondary study at some point in the year. Final year students not returning to studies are also eligible. The studies are done outside of Canada.

\* U.S. students are permitted to repeat SWAP in Canada after another academic term in the U.S.

### III: University and College Co-operative Education Inter-institutional agreements for work placement only.

Age	Type of work permit	Maximum validity period
18-30	Employer specific	12 months

#### Participating Institutions subject to change:

- Australia (Ballarat U College & Swinburne U of Technology / U of Victoria)
- Australia (U of South Australia / Ryerson Polytechnic U)
- Australia (U of Technology, Sydney Exchange / U of Waterloo)
- Austria (Johannes Kepler U / U of Victoria)
- Canadian UK Exchange (CANUKE) between ASET and CAFCE
- China (Hong Kong) (University of Victoria)
- Finnish-Canadian Trainee Exchange Program (Association of University and Colleges of Canada (AUCC) - Finnish Centre for International Mobility (CIMO)) – maximum validity period is 18 months
- Germany (Berufsakademie Heidenheim & U of Mannheim / U of Victoria)
- Germany (Canada-Germany Georgian College / U of Victoria)
- Ireland (MUN Marine Institute / Cork)
- Japan (U of Fukushima / U of Victoria)
- Mexico (Capilano College, Vancouver)
- Mexico (CEGEP International, Montreal)
- New Zealand (Victoria U at Wellington & U of Waikato / U of Victoria)
- Prague (University of Economics / U of Victoria)
- Singapore (Nanyang Technological U / U of Victoria)
- Taiwan (National Sun-Yat-Sen U / U of Victoria)
- United Kingdom (U of Brunel, U of East Anglia & U of Surrey / U of Victoria)

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**Note:** All C21 programs are work permit (initial, extension and change of conditions) and TRV fee exempt.

**Note:** When issuing an open work permit, if the applicant has not passed an immigration medical examination, an occupation restriction must be specified. Once the applicant has completed the medical requirements, the condition can be removed.

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## **Appendix F Military Personnel and family members**

### ***Visiting Forces Act (VFA)***

#### **Examination procedures**

Military personnel are exempt from work permits and are to be documented on Visitor records (case type code 12, special program field 047). Conditions of entry should not be imposed upon a member of the visiting force, nor should a definite period of authorized stay be noted on the form.

The member and family members should be authorized to remain in Canada "for duration of status". On FOSS generated documents, the "valid until date" cannot be left blank. A date of three years validity should be entered, however the following statement should be noted in the remarks section: "Additional condition: This document valid for duration of status under *the Visiting Forces Act*".

While exempt from the passport and visa requirements (unless a civilian), military personnel under VFA must be able to produce an identity document and movement orders (e.g., NATO travel order).

Notwithstanding A18(1), officers may choose not to personally examine every individual in a group. The commanding officer may be relied on to identify any individuals who may be inadmissible to Canada. Port managers are encouraged to obtain group lists in advance and take the appropriate action about any inadmissible individuals prior to the arrival of the group. Those with a military base in their area should meet the base commander to ensure that they are aware of the inadmissibility requirements.

### **NATO**

#### **Regular NATO personnel**

NATO nations are covered by the Status of Forces Agreement (taken from the *Visiting Forces Act*). Military personnel coming to Canada under NATO, including the civilian component, are exempt from work permits pursuant to R186(d).

#### **Long term personnel**

Visitors entering Canada to take employment at certain facilities may be in Canada for many years. Consequently, long-term work permits may be issued. They are exempt from the work permit requirement, but work permits may be issued pursuant to R204, T11.

#### **Military Training Assistance Programme (MTAP)**

New member states of the MTAP which have not been designated under the *Visiting Forces Act* are approved on the basis of bilateral MOUs between the Department of National Defence and its counterpart in the MTAP state. The list of MTAP member states is included below.

MTAP participants (both service and civilian) who are not covered by the VFA may be authorized to enter Canada as visitors to follow seminars or short courses, but require a study permit to follow a training program longer than six months. They are subject to normal passport, visa, medical and visa referral requirements, as applicable. Applicants must show evidence of their participation in MTAP at time of application.

#### **Other Canadian military training offered to non-VFA countries**

The Department of National Defence offers a variety of International Training Programs (ITP) to foreign militaries outside of MTAP through various elements of the Canadian Forces (CF). ITP may consist of the use of CF training facilities by visiting military personnel or their attendance on CF-run training courses ranging in length from a few days to a year or more. In most cases these training services are sold to the foreign government or provided in exchange for reciprocal training benefits. The provision of ITP is based upon a formal agreement for the provision of

services between the CF and the appropriate military authority of the requesting country. These agreements detail the terms, conditions, duration of the training etc. and identify any applicable existing bilateral agreements. All such international training relationships are subject to Department of Foreign Affairs and International Trade (DFAIT) review through CF international policy offices.

**Criteria:**

Training participants coming from VFA countries are exempt from the requirement for immigration documentation. Participants coming from non-VFA countries will require a study permit for studies longer than six months and may require a TRV.

**Military personnel family members**

This group includes family members of foreign military personnel stationed in Canada who themselves are exempt from work permits pursuant to R186(d).

**Under the terms of Reciprocal Agreements**

Work permit required but LMO exempt under R205(b) - C20. Fee exempt.

Reciprocal agreements covering family members of military personnel are in place with Denmark, France, Germany, Great Britain, the Netherlands, Norway and the United States. Negotiations are in process with other countries that have exchange military personnel in Canada and personnel from those countries may be included in this procedure at a later date.

Family members of military personnel covered by reciprocal arrangements will submit a request for approval to the Director, Protocol and Foreign Liaison (DPFL) at National Defence Headquarters in Ottawa (NDHQ), 101 Colonel By Drive, Ottawa, ON K1A 0K2. Fax (613) 995-1288. The request should clearly state under which defence program the spouse or parent is employed in Canada. Current programmes are as follows:

- a) Exchange and Liaison Program;
- b) British Army Training Unit Suffield (BATUS);
- c) British Army Training Support Unit Wainwright (BATSUW);
- d) Foreign Forces in Goose Bay;
- e) NATO Flying Training in Canada Program (NFTC) in Moose Jaw and Cold Lake.

DPFL will forward the request to the appropriate directorate in NDHQ which administers the program, who will review the request and issue a letter granting approval in principle if the family member is eligible and a reciprocal arrangement exists.

If such approval is given, the family member may approach CIC directly and request a work permit (R199). If the principal applicant is under the *Visiting Forces Act*, the work permit is fee exempt. Case type code 22, "official status".

The family member should be in possession of a 'letter of approval of employment' from the applicable DND official, acceptable proof of identity and relationship to the head of family and proof of the duration of the official assignment in Canada.

An open work permit may be issued, for a duration to coincide with the expiry of the tour of duty of the military principal applicant. Prior to the issuance of an open/unrestricted work permit, an applicant must meet immigration medical requirements. Conditions as well as a definite period of stay may be imposed on work permits issued to family members, but when needed, an extension of status should not be withheld unnecessarily.

**Where no reciprocal agreements exist**

Family members of military personnel not covered by a reciprocal arrangement may apply for a work permit in Canada under R199, but an LMO is required.

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**Note:** Spouses of Military personnel may be more easily processed if they qualify under the Spousal Employment Provision for spouses of high skilled workers R205(c), C41.

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**COUNTRIES DESIGNATED FOR THE PURPOSE OF THE VFA (See IR 1, Section 3)**

**MTAP COUNTRIES NOT DESIGNATED UNDER THE VFA (as of May 2005)**

Argentina	South Africa
Bosnia-Herzegovina	South Korea (Tier-Two)
Brazil	Tajikistan
Burkina Faso	Uruguay
Chile	
Croatia	
Dominican Republic	
Ecuador	
Jordan	
Kyrgyzstan	
Mali	
Mexico	
Mongolia	
Namibia	
Paraguay	
Peru	
Philippines	
Rwanda (suspended)	
Russia	
Senegal	
Serbia-Montenegro	

**Appendix G North American Free Trade Agreement (NAFTA)**

**1 INTRODUCTION**

**1.1 Purpose of this appendix**

This appendix contains information on the temporary entry provisions of the North American Free Trade Agreement (NAFTA). General information on examining and processing temporary foreign workers, contained in the main body of this manual, should also be consulted.

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**Note:** The text of the actual agreement is found in part V, Chapter 16, at <http://www.international.gc.ca/nafta-alena/chap16-en.asp>

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**1.2 Policy intent**

The NAFTA seeks to liberalize trade between the United States, Mexico and Canada and abolish tariffs and other trade barriers. The Agreement opens up the three countries' markets by ensuring that future laws will not create barriers to doing business.

In order for trade to expand, individuals must have access to each other's country to sell, provide goods or services or trade and invest. Chapter 16 of the NAFTA, entitled "Temporary Entry for Business Persons", provides the mechanisms to allow selected categories of temporary workers access to each other's market(s).

Chapter 16 eases the temporary entry of citizens of the United States, Mexico and Canada, whose activities are related to the trade of goods or services, or to investment. The NAFTA is a reciprocal agreement and Canadians will be afforded similar treatment when seeking entry to the U.S. or Mexico. Chapter 16 does not replace, but adds to our existing general provisions. An American or Mexican business person seeking entry to Canada is eligible for consideration under the provisions of the NAFTA, as well as the general provisions which apply to all temporary foreign workers.

### **1.3 Background**

The NAFTA reflects a preferential trading relationship initiated between Canada and the United States under the Free Trade Agreement (FTA) and now expanded to include Mexico. With the coming into force of the NAFTA, the FTA was suspended.

Chapter 16 of the NAFTA is modelled on the FTA and deals only with temporary entry of selected business persons. It has no effect on permanent residence. The Agreement defines temporary entry as entry without the intent to establish permanent residence.

Under the NAFTA, the United States, Mexico and Canada are required to meet a number of obligations. Among them are the publication of a public information booklet on temporary entry under the NAFTA and the provision of statistical information. Given the growing public image of the NAFTA and the importance of sharing information with our NAFTA partners, it is crucial that data entered into FOSS or CAIPS be as accurate and as complete as possible in order to meet our obligations related to statistics.

A trilateral Temporary Entry Working Group, consisting of officials from departments which have an interest in the temporary entry of workers, meets every year to oversee the implementation and administration of Chapter 16 of the NAFTA. The director of Economic Policy and Programs (SSE), Selection Branch (SSD), and U.S. and Mexican immigration officials co-chair this working group. The Working Group is also responsible to develop measures to facilitate temporary entry of business persons on a reciprocal basis.

### **1.4 What NAFTA does**

- NAFTA facilitates temporary entry for business persons who are citizens of the United States, Mexico and Canada and who are involved in the trade of goods or services, or in investment activities.
- NAFTA removes the need for an LMO for all business persons covered by the Agreement.
- In the case of a business visitor, it removes the need for a work permit.
- For professionals and intra-company transferees, it expedites the application process because one can apply at the POE, (Note that nationals who require a Temporary Resident Visa (TRV) to enter Canada, however, should apply at a visa office prior to coming to Canada)

### **1.5 What NAFTA does not do**

- NAFTA does not assist permanent admission.
- It does not apply to permanent residents of the three countries.
- It does not replace the general provisions dealing with temporary foreign workers.
- It has no effect on universal requirements related to passports and identity documentation, medical examinations and safety and security.
- It does not replace the need for temporary workers to meet licensing or certification requirements respecting the exercise of a profession.
- It does not extend special privileges to spouses and members of the family. Their entry is governed by the provisions of the Immigration and Refugee Protection Act *and the Regulations*.

### **1.6 Who is covered by NAFTA?**

The temporary entry provisions of Chapter 16 of the NAFTA are restricted to citizens of the United States, Mexico and Canada. In the case of the United States, citizens of the District of Columbia and Puerto Rico are covered by the NAFTA; however, citizens of Guam, the Northern

Mariana Islands, American Samoa and the United States Virgin Islands are excluded from the NAFTA.

Permanent residents of the three countries are not covered. They are, however, covered by the general provisions governing the temporary entry of temporary foreign workers.

#### **1.7 Regulatory authority**

The temporary entry provisions of the NAFTA are to be used in addition to the general entry provisions governing temporary foreign workers. The business visitor category is the same as the generally-applied rule in R186(a) except that the general rule allows for after-lease servicing with the same conditions, while NAFTA is slightly more restrictive and requires a sale. The other three categories of business person are eligible for work permits through R204(a), which exempts from the LMO process persons whose entry is granted pursuant to an international agreement between Canada and other countries. Administrative codes have been assigned to each category.

#### **1.8 Categories of business persons included under the NAFTA**

Business persons included in Chapter 16 of the NAFTA are grouped under four categories:

- business visitors;
- professionals;
- intra-company transferees;
- traders and investors.

Business visitors engage in international business activities related to research and design; growth, manufacture and production; marketing; sales; distribution; after-sales service; and general service. These activities reflect the components of a business cycle (see Appendix 1603.A.1 of Chapter 16).

Business visitors are authorized to enter Canada for business purposes under R186(a) and can carry out their activities without the need for a work permit.

Professionals are business persons who enter to provide pre-arranged professional services—either as a salaried employee of a Canadian enterprise, through a contract between the business person and a Canadian employer, or through a contract between the American or Mexican employer of the business person and a Canadian enterprise. Appendix 1603.D.1 of NAFTA lists more than 60 occupations covered by the Agreement. Professionals enter to provide services in the field for which they are qualified.

Professionals are not subject to an LMO but require a work permit (R204, T23).

Intra-company transferees are employed by an American or Mexican enterprise in a managerial or executive capacity, or in one which involves specialized knowledge, and are being transferred to the Canadian enterprise, parent, branch, subsidiary, or affiliate, to provide services in the same capacity.

Intra-company transferees are exempt from the LMO process but require a work permit (R204, T24).

Traders and investors carry on substantial trade in goods or services between the United States or Mexico and Canada or have committed, or are in the process of committing, a substantial amount of capital in Canada. Traders and Investors must be employed in a supervisory or executive capacity or one that involves essential skills.

Traders and investors are not subject to the LMO process but require a work permit (R204, exemptin codes T21 and T22, respectively) for which they must apply at a visa office before departing for Canada.

#### **1.9 Admission decisions**

In assessing applications for temporary entry by citizens of the United States or Mexico, all available mechanisms for temporary entry should be considered. An American or Mexican citizen

who is not eligible for entry under the NAFTA may qualify under the general provisions governing temporary workers.

In making admission decisions the overall objectives of the NAFTA which seek to facilitate trade between Canada, the United States and Mexico should be considered.

#### **1.10 NAFTA definitions and interpretations**

The following general definitions, contained in Chapter 2 "General Definitions" and Chapter 16 "Temporary Entry for Business Persons" of the NAFTA deal with temporary entry:

business person means a citizen of a Party (a "Party" means the United States, Mexico or Canada) who is engaged in trade in goods, the provision of services or the conduct of investment activities;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or owned by government, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing **refers to**, for Canada and the United States, the date of entry into force of the FTA (January 1, 1989); while for Canada and Mexico and for the United States and Mexico it is the date of entry into force of the NAFTA (January 1, 1994);

measure includes any law, regulation, procedure, requirement or practice;

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**Note:** Temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence. *This definition is consistent with Canadian immigration law. It is sufficiently flexible to respond to the needs of business persons and it recognizes that the concept of temporary entry cannot, in most situations, be based simply on a specific time limitation. The definition is not to be perceived as being open-ended, nor as a mechanism to circumvent procedures applicable to permanent residence.*

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Like many temporary workers, temporary workers authorized to enter Canada under the NAFTA are allowed to work temporarily either in a temporary or permanent position. The NAFTA cannot be used, however, as a means to remain in Canada indefinitely.

#### **1.11 Administrative definitions and interpretations**

Labour certification tests - In Canada, this means the HRSDC labour market opinion or LMO of a job offer for a temporary foreign worker. (R203)

Procedures of similar effect - These are administrative or legal requirements related to immigration procedures which may have the result of delaying or preventing a business person from engaging, or continuing to engage, in a covered profession, occupation, or activity. They do not include the immigration procedures established by Canada, the United States or Mexico:

- to implement the provisions of Chapter 16 of the North American Free Trade Agreement; and
- to ensure compliance with general entry requirements relating to public health, safety, and national security.

#### **1.12 Labour dispute**

Chapter 16 contains a labour dispute clause which permits an officer to refuse to issue a work permit where the entry of a person would adversely affect the settlement of a strike in progress or the employment of a person involved in the strike.

Article 1603 of the NAFTA states:

"2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
- (b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
- (a) inform in writing the business person of the reasons for the refusal; and
  - (b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal."

The provision applies only to NAFTA business persons subject to the requirement for a work permit: professionals, intra-company transferees, and traders and investors.

To comply with Articles 1603.3(a) and 1603.3(b) of the NAFTA, officers are required to:

- provide a letter at the time of refusal to the applicant that includes the following information:
  - ◆ name and any known address of the business person;
  - ◆ citizenship of the business person;
  - ◆ date and place of refusal;
  - ◆ name and address of prospective employer;
  - ◆ position to be occupied;
  - ◆ requested duration of stay;
  - ◆ reason(s) for refusal;
  - ◆ reference to NAFTA provision 1603.2(a) and/or R200(3)(c); and
- inform NHQ by sending an URGENT fax with complete information on the case, including a copy of the above refusal letter and copies of documentation presented by the applicant, to: Director, Economic Policy and Programs (SSE), Selection Branch (SSD), FAX (613) 954-0850. A copy of the fax is to be sent to the Regional Office concerned. NHQ will inform the country of which the business person is a citizen.

## **2 BUSINESS VISITORS**

### **2.1 What requirements apply to business visitors?**

The following requirements apply:

- citizenship of the United States or Mexico;
- business activities as described in Appendix 1603.A.1;
- activities are international in scope;
- no intent to enter the Canadian labour market;
- the primary source of remuneration remains outside Canada;
- the principal place of business remains outside Canada; and
- compliance with existing immigration/admissibility requirements for temporary entry.

### **2.2 What business activities are covered by Appendix 1603.A.1?**

Business activities covered by Appendix 1603.A.1 are activities of a commercial nature which reflect the components of a business cycle:

- research and design;
- growth, manufacture and production;
- marketing;
- sales;
- distribution;
- after-sales service; and
- general service.

**Appendix 1603.A.1** of the NAFTA is reprinted in section 2.7. The wording of the Appendix has been modified from the official NAFTA text and explanatory notes added.

**Appendix 1603.A.1** is not exhaustive but illustrates the types of activities covered. It is not merely the activities but the requirements for business visitors which must be considered.

Professionals described in **Appendix 1603.D.1** can be authorized to enter Canada under the general service provision of the business visitor category when they are not seeking to enter the

labour market and the primary source of remuneration remains outside Canada, in other words, when they meet the Business Visitor criteria. (See section 3.8.)

### **2.3 Where can a business visitor apply for entry?**

Business visitors must apply at a POE in the same manner as persons covered by other paragraphs of R186. An application cannot be made prior to arriving in Canada.

Business visitors can be authorized to enter Canada at the Primary Inspection Line, except persons applying for entry under the after-sales service provision, who must be referred to Immigration Secondary.

### **2.4 What documentation must a business visitor present to support an application?**

A business visitor must provide the following documentation:

- proof of American or Mexican citizenship;
- documentation to support that the purpose for entry, for instance a business activity listed in Appendix 1603.A.1; and
- evidence that the business activity is international in scope and that the person is not attempting to enter the Canadian labour market. The business person can satisfy these requirements by demonstrating that:
  - ♦ the primary source of remuneration is outside Canada; and
  - ♦ the person's place of business remains outside Canada and the profits of the business are accumulated primarily outside Canada.

In addition to establishing the purpose for entry, the officer should confirm that the applicant retains employment outside Canada (as an employee of an enterprise or as a self-employed individual) and that the primary source of remuneration remains outside Canada. In general, an individual who is to be paid in Canada would be considered to be joining the labour market and could not be authorized to enter Canada as a business visitor. The payment of expenses incidental to the trip is allowed, as is an honorarium.

Typical examples of business activities include, but are not limited to, consultation, negotiation, discussion, research, participation in educational, professional or business conventions or meetings and soliciting business.

As the NAFTA is a facilitative agreement, the applicant should be given every opportunity to establish that the admission criteria for business visitors are being met and to provide any missing documentation by alternative means, such as by fax.

A verbal statement that the business of the applicant is being carried on outside Canada can be acceptable. Alternative indications (business cards, business papers, advertising pamphlets, etc.) may be helpful.

When dealing with applicants for temporary entry under the after-sales service provision of Appendix 1603.A.1, copies of the original sales, warranty or service agreement and extensions of such agreements are needed.

### **2.5 What documents are issued and can extensions be granted?**

- Existing policies and procedures pertaining to the documentation of visitors and to extensions apply.

Because of the nature of the activities of a business visitor, the stay in Canada will usually be short-term.

Business visitors may seek entry to Canada for a number of regular visits related to a specific project. These visits may take place over a period of weeks or months. In these circumstances, consideration should be given to issuing a Visitor Record to facilitate entry and to reduce potential referrals to Immigration Secondary.

Persons authorized to enter Canada under the after-sales service provision for a period (on-the-job) longer than two days must be issued a Visitor Record.

If a Visitor Record is issued, the special program identifier "FTA" or "054" should be used.

- Applications for extension of status should be based on the requirements specified above.

## **2.6 After-sales service**

All persons applying for entry under the after-sales service provision of Appendix 1603.A.1 must be referred to Immigration Secondary.

### **2.6.1 What requirements apply to after-sales service personnel?**

The following requirements apply:

- citizenship of the United States or Mexico;
- purpose of entry is to install, repair, service, or supervise these functions, or train workers to perform services (see section 2.6.2 for definition of 'Installation');
- equipment or machinery (including computer software) is commercial or industrial (not household or personal);
- equipment or machinery or computer software was manufactured and purchased outside Canada;
- work is pursuant to original sales contract and any warranty or service agreement incidental (connected) to the sale;
- work is carried out during the validity of any warranty or service agreement or any extensions of same;
- work requires specialized knowledge (which excludes hands-on building and construction work); and
- compliance with existing immigration requirements for temporary entry.

### **2.6.2 What is after-sales service?**

After-sales service includes the installation, or repair, or servicing of commercial or industrial equipment or machinery, or computer software.

**Installation includes only setting-up and testing of the commercial or industrial equipment or machinery, or computer software. It does not include operating the equipment or machinery, or computer software for production and excludes hands-on building and construction work. The term installation generally refers to activities which do not include hands-on building and construction work, such as installation of computer software.**

### **2.6.3 Who may enter to perform after-sales service?**

- Persons may be granted entry to install, repair and maintain equipment and machinery and computer software or to supervise or train workers performing installation, repair and maintenance of such equipment.
- Entry shall not be granted to any temporary worker who will be performing hands-on building and construction work even if the sales, warranty or service agreement specifies that their services be provided (see section 2.6.4 for information on hands-on building and construction work).
- Persons granted entry to train or to supervise may also train or supervise the workers who are doing the hands-on building and construction work. Supervising and training might occasionally require demonstrating a procedure. A demonstration must not, however, result in the completion of an installation or servicing task, or of part of such task, or in the productive operation of the equipment or machinery.

### **2.6.4 Who may not enter to perform after-sales service?**

- Persons whose activities or services in Canada would constitute hands-on building and construction work may not enter to provide after-sales service. Hands-on building and

construction work is not considered to require specialized knowledge (see section 2.6.5 for information on specialized knowledge). Generally the entry of foreign tradespersons in the building and construction industry is subject to an assessment of the availability of domestic labour (an LMO). As part of the LMO process, Service Canada will consult with organized labour prior to making a determination.

- Regardless of the existence of wording in sales, warranty or service agreements that requires company personnel to perform the installation or servicing, entry should not be granted when personnel will be performing hands-on building and construction work.

Building and construction work includes installing, maintaining and repairing:

- utility services;
- any part of the fabric of any building or structure; or
- machinery, equipment or structures within a building.

Building and construction work includes activities normally performed by (but not limited to):

- labourers;
- millwrights;
- heat and frost insulators;
- bricklayers;
- carpenters and joiners;
- electrical workers;
- operating engineers (includes heavy equipment operators);
- elevator constructors;
- sheet metal workers;
- teamsters;
- boilermakers;
- residential, commercial or industrial painters (including the application of all surface coatings no matter how applied);
- bridge, structural and ornamental ironworkers;
- plumbers and pipefitters;
- roofers;
- plasterers and cement masons.

Building and construction work includes work involving:

- assembly lines;
- conveyor belts and systems;
- overhead cranes;
- heating, cooling, and ventilation or exhaust systems;
- elevators and escalators;
- boilers and turbines; and
- dismantling or demolition of commercial or industrial equipment or machinery, whether on-site or in-plant.

Also, persons are not covered by this provision if they are seeking entry to engage in site preparation work, services installation (for example, electricity, gas, water) and connection of the commercial or industrial equipment or machinery to such services.

#### **2.6.5 What requirements apply to a person seeking entry to provide after-sales service?**

The person seeking entry must possess specialized knowledge essential to the seller's contractual obligation.

"Specialized knowledge" is considered to be a very high degree of knowledge only given to an already skilled person through extensive training. In determining whether the person possesses specialized knowledge, the following factors should be considered:

- the skill and/or knowledge level necessary to perform the proposed activity in Canada (i.e., the services to be provided must require the use of specialized knowledge which generally excludes hands-on building and construction work);
- the high level of skill or knowledge the person possesses as indicated by a relevant post-secondary degree or diploma, or by licensing, certification or accreditation issued by an authoritative body;
- additional training, whether in-class or on-the-job, which is essential for providing the service.

The person must be employed by an enterprise established in the United States or Mexico.

The person's proposed activities in Canada must be supported by clear wording in a sales, warranty or service contract.

#### **2.6.6 What requirements apply to the equipment or machinery, or computer software?**

- The equipment or machinery, or computer software must be for use in a commercial or industrial setting. The after-sales service provision does not apply to household or personal goods or appliances.
- The commercial or industrial equipment or machinery or the computer software must have been manufactured outside Canada.
- The commercial or industrial equipment or machinery or the computer software must have been purchased from a manufacturer or distributor located outside of Canada.

Equipment or machinery leased or rented from an enterprise outside of Canada is not covered under the after-sales service provision. For computer software, "purchase" includes a licensing agreement.

The purchase of the equipment or machinery or computer software is usually made by a direct sales transaction between a manufacturer or distributor abroad and an end-user in Canada. However, a sales transaction between a foreign manufacturer or distributor and an affiliate (e.g., parent or subsidiary) or an unrelated distributor in Canada, which in turn sells or leases the merchandise to an end-user, is also covered by this provision. In this instance, the Canadian enterprise selling or leasing to the end-user may not be equipped to provide installation or warranty service and relies on the enterprise established in the United States or Mexico to provide such services.

Where lease arrangements are involved, it is the initial cross-border transaction which must have involved a sale. The lease arrangement between the Canadian purchaser and an end user is covered as long the equipment remains the property of the original purchaser and the sales, warranty or service agreement is still in effect.

While NAFTA only provides for after-sales situations, the general provision for business visitors R187, under which this section of NAFTA is implemented) allows individuals to enter pursuant to both sales and lease agreements.

#### **2.6.7 What is third party service?**

- Third party service occurs when a seller located outside Canada (in the United States or Mexico or in another country) contracts the after-sales servicing to another firm (a third party). The third party must be established in the United States or Mexico.
- There must be clear wording in the sales agreement that specifies that a third party will perform the installation, warranty or service work. Unless such wording exists, there is no evidence that the third party service is incidental to the sale. However, the firm need not be named in the agreement, as it may take some time for the firm to be identified.

#### **2.6.8 What documentation must the person present to support the application?**

A person must present the following documentation:

- proof of American or Mexican citizenship; and

- copies of the original sales agreement, and warranty or service agreement, including extensions, which clearly support the purpose of entry.

The warranty or service contract must be incidental to, or connected to the sale of commercial or industrial equipment or machinery, including computer software.

It does not mean that a warranty or service agreement must have the same date as the sales agreement. Particularly with third party service, it may take a number of months after the sale before the company installing or servicing the machinery is identified and sub-contracted.

The initial warranty or service agreement may be extended provided that the sales agreement, or initial warranty or service agreement contained a provision allowing for the extension. The after-sales service, therefore, continues to be contracted as part of the sale of the equipment or machinery, or computer software.

#### **2.6.9 What if a person is unable to provide documentation?**

- Before refusing entry based on the lack of documentation, every effort should be made to allow documentation to be provided (e.g., by fax) from the company in Canada or the person's employer in the United States or Mexico.

The requirement for documentation has been imposed in order to clearly establish that the proposed activity is incidental or connected to the sale of the equipment or machinery or computer software. The other parties to the agreement impose the same requirements.

#### **2.6.10 Does the NAFTA affect any requirements for licensing or certification with respect to installation and servicing activities?**

- No. The NAFTA does not relieve after-sales service personnel, or any other business person, from the obligation to comply with municipal, regional, provincial, or other federal requirements where these apply.
- The grant of entry indicates only that the person complies with the requirements of the Act and Regulations and with the provisions of Chapter 16 of the NAFTA.

#### **2.6.11 When should a Visitor Record be Issued to a person entering to perform after-sales service?**

Where entry is sought for a period (on-the-job) of longer than two days, a Visitor Record is to be issued to after-sales service personnel. The Visitor Record should be notated "no hands-on work allowed" and be coded FTA or 054.

A Visitor Record serves to facilitate and to control. It is a useful mechanism for providing information to the person entering concerning the activities that are allowed in Canada. The location(s), as well as the name of the company in Canada, should be indicated on the document.

### **2.7 Appendix 1603.A.1 - Business visitors (Amended)**

(Amended to include interpretive notes - the official text of Appendix 1603.A.1 is available at <http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp>.)

The term "commercial transaction", found in some provisions in Appendix 1603.A.1 may be described as any act, within the confines of the law, which is performed expressly to derive a profit. A "commercial transaction" refers only to discussions and negotiations respecting the sale, purchase, marketing, distribution, advertisement, procurement, transmission, transportation or packaging of goods or services.

#### **Research and Design**

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the United States or Mexico.

#### **Growth, Manufacture and Production**

Harvester owner supervising a harvesting crew authorized to enter Canada under applicable law.

**Note:** *"Harvester" refers to a machine used for gathering agricultural crops, such as, grains, fruits and vegetables.*

**Note:** *"Supervising" does not include hands-on work.*

**Note:** *"Applicable law" refers to Human Resources Centre validation and work permit documentation.*

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the United States or Mexico.

### **Marketing**

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the United States or Mexico.

Trade fair and promotional personnel attending a trade convention.

**Note:** *Where the business of the convention involves sales rather than simple promotion, the provisions under Sales apply.*

**Note:** *Organizers of trade fairs whose exhibitors are wholly of American or Mexican origin may be granted entry under this provision.*

### **Sales**

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the United States or Mexico but not delivering goods or providing services.

**Note:** *Sales representatives and agents cannot sell Canadian-made goods or services provided by a Canadian.*

**Note:** *This provision allows persons to sell to the general public, provided that the goods or services are not delivered or available to the buyer at the time of sale (on the same business trip). The seller may only take orders for the goods or enter into contracts for the services.*

- Buyers purchasing for an enterprise located in the United States or Mexico.

### **Distribution**

- Transportation operators transporting goods or passengers to Canada from the United States or Mexico, or loading and transporting goods or passengers from Canada, with no unloading in Canada, to the United States or Mexico.
- In the NAFTA, a "transportation operator" means a natural person [human being as opposed to a corporate "person" (company)], other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip. (See the General Service provision for information on tour bus operators.)
- This provision includes those persons necessary for the operation of a land transportation conveyance used to transport goods and/or passengers. Persons covered by the provision include the driver and other persons on the vehicle providing services that support the moving operation of the vehicle (for instance, persons providing services to passengers and persons providing services necessary for the movement of the conveyance).
- The parties to the NAFTA have agreed that while pilot car drivers cannot be defined under the Distribution provision of Appendix 1603.A.1., their entry should nonetheless be facilitated. Persons operating highway pilot cars (vehicles leading and following other vehicles

transporting over-size loads or hazardous cargo) can be authorized to enter Canada as a member of a crew, pursuant to R186(s).

- Taxi-drivers and passenger-van operators may enter to pick-up passengers for delivery to the United States pursuant to an oral or written contract for services, provided that all passengers picked up are disembarked only in the United States.
- Although truck drivers involved in international hauling of goods should not normally become involved in the loading or unloading of cargo, there are instances where it is acceptable (e.g., in non-warehouse situations and for cargo such as furniture, chemicals, livestock and building materials). Thus, in special circumstances, particularly involving load safety, the provision also allows the driver, including a relay driver, and the other persons described to participate in the loading and unloading of goods.
- The provision does not apply to a person whose only or main job duty is to load or unload the vehicle. Thus, the "crew" of a moving van, other than a driver, is not covered. Nor is a helper on a delivery truck covered by the provision (for instance, a helper on a truck delivering large appliances from a store in an American border town to a Canadian customer).
- An American or Mexican truck driver may load goods in the United States or Mexico, then deliver partial loads at several locations in Canada. An American or Mexican driver may also pick-up goods in Canada at one or more locations and take them to the United States or Mexico. The American or Mexican driver may combine any or all of these pick-ups and deliveries in one trip as long as the goods picked up in Canada have a final destination in the United States or Mexico and are not delivered to another Canadian location. Cabotage, which is pick-up and delivery of the same goods between one location in Canada and another, is not allowed.
- A bus driver may transport passengers in the same way that truck drivers may transport goods. As long as the trip originates or terminates in the United States or Mexico, the bus driver may take the bus to one or several Canadian locations and disembark or board passengers along the way as long as no individuals both join and leave the bus while it is in Canada.
- Relay drivers (drivers who drive a portion or portions of a route) are also covered by this provision. A relay truck or bus driver need not enter Canada on the truck or bus. A relay driver may enter Canada within a reasonable time before or after the truck or bus enters.

United States customs brokers entering Canada to perform brokerage duties relating to the export of goods from Canada to or through the United States.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

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**Note:** *This provision covers American and Mexican customs brokers travelling to Canada to consult and not to provide brokerage services.*

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#### **After-sales service**

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside Canada, during the life of the warranty or service agreement.

#### **General service**

Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1.

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the United States or Mexico.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the United States or Mexico.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

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**Note:** *"Business associates" refers to colleagues or clients.*

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Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the United States or Mexico.

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**Note:** *Tourism personnel and tour participants must congregate at a point in the United States or Mexico and travel as a group when entering Canada. Tourism personnel wishing to use Canada as a base and seeking entry to conduct tours from within Canada are subject to the LMO process.*

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Tour bus operators entering Canada:

- with a group of passengers on a bus tour that has begun in, and will return to the United States or Mexico;
- to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the United States or Mexico; or
- with a group of passengers on a bus tour to be unloaded in Canada, and returning to the United States or Mexico with no passengers, or reloading with the group for transportation to the United States or Mexico.

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**Note:** In the NAFTA, a "tour bus operator" means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip.

**Note:** A foreign tour bus operator may be authorized to enter Canada as a business visitor for a tour of one or several Canadian locations as long as the trip originates and/or terminates in the United States or Mexico. While passengers may be boarded or dropped at a location in Canada, no individuals may both join and leave the bus while it is in Canada.

**Note:** If a tour originates in Canada (i.e., a bus enters Canada to pick up passengers), the predominant portion of the tour must then take place in the United States or Mexico in order to preserve the international nature of the tour. Passengers may be returned to Canada following the tour which has taken place predominantly in the U.S. or Mexico.

**Note:** Tours that originate in Canada and take place predominantly in Canada, with a minimum time spent in the U.S. or Mexico, do not qualify under NAFTA even if the bus crosses the international boundary during the course of the tour. Operators of such a tour would not be admissible as "business visitors".

**Note:** As well, foreign tour bus operators and transportation operators are still prohibited from conducting "point to point" service (i.e., "cabotage") within Canada - e.g., they cannot pick up passengers in Canada when the final destination of those passengers is another location in Canada. For instance, while an American tour bus operator is allowed to pick up from and return passengers to Canada, specifically for a tour which will take place predominantly in the U.S., the tour bus operator cannot pick up and drop off additional passengers in Canada on his way to the U.S. or when returning from the U.S. following the tour.

**Note:** Relay drivers (drivers who drive a portion or portions of a route) are also covered by this provision. A relay tour bus driver need not enter Canada on the tour bus. A relay driver may enter Canada within a reasonable time before or after the tour bus enters.

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- Translators or interpreters performing services as employees of an enterprise located in the United States or Mexico.

### **3 PROFESSIONALS**

#### **3.1 What requirements apply to professionals?**

The following requirements apply:

- citizenship of the United States or Mexico;
- profession identified in Appendix 1603.D.1;
- qualification to work in that profession;
- pre-arranged employment with a Canadian employer;
- provision of professional level services in the field of qualification as indicated in the Appendix; and
- compliance with existing immigration requirements for temporary entry.

#### **3.2 What is Appendix 1603.D.1?**

Appendix 1603.D.1, a list of over 60 occupations, is the mechanism by which selected professionals can enter Canada to provide their services.

The Appendix is a complete list and cannot be interpreted. Generally, if an occupation does not appear on the list, it is not a profession as defined by Appendix 1603.D.1. However, officers should allow for alternative job titles in instances where the job duties are interchangeable. This can be confirmed by referring to the National Occupational Classification (NOC) at <http://www23.hrdc-drhc.gc.ca/2001/e/generic/welcome.shtml>.

The footnotes contained in Appendix 1603.D.1 form part of the Appendix as it appears in the NAFTA. Notes in italics were added to assist officers in understanding the requirements for the Professionals category generally and some individual professions (e.g., management consultant).

The Minimum Education Requirements and Alternative Credentials indicated for each profession are minimum criteria for entry and do not necessarily reflect the educational requirements, accreditation or licensing necessary to practice a profession in Canada.

Professionals can also be authorized to enter Canada as business visitors (General Service provision of Appendix 1603.A.1) when they are not seeking to enter the labour market (meet criteria applicable to business visitors) but will be performing activities such as soliciting business, consulting, providing advice and meeting clients.

#### **3.3 Where can a professional apply for a work permit ?**

Facilitated entry under the NAFTA allows a Professional to apply at a POE. An application can also be made at a visa office before departing for Canada.

United States and Mexican citizens can also apply for Professional status in Canada, having been authorized to enter Canada as temporary residents R199.

#### **3.4 What documentation must a professional present to support an application?**

A professional must present the following documentation:

- proof of American or Mexican citizenship;
- confirmation of pre-arranged employment provided by:
  - ♦ a signed contract with a Canadian enterprise, or
  - ♦ evidence of an offer of employment from a Canadian employer, or
  - ♦ a letter from the American or Mexican employer on whose behalf the service will be provided to the Canadian enterprise;
- documentation which provides the following information:
  - ♦ the proposed employer in Canada;
  - ♦ the profession for which entry is sought;

- ♦ details of the position (title, duties, duration of employment, arrangements as to payment; and
- ♦ the educational qualifications or alternative credentials required for the position; and
- evidence that the person has at least the Minimum Education Requirements and Alternative Credentials listed in Appendix 1603.D.1 (copies of degrees, diplomas, professional licences, accreditation or registration, etc).

Employment in the Professionals category must be pre-arranged with the Canadian employer. In this context, the Canadian employer may be an enterprise as defined in section 1.10 or an individual. The following are examples of pre-arranged services and do not preclude other arrangements as long as the professional is not self-employed in Canada:

- an employee-employer relationship with a Canadian enterprise; or
- a contract between the professional and a Canadian enterprise; or
- a contract between the professional's American or Mexican employer and a Canadian enterprise.

The Professionals category does not allow self-employment in Canada (i.e., "hanging-out a shingle" to solicit business in the Canadian labour market). A person who wishes to be self-employed in Canada should consider making an application under another category such as Trader or Investor. However, an American or Mexican citizen who is self-employed outside Canada is not barred from the Professional category, provided the services to be rendered in Canada are pre-arranged with a Canadian employer.

The Canadian employer must be separate from the applicant seeking entry as a Professional. This means that if the Canadian enterprise offering a contract or employment to the applicant is a sole proprietorship operated by that applicant, then entry cannot be granted under the Professionals category; further if the Canadian enterprise is legally distinct from the applicant (i.e., a corporation with a separate legal entity) but is substantially controlled by the applicant, entry as a Professional must also be refused.

In order to determine if an enterprise is substantially controlled, the following factors must be taken into account:

- whether the applicant has established the business;
- whether the applicant has primary, sole, or *de facto* control of the business;
- whether the applicant is the primary, sole, or *de facto* owner of the business;
- whether the applicant is the primary, sole, or *de facto* recipient of income of the business.

When a professional applies for a renewal of a work permit, the following activities may indicate that the individual has been self-employed in Canada:

- incorporation of a company in Canada expressly for the purpose of the business person being self-employed (incorporating does not automatically signify self-employment; the motives for incorporation need to be examined before making a determination);
- initiation of communications (e.g., "job hunting" by direct mail or by advertising);
- responding to advertisements for the purpose of obtaining employment or contracts; or
- establishing an office which serves as a way to advertise (i.e., a "sign or a shingle" outside the door).

The following activities do not constitute self-employment:

- responding to unsolicited inquiries about service which the professional may be able to perform; or
- establishing an office from which to deliver pre-arranged service to clients.

A professional must be entering Canada to provide professional level services in the field of qualification. That is, the professional must be entering to work in an occupation described in Appendix 1603.D.1, for which they are qualified. In making this determination, both the qualification of the individual and the position in Canada must be considered.

The duties of the profession that the business person intends to practice in Canada must conform to the job duties of the profession. For instance, an accountant must be seeking to enter Canada

as an accountant and not as a bookkeeper, which is not an occupation covered in Appendix 1603.D.1. Alternatively, a bookkeeper cannot be authorized to enter Canada to work as an accountant unless the applicant is also qualified as an accountant as indicated in the Minimum Education Requirements and Alternative Credentials of Appendix 1603.D.1. Additionally, to be authorized to enter Canada under the Professionals category, a professional entering Canada to be a corporate executive must be coming to work in their field of qualification, i.e. an engineer, or the details of the position requirements and job duties of a specific profession are integral to the job.

The applicant must meet the qualifications indicated in the Minimum Education Requirements and Alternative Credentials of Appendix 1603.D.1. These qualifications represent only a minimum to permit entry and do not necessarily indicate the level of qualification required to actually work in that profession in Canada.

It is not the role of immigration to determine whether or not the applicant has the necessary license or registration to practice a profession in Canada. The employer in Canada and the professional are responsible to ensure that such requirements are met before employment commences.

In the case of nurses, however, they are required to hold the appropriate provincial license before they can be granted Professional status. Officers may facilitate their entry (e.g., as a business visitor) to permit them to obtain the appropriate licence, providing they can demonstrate that they have initiated steps towards achieving that objective.

In instances where a baccalaureate degree is required, the degree must be in the specific field or in a closely related field. Baccalaureate degrees (or licenciatura) need not have been obtained in colleges or universities in the United States, Mexico or Canada, whereas post secondary diplomas or certificates should have been earned in one of the three NAFTA countries.

It is possible for a professional to be working in Canada on more than one contract at a time. Information on each employer must be included on the work permit.

### **3.5 What training functions are permitted for professionals?**

Professionals can enter Canada to provide training related to their profession, including conducting seminars.

The training session must be pre-arranged with a Canadian employer and the subject matter must be at the professional level. Entry does not allow seminar leaders to engage in training that is not pre-arranged with a Canadian employer.

The training must form part of the professional training or development of the participants and must be related to their job duties.

### **3.6 What documents are issued?**

Persons who qualify in the Professionals category may be issued a work permit pursuant to R204(a), T23.

### **3.7 How long can a work permit be issued and can it be extended?**

**Includes update from OB 85.**

Initial work permits can be granted for durations of up to three years.

Extensions can also be issued in increments of up to three years with no limit on the number of extensions providing the individual continues to comply with the requirements for professionals.

Officers must be satisfied that the employment is still "temporary" and that the applicant is not using NAFTA entry as a means of circumventing normal immigration procedures.

### 3.8 Appendix 1603.D.1 - Professionals (Amended)

Amended to include interpretive notes - the official text of Appendix 1603.D.1 is available at: <http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp>

**Note:** A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars. It is to be noted that the subject of the workshop or seminar must be in the field for which professional qualification is held. The workshop or seminar must be for professional training or development purposes related to the occupation or to the job duties of the participants.

Profession	Minimum education requirements and alternative credentials
<b>General</b>	
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial licence. ("State/provincial licence" and "state/provincial/federal licence" mean any document issued by a state, provincial or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.)
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years' experience.  <b>Note:</b> "Post-Secondary Diploma" means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States.  <b>Note:</b> "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of post-secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.
Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
<b>Note:</b> For the purposes of this provision, a disaster shall be an event so declared by the Insurance Bureau of Canada or sub-committee thereof through activating the <i>Insurance Emergency Response Plan</i> .	
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial licence
Forester	Baccalaureate or Licenciatura Degree; or state/provincial licence
Graphic Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years

	experience
Hotel Manager (See note below for further details.)	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
<b>Note:</b> This provision refers to a management position to which other managers report, e.g., general manager, director. It also refers to specialty managers, e.g., food and beverage managers, convention services managers within a hotel.	
Industrial Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/federal licence
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec)	LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian (See note below for the requirements of a librarian.)	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
<b>Note:</b> A librarian must have either: 1. a Master of Library Science degree; or 2. a Bachelor of Library Science and another baccalaureate degree which was necessary to enter the B.L.S. program.	
Management Consultant (See notes below for further details.)	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement
<b>Notes:</b> 1. A management consultant provides services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems. The management consultant does not take part in the company's production but seeks to improve the client's goals, objectives, policies, strategies, administration, organization, and operation. Generally a management consultant is hired on contract to do project work to deal with specific issues or problems. 2. A management consultant may provide the following range of services: <ul style="list-style-type: none"> <li>• conduct a comprehensive examination of the client's business to isolate and define problems;</li> <li>• prepare a presentation and report all findings to the client;</li> <li>• work with the client to design and implement in-depth working solutions.</li> </ul> 3. Management consultants assist and advise in implementing recommendations but do not perform functional/operational work for clients or take part in the company's production. 4. Any training or familiarization that is provided to management and personnel on an individual or group basis: <ul style="list-style-type: none"> <li>• must be incidental to the implementation of new systems and procedures which were</li> </ul>	

<p>recommended in the management consulting report;</p> <ul style="list-style-type: none"> <li>must be performed by permanent (indeterminate) employees of the recommending American or Mexican management consulting firm.</li> </ul> <p>5. Typically, a management consultant is an independent contractor or an employee of a consulting firm under contract to a Canadian client. A management consultant can also occupy a permanent position on a temporary basis with a Canadian management consulting firm.</p>	
Mathematician (including Statistician and Actuary)	<p>Baccalaureate or Licenciatura Degree</p> <p>An Actuary must satisfy the necessary requirements to be recognized as an actuary by a professional actuarial association or society operating the territory of at least one of the Parties</p>
Range Manager/Range Conservationist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/Technologist (See below for further details.)	<p>Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research.</p>
<p>A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.</p> <p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>1. A baccalaureate degree is not normally held by a scientific technician/technologist; therefore, an applicant must possess the skills noted above.</li> <li>2. Basic research is theoretical or conceptual and is not conducted with a specific purpose or result in mind. Applied research is conducted with a practical or problem solving purpose in mind.</li> </ol> <p><b>Additional guidance (as agreed to by all parties of the Working Group, Dec. 2001):</b></p> <p>Individuals for whom ST/Ts wish to provide direct support <i>must qualify as a professional in their own right</i> in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.</p> <p>A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist. The offer must demonstrate that the work of the ST/T will be <i>interrelated with</i> that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.</p> <p>The ST/T's theoretical knowledge should generally have been acquired through the <i>successful completion of at least two years of training</i> in a relevant educational program. Such training may be documented by presentation of a diploma, a certificate, or a transcript accompanied by evidence of relevant work experience.</p> <p>Use the National Occupational Classification (NOC) in order to establish whether proposed job functions are consistent with those of a scientific or engineering technician or technologist.</p> <p>Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution).</p>	

Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree
<b>Medical/Allied Professional</b>	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license
Medical Laboratory Technologist (Canada)/ Medical Technologist (Mexico and the United States) (See note below for further details.)	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
<b>Note:</b> A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.	
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial license
Physician (teaching or research only) (See note below for further details.)	M.D. or Doctor en Medicina; or state/provincial license
<b>Note:</b> Physicians may not enter for the purpose of providing direct patient care. Patient care incidental to teaching and/or research is permissible.	
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Psychologist	State/provincial license; or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse (See note below for further details.)	State/provincial license; or Licenciatura Degree
<b>Note:</b> To be authorized to enter Canada as a registered nurse, a licence issued by the province of destination is necessary.	
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license
<b>Scientist</b>	
Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist (including Plant Pathologist)	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree

Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
Teacher	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

## 4 INTRA-COMPANY TRANSFEREES

### 4.1. What requirements apply to intra-company transferees?

The following requirements apply:

- citizenship of the United States or Mexico;
- employment in an executive or managerial capacity or one involving "specialized knowledge";
- enterprises in the United States or Mexico and in Canada have a parent, branch, subsidiary or affiliate relationship;
- continuous employment, in a similar position outside Canada, for one year (full-time) in the previous three-year period from the date of application; and
- compliance with existing immigration requirements for temporary entry.

### 4.2. Where can an intra-company transferee apply for a work permit?

Facilitated entry under the NAFTA allows an intra-company transferee to make an application at the POE. An application can also be made at a visa office before departing for Canada.

United States and Mexican citizens can also apply for intra-company transferee status in Canada, having been authorized to enter Canada as visitors (R199).

### 4.3. What documentation must an intra-company transferee present to support an application?

An intra-company transferee must present:

- proof of American or Mexican citizenship;
- confirmation that the person has been employed continuously outside of Canada by the enterprise for one year (full-time) within the three-year period immediately preceding the date of application (see TIP);
- outline of the applicant's current position in an executive, or managerial capacity or one involving specialized knowledge, i.e., position, title, place in the organization, job description;
- in the case of "specialized knowledge", evidence that the person has such knowledge and that the position in Canada requires such knowledge;
- outline of the position in Canada, i.e., position, title, place in the organization, job description;
- indication of intended duration of stay; and

- description of the relationship between the enterprise in Canada and the enterprise in the United States or Mexico.

Officers may request tangible proof to establish the relationship between the Canadian and American or Mexican organizations.

**TIP:** If the applicant has not had full-time work experience with the foreign company, the officer should consider other factors before refusing the applicant solely on this basis, such as:

- Number of years of work experience with the foreign company;
- The similarity of the positions. For example, is the applicant coming to work for a short period of time versus coming from a part-time position to a full-time long-term position?
- The extent of the part-time position (i.e., 2 days/week versus 4 days/week)
- Does it appear to be an abuse of the ICT provision?

In order to qualify in the intra-company transferee category, a business enterprise "is or will be doing business" in both Canada and the business person's home country, the United States or Mexico.

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**Note:** "Doing business" means regularly, systematically, and continuously providing goods and/or services by a parent, branch, subsidiary, or affiliate in Canada and the United States, or Mexico, as the case may be. It does not include the mere presence of an agent or office in Canada or in the United States or Mexico. For instance, a company with no employees which exists in name only and is established for the express purpose of facilitating the entry of intra-company transferees would not qualify.

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An applicant seeking entry to open a new office on behalf of the American or Mexican enterprise may also qualify, having established that the enterprise in Canada is expected to support a managerial or executive position or, in the case of specialized knowledge, is expected to be doing business. Factors such as the ownership or control of the enterprise, the premises of the enterprise, the investment committed, the organizational structure, the goods or services to be provided and the viability of the American or Mexican operation should be considered.

Intra-company transferees may be authorized to enter Canada for short term assignments and may divide work between Canada and the U.S. or Mexico.

In assessing an application as an intra-company transferee under the NAFTA, the general provisions which deal with intra-company transferees (R205(a), C12) may also be considered.

#### 4.4. What is an affiliate, a branch, an enterprise, a parent and a subsidiary?

Affiliate means:

- one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
- one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company.

Branch is an operating division or office of the same organization housed in a different location.

Enterprise is "any entity constituted or organized under applicable law, whether or not for profit and whether privately or publicly owned including any corporation trust, partnership, sole proprietorship, joint venture or other association".

Parent means a firm, corporation or other legal entity which has subsidiaries.

Subsidiary refers to a firm, a corporation, or other legal entity of which a parent owns:

- directly or indirectly, half or more than half of the entity and controls the entity; or

- owns, directly or indirectly, 50% of a 50-50 joint venture and has equal control and veto power over the entity; or
- owns directly or indirectly, less than half of the entity, but in fact controls the entity.

#### 4.5. What is "executive capacity"?

"Executive capacity" refers to a position in which the employee primarily:

- directs the management of the organization or a major component or function of the organization;
- establishes the goals and policies of the organization, component, or function;
- exercises wide latitude in discretionary decision-making; and
- receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

An executive does not generally perform duties necessary in the production of a product or in the delivery of a service.

In smaller businesses, the title of the position may not be sufficient to establish that a position is managerial or executive. For example, an architect who incorporates a business and hires a secretary and a draughtsman is not automatically considered to be holding an executive or managerial position. In order to qualify as a manager or executive as described in the intra-company transferee category, the architect must be engaging in managerial or executive duties rather than purely architectural ones.

#### 4.6. What is "managerial capacity"?

"Managerial capacity" refers to a position in which the employee primarily:

- manages the organization, or a department, subdivision, function, or component of the organization;
- supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- has the authority to hire and fire or recommend those, as well as other, personnel actions (such as promotion and leave authorization); if no other employee is directly supervised, functions at a senior level within the organization hierarchy or with respect to the function managed; and
- exercises discretion over the day-to-day operations of the activity or function for which the employee has the authority.

A first-line supervisor is not considered to be acting in a managerial capacity unless the employees supervised are professional.

A manager does not primarily perform tasks required in production of a product or in the delivery of a service.

In smaller businesses, the title of the position may not be sufficient to establish that a position is managerial or executive (refer to section 4.5, What is "executive capacity"?).

#### 4.7. What is "specialized knowledge"?

"Specialized knowledge" means special knowledge an individual has of a company's product or service and its application in international markets or an advanced level of knowledge or expertise in the organization's processes and procedures. (Product, process and service can include research, equipment, techniques, management, or other interests.)

**Special knowledge** is unusual and different from that found in a particular industry. The knowledge need not be proprietary or unique but uncommon. As a general guide, special knowledge may involve a person's familiarity with a product or service which their company makes. Advanced knowledge is complex - again, not necessarily unique or known only by a few individuals (proprietary), but advanced. An assessment of whether such knowledge exists in Canada is not relevant as the test is whether the applicant possesses such knowledge.

**Example:** A person who possesses specialized knowledge would usually be in a position critical to the well-being of the enterprise. As well, this knowledge has normally been gained by experience with the organization and used by the individual to contribute significantly to the employer's productivity or well being. Evidence of such knowledge must be submitted by the company.

The use of the term "specialized knowledge" applicable to the after-sales service personnel of the business visitor category (Appendix 1603.A.1) differs. For after-sales service, specialized knowledge reflects special training which raises the level of expertise beyond hands-on building and construction work.

#### 4.8 What documents are issued?

- Persons who qualify as intra-company transferees are to be issued a work permit pursuant to R204, T24.

#### 4.9 How long can a work permit be issued and can it be extended?

A work permit issued at the time of entry can have a maximum duration of three years. However, individuals authorized to enter Canada to open an office or to be employed in a new office should be issued an initial permit for a maximum period of one year.

Extensions can be granted for a duration of up to two years if the person continues to comply with the requirements for intra-company transferees.

The category of intra-company transferees is the only NAFTA category to have a "cap" imposed on the total duration of employment. The total period of stay for a person employed in an executive or managerial capacity may not exceed seven years. The total period of stay for a person employed in a position requiring specialized knowledge may not exceed five years.

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**Note:** For these cases, a minimum period of one year must pass after the time cap before applicants are eligible to be issued a new work permit in these categories.

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Intra-company transferees are not necessarily required to re-locate to Canada; however, they are expected to actually occupy a position within the Canadian branch of the company. There should be a clear employer-employee relationship with the Canadian company, and the Canadian company should be directing the day-to-day activities of the foreign worker. This is especially important for workers working at client sites and not at the parent, branch, affiliate, or subsidiary.

Alternatively, officers should examine whether the applicant might better be classified as a business visitor, which includes provision of after-sales service. (See Business visitors, section 2 of this Appendix.)

Issuance of short-term work permits for specific projects is permissible, whether the project is taking place at the company premises in Canada or at a client site (generally seen as applicable for persons the company needs to transfer for their specialized knowledge). *Long-term* work permits in the intra-company transferee category should not be issued for service personnel living outside Canada whom the company wishes to parachute into a client site of the international company on an as-needed basis.

#### TRADERS AND INVESTORS

Sections 5 and 6 deal with the traders and investors category. An applicant can be granted trader or investor status, but not both. If an applicant is unsure as to the applicable status or wishes to be considered under both, all sections of the application form must be completed. (Refer to sections 5.2 and 6.2 for information concerning the application form.)

### 5. TRADERS

#### 5.1. What requirements apply to traders?

The following requirements apply:

- applicant has American or Mexican citizenship;
- the employing enterprise has American or Mexican nationality;
- activities involve substantial trade in goods or services;
- trade is principally between either the United States or Mexico, and Canada;
- position is supervisory or executive, or involves essential skills; and
- compliance with existing immigration requirements for temporary entry.

### 5.2. Where can a trader apply for a work permit?

An application should be submitted at a visa office.

The Regulations allow a citizen of the United States or Mexico to apply for a work permit either at a POE (R198) or at a visa office. However, due to the complexity of the application and for reasons of client service, program consistency and reciprocity, an application for a work permit for entry as a trader should be submitted at a visa office. Because of reciprocal treatment offered to Canadians, United States and Mexican citizens who are granted temporary resident status can also apply for trader status from within Canada (R199).

A person who wishes to submit an application at a POE is to be counselled to submit the application at a visa office. Upon receiving a request for extension, the file from the issuing office should be requested to compare the original information and documentation with that presented in support of the extension request.

Persons applying for trader status must complete an Application for Trader/Investor Status (IMM 5321) in addition to the application for a work permit.

### 5.3. What criteria must be met?

#### Nationality

The applicant is an American or a Mexican citizen and the employing enterprise to or from which the applicant is coming has American or Mexican nationality.

American or Mexican nationality means that the individual or corporate persons who own at least 50 percent interest in the entity (directly or by stock), must hold American or Mexican citizenship. The place of incorporation of an enterprise is not an indicator of nationality. Nationality is indicated by ownership. A letter attesting to ownership from a corporate secretary or a company lawyer may be used in determining nationality. In cases where an entity's shares are sold exclusively on a stock exchange of the country of incorporation, nationality can be presumed to be the same. In cases of a multinational entity whose shares are exchanged in more than one country, then the applicant should submit evidence that the entity meets the nationality requirement.

A citizen of the United States or Mexico who is a permanent resident of Canada does not qualify to bring an employee into Canada under trader status. Similarly, shares of a corporation or other business organization owned by a citizen of the United States or Mexico who is a permanent resident of Canada cannot be considered in determining majority ownership to qualify the company for bringing in an employee as a trader.

The applicant may be trading on their own behalf or as an agent of a person or an organization engaged in trade principally between Canada and the United States or Mexico.

#### Substantial Trade

The applicant is seeking temporary entry to carry on substantial trade in goods or services principally between Canada and the United States or Mexico. Over 50 percent of the total volume of international trade conducted by the entity must be between Canada and the United States or Mexico. However, the duties of the individual applicant need not be similarly divided.

Trade means the exchange, purchase, or sale of goods and/or services. Goods are tangible commodities or merchandise having intrinsic value, excluding money, securities, and negotiable instruments. Services are economic activities whose outputs are other than tangible goods. Such

activities include, but are not limited to international banking, insurance, transportation, communications and data processing, advertising, accounting, design and engineering, management consulting and tourism.

"Substantial trade" is determined by the volume of trade conducted as well as the monetary value of the transactions. Numerous transactions, although each may be small in value, might establish the requisite continuing course of international trade. Officers must be satisfied that the business person's predominant activity in Canada is international trading.

Trade between the United States or Mexico and Canada must already be in existence as evidenced by completed sales or binding contracts that call for the immediate exchange of goods or services. An applicant cannot qualify as a Trader for the purpose of searching for a trading relationship.

### **Capacity**

The applicant's job duties in Canada will be employed in a capacity that is supervisory, or executive or involves essential skills.

The **supervisory or executive** element of the position must be a principal function of the duties while working in Canada. A supervisor is a manager who is primarily responsible for directing, controlling and guiding subordinate employees and who does not routinely engage in hands-on activities. Note that a first line supervisor would not generally meet these requirements. An executive is in a primary position in the organization with significant policy authority.

Indicators of supervisory or executive capacity are:

- position title;
- place in the organizational structure;
- job duties;
- degree of ultimate control and responsibility over operations;
- number and skill levels of immediately subordinate employees over whom supervision is exercised;
- level of pay commensurate with a senior position; and
- qualifying executive or supervisory experience.

The size of the entity will dictate which indicators are more significant.

**Essential skills** or services are special qualifications that are vital to the effectiveness of the firm's Canadian operations. In general, essential skills are possessed by specialists, not ordinary skilled workers. The essential employee is not required to have been previously employed by the American or Mexican enterprise unless the skills required can only be obtained through working for that enterprise.

In assessing essential skills, officers must be satisfied, based upon a consideration of the following factors, that trader status is warranted:

- the degree of proven expertise of the applicant in the area of specialization;
- the uniqueness of the special skills. The availability of workers in Canada to perform such work, not as a LMO, but rather as a measure of the degree of the specialization or uniqueness of the skill;
- the function of the job;
- the period of training required to perform the contemplated duties; and
- a salary commensurate with the special expertise. The salary of an applicant with essential skills should be significantly higher than that of a skilled labourer in the relevant occupation.

A highly trained technician may sometimes qualify as having essential skills. A highly trained or specially qualified technician employed by a firm to train or to supervise personnel employed in manufacturing, maintenance and repair functions may be granted trader status even though some manual duties may be performed, provided that the firm cannot obtain the services of a qualified Canadian technician. For example, a qualified technician coming to perform warranty repairs on intricate and complex products sold in trade between Canada and the United States or

Mexico can be granted trader status if the Canadian entity establishes that it cannot obtain the services of a qualified Canadian technician. It is expected that the firm in Canada will, within a reasonable period of time, locate and train a Canadian as a highly skilled technician. The absence of an effective training program for a Canadian is sufficient reason to refuse repeated requests for an American or a Mexican highly trained technician to occupy a position not requiring essential skills.

#### **5.4. What documents are issued?**

Persons qualifying in the Trader category may be issued a work permit pursuant to R204; T21 should be used.

#### **5.5. How long can a work permit be issued and can it be extended?**

- The initial work permit can have a maximum duration of one year.
- Extensions should be granted for a duration of two years provided that all requirements described above continue to be met.

An applicant's expression of a definite intention to return to the United States or Mexico when trader status terminates will normally be accepted as sufficient evidence of temporary intent, unless there are indications to the contrary.

Trader status would end upon the applicant taking another job, engaging in an activity which is not consistent with this status, closing down the business, etc.

## **6 INVESTORS**

### **6.1 What requirements apply to investors?**

The following requirements apply:

- applicant has American or Mexican citizenship;
- enterprise has American or Mexican nationality;
- substantial investment has been made, or is actively being made;
- applicant is seeking entry solely to develop and direct the enterprise;
- if the applicant is an employee, position is executive or supervisory or involves essential skills; and
- compliance with existing immigration measures applicable to temporary entry.

### **6.2 Where can an investor apply for a work permit?**

An application should be submitted at a visa office.

The Regulations allow a citizen of the United States to apply for a work permit either at a POE (R198) or at a visa office. However, due to the complexity of the application and for reasons of client service, program consistency and reciprocity, an application for a work permit as an investor should be submitted at a visa office. Because of reciprocal treatment for Canadians, United States and Mexican citizens who are granted temporary resident status can also apply for investor status from within Canada (R199).

A person who wishes to submit an application at a POE is to be counselled to submit the application at a visa office. Upon receiving a request for extension, the file from the issuing office should be requested to compare the original information and documentation with that presented in support of the extension request.

Persons applying for investor status must complete an Application for Trader/Investor status (IMM 5321) in addition to the application for an employment authorization.

### **6.3 What criteria must be met?**

- The applicant is a citizen of the United States or Mexico and the enterprise or firm to which the applicant is coming has American or Mexican nationality.

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**Note:** American or Mexican nationality means that the individual or corporate persons who own at least 50 percent interest (directly or by stock) in the entity established in Canada must hold American or Mexican citizenship. Joint ventures and partnerships are limited to two parties.

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In parent-subsidiary situations, officers should consider the nationality of the corporate entity established in Canada.

A letter attesting to ownership from a corporate secretary or a company lawyer may be used in determining nationality.

The place of incorporation of an enterprise is not an indicator of nationality. Nationality is indicated by ownership.

- The applicant is seeking temporary entry solely to develop and direct the operations of an enterprise in which the applicant has invested, or is actively in the process of investing, a substantial amount of capital.

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**Note:** This criterion does not apply to an employee of an investor.

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"Develop and direct" means that the applicant should have controlling interest in the enterprise. An interest of 50 per cent or less usually will mean that the applicant does not have requisite control, particularly in smaller enterprises. An equal share of the investment, such as an equal partnership, generally does not give controlling investment in Canadian-based corporations. However, in cases of American and Mexican corporate investment in Canadian-based corporations, the focus should be less on an arithmetical formula and more on corporate practice, since control of half or less of the stock sometimes gives effective control. A joint venture may also meet the "develop and direct" requirement, provided that the American or Mexican corporation can demonstrate that it has, in effect, operational control.

Investment involves placing funds or other capital assets at risk in the commercial sense in the hope of generating a profit or a return on the funds risked. If the funds are not subject to partial or total loss if investment fortunes reverse, then it is not an investment which can be used to support investor status. (Investor status could not, therefore, be extended to non-profit organizations).

If the applicant is in the process of investing, mere intent to invest or prospective investment arrangements entailing no present commitment will not suffice. The applicant must be close to the start of actual business operations, not merely in the stage of signing contracts (which may be broken) or scouting for suitable locations and property. The investment funds must be irrevocably committed to the business.

Whether an investment has been, or will be made, the applicant must demonstrate prior or present possession and control of the funds or other capital assets.

Officers should assess the nature of the transaction to determine whether a particular financial arrangement may be considered an investment for the purpose of investor status. Following are some factors which may be considered in making a determination:

- Funds - Mere possession of uncommitted funds in a bank account would not qualify, whereas, a reasonable amount of cash held in what is clearly a business bank account or similar fund used for routine business operations may be counted as investment funds.
- Indebtedness - Mortgage debt or commercial loans secured by the enterprise's assets cannot count toward the investment as there is no requisite element of risk. Loans secured by the applicant's own personal assets, such as a second mortgage on a home, or unsecured loans, such as a loan on the applicant's personal signature, may be included since the applicant risks the funds in the event of business failure.
- Lease/rent payments - Payments in the form of leases or rents for property or equipment may be calculated toward the investment in an amount limited to the funds devoted to that item in

any one month. However, the market value of the leased equipment is not representative of the investment and neither is the annual rental cost (unless it has been paid in advance) as these rents are generally paid from the current earnings of the business.

- Goods/equipment as investment - The amount spent for purchase of equipment and for inventory on hand may be calculated in the investment total. The value of goods or equipment transferred to Canada (such as factory machinery shipped to Canada to start or enlarge a plant) is considered an investment provided the applicant can demonstrate that the goods or machinery will be put, or are being put, to use in an ongoing commercial enterprise.

There is no minimum dollar figure established for meeting the requirement of "substantial" investment. Substantiality is normally determined by using a "proportionality test" in which the amount invested is weighed against one of the following factors:

- the total value of the particular enterprise in question (determining proportion is a largely straightforward calculation involving the weighing of evidence of the actual value of an established business, i.e., purchase price or tax valuation, against the evidence of the amount invested by the applicant); or
- the amount normally considered necessary to establish a viable enterprise of the nature contemplated. (This may be a less straightforward calculation. Officers will have to base the decision on reliable information on the Canadian business scene to determine whether the amount of the intended investment is reasonable for the type of business involved. Letters from chambers of commerce or statistics from trade associations may be reliable for this purpose.)

Only the amount already invested or irrevocably committed for investment can be considered in determining substantiality.

**The investment must be significantly proportional to the total investment.** The total investment is the cost of an established business or money needed to establish a business. In businesses requiring smaller amounts of total investment, the investor must contribute a very high percentage of the total investment, whereas in businesses of larger total investment, the percentage of the investment may be much less. In applying the test, officers must first focus on the nature of the business to determine reasonably the total amount of investment needed to establish such business.

Clearly, the total amount of money needed to start a consulting service will be much less than to open an automobile manufacturing plant or even a restaurant. In the case of a consulting firm, it might be found that a total of \$50,000 investment is necessary to become fully operational. In order to qualify as an investor, an applicant would have to invest a high percentage of the \$50,000. For a total investment of \$1 million, the investor might reasonably have to invest at least \$500,000 to \$600,000; whereas for a \$10 million manufacturing plant, \$2-3 million might suffice, based on the sheer magnitude of the dollar amount invested. (These examples are not intended to establish any set dollar figures, but are used only to demonstrate by example the application of the proportionality test.)

The enterprise must be a real and active commercial or entrepreneurial undertaking which operates to produce some service or commodity for profit. It cannot be a paper organization or an idle, speculative investment held for potential appreciation in value. For instance, passive investment in developed or undeveloped real estate or stocks does not qualify. (Evidence that an applicant intends and has the ability to invest additional funds in the future in an enterprise may demonstrate that the business is, or will be, a viable commercial enterprise. A plan for future investment, expansion, and/or development is significant in meeting this criterion.)

The objective of investor status is to promote productive investment in Canada. Therefore, an applicant is not entitled to this status if the investment, even if substantial, will return only enough income to provide a living for the applicant and family.

There are various ways to assist in determining whether an enterprise is marginal, in the sense of only providing a livelihood for the applicant. For instance, an applicant may show that the investment will expand job opportunities locally or that it is adequate to ensure that the applicant's primary function will not be that of a skilled or unskilled labourer. If the applicant has substantial income from other sources and does not rely on the investment enterprise to provide a living, the investment may be one of risk and not one of providing a mere livelihood. Therefore, the investment would not be in the marginal category.

#### **6.4 What criteria must be met to qualify to bring an employee to Canada in investor status?**

Criteria applicable to the employer

To bring an employee to Canada in investor status, the nationality requirement must be met:

- the prospective employer in Canada must be a citizen of the United States or Mexico who is maintaining investor status in Canada; or
- if the prospective employer is a corporation or other business organization, the majority ownership must be held by citizens of the United States or Mexico who, if not residing in the United States or Mexico, are maintaining investor status in Canada.

A citizen of the United States or Mexico who is a permanent resident of Canada does not qualify to bring an employee into Canada under investor status.

Shares of a corporation or other business organization owned by a citizen of the United States or Mexico who is a permanent resident of Canada cannot be considered in determining majority ownership to qualify the company for bringing in an employee as an investor.

Criteria applicable to the employee

The applicant must be an American or Mexican citizen who qualifies in a supervisory or executive capacity or possesses skills essential to the firm's operations in Canada.

The supervisory or executive element of the position is a primary function. The supervisor is primarily responsible for directing, controlling and guiding subordinate employees and does not routinely engage in hands-on activities. (A first line supervisor would not, as a general rule, qualify). An executive or manager is in a position in the organization with significant policy authority.

Indicators of supervisory or executive or managerial capacity are:

- position title;
- place in the organizational structure;
- job duties;
- degree of ultimate control and responsibility over operations
- number and skill levels of immediately subordinate employees over whom supervision is exercised;
- level of pay; and
- qualifying executive or supervisory experience.

The size of the Canadian office will dictate which indicators are more relevant.

Essential skills or services are special qualifications that are vital to the effectiveness of the firm's Canadian operations over and above qualifications required of an ordinary skilled worker.

An employee with essential skills is not required to have previously worked for the enterprise unless the skills required could only be acquired by working for the enterprise.

Officers must be satisfied that, based upon a consideration of the following factors, investor status is warranted:

- the degree of proven expertise of the applicant in the area of specialization;
- the uniqueness of the special skills;

- the length of experience and training with the firm;
- the period of training required to perform the contemplated duties; and
- the salary that the special expertise can command.

There are two exceptions to the application of the factors concerning essential skills:

#### **New enterprises**

- investor status may be granted to an employee not possessing essential skills when the employee is needed for the start-up of a new enterprise;
- the employee and the company will have to demonstrate need, based upon familiarity with the American or Mexican operations of the firm;
- this provision usually applies where a firm established in the United States or Mexico seeks to use a skilled American or Mexican employee in the early stages of a Canadian investment;
- investor status will normally be granted for a period not to exceed one year;
- this procedure is designed to assist new enterprises to establish themselves and to allow them a reasonable period of time to train a Canadian for a position not requiring essential skills.

#### **Highly trained technicians**

- a highly trained or specially qualified technician employed by a firm to train or supervise personnel employed in manufacturing, maintenance and repair functions may be granted investor status even though some manual duties may be performed, provided that the firm cannot obtain the services of a qualified Canadian technician;
- the emphasis is on "highly trained". For example, a qualified technician coming to perform warranty repairs on intricate and complex products sold in trade between Canada and the United States/Mexico can be granted investor status if the employing firm establishes that it cannot obtain the services of a qualified Canadian technician. It is expected that the firm in Canada will, within a reasonable period of time, locate and train a Canadian as a highly skilled technician.

The absence of an effective training program for a Canadian is sufficient reason to refuse repeated requests for an American or a Mexican worker to occupy a position requiring high technical skills.

#### **6.5 What documents are issued?**

Persons qualifying in the Investor category may be issued a work permit pursuant to R204, T22.

#### **6.6 How long can a work permit be issued and can it be extended?**

A work permit issued at the time of entry can have a maximum duration of one year.

Extensions should be granted for a duration of two years provided that the requirements outlined above are met.

An applicant's expression of a definite intention to return to the United States or Mexico when investor status terminates will normally be accepted as sufficient evidence of temporary intent unless there are indications to the contrary.

Investor status would end upon applicant taking another job, engaging in an activity which is not consistent with this status, closing down the business, etc.

#### **Annex A to Appendix G**

#### **THE NORTH AMERICAN FREE TRADE AGREEMENT AND UNIVERSITY, COLLEGE AND SEMINARY TEACHERS**

The immigration provisions of the NORTH AMERICAN FREE TRADE (NAFTA) are of particular interest to Canadian, American and Mexican teachers who have been offered temporary appointments at the university, college, and seminary levels. The following is intended to provide

information concerning the application of the temporary entry chapter of the NAFTA for university, college and seminary teachers.

**1. What are the general principles of the immigration chapter of the NAFTA?**

- a) It reflects the desirability of facilitating temporary entry on a reciprocal basis for persons whose activity or profession is described in the chapter.
- b) It recognizes the need to ensure border security and protect indigenous labour and permanent employment.

**2. Does the NAFTA replace previously existing immigration provisions for teachers?**

No. The new provisions enhance or expand the general or universal provisions which exist in each country. Thus, for American and Mexican teachers coming to Canada, the NAFTA augments the existing provisions respecting exchange professors, guest lecturers and visiting professors. (See Annex 1 for details of general provisions.)

**3. What immigration provisions exist under the NAFTA?**

Canadian, American and Mexican teachers can now obtain a document authorizing employment to undertake a temporary appointment at a university, college, or seminary in one of the other countries simply by presenting at the POE a letter from the employer describing the temporary appointment.

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**Note:** Appendix 1603.D.1 of the NAFTA lists those professions whose members are eligible for facilitated entry to the other countries. Only those activities which are generally understood to be associated with the performance of a profession may be undertaken by a person seeking to enter or to remain in Canada temporarily to practice the profession.

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Thus, a person entering to be employed temporarily as a university teacher can carry out the range of duties normally associated with that position.

**4. Is coverage of the new NAFTA provisions restricted to Canadian, American and Mexican citizens?**

Yes. Persons who are not citizens but have immigration status as a legal permanent resident of the other countries do not have access to facilitated entry under the NAFTA. They do, however, continue to have access to each country through existing general or universal provisions governing the entry of temporary foreign workers.

**5. Does the NAFTA facilitate permanent admission to Canada, the United States or Mexico?**

No. The immigration chapter of the NAFTA covers temporary entry only.

**6. What is 'temporary entry'?**

The NAFTA defines "temporary entry" as "...entry without the intent to establish permanent residence." This definition is consistent with immigration law. It is adaptable to individual circumstances and it recognizes that the concept of temporary entry cannot be based simply on a specific time limitation.

The definition does not allow for open-ended temporary entry. The provisions of the NAFTA cannot be used as a mechanism to circumvent procedures applicable to permanent employment nor as a means to establish *de facto* permanent residence.

Upon arrival at a POE, a work permit may be granted for the length of the contract up to a maximum of twelve months. If the appointment is for a period greater than twelve months, a renewal of the work permit must later be requested and obtained. (A person who is in possession of a valid work permit is eligible to apply for a renewed work permit, and should apply at least one month before the expiry of the work permit. An application can be downloaded from CIC's website or from the Call Centre.

Multiple renewals will not be approved routinely even though a lengthy appointment might have been indicated at the time of arrival in Canada. The longer the duration of temporary stay, the greater the onus will be on the individual, especially when requesting an extension of status, to satisfy an officer of temporary intent.

**7. Does the NAFTA allow temporary entry to undertake a temporary appointment in a permanent position?**

Yes. Many temporary foreign workers in general are authorized to work temporarily in a permanent position that, for one reason or another, is temporarily vacant.

**8. Is the LMO procedure for temporary and permanent employment affected by the NAFTA?**

The procedures which apply to permanent employment are unaffected by the NAFTA. The advertising procedure required as part of the LMO process continues for permanent appointments.

On the other hand, the NAFTA prohibits, as a condition for temporary entry, "...prior approval procedures, petitions, labour certification tests, or other procedures of similar effect." Service Canada labour certification is, therefore, prohibited for a temporary appointment. A hiring (advertising) process which is independent of a labour certification test or other procedure of similar effect\* is permissible for a temporary appointment under the NAFTA.

A university can institute a "Canadians-first"\*\* hiring policy and not be in conflict with provisions of Chapter 16 or any other provisions of the NAFTA. The university would simply be exerting its prerogative as an employer.

Should a decision be made, though, to offer a temporary appointment to a teacher who is a U.S. or Mexican citizen, then that person's entry to Canada and authorization to work will be facilitated through the provisions of Chapter 16 of the NAFTA.

\* A "procedure of similar effect" is an administrative or legal requirement which may have the consequence of delaying or preventing a person covered by Chapter 16 from engaging, or continuing to engage, in a covered profession, occupation, or activity. It does not include the immigration procedures established by Canada, the United States or Mexico: 1) to implement the provisions of Chapter 16 of the NAFTA, 2) to ensure compliance with general entry requirements relating to public health, safety, and national security.

\*\* The term "Canadians-first" refers to citizens and permanent residents of Canada.

**9. What happens when a university wishes to turn a temporary appointment under the NAFTA into a permanent appointment?**

The university must offer the person permanent/indeterminate employment. The applicant can then apply for permanent residence, and benefit from receiving points for 'arranged employment'. If they qualify as a skilled worker permanent resident, then a permanent residence visa will be issued.

**10. What Immigration procedures apply to American or Mexican teachers coming to Canada to undertake temporary appointments?**

Teachers require work permits to teach temporarily in Canada at a university, college or seminary. An American or Mexican citizen can apply for a work permit at a Canadian POE and must provide the following documentation:

- a) evidence of citizenship (passport or birth certificate);
- b) a letter or signed contract from the institution providing full details of the temporary appointment including:
  - the nature of the position offered;
  - arrangements for remuneration;
  - educational qualifications required; and
  - the duration of the appointment.

While not mandatory, for the purpose of further facilitating entry at the border, it is recommended that the letter or contract specify that "the offer of employment is for a temporary appointment consistent with the terms of the North American Free Trade Agreement";

c) evidence that the applicant holds at least a baccalaureate degree.

Applicants must, as well, be able to satisfy an immigration officer of general compliance with the requirements of the *Immigration and Refugee Protection Act* and Regulations, e.g., be in good health and have no criminal record.

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**Note:** There is a \$150.00 processing fee for a work permit.

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**11. What immigration procedures apply to Canadian teachers going to the United States and to Mexico to undertake temporary appointments?**

As mentioned earlier, one of the fundamental principles of the immigration chapter of the NAFTA is reciprocity. While the procedures at a United States or Mexican POE may not be exactly the same as ours, Canadians will be subject to exactly the same criteria for facilitated temporary entry under the NAFTA. Canadians should contact a U.S. POE or consulate or Mexican consulate for full details.

**12. Can persons who are denied temporary entry under the NAFTA appeal such decisions, and will reasons for denials be given?**

The NAFTA contains no provisions for a person to appeal a decision refusing entry because of non-compliance with entry requirements. In the event of a refusal to grant entry, officers will provide reasons for the refusal.

**13. Is there a means of assuring that Canadians, Americans and Mexicans are treated equally upon entry to the three countries?**

Yes. The immigration chapter of the NAFTA provides for a consultation procedure involving the participation of immigration officials of Canada, the United States and Mexico. In practice these officials meet regularly to harmonize their respective NAFTA procedures and to resolve problems relating to the on-going implementation of the chapter.

**LMO EXEMPT CODE (TEACHERS)**

Code C22

Persons who are engaged by post-secondary educational institutions (e.g., universities, community colleges and similar institutions) as:

1. exchange professors coming to Canada on a reciprocal basis;
2. guest lecturers who are invited by a post-secondary institution to give a series of lectures which does not comprise a complete academic course and is for a period of less than one academic term or semester;
3. persons coming as visiting professors for a period of not more than two academic years to take a position with a post-secondary institution and who retain their former position abroad (as this does not apply to Summer Student instruction, appropriate terms and conditions should be imposed).

**UNIVERSITY TEACHERS**

The duties of a university teacher include:

- teaching one or more subjects within a prescribed curriculum;
- preparing and delivering lectures to students;
- conducting seminars or laboratory sessions;
- stimulating and guiding class discussions;
- compiling bibliographies of specialized materials for outside reading assignment;
- preparing and administering examinations and grading answer papers;

- assigning and marking essays;
- directing research programs of graduate students;
- conducting research in a particular field of knowledge, and publishing findings in books or professional journals;
- serving on faculty committees concerned with such matters as curriculum revision, academic planning and degree requirements;
- advising students on academic and other matters;
- assisting students with the conduct of various scholarly, cultural and political clubs or societies;
- providing professional consultative services to government, industry and private individuals;
- attending regional and international conferences dealing with academic specializations; and
- teaching as required in an adult education or university extension program, by means of correspondence courses or night classes.

Teachers at this level usually specialize in one subject, or two or more related subjects.

## **Appendix H Sales**

R187 defines business visitors as those who are not entering the labour market. R187(2)(c) gives the specific example of persons selling goods and services, who meet that definition as long as they are not selling to the general public. Potential buyers NOT classified as the 'general public' include wholesalers, retailers, corporations and institutions. Some examples of sales situations are given below:

### **Sales negotiations**

A business visitor may sell, take orders or negotiate contracts for goods (or services) during the same visit to Canada. If, however, the goods are delivered or the services are provided during the same visit to Canada, a work permit is required.

Foreign sales representatives and agents may not sell predominantly Canadian-made goods or services provided by a Canadian without a work permit. The issue of whether the goods are made in Canada or outside relates to the issue of entry into the labour market. If a product is manufactured in Canada, and sold in Canada, there is no reason that a Canadian should not be the one to sell the product. On the other hand, if a product is manufactured in, for example, Africa, and then sold to a Canadian retailer, wholesaler or institution, this would be considered a normal international business practice. A foreign salesperson should be able to sell their products in another country. There is no entry into the labour market. Sales negotiations are considered in the same way; as not entailing entry into the labour market.

### **Sales to the general public**

Persons engaging in regular sales to the general public require a work permit issued on the basis of an LMO.

### **Direct sales organizations**

Direct sales companies such as Amway/Quixstar, Mary Kay or Avon Cosmetics and Homes Interiors & Gifts Company will send individuals to prospect and recruit Canadian salespeople who will sell the company's products. These individuals may enter to give training and motivation sessions, and assist recruits in making their first presentations and sales to Canadian consumers. They may carry with them, when crossing the border, training material, promotional material such as brochures and catalogues, and various samples of the products which are to be used for demonstrations and training purposes only and are not to be sold in Canada. These people may be authorized to enter Canada as business visitors.

R187 allows foreign salespeople to sell products directly, provided that the products are non-Canadian products and that they are not delivered or available to the buyer at the time of the sale (on the same trip); the seller being able only to take orders for the products at the time of the sale.

### **Conventions**

For events held by the following organizations:

- Associations;
- Corporations, and
- Governments.

Events can be one of the following:

- association meetings, conventions and congresses;
- corporate meetings;
- incentive meetings, or
- trade shows, exhibitions and consumer shows.

### **Canadian Events**

A Canadian event is one being held by an organization which is located in Canada. The organization must be actively doing business in Canada.

A Canadian event may be conducted by a branch or subsidiary of a foreign based organization.

### **Foreign Events**

A foreign event is one being held by an organization which is located in a country other than Canada. The organization must conduct its business from a location outside Canada.

### **Event Planners for a Foreign Organization**

Permanent employees of **foreign organizations** planning events in Canada **do not** require work permits if they are:

- executive organizing committee members, or
- administrative support staff.

Persons working under contract for **foreign organizations** planning events in Canada **do not** require work permits if they are:

- event planners;
- exhibit managers;
- professional conference organizers;
- destination marketing company personnel, or
- event accommodation consultants.

### **Event Planners for a Canadian Organization**

Foreign nationals working under contract for **Canadian organizations** planning events in Canada **require** Work permits and an LMO.

### **Exhibitors**

Booth personnel, display stand personnel, and booth owners may enter Canada as business visitors to display or demonstrate goods at an event without work permits.

### **Selling goods**

Exhibitors of all nationalities who want to sell foreign made goods to the **general public** and deliver them at the time of the sale require work permits. Work permits for this purpose are LMO exempt under R205(a) C10 (significant economic benefits). There are benefits deriving from their entry in that they hire Canadian services and purchase accommodations etc.

Exhibitors who are citizens of the U.S. and Mexico who merely take orders for goods from the **general public** that will be delivered to the customer after the seller returns to their home country do not require work permits. They can benefit from treatment as business visitors under NAFTA.

Exhibitors who take orders for foreign made goods on a **business-to-business** basis at trade shows that are attended by corporations, wholesalers, retailers, and institutions do not require work permits. They are considered to be business visitors.

Exhibitors selling **Canadian-made** goods require work permits. Work permits for this purpose require an LMO.

### **Setting up display**

Company employees will require work permits to install and dismantle a booth or display if it is larger than a portable pop-up. Work permits for this purpose do not require an LMO

### **Contract Service Providers**

Foreign service providers who are working under contract for exhibitors require work permits. This includes persons who are involved in activities such as:

- the installation and dismantling of a show or exhibit;
- audio video, staging, or show decorating services, and
- lighting, carpet laying, carpentry, or electrical work.

All foreign service providers working under contract to **Canadian** events require work permits. Work permits for this purpose require an LMO.

Foreign service providers who are supervisory personnel working under contract for **foreign** events require work permits. Work permits for this purpose do not require an LMO, as long as the supervisors will be directing local hires.

Exhibitors are expected to hire Canadians to do all the labour on the convention floor.

#### **Entertainers**

Entertainers contracted to work at events do not need work permits if they are performing at venues that are not bars, restaurants, or clubs.

#### **Delegates**

Delegates, attendees, and board members are considered to be visitors.

## Appendix I Guide to Mergers and Acquisitions

### Substantive Issues

Corporate mergers and acquisitions may trigger work permit related issues for foreign workers employed at Canadian target companies.

There are two types of temporary foreign workers employed by Canadian companies and corporate restructurings affect these workers differently:

- **LMO:** issued by Service Canada allowing Canadian employers to hire foreign nationals in a variety of occupations. The LMO application requires the employer to abide by a prevailing wage, specific job location, and specific job duties. Therefore, each LMO is tailored to fit a particular job offer by a particular employer.
- **intra-company transferees:** requires a qualifying corporate relationship between the foreign and Canadian entity. Therefore, if a qualifying relationship ceases to exist in the wake of a corporate restructuring, there is no basis for the emerging Canadian entity to continue to employ a foreign national worker as an intra-company transferee.

### Corporate Restructurings

The most common corporate restructurings are acquisitions, mergers, and consolidations:

- **Acquisitions:** the takeover of the controlling interest of one entity by another and both entities retain their legal existence after the transaction.
- **Mergers:** the joining together of two entities into a single entity called a surviving entity; the surviving entity assumes all of the assets and liabilities of the merged entities, i.e. it purchases the stock, assets and liabilities of the other entities, absorbing them into one corporate structure.
- **Consolidations:** the joining together of two or more entities to create a new entity; the new entity assumes the assets and liabilities of the original companies which cease to exist.

The specific characteristics of the restructuring will dictate the resulting action that is required by the employer and the foreign national worker.

The main consideration for workers who require a LMO is whether the employer can be seen to be a "successor in interest" employer, or, in the case of an acquisition, the same employer.

The main consideration for intra-company transferee workers is whether a qualifying relationship continues to exist between the foreign entity and the Canadian entity.

### Definition of Employer

An employer can be defined as a person, firm, corporation, contractor, or other association or organization in Canada which:

- Indicates the intention to have an employer-employee relationship with a person who is a temporary foreign worker, and,
- Has an employer-employee relationship with respect to employees, as indicated by the fact that it may hire, fire, pay, supervise, or otherwise control and direct the employee in the material details of how their work is to be performed.

### Definition of "Successor In Interest"

To establish a "successor in interest", the successor entity must demonstrate that it has substantially assumed the interests and obligations, assets and liabilities of the original owner, and continues to operate the same type of business as the original owner.

If some assets or liabilities are not assumed by the successor entity after the corporate restructuring, then the "successor in interest" may not exist. This may occur when a "shelf corporation" is created, and a

minimal asset or liability is left with a corporation. "Shelf corporations" have no activity. It is then usually sold to an individual who would prefer to have an aged corporation rather than a new one. A business entity that is created through a process other than incorporation (such as a limited liability company) is simply called a "shelf company".

Some economic determinants for the purposes of establishing whether an entity has assumed the required interests, obligations, assets, and liabilities of the previous owner.

Assets include, but are not limited to:

- Current assets, such as cash, short-term investments, receivables, inventories, prepaid expenses;
- Long-term investments, such as securities, pension funds;
- Property, plant and equipment;
- Human resources;
- Intangible assets, such as patents, licenses, trademarks, and software development costs.

Liabilities include, but are not limited to:

- Current liabilities, such as notes and accounts payable, short term debts, advances from customers on contracts, accrued compensation and benefits, income tax payable;
- Long-term Liabilities, such as the issuance of bonds, long-term lease obligations, deferred income tax liabilities, service or product warranties, and other contingencies.

#### **Workers that require LMOs**

With respect to mergers and acquisitions, changes in ownership structure should not require a new LMO application if the new entity continues to be the worker's employer, provided the new owner assumes the previous owner's duties and liabilities, including those of the prior owner related to the filing of LMO applications, i.e. where a successor in interest can be demonstrated.

It would be in the best interest of the temporary foreign worker to apply for a new work permit to reflect the name of the new entity.

If some assets or liabilities are not assumed by the successor entity after the corporate restructuring, then a "successor-in-interest" may not exist. As a result, the new entity will have to apply for a new LMO and the worker for a new work permit.

#### **Workers Requiring LMOs: Documentation to Support New Work Permit**

In order for a new work permit reflecting the new corporate name to be issued, the following documentation should be submitted:

- A statutory declaration signed by an authorized officer of the corporation attesting to the nature of the restructuring and successor in interest
- Copy of a corporate press release or announcement confirming the corporate change.

Where a "successor in interest" exists, a temporary foreign worker who requires a LMO would benefit from Regulation 186(u) while the application to vary terms and conditions was being decided on by CPC Vegreville, as long as the application for the renewal was made before the expiry of the existing work permit.

It would be in the best interest for affected workers to submit applications to renew their work permits to reflect the new corporate name within 90 days of the closing of a deal. Cost recovery fees would apply.

#### **LMO Example**

A small company plans to merge with a large company. After the merger, the small company, which employs many workers who require a LMO, will cease to exist. After the merger, the workers requiring a LMO, who were employed by the small company, are now working for the large company under the same conditions. The large company takes over the small company's assets and liabilities. Because of this, the large company becomes "successor in interest", i.e. substantially succeeds to the interests and

obligations, assets and liabilities of the small company. Therefore, the workers from the small company do not need new LMOs but should apply for new work permits to reflect the name of the new owner.

#### **Intra-company Transferees**

The intra-company transferee category allows the transfer of certain employees to Canada from qualifying foreign entities for temporary periods. To qualify, the foreign employee must take a position with the Canadian entity in an executive, senior managerial or specialized knowledge capacity. Also, a qualifying corporate relationship must exist between the Canadian and foreign entities.

The original foreign entity can cease to exist in an intra-company transferee situation, as long as there is another entity with a qualifying relationship to the Canadian entity.

The terms and conditions of the intra-company transferee's work permit will continue to be valid if the Canadian employer is still doing business either directly or through a parent, branch, affiliate, or subsidiary in another country to which the employee can reasonably be expected to be transferred at the end of their assignment in Canada. Under certain circumstances joint ventures also qualify. Where this is the case, the intra-company transferee may apply to have their work permit renewed to reflect the name of the new owner and continue to work for the Canadian entity.

#### **Intra-company Transferees: Documentation to Support Renewed Work Permit**

In order for a new work permit reflecting the new corporate name to be issued for an intra-company transferee the worker should present the following documentation:

- A statutory declaration signed by an authorized officer of the corporation attesting to the nature of the restructuring and qualifying corporate relationship;
- Copy of a corporate press release or announcement confirming the corporate change.

Where a qualifying relationship exists an intra-company transferee worker would benefit from Regulation 186(u) while the application to vary terms and conditions was being decided on by CPC-Vegreville, as long as the application for the renewal was made before the expiry of the existing work permit.

It would be in the best interest for affected workers to submit applications to renew their work permits to reflect the new corporate name within 90 days of the closing of a deal. Normal cost recovery fees would apply.

#### **Intra-company Examples**

Consider the situation where a foreign corporation sells its Canadian subsidiary to a Canadian company. If all of the employees of the former subsidiary are transferred to the purchasing Canadian company the foreign intra-company transferees would no longer be eligible for consideration in the intra-company transferee category since a qualifying relationship would no longer exist between a foreign and a Canadian entity.

In the situation where a Canadian and foreign subsidiary were both purchased by a third entity, a qualifying relationship could still be shown even when the ownership changes, provided the Canadian and foreign entity meet the definitions of parent, branch, affiliate or subsidiary.

#### **Sample Employer Information**

The sample employer information (see below) may assist officers in determining whether a new work permit, and LMO if applicable, is required in cases where there is a change in the name of the employer.

**SAMPLE**

**Confirmation: Change of Employer Name**

*(To be completed by Employer for confirmation of change of corporate name or legal structure)*

<b>Section 1: Particulars of Current Employee</b>	
Name:	
Address:	
Client ID No.:	
Occupation:	
Location of Employment:	
Date of Issuance of work permit:	
Date of Expiry of work permit:	

<b>Section 2: Particulars of Current Employer (Prior to Change of Name)</b>	
Name:	
Address:	
Phone:	
RCN:	

<b>Section 3: Particulars of Employer Change of Name:</b>	
Name:	
Address:	
Phone:	
RCN:	
Effective Date of Change of Employer's name:	
Location of Employment:	
Employer Contact Representative and Contact Information:	

<b>Section 4: Reason for Name Change:</b>
<i>Specify reason for name change. Guidance for completion of this section is provided on the reverse side.</i>
<ul style="list-style-type: none"><li>• Acquisition</li><li>• Merger</li><li>• Consolidation</li><li>• Other</li></ul>

Briefly describe reasons change in name or legal below and attach the following documentation confirming the change described above for the following categories of workers:

**Intra-company Transferee Employees:**

1. Statutory declaration signed by an authorized officer of the corporation attesting to the nature of the restructuring and qualifying corporate relationship.
2. A corporate press release or announcement confirming the change.

**LMO Employees:**

1. Statutory Declaration signed by an authorized officer of the corporation attesting to successor in interest.
2. A corporate press release or announcement confirming the change.

**Rationale for Name Change:**

I certify that the information provided above is correct	
	<i>Signature</i>
Name:	

## **Appendix J Temporary Foreign Worker Units: Expanded Services**

### **Background**

Bringing a temporary foreign worker to Canada requires the interpretation and application of the *Immigration and Refugee Protection Act* (IRPA) by three different federal government departments. Service Canada is mandated to assess the impact of the foreign worker's entry into the Canadian labour market. Citizenship and Immigration Canada, International Region assesses potential foreign workers and processes temporary resident visas at a visa post abroad. The Canadian Border Services Agency examines these foreign nationals at our borders. This process can be difficult for an employer to navigate when seeking to hire a foreign national as an employee.

The first Temporary Foreign Worker Unit (TFWU) at an inland CIC was opened in Montreal in 2003 to inform employers of the requirements to be met when bringing a foreign worker to Canada. In September of 2006, in response to a booming economy in the western provinces of B.C. and Alberta, two more Temporary Foreign Worker Units, based on the Montreal model, opened their doors in Vancouver and Calgary as pilot projects. In addition to providing advice, TFWU staff coach clients and stakeholders through public-education sessions as well as employment-sector workshops and conferences.

### **Current Status**

#### **Service expanded to include all regions of Canada**

Following the success of the existing three units, the Minister of Citizenship and Immigration decided to expand the project. Effective February 2008, two additional offices were opened, one in Moncton (providing service to the Atlantic Region) and one in Toronto (providing service to the Ontario Region). In addition, the Calgary office was expanded to provide service to the whole Prairies and Northern Territories Region. As a result, each region now has a dedicated Temporary Foreign Worker Unit.

#### **National Working Group**

A national working group has been created which includes representation from all regions as well as NHQ. The working group also includes representation from our Service Delivery Partners, CBSA and HRSDC. The purpose of the working group is to foster enhanced horizontal and vertical communication (internally as well as externally), to create consistent tools and products, and to ensure that best practices are shared and put into operation in each of the units.

#### **Liaison Desks at NHQ:**

The **OMC Liaison Desk** will provide functional guidance to Temporary Foreign Worker Units and regional offices. It will also:

- review and approve all products and tools;
- conduct national reviews to establish best practices and service standards;
- coordinate training opportunities for TFWU staff;
- provide opportunities for stakeholder evaluation to ensure ongoing client service; and
- provide a centralized conduit for information sharing with service delivery partners, including International Region.

The **International Region, Temporary Foreign Worker Desk** will focus on:

- liaison and outreach with domestic partners and stakeholders;

- collaboration with OMC and domestic regions to develop outreach tools and products for use overseas;
- coordination of information sharing with domestic and international partners;
- development of TFW-related policy, in partnership with OMC, Immigration Branch and other NHQ partners, CIC domestic regions, HRSDC/Service Canada and CBSA;
- operational guidance to missions to enhance quality and consistency with TFW decision making; and
- quality-assurance initiatives at missions overseas.

#### **Increased Communication**

These new initiatives have resulted in increased communication and cooperation both within CIC and between the relevant service-delivery partners. Ongoing monitoring, consistent tools and thorough data tracking are now in place to ensure CIC's ongoing ability to support employers. The creation of centralized desks on Temporary Foreign Workers, for both domestic and international regions, allows for centralized coordination and quality assurance initiatives. It also ensures that there are no gaps in the communications continuum from the initial examination abroad to the issuance of the work permit at the Canadian Port of Entry. Regional Temporary Foreign Worker Units play a significant role not only in educating and informing employers, but also in facilitating their active participation in the process.

#### **Enhanced Federal/Provincial Relationships**

Finally, as the provinces play an increasingly active role in the selection of foreign workers, the TFWUs have become a significant resource for our provincial partners. Many provinces now have Federal/Provincial agreements that include annexes on Temporary Foreign Workers. Federal/Provincial working groups at the regional level enable an integrated approach to ensuring that the rights and responsibilities of both employers and workers are understood and met.

#### **Contact**

For further information on the content of this document, please contact Operational Management and Coordination Branch at [OMC-GOC-Immigration@clc.gc.ca](mailto:OMC-GOC-Immigration@clc.gc.ca).

Briefly describe reasons change in name or legal below and attach the following documentation confirming the change described above for the following categories of workers:

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2. A corporate press release or announcement confirming the change.

**LMO Employees:**

1. Statutory Declaration signed by an authorized officer of the corporation attesting to successor in interest.
2. A corporate press release or announcement confirming the change.

**Rationale for Name Change:**

I certify that the information provided above is correct	
	<i>Signature</i>
Name:	



- collaboration with OMC and domestic regions to develop outreach tools and products for use overseas;
- coordination of information sharing with domestic and international partners;
- development of TFW-related policy, in partnership with OMC, Immigration Branch and other NHQ partners, CIC domestic regions, HRSDC/Service Canada and CBSA;
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# NATIONAL OCCUPATIONAL CLASSIFICATION MATRIX 2006

	1 BUSINESS, FINANCE AND ADMINISTRATION OCCUPATIONS	2 NATURAL AND APPLIED SCIENCES AND RELATED OCCUPATIONS	3 HEALTH OCCUPATIONS	4 OCCUPATIONS IN SOCIAL SCIENCE, EDUCATION, GOVERNMENT SERVICE AND RELIGION
0 MANAGEMENT OCCUPATIONS	011 Administrative Services Managers 012 Managers in Financial and Business Services 013 Managers in Communication (Except Broadcasting)	021 Managers in Engineering, Architecture, Science and Information Systems	031 Managers in Health, Education, Social and Community Services 041 Managers in Public Administration	
SKILL LEVEL A Occupations usually require university education.	Major Group 11 PROFESSIONAL OCCUPATIONS IN BUSINESS AND FINANCE 111 Auditors, Accountants and Investment Professionals 112 Human Resources and Business Service Professionals	Major Group 21 PROFESSIONAL OCCUPATIONS IN NATURAL AND APPLIED SCIENCES 211 Physical Science Professionals 212 Life Science Professionals 213 Civil, Mechanical, Electrical and Chemical Engineers 214 Other Engineers 215 Architects, Urban Planners and Land Surveyors 216 Mathematicians, Statisticians and Actuaries 217 Computer and Information Systems Professionals	Major Group 31 PROFESSIONAL OCCUPATIONS IN HEALTH 311 Physicians, Dentists and Veterinarians 312 Ophthalmologists, Chiropractors and Other Health Diagnosing and Treating Professionals 313 Pharmacists, Dietitians and Nutritionists 314 Therapy and Assessment Professionals 315 Nurse Supervisors and Registered Nurses	Major Group 41 PROFESSIONAL OCCUPATIONS IN SOCIAL SCIENCE, EDUCATION, GOVERNMENT SERVICES AND RELIGION 411 Judges, Lawyers and Quebec Notaries 412 University Professors and Assistants 413 College and Other Vocational Instructors 414 Secondary and Elementary School Teachers and Educational Counsellors 415 Psychologists, Social Workers, Counsellors, Clergy and Probation Officers 416 Policy and Program Officers, Researchers and Consultants
SKILL LEVEL B Occupations usually require college education or apprenticeship training.	Major Group 12 SKILLED ADMINISTRATIVE AND BUSINESS OCCUPATIONS 121 Clerical Supervisors 122 Administrative and Regulatory Occupations 123 Finance and Insurance Administrative Occupations 124 Secretaries, Records and Transcriptionists	Major Group 22 TECHNICAL OCCUPATIONS RELATED TO NATURAL AND APPLIED SCIENCES 221 Technical Occupations in Physical Sciences 222 Technical Occupations in Life Sciences 223 Technical Occupations in Civil, Mechanical and Industrial Engineering 224 Technical Occupations in Electronics and Electrical Engineering 225 Technical Occupations in Architecture, Drafting, Surveying and Mapping 226 Other Technical Inspectors and Regulatory Officers 227 Transportation Officers and Controllers 228 Technical Occupations in Computer and Information Systems	Major Group 32 TECHNICAL AND SKILLED OCCUPATIONS IN HEALTH 321 Medical Technologists and Technicians (Except Dental Health) 322 Technical Occupations in Dental Health Care 323 Other Technical Occupations in Health Care (Except Dental)	Major Group 42 PARAPROFESSIONAL OCCUPATIONS LAW, SOCIAL SERVICES, EDUCATION AND RELIGION 421 Paralegals, Social Services Workers and Occupations in Education and Religion, n.e.c.
SKILL LEVEL C Occupations usually require secondary school and/or occupation-specific training.	Major Group 14 CLERICAL OCCUPATIONS 141 Clerical Occupations, General Office Skills 142 Office Equipment Operators 143 Finance and Insurance Clerks 144 Administrative Support Clerks 145 Library, Correspondence and Related Information Clerks 146 Mail and Message Distribution Occupations 147 Recording, Scheduling and Distributing Occupations		Major Group 34 ASSISTING OCCUPATIONS IN SUPPORT OF HEALTH SERVICES 341 Assisting Occupations in Support of Health Services	
SKILL LEVEL D				

The National Occupational Classification (NOC) matrix provides an overview of the classification at the minor group level. It also illustrates how the NOC is accessible on the basis of skill level, skill type, or on a combination of these two criteria. The four skill level categories are listed on the left side of the matrix, while nine skill type categories are listed across the top. The tenth skill type category (0 Management Occupations) is organized across the top of the matrix. In most cases, each matrix cell consists of a major group.

5	6	7	8	9
OCCUPATIONS IN ART, CULTURE, RECREATION AND SPORT	SALES AND SERVICE OCCUPATIONS	TRADES, TRANSPORT AND EQUIPMENT OPERATORS AND RELATED OCCUPATIONS	OCCUPATIONS UNIQUE TO PRIMARY INDUSTRY	OCCUPATIONS UNIQUE TO PROCESSING, MANUFACTURING AND UTILITIES
Major Group 00 SENIOR MANAGEMENT OCCUPATIONS 001 Legislators and Senior Management				
051 Managers in Art, Culture, Recreation and Sport	061 Sales, Marketing and Advertising Managers 062 Managers in Retail Trade 063 Managers in Food Service and Accommodation 064 Managers in Protective Service 065 Managers in Other Services	071 Managers in Construction and Transportation 072 Facility Operation and Maintenance Managers	081 Managers in Primary Production (Except Agriculture)	091 Managers in Manufacturing and Utilities
Major Group 51 PROFESSIONAL OCCUPATIONS IN ART AND CULTURE 511 Librarians, Archivists, Conservators and Curators 512 Writing, Translating and Public Relations Professionals 513 Creative and Performing Artists				
Major Group 52 TECHNICAL AND SKILLED OCCUPATIONS IN ART, CULTURE, RECREATION AND SPORT 521 Technical Occupations in Libraries, Archives, Museums and Art Galleries 522 Photographers, Graphic Arts Technicians and Technical and Co-ordinating Occupations in Motion Pictures, Broadcasting and the Performing Arts 523 Announcers and Other Performers 524 Creative Designers and Craftpersons 525 Athletes, Coaches, Referees and Related Occupations	Major Group 62 SKILLED SALES AND SERVICE OCCUPATIONS 621 Sales and Service Supervisors 622 Technical Sales Specialists 623 Wholesale Trade Insurance and Real Estate Sales Occupations and Buyers 624 Chefs and Cooks 625 Butchers and Bakers 626 Police Officers and Firefighters 627 Technical Occupations in Personal Service	Major Group 72/73 TRADES AND SKILLED TRANSPORT AND EQUIPMENT OPERATORS 721 Contractors and Supervisors, Trades and Related Workers 722 Supervisors, Railway and Motor Transportation Occupations 723 Mechanists and Related Occupations 724 Electrical Trades and Telecommunication Occupations 725 Plumbers, Pipefitters and Gas Fitters 726 Metal Forming, Shaping and Erecting Trades 727 Carpenters and Cabinetmakers 728 Masonry and Plastering Trades 729 Other Construction Trades 731 Machinery and Transportation Equipment Mechanics (Except Motor Vehicle) 732 Automotive Service Technicians 733 Other Mechanics 734 Upholsterers, Tailors, Shoe Repairers, Jewellers and Related Occupations 735 Stationary Engineers and Power Station and System Operators 736 Train Crew Operating Occupations 737 Crane Operators, Drivers and Blasters 738 Printing Press Operators, Commercial Divers and Other Trades and Related Occupations, n.e.c.	Major Group 82 SKILLED OCCUPATIONS IN PRIMARY INDUSTRY 821 Supervisors, Logging and Forestry 822 Supervisors, Mining, Oil and Gas 823 Underground Miners, Oil and Gas Drillers and Related Workers 824 Logging Machinery Operators 825 Contractors, Operators and Supervisors in Agriculture, Horticulture and Aquaculture 826 Fishing Vessel Masters and Skippers and Fishermen/women	Major Group 92 PROCESSING, MANUFACTURING AND UTILITIES SUPERVISORS AND SKILLED OPERATORS 921 Supervisors, Processing Occupations 922 Supervisors, Assembly and Fabrication 923 Central Control and Process Operators in Manufacturing and Processing
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	Major Group 66 ELEMENTAL SALES AND SERVICE OCCUPATIONS 661 Cashiers 662 Other Sales and Related Occupations 664 Food Counter Attendants, Kitchen Helpers and Related Occupations 665 Security Guards and Related Occupations 666 Cleaners 667 Other Occupations in Travel, Accommodation, Amusement and Recreation 668 Other Elemental Service Occupations	Major Group 76 TRADES HELPERS, CONSTRUCTION LABOURERS AND RELATED OCCUPATIONS 761 Trades Helpers and Labourers 762 Public Works and Other Labourers, n.e.c.	Major Group 86 LABOURERS IN PRIMARY INDUSTRY 861 Primary Production Labourers	Major Group 96 LABOURERS IN PROCESSING, MANUFACTURING AND UTILITIES 961 Labourers in Processing, Manufacturing and Utilities

PROVINCE OF BRITISH COLUMBIA

## **FOIPA REQUEST:**

- JTI – 00124 Training Manual
- Policy, BC Provincial Nominee Program

November 21, 2011

## **Training for BC PNP Decision Makers**

The training of BC PNP officers (program advisors and program managers) is primarily on-the-job training conducted by experienced senior program officials. A summary of training modules for program officers is attached.

Training in decision making is accomplished principally using the case study method where trainees review, analyze and discuss previously decided cases and, subsequently, active applications, with their trainer.

During the course of this training, new officers will develop their knowledge of BC PNP requirements and procedures, information sources and techniques for conducting due diligence, relevant federal immigration requirements and programs, and standards for decision making.

Trainees are provided with relevant policy manuals and other documents for study and reference; copies of these materials are provided in this package.

The scope and period of training depends on a new officer's prior work experience and training that are directly relevant to the BC PNP.

For example, training for an individual who had previously worked as a Canadian visa officer deciding economic immigration program applications would differ from that for someone without this type of background.

However, all new program officers must satisfactorily complete a 6 month probationary period of employment before they can be confirmed as permanent employees of the BC PNP.

In addition to on-the-job training, the following training is provided in a classroom setting:

- BC PNP Overview (enabling legislation; federal Provincial Nominee regulations; program objectives, program components and requirements)
- Introduction to the Immigration and Refugee Protection Act and Regulations (delivered by Citizenship and Immigration Canada)
- Administrative Fairness for Decision Makers (delivered by Ministry of the Attorney General)

Copies of materials related to this introductory training are included in this package.

## **BC PNP In-House Training Schedule for New Advisors – Business Immigration**

- Module 1: Orientation / Introduction to BC PNP
- Module 2: PNP Business Immigration Stream
- Module 3: BC PNP/CIC Website Orientation & PNP application forms
- Module 4: Immigration and Refugee Protection Act and Regulations and Inadmissibility (CIC)
- Module 5: NAICS Classification and Online Resources
- Module 6: PNP Database and Introduction to shared drive
- Module 7: Filing and file security
- Module 8: Visa Offices, Port of Entry and CIC Documents
- Module 9: Financial Documents and Country Specific Documents
- Module 10: Work Permit Extensions
- Module 11: Business Plan review
- Module 12: Initial Review of Application packages
- Module 13: Deficiency letters and Interviews
- Module 14: Application Assessment for Work Permit (for Confirmation of Eligibility)
- Module 15: Performance Agreement, Business Plan Change and Performance Agreement Addendum
- Module 16: Refusals and Refusal Letters
- Module 17: In-Box Duty Introduction
- Module 18: Fast Track Nomination
- Module 19: Administrative Processes – Pre-nomination and Post-nominations
- Module 20: Monitoring Business Performance
- Module 21: Assessment for Nomination (or for Deposit Refund) and Site visit
- Module 22: Investment and Immigration Seminar and Outreach activities
- Module 23: File processing walkthrough (for Confirmation of Eligibility phase and Acceptance phase)

## **BC PNP In-House Training Schedule for New Advisors – Strategic Occupations**

- Module 1: Orientation / Introductions
- Module 2: National Occupation Classification
- Module 3: PNP Skilled Worker Category
- Module 4: International Graduate & Post-Grad Categories
- Module 5: Entry Level and Semi-Skilled Category
- Module 6: BC PNP/CIC Website Orientation & PNP application forms
- Module 7: Immigration and Refugee Protection Act and Regulations
- Module 8: Inadmissibility (CIC)
- Module 9: Online resources
- Module 10: PNP Database
- Module 11: Filing and file security
- Module 12: Federal Immigration / Foreign Worker Programs
- Module 13: Visa Offices, Port of Entry, & CIC Documents
- Module 14: Work permit extensions and CIC Inland Operations
- Module 15: Introduction to BC PNP Policy Manual
- Module 16: Administrative Decision Making and Procedural Fairness / Interviews
- Module 17: Refusals and Refusal Letters
- Module 18: Introduction to shared drive and rationales
- Module 19: On Duty Introduction
- Module 20: Administrative Processes – Pre-nomination
- Module 21: Administrative Processes – Post-nomination
- Module 22: File processing walkthrough

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# **BC PROVINCIAL NOMINEE PROGRAM**

## **POLICY MANUAL**

### *STRATEGIC OCCUPATIONS CATEGORIES*

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Economic Immigration Program  
Ministry of Jobs, Tourism and Innovation<sup>1</sup>

November 21, 2011

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<sup>1</sup> Transferred from the former Ministry of Regional Economic and Skills Development, March 14, 2011.

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## BC PNP Policy Manual: Strategic Occupations Categories

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**Subject:**

Authority and Responsibility

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**Authority**

The BC Provincial Nominee Program (BC PNP) operates under the authority of Annex C of the *Agreement for Canada-British Columbia Co-operation on Immigration, 2004*. This bilateral agreement is authorized under section 8 of the federal *Immigration and Refugee Protection Act* (2001, c. 27) and section 5 of the provincial *Ministry of International Business and Immigration Act* (RSBC 1996)

**Regulations**

The BC PNP is subject to section 87 of the *Immigration and Refugee Protection Regulations* governing the Provincial Nominee class.

**Administrative Responsibility**

The Ministry of Advanced Education and Labour Market Development (the *PNP Ministry*) has responsibility to administer the BC PNP on behalf of the Government of British Columbia.

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**Subject:**

Public Information

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**Policy:**

Selection criteria, requirements, application procedures and forms are posted on the BC PNP website: [www.WelcomeBC.ca/PNP](http://www.WelcomeBC.ca/PNP)

In the event of a conflict between information in the BC PNP Policy and Procedures Manual and the BC PNP website, the current website shall be considered correct.

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**Subject:**

Objectives, Principles, and Scope

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**Background and Objectives:**

The British Columbia Provincial Nominee Program (BC PNP) provides a mechanism to increase the economic benefits of immigration to British Columbia based on industrial and economic priorities, taken from Objective 1.1 of Annex C, and current labour market conditions.

In addition to supporting BC employers facing critical skills shortages, the BC PNP supports economic growth in the province by attracting skills in high demand to BC.

The BC PNP facilitates the recruitment of workers in high demand who create immediate and future significant economic benefits for the province through the BC PNP Strategic Occupations category.

Individuals approved as provincial nominees can apply to Citizenship and Immigration Canada to become permanent residents of Canada and will receive expedited processing of their permanent resident applications.

---

**Principles**

- Consistent, transparent decision making
  - Administrative Fairness for Applicants and Employers
  - Preservation of the integrity of Canada's Immigration program
- 

**Policy**

The BC PNP policy manual applies to all decisions made on or about applications submitted to the BC PNP for consideration under the Strategic Occupations category.

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**Subject:**

Confidentiality and Security of Information

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**Policy:**

Information received by the BC PNP from applicants (nominees and employers) is confidential unless it is known to be public information. However, applicants are also required to authorize the exchange of some specific information for the purposes of assessing the BC PNP application.

Some information provided by the employer applicant may involve commercial or trade secrets the improper release of which could cause the employer economic harm. Confidential information must not be divulged to anyone other than the person(s) who are authorized by statute, regulation or legal consent (Information Release Form) to receive the information.

BC PNP staff who are in doubt as to whether certain information is confidential must obtain approval from the Program Manager or the applicant (employer or nominee) who is the subject of the information (e.g. employment history from the nominee applicant, or profits, revenues or tax records from the employer applicant) before disclosing it.

Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply to PNP staff after an employment relationship with the program ceases.

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**Subject:**

Correspondence Signatories

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**Policy:**

Nomination, Acceptance and Refusal:

The Program Director, or designate, shall sign all Nomination Certificates and Letters of Acceptance. Letters of Refusal are signed by the Program Advisor assigned to review the application.

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**Subject:**

Administrative (Procedural) Fairness

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**Background and Objectives:**

Whenever the legal rights of an individual may be affected by officials exercising legal decision-making authority, there is an expectation that the decision will be made in accordance with the principles of administrative or "procedural" fairness.

In the BC PNP, administrative fairness means:

- No potential applicant is denied *reasonable* access to public information about the program. *Reasonable* access may be provided electronically through the program website, in hard copy available upon request, or through electronic or telephonic correspondence with the inquirer;
- All enquiries and applications are processed without unwarranted delay;
- No application is refused or closed until the Program Representative is satisfied the application does not meet the program requirements;
- The decision-maker always acts in a manner which is unbiased, fair and open-minded.

---

**Policy**

BC PNP staff shall adhere to the principle of Administrative Fairness in the review of all applications.

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**Subject:**

Administrative Fairness in Refusing Applications

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**Background and Objectives:**

Consistency and clarity in decision-making are core principles of the BC PNP. The BC PNP seeks to make available as much information as possible to applicants on the assessment criteria for applications, as well as information on the decision-making process.

An application will be reviewed by a Program Advisor and a Program Manager, before a decision is rendered on an application. At each stage, the employer applicant or nominee applicant may be consulted for more information.

In the case of a refusal of an application, the applicant(s) must be informed of the reasons for refusal.

There is no formal appeal process for BC PNP applications. It is critical to the success and integrity of the BC PNP that the principles of administrative fairness are strictly adhered to on each file in that the applicant has the right to know the reasons for the refusal and to have the opportunity to challenge these reasons.

---

**Policy:**

The Program Advisor or Program Manager shall inform the employer applicant and/or the nominee applicant, as appropriate in the circumstances, in writing of the reasons for refusing the application.

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**Subject:**

Administrative Fairness in Refusing Applications – Onus on Applicant

---

**Background and Objectives:**

While it is the responsibility of the Program Advisor to thoroughly assess the information submitted in a PNP application before rendering a decision on the application, it is always the responsibility solely of the applicant, whether the nominee or the employer, to provide full and correct information to allow the Program Advisor to properly assess the application.

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**Policy:**

The onus is on the Applicant to provide full and correct information in the application.

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**Subject:**

Reconsidering a Refused Application

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**Policy:**

In the case of a refusal of an application, the applicant(s) must be informed of the reasons for refusal and be given the opportunity to refute these reasons by submitting new information.

Where new information warrants reconsideration of the refusal decision the Program Advisor or Program Manager must determine, based on the circumstances at hand, whether the existing file should be re-opened or whether a new application is required. The Procedures section of the Manual describes this process.

The Program Advisor or Program Manager, in consultation with the Program Advisor, will decide whether new information warrants reconsideration of the refusal decision.

The Program Advisor or Program Manager will advise the applicant(s) in writing either that the refusal decision stands or next steps to re-open or submit a new application.

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**Subject:**

Documentation of Decisions

---

**Background and Objectives:**

The principle of administrative (procedural) fairness requires disclosure of decisions and the reasoning behind decisions to applicants. This in turn dictates that the steps taken in reaching a decision on a file be properly documented in the file so as to leave a complete record of the decision process beginning with receipt of the application and ending with the decision whether to nominate.

This record ensures that the rights of the applicant are protected, and can be shown to have been protected but it also protects the Program and Staff against claims of bias, mistreatment, delay and other elements of administrative unfairness when nominations are denied. In addition, Annex C of the *Agreement for Canada – British Columbia Co-operation on Immigration* also specifies that BC will maintain permanent records of its assessments of provincial nominee candidates.

Because each application file is typically handled by several staff members in the course of opening, investigating, assessing and deciding on a nomination, BC PNP staff are responsible for ensuring their individual actions on a file are properly entered and documented.

---

**Policy**

While the Program Advisor will typically have the largest impact on an application file, it is the responsibility of all staff involved with a file to ensure that all action taken on the file is fully and properly recorded so as to leave a complete paper record of the receipt, assessment and decision of the application.

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**Subject:**

Preliminary Review Before Formal Submission of BC PNP Application

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**Policy:**

Program Advisors may provide clarification of program requirements in response to public inquiries. However, to avoid unproductive duplication of effort and to avoid the potential for misleading applicants about the prospect of the application's success, Program Advisors will not conduct preliminary reviews of materials or applications from potential applicants.

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**Subject:**

Due Diligence

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**Background and Objectives:**

To maintain program integrity and minimise the opportunity for immigration fraud through a PNP application, it is critically important that Program Advisors and Program Managers conduct an *appropriate* degree of due diligence on each applicant. Appropriate means the level of investigation that any reasonable person would take to verify the material facts concerning a PNP application before making a decision on the application.

Paragraph 3.12 of *Annex C to the Canada-British Columbia Agreement on Immigration* also requires British Columbia to conduct due diligence to ensure that the applicant has the ability to become successfully established economically in British Columbia.

---

**Policy**

- Confirm that the nominee applicant has provided documentation of legal status in Canada, that the employer applicant is as represented, and that the authorized representative is properly certified/licensed.
- Verify information critical to the nomination decision with reliable sources and, where necessary, reliable documentation.

Due diligence must be applied to every PNP application. Where the candidate and his or her credentials have been formally vetted by another BC or Canadian government agency or government-sponsored agency such as Health Match BC before being referred to the PNP, a lower level of effort on due diligence will normally be required.

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**Subject:**

Authority to Disclose Information

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**Policy:**

The BC PNP collects a significant amount of information on each of the employer applicant and the nominee applicant. Any information provided to the BC PNP will only be disclosed in accordance with the *Freedom of Information and Protection of Privacy Act (1996)*.

BC PNP may not disclose information to anyone other than the employer applicant or the nominee applicant without the express written consent of the applicant (employer or employee) to whom the information relates.

Authority is given by the nominee applicant through the Information Release Form (IMB 04 0192006), for an exchange of information between BC PNP and CIC and between BC PNP and the provincial ministry responsible for social assistance for the purpose of assessing, verifying and evaluating the BC PNP.

The *Authorized Representative Letter* (employer and employee) authorizes BC PNP to release information to designated representatives.

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**Subject:**

When an Authorized Representative is Involved

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**Policy:**

Whether or not the employer applicant or the nominee applicant has engaged an authorized representative, the Program Advisor may contact either applicant directly at any stage in the application process. This unfettered access to the applicants is an essential element of the due diligence process.

The BC PNP requires all immigration representatives to meet the definition of "authorized representative", which means any of the following:

- Immigration consultants who are members in good standing of the Canadian Society of Immigration Consultants
- Lawyers who are members in good standing of a Canadian law society, and students-at-law under their supervision
- Notaries who are members in good standing of the Chambre des notaires du Québec, and students-at-law under their supervision
- Applicants to the BC PNP are not obliged to hire a representative
- All applications will be treated equally, regardless of whether they were prepared with the assistance of an authorized representative

PNP staff must obtain written authorization on form *Authorized Representative Letter* (employer or employee) to discuss case information with a third party before engaging in correspondence or discussions on specific case information.

PNP staff will facilitate dealings with authorized representatives by including them on all correspondence once authorisation is in hand.

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---

**Subject:**

Removing Ineligible Paid or Unpaid Representatives

---

**Policy:**

Applicants are required to confirm the eligibility of their representative (paid or unpaid) by completing the *BC PNP Authorized Representative Letter* form only if the representative will continue to represent the applicant once the application is submitted to the BC PNP.

If an ineligible representative is identified in an application prior to processing, the application and fees will be returned to the applicant unprocessed.

If an ineligible representative is identified in an application after processing has begun, the applicant will be notified that his/her representative does not meet requirements of an Authorized Representative and that the PNP staff will not communicate with the ineligible party.

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**Subject:**

Applications Where an Unpaid Representative is Involved

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**Policy:**

Applicants (employers and nominees) may choose to use a person or organization that does not charge a fee for the service to assist with preparation of the BC PNP application process. This representative may, for example, be related to the applicant, may be member of a non-governmental or religious organization, or could be a lawyer or immigration consultant who is providing the service at no charge.

Once the application has been filed, an unpaid representative acting for the applicant must be an *authorized representative* as defined by CIC. Even though the representative is unpaid, the applicant must still provide BC PNP with a *BC PNP Authorized Representative Letter* before any personal information will be shared with that representative.

As with paid representatives, the Program Advisor must confirm who the third party is representing - the employer, the potential employee, or both.

PNP staff will facilitate dealings with unpaid representatives by including them on all correspondence once authorization is in hand.

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**Subject:**

Questions Regarding Material Facts

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**Policy:**

When due diligence identifies questions regarding material facts in a PNP application, no decision will be made until the questions are resolved by the relevant applicant (employer applicant or nominee applicant).

If the applicant is unwilling or unable to respond within 15 business days, the Program Advisor will consider all of the relevant facts and decide either:

- To extend the period for a response, if the Program Advisor has reason to believe a response is likely to be forthcoming within a reasonable time; or,
- To recommend refusing the file.

If the Program Advisor decides to refuse the file, the normal procedures for a refused application will be followed, with advice to the applicants.

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**Subject:**

Applicants Exempt from BC PNP Processing Fee

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**Policy:**

The processing fee is waived for all nurse nominee applicants referred to the program by Health Match BC.

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**Subject:**

Ineligible Applicants

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**Policy:**

A nominee applicant who is in Canada but does not possess valid immigration status in Canada as per the federal *Immigration and Refugee Protection Act and Regulations*, is ineligible for the BC PNP and their application will be refused.

The BC PNP will not approve an application to nominate an individual who:

- Has an unresolved refugee claim in Canada;
- Is in Canada illegally
- Is under a removal order in Canada; or
- Is prohibited from entering Canada.

The BC PNP is not responsible for assisting nominee applicants to obtain or maintain legal immigration status during the processing of an application.

A BC PNP application will be refused if the nominee applicant, currently residing in Canada, cannot show proof of legal immigration status in Canada.

It is the responsibility of the nominee applicant to maintain legal immigration status in Canada throughout the application process

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**Subject:**

The Assessment Criteria – Strategic Occupations

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**Background and Objectives:**

Uniformity and clarity in decision-making are key goals of the BC PNP. Administrative (procedural) fairness dictates that every applicant be assessed under a standard set of assessment criteria. Each application file contains a worksheet where the Program Advisor documents the review of the file, the research and the findings on each of the following assessment factors:

- The employer;
- The BC labour market;
- The standards of the occupation (regulatory and/or licensing requirements)
- The job;
- The remuneration offered;
- The long term prospects for employment;
- The individual's ability to successfully establish economically in the province;
- The individual's qualifications, skills and experience in relation to those required for the position;
- The individual's immigration status in Canada, or the country from which the PNP application is submitted; and,
- Whether a significant economic benefit is created for BC.

International graduate applications will be assessed on the *extended set* of criteria which includes the standard set of criteria and also:

- The BC program of study;
- The degree granting institution;
- Recommendations from the educational institution or employer; and,
- The student's academic record.

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**Policy:**

Before a recommendation to nominate or refuse an application is made, the Program Advisor will assess the BC PNP application against the standard assessment criteria.

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**Subject:**

Labour Market Research

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**Background and Objectives:**

Current labour market conditions must be considered when assessing each BC PNP application. These labour market conditions include wages, skill shortages and occupational outlooks.

Many employers have no ability to compile or analyse the type of information required to make an appropriate labour market assessment. For each application, the Program Advisor may obtain and analyse the information necessary to develop an informed opinion about the state of that part of the labour market the applicant wishes to enter.

In order to obtain sufficient labour market information to make a recommendation for nomination, the Program Advisor must consult a variety of sources. The Program Advisor will generally use the following resources on each file, if applicable:

- Government websites and contacts;
- Industry associations;
- Industry reports;
- Non-government wage and salary websites;
- Occupational profile resources;
- Job banks; and,
- Industry representatives.

---

**Policy:**

The Program Advisor shall research current labour market conditions on each application for nomination and develop an informed opinion about the state of the marketplace for the occupation, typical remuneration and the skills or qualifications required for the position, based on a variety of credible, reliable sources.

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**Subject:**

Assessing Demand and Outlook for Occupations

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**Policy:**

The BC PNP will consider employers' applications to hire foreign workers in relation to the current demand and outlook for specific occupations. Applications will not be approved for occupations where there is an adequate supply of workers domestically, or where future prospects for employment in the occupation are poor.

To assess the demand for particular skilled occupations, the BC PNP consults labour market information from Services Canada/HRSDC, Statistics Canada, the BC ministry(ies) with a mandate for economic and labour market development.

The outlook for employment in particular occupations is based on information from the Canadian Occupational Projection System (COPS), national sector councils, Statistics Canada, and other sources.

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**Subject:**

Assessing Proposed Remuneration Rates

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**Policy:**

The BC PNP supports economic growth in the province by attracting skills in demand. Employers facing critical skill shortages may use the BC PNP to recruit and retain individuals with skills that are critical to their operational success. If a position is truly in critical short supply, then it follows that a rate of remuneration, meeting or exceeding the current industry standard, would have to be offered in order to attract and retain workers.

The wage an employer intends to pay the nominee candidate must be comparable to that for equivalent jobs in BC. Bonuses, commissions, profit-sharing distributions, or similar payments to the employee are not considered as part of the wage. Failure to offer an appropriate wage will result in the refusal of the BC PNP application.

The BC PNP uses information from published and unpublished surveys, industry and professional associations, and Services Canada/HRSDC to compare wages. Company size, geographic location, skill and experience levels are considered in assessing wage rates.

Assessing appropriate rates of remuneration is part of the Program Advisor's job. Employers are required to justify the level of remuneration offered to the nominee applicant when it does not meet or exceed industry standards.

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**Subject:**

Standard Requirements of the Employment Offer

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**Policy:**

Every employment offer must state:

- The job title, description of duties, and the indefinite, full-time nature of the position;
- The rate of pay. Note: bonuses, commissions, profit-sharing distributions, or similar payments to the employee are *not* considered part of the wage for the purposes of the PNP application evaluation;
- The employee's standard hours of work;
- Employee benefits that exceed statutory minimums, such as pension and medical plans, disability insurance, sick pay, accommodation and meal allowances, and extra paid vacations; and
- The name of the collective bargaining agreement, if any, that applies to the position.

It must be clear from the employment offer that an employer-employee relationship will exist, not that of an employer engaging an independent contractor. Should the employment offer be withdrawn for any reason prior to a final decision being made, the application will be refused for failure to meet program requirements.

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**Subject:**

Significant Economic Benefit

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**Policy:**

The hiring of foreign workers through the program must demonstrate significant economic benefits to BC, such as:

- Filling a critical skill need
- Creating or maintaining employment
- Transferring skills and knowledge to Canadians
- Accelerating the adoption of new technologies
- Developing new products, technologies, services or markets.

The BC PNP will only approve nominee candidates who are likely to contribute long-term net economic benefits to BC.

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**Subject:**

Assessing the Ability to Become Economically Established

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**Policy:**

The potential for nominee applicants to become economically established in BC will be assessed according to their income and employment prospects, number of dependents, English language ability, education, and connections to BC or Canada through work, study, residence, and family ties.

The BC PNP will not approve an application if it appears likely that a nominee candidate's family income (based on the candidate's job offer and any spousal job offer) will be below Statistics Canada's applicable Low Income Cut-Off.

See <http://www.statcan.gc.ca/pub/75f0002m/75f0002m2008004-eng.pdf> for details

In making this assessment, the BC PNP will take into consideration a reasonable estimate of income earned from tips and gratuities for nominee applicants employed in tourism/hospitality occupations.

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**Subject:**

Regulatory Requirements for Internationally-Trained Professionals

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**Policy:**

All BC PNP nominee applicants must be qualified to work in their intended occupation before being nominated by the BC PNP.

The onus is on the employer applicant and the nominee applicant to ensure that any mandatory licensing, certification or registration requirements are met by the nominee applicant.

All BC PNP nominee applicants must be in possession of any required documentation to be accepted into the BC PNP.

The Program Advisor shall research the regulatory requirements for each job proposed by an employer applicant and confirm that the nominee applicant has provided proof of licensing or registration before the Program Advisor recommends nomination.

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**Subject:**

Requirements for Eligible Private Sector Employer Applicants

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Policy

Every private sector employer applying to the BC PNP must:

- Be incorporated, extra-provincially registered, or registered as a limited liability partnership in BC;
- Have a permanent establishment in BC ("permanent establishment" having the meaning contained in the Income Tax Act, Canada);
- Have been in operation in BC for at least one year and must have at least five permanent, full-time employees in BC. [The BC PNP may consider applications that do not meet these minimum requirements if an employer has substantial business operations outside of BC, or can present a compelling business case, and provided that the employer has received prior approval from the BC PNP to submit an application]; **Note: Pilot Projects may have different or additional requirements.**
- Be financially sound and have a history of good workplace and business practices, including compliance with employment, immigration, health, and safety laws and regulations;
- Be accredited by, or registered, with the Private Career Training Institutions Agency of BC (if a private for-profit post-secondary institution); and
- Not be engaged in the production, distribution or sale of pornographic or sexually explicit products, or the provision of sexually oriented entertainment or services,

Employer applicants who have applied successfully to the BC PNP within the past 12 months, and have a satisfactory record of retaining provincial nominees, normally will not need to provide this information for new applications

Employment agencies and similar placement firms are not eligible employer applicants unless they are establishing an employer–employee relationship with the nominee applicant.

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**Subject:**

Requirements for Public Sector and Not-for-Profit Employers

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**Policy:**

The BC PNP accepts applications from the following types of public sector and non-profit organizations with a permanent establishment in BC:

- Provincial and regional health care authorities and agencies
  - Public post-secondary education and training institutions
  - Private non-profit post-secondary institutions that are accredited by, or registered, with the Private Career Training Institutions Agency of BC
  - Institutions supported by the Government of Canada or the Province of BC conducting research in the natural and applied sciences, engineering, computer and information systems, or health sciences.
  - Provincial/Federal/Municipal government organizations and agencies
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- Other non-profit groups registered as charitable organisations and incorporated under the Society Act (RSBC 1996) or the Canada Corporations Act, Part II, 1970, and in good standing
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**Subject:**

Nominee Applicants as Owners or Shareholders of the Employing Company

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**Policy:**

A nominee applicant must be an employee in a position that meets BC PNP program criteria. This does not include owners of companies nominating themselves as employees to gain permanent residence status in Canada.

In many industries, it is common for key personnel to become shareholders in the company. For the purpose of the BC PNP, a nominee is considered an employee if the percentage of ownership in the company is less than 10%.

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**Subject:**

Health Match BC

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**Background and Objectives:**

BC PNP works closely with Health Match BC on the applications of all health professionals.

Health Match BC is funded by the Ministry responsible for health planning to perform the following tasks, under a Memorandum of Understanding between the *PNP Ministry* and the Ministry responsible for health planning:

- Provide program information and promotion to the public, employers and interested nurses;
  - Ensure recommended individuals meet program criteria;
  - Ensure employers are aware of, and understand program criteria;
  - Assist employers and nominee applicants with form completion and submission;
  - Maintain records of individuals recommended for nomination
  - Provide in service training to health employers; and
  - Assist BC PNP with program implementation and evaluation.
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**Policy:**

BC PNP will accept applications for health professionals that have been reviewed, assessed and forwarded by Health Match BC.

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**Subject:**

Requirements for Health Professionals

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**Policy:**

**Nurses**

Every eligible registered nurse and registered psychiatric nurse nominee applicants must have:

- An interim permit from the College of Registered Nurses of BC (CRNBC) or the College of Registered Psychiatric Nurses of BC (CRPNBC) which permits the nominee applicant to work while he/she waits to write and pass the final CRNBC/CRPNBC exam (which is only scheduled four times per year); or,
- A permanent permit from CRNBC/CRPNBC which indicates that the final examination has been written and successfully completed; or,
- A letter from RNABC stating that the applicant is eligible to write the registration examinations or apply for an interim permit in BC.

A nurse nominee applicant will not be nominated in the absence of documentation from RNABC to show that their employment in British Columbia is authorized.

BC PNP processing fees are waived for nurses referred by Health Match BC.

**Physicians**

- Employer applicant must be a provincial or regional health authority.
- Nominee applicants must have practiced in BC on a work permit for at least nine months, and have a letter from the College of Physicians and Surgeons of BC showing that a supervising physician has given them a positive assessment.
- Recruitment is administered through Health Match BC.

## Midwives

- A midwife nominee applicant will not have an accompanying employer applicant if they intend to be self-employed;
- A midwife nominee applicant must have proof of registration or proof of eligibility for registration with the College of Midwives of British Columbia (CMBC);
- A midwife nominee applicant must have a Letter of Confirmation from an established practice group in British Columbia confirming acceptance into the group as an affiliated midwife authorized to practice for a period of at least 6 months. This letter must be on the practice group's official letterhead, and must be signed by the head of the practice group and the midwife nominee applicant.

For midwife nominee applicants, the Letter of Confirmation replaces the requirement for a Guaranteed Job Offer.

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**Subject:**

Reviewing CIC Forms for Completeness

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**Policy:**

BC PNP Program Advisors shall review each "Application for Permanent Residence in Canada" (IMM 0008 generic), "Background Declaration" (IMM 0008 Schedule 1), "Economic Classes - Provincial Nominee" (IMM 0008 Schedule 4) and "Additional Family Information" (form IMM 5406) and report any identified deficiencies on the forms to the nominee applicant, so that it can be corrected before submission to CIC.

The Program Advisor will advise the nominee applicant that incomplete or incorrect forms will substantially delay CIC processing of the nomination.

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**Subject:**

Withdrawal of Nomination - Loss of Employment

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**Background and Objectives:**

Where the BC PNP learns that a nominee, prior to becoming a permanent resident, has lost the offer of employment on which their nomination is based, it is appropriate to review the nomination to determine whether or not it should be withdrawn. The offer of employment may have been withdrawn before the nominee starts working for the employer. After starting work for the employer the nominee may voluntarily leave or be fired from the job, may be laid off for business reasons or may change employers.

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**Policy:**

Prior to nomination, if an applicant's employment is terminated or the offer of employment is withdrawn the application does not meet the nomination requirements and will be refused.

If the employment of a nominee under the Entry-Level and Semi-Skilled Pilot Project stream is terminated, the nomination will be withdrawn.

Where a nominee has rejected the offer of employment on which the nomination is based or has lost that offer of employment for cause, the nomination will be withdrawn.

Where a nominee quits the employment, which is the basis for the nomination or is terminated for cause from that position, the nomination will be withdrawn.

In all other circumstances, the Program Advisor will request the nominee to provide current information on what action they have taken to find alternative suitable employment and other efforts to establish in British Columbia, including confirmation that the application for a permanent resident visa has been filed at the appropriate visa office. The Program Advisor will review the nominee's individual circumstances and, based on this information, recommend to the Program Manager whether to continue supporting the nomination.

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In all such cases, the Program Advisor and the Program Manager should be mindful that the nominee was nominated on the basis of their skills and is likely to be in demand in the future labour market, if not with the initial employer. In the absence of a compelling argument for cancellation of the nomination, the nomination should not be withdrawn.

The Program Advisor will communicate the decision on withdrawal to the nominee and the employer as soon as possible.

If the nomination is withdrawn, the Program Manager will communicate to the appropriate visa office processing the nominee's permanent resident visa application that the nomination has been withdrawn. Having confirmed that the visa office has discontinued processing of the nominee's application, the Program Advisor will inform the nominee in writing of the withdrawal of their nomination and the reasons for this decision.

If the nomination is not withdrawn, the Program Advisor will inform the nominee that they must report to the Program Advisor every two months on their efforts to secure employment and other information relevant to their establishment in British Columbia. The Program Advisor will advise the nominee that the nomination will be reviewed every two months until CIC has made a final decision on the nominee's permanent resident application.

Should the nominee fail to report every two months or should the situation warrant at the time of a report, the nomination may be withdrawn. A nomination will only be withdrawn at a subsequent report following a Program Manager's review of a recommendation from the Program Advisor.

Withdrawal of nominations for loss of employment, should be considered the last resort and should only occur where there is substantive evidence that the nominee cannot become economically established in British Columbia within a reasonable period of time and retain an acceptable job within the nominee's skill range.

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**Subject:**

Withdrawal of Nomination – New Information

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**Policy:**

The BC PNP may obtain information that questions the basis for a nomination – including from the nominee, the employer, an investigation for a separate application or from CIC during the processing of the application for a permanent resident visa.

The BC PNP may withdraw a nomination if the nomination decision was based on information subsequently determined to be false or misleading.

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**Subject:**

Refusal of Nominee's Application for a Permanent Resident Visa

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**Background and Objectives:**

Under paragraph 3.14 of *Annex C of the Agreement for Canada-British Columbia Co-operation on Immigration – 2004*, CIC must advise and consult with the BC PNP if it is likely to refuse a nomination. A visa officer may refuse a nominee based on substitution of evaluation of the nominee's ability to establish economically in BC or for inadmissibility (medical, security or criminality).

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**Policy:**

The BC PNP is under no obligation to withdraw a nomination because a visa officer has or is likely to refuse the nominee's permanent resident visa application. Should the basis for the refusal of the nominee's visa application call the nomination into question (e.g., false information, etc.), the BC PNP may consider that situation under Policy 5-1-3.

The BC PNP may choose to contest a refusal or likely refusal by a visa officer (whether a substitution of evaluation or for inadmissibility), to withdraw the nomination or to do nothing depending on the visa officer's reasons for refusal. While the BC PNP is unlikely to contest a potential refusal based on security or criminality concerns, it may elect to intervene in cases of proposed medical inadmissibility where economic, social or other benefits to BC can be determined to outweigh the anticipated burden on the health care system.

When CIC advises the BC PNP that it is likely to refuse a nomination for health or safety reasons the Program Advisor has 90 days to seek clarification and raise concerns with the visa officer who has made the assessment. The Program Advisor will endeavour to clarify the visa officer's concerns before recommending action to a Program Manager to withdraw, contest or to take no action.

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**Subject:**

Extending a Nomination

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**Background and Objectives:**

When a nominee candidate is approved by the BC PNP, the nomination certificate submitted to the appropriate CIC Visa Office is valid for 180 days from the date of nomination. The nominee's complete application for Permanent Residence must be received by the appropriate Visa Office within these 180 days or CIC will not consider it for expedited processing in the Provincial Nominee Class. From time-to-time nominees or their authorized representatives request extensions to nomination certificates in order to provide additional time to prepare the application for Permanent Residence.

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**Policy:**

For all applications approved after April 1st, 2009, the BC PNP will no longer consider requests for extensions to nomination certificates. In cases where a nomination certificate has expired and a new one is required for the submission of the Permanent Residence application, the nominee must submit a new \$550 fee and a new application to the BC PNP for assessment by a Program Advisor. A reassessment of the application is required in this situation to ensure that there have been no material changes in the circumstances under which the original application was approved, including the applicant's intention to become a permanent resident of Canada and to settle in British Columbia.

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**Subject:**

Strategic Occupations – General Requirements

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**Policy:**

Applications in this component of the BC PNP are considered in these categories:

**Skilled Workers**

Managers, professionals, technologists and technicians, and skilled trades

**Designated Health Professionals**

Registered nurses, midwives, registered psychiatric nurses, and physicians

**International Graduates**

Recent graduates of recognized BC post-secondary institutions

**International Post-Graduates Pilot Project**

Recent BC masters and doctorate graduates in natural, applied and health sciences

**Entry Level and Semi-Skilled Pilot Project**

Select occupations in Tourism/Hospitality, and Long-Haul Truck Drivers

**General requirements:**

- The nominee applicant has submitted the BC PNP Fee Payment Form and fee, if applicable; see **Policy 3-0 for exceptions**.
- The nominee candidate has the ability to become economically established in BC.

The following requirements apply to all categories except for the International Post-Graduates Pilot Project which does not require a job offer.

- The employer applicant has offered, and the nominee applicant has accepted, permanent, full-time employment in an eligible skilled occupation;
- The nominee applicant is qualified to do the job;
- The wage offered is competitive with BC wage rates for the occupation;
- The nominee applicant's field of employment offers good long-term prospects;
- The employer applicant is financially sound, has a history of good practices, has been operating in BC for at least one year and has at least five paid employees. (Discretion may be used where there are compelling arguments);

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- The employment of a foreign worker will be of significant economic benefit to BC; and
  - The employment of a foreign worker will not adversely affect the settlement of a labour dispute, or the employment of anyone involved in any such dispute.
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**Subject:**

Special Requirements for International Graduates

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**Policy:**

Nominee Applicants in this category must have satisfied the requirements for an eligible degree or diploma conferred by a recognized post-secondary institution in Canada before accepting an offer of employment.

**Eligible Degree Programs**

An undergraduate or graduate degree awarded from a post-secondary institution in Canada that:

- 1) if in British Columbia,
  - a. Has been established under an Act of British Columbia legislature; or
  - b. Has completed the required British Columbia government-mandated quality assessment process and has obtained Ministerial consent under the Degree Authorization Act (DAA) or

or

- 2) If located in Canada but outside British Columbia, is authorized under the statute of any other province or territory to confer degrees including the undergraduate or graduate degree on which the Nominee Applicant is basing the application to the BC PNP.

**Eligible Diploma Programs:**

A program of study, offered by a Canadian public post-secondary institution, that is normally greater than 12 months of full-time equivalent study. Diplomas from private institutions are not eligible.

**Reference:**

Nominee Applicants will be required to include in their application the name of a faculty member or senior administrator of the Canadian institution where they studied for their degree or diploma who will serve as a reference.

**Timeline for Submitting Applications:**

Applications must be submitted within two years of the date shown on the Nominee Applicant's final official transcript indicating when all requirements for the program have been met.

**Eligible occupations:**

The BC PNP will consider applications for positions under Skill Levels 0, A and B of the National Occupational Classification Matrix (NOC).

The BC PNP will also consider applications for positions under Skill Levels C and D of the NOC where the employer can demonstrate that there is a structured career progression to an occupation at Skill Level 0, A or B.

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The BC PNP web site – [www.WelcomeBC.ca/PNP](http://www.WelcomeBC.ca/PNP) is the primary source for the most up to date documentation on the requirements for this Pilot Project. Where there is a conflict between the Manual and the web-based material, the web-based material will take precedence.

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**Subject:**

Entry Level and Semi-skilled Pilot Project:  
Occupations in Tourism/Hospitality, Food Processing, and Long-Haul Truck Drivers

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**Policy:**

All nominee applicants under this pilot project must be Temporary Foreign Workers in Canada at the time of PNP application - hereafter *TFW nominee applicant*.

The *TFW nominee applicant* must be currently engaged in one of the following eligible NOC occupations:

**Tourism/Hospitality**

- 6435 Hotel Front Desk Clerks
- 6441 Tour and Travel Guides
- 6442 Outdoor Sport and Recreational Guides
- 6443 Casino Occupations
- 6451 Maitres d'hotel and Hosts/Hostesses
- 6452 Bartenders
- 6453 Food and Beverage Servers
- 6641 Food Counter Attendants, Kitchen Helpers and Related Cleaners (hotels only)
- 6661 Light Duty Cleaners
- 6662 Specialized Cleaners
- 6663 Janitors, Caretakers & Building Superintendents Other

**Attendants in Accommodation & Travel**

- 6672 Doorkeeper, Hotel; Guest Services Attendant, Hotel
- 6681 Dry Cleaning and Laundry Occupations  
(Hotels/Resorts only)
- 6682 Ironing, Pressing and Finishing Occupations  
(Hotels/Resorts only)
- 6683 Attendant, Sauna Room (Hotels/Resorts only); Hotel Valet

## Long-Haul Trucking

7411.1 Long-Haul Truck Drivers [Definition: Operate articulated or multi-articulated heavy commercial vehicles over 4,600 kg gross vehicle weight on routes more than 160 km from home base]

## Food Processing

9461 Process Control and Machine Operators, Food and Beverage Processing  
9462 Industrial Butchers and Meat Cutters, Poultry Preparers and Related Workers  
9463 Fish Plant Workers  
9465 Testers and Graders, Food and Beverage Processing  
9617 Labourers in Food, Beverage and Tobacco Processing  
9618 Labourers in Fish Processing

## Employment History:

A TFW nominee applicant must have been employed in an eligible occupation by the sponsoring company on a temporary work permit for at least 9 months immediately prior to the date of application to the BC PNP, and must be legally employed by the sponsoring company at the time of application.

Truck driver applicants must be long-haul truckers with at least 2 years employment experience as a long-haul truck driver in the 3 years immediately prior to the PNP application, must have a valid BC Class 1 driver's licence, normally with an air brake endorsement and other certification specific to the proposed job (e.g. transporting dangerous goods).

## Education and Language Proficiency

TFW nominee applicants will have completed formal education to a secondary school level and will demonstrate basic proficiency in English.

If the Labour Market Opinion or BC PNP Guaranteed Job Offer Form indicates that no English language proficiency is needed for the job, the employer will pay for the TFW nominee applicant to take one of the following approved English language tests: TOEFL, IELTS and LPI. If the applicant fails to demonstrate basic proficiency, the employer must commit to pay for the TFW nominee applicant's enrollment in a recognized ESL (English as a second language) program for a minimum of 6 months and the TFW nominee applicant must commit to and actively participate in that program.

### Confirmation of Remuneration

Employers will submit a copy of the Labour Market Opinion obtained from Service Canada that authorized the original hiring of the applicant under the federal Temporary Foreign Worker Program.

For nominee applicants who were not hired through a Labour Market Opinion, employers will need to submit official records of remuneration, such as original cancelled checks or **direct deposit confirmation, for the nine month period preceding their application.**

If the TFW nominee applicant was originally hired through a Labour Market Opinion, the offered wage must be equal to or higher than that specified in the employment contract. The offered wage can not be lower than the prevailing wage at the time of application to the BC PNP, and must be comparable to that for equivalent jobs in BC.

Bonuses, gratuities, tips, profit-sharing distributions, or similar payments to the employee are not considered as part of the wage.

### Offer of Employment

At the time of PNP application, for an occupation eligible under the pilot project *Policy 3-3-2-2 Offer of Employment applies.*

In addition to the standard requirements of the employment offer every employment offer under this pilot project will include:

- *Employer-paid return air fare for any unplaced worker.* If an unemployed nominee has not obtained suitable employment within 4 weeks of termination, the BC PNP will cancel the individual's nomination, and the original employer will be required to pay the air fare of the nominee back to his/her country of origin.

In the Tourism/Hospitality sector, the employer may offer the applicant a more senior position, provided that he or she is qualified for the job, and will be paid the applicable prevailing wage in BC.

### Displaced Nominees

If a nominee is terminated without cause by a sponsoring employer, that employer must provide a positive letter of recommendation.

Two employer organizations, Go2HR ([www.go2hr.ca](http://www.go2hr.ca)) for the tourism/hospitality sector, and the BC Trucking Association ([www.bcta.ca](http://www.bcta.ca))

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will work with sponsoring employers to place any unemployed nominees in an equivalent position.

BC PNP will withdraw the nomination of a nominee who refuses a comparable job offer without good cause.

**Employer's History and Operations**

The employer applicant must sign a declaration that it meets all of the requirements set out in *Policy 3-6-1 - Employer Qualifications*, has been in operation in BC for at least two years, and that it is in compliance with employment, immigration, health, and safety laws and regulations.

**Economic Benefits to BC**

*Policy 3-4-1 Economic Benefits applies*

**Ability to Become Economically Established in BC**

*Policy 3-4-2 Ability to Become Economically Established in BC applies.*

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The BC PNP web site – [www.WelcomeBC.ca](http://www.WelcomeBC.ca) is the primary source for the most up to date documentation on the requirements for this Pilot Project. Where there is a conflict between the Manual and the web-based material, the web-based material will take precedence.

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**Subject:**

Requirements for the International Post-Graduates Pilot Project (IPG)

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**Policy:**

Nominee Applicants in the IPG must have satisfied the requirements for an eligible masters or doctorate degree conferred by an eligible post-secondary institution in BC and meet all other requirements before applying. Nominee Applicants are not required to have a job offer from a BC employer, but must satisfy the BC PNP of their intention to reside, and their ability to become economically established, in BC.

**Eligible Post-Secondary Institutions**

A post-secondary institution in British Columbia that:

1. Has been established under an act of British Columbia legislature; or,
2. Has completed the required government-mandated quality assessment process and has obtained Ministerial consent under the Degree Authorization Act (DAA).

**Eligible Graduate Degree Programs**

A graduate degree (masters or earned doctorate) awarded by an eligible post-secondary institution which the BC PNP is satisfied is for studies in the natural, applied or health sciences. This includes programs in the following fields of study:

- Agriculture
- Biological and Biomedical Sciences
- Computer and Information Sciences and Support Services
- Engineering
- Engineering Technology
- Health Professions and Related Clinical Sciences
- Mathematics and Statistics
- Natural Resources Conservation and Research
- Physical Sciences

This list is based on the Classification of Instructional Programs (CIP), Canada, 2000 available at [http://stds.statcan.ca/english/cip/cip\\_2digit.asp](http://stds.statcan.ca/english/cip/cip_2digit.asp).

Distance learning programs where the Nominee Applicant has not been resident in BC during the period of studies are not eligible.

### **Academic Reference**

Nominee Applicants must include in their application the name of a faculty member or senior administrator of the BC institution where they studied for their degree who will serve as a reference.

### **Timeline for Submitting Applications**

Nominee Applicants into the IPG must apply to the BC PNP within two years of the date shown on their final official transcript as when they have completed all program requirements for the masters or doctorate degree on which the application is based. The BC PNP will expect that a Nominee Applicant to the IPG who applies more than six months after having completed their masters or doctorate program will have a work permit valid for work in BC.

### **Intention to Reside in BC**

Nominee Applicants must satisfy the BC PNP of their intention to settle in BC once they obtain permanent resident status in Canada. The evidence that the BC PNP will consider in determining this intention include:

- Length of any previous and/or current period of residence in BC
- Connections to BC through work, study, family and other ties
- Plans and actions taken to settle in BC

A Nominee Applicant/Nominee must inform the BC PNP of their current residence and of any change in residence during processing of their application for nomination and for a permanent resident visa. Should a Nominee Applicant/Nominee cease being a resident of BC at any time prior to becoming a permanent resident, the Nominee Applicant/Nominee must satisfy the BC PNP of their continued intention to settle in BC. Should the BC PNP not be satisfied that a Nominee intends to settle in BC, the BC PNP may withdraw the nomination.

### **Ability to Become Economically Establish in BC**

Nominee Applicants must satisfy the BC PNP that they have the ability to become economically established in Canada. While the degree that a Nominee Applicant has obtained is a strong indication of this ability, the BC PNP will also assess consider the ability of the Nominee Applicant to become economically established based on the Nominee Applicant's:

- Past or current work experience (Canadian and/or foreign) including work performed as part of their graduate studies program
- Plans and actions taken to find employment in BC
- Connections to BC or Canada through work, study, residence, family and other ties
- Family unit size (spouse and dependent children)
- Available and transferable settlement funds (taking into account any obligations)

## British Columbia Provincial Nominee Program

### Legislative Background

The governments of Canada and British Columbia entered into the Agreement for Canada - British Columbia Co-Operation on Immigration (the "Agreement") in April, 2004. Immigration is a concurrent constitutional subject matter with federal paramountcy (s.95, *Constitution Act, 1867*). The government of Canada regulates immigration with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 2.7 (the federal Act), and immigration recruitment matters in the Province are the responsibility of the Minister of Economic Development under the *Ministry of International Business and Immigration Act*, R.S.B.C. 1996, c.304.

The Canada - British Columbia Agreement in Article 3.2(a) recognizes that one of its objectives is:

to foster an effective partnership between Canada and British Columbia for the recruitment, selection, admission and control of immigrants, refugees, temporary workers and international students to British Columbia;

The Agreement recognizes, subject to the terms of the Agreement and the Annexes, that Canada has the responsibility for the selection of all immigrants (Article 6.3). It also recognizes that B.C. will be consulted and have an opportunity to influence selection and control policies (Article 6.4). Annex C. sets out the terms of co-operation for the Provincial Nominee Class as described in s.87 of the *Immigration and Refugee Protection Act Regulations* SOR/2002-227, (the Regulations).

The Provincial Nominee Class is a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada (s.87(1) of the Regulations). A foreign national is a member of that class if they are named in a nomination certificate issued by the government of a province under an agreement between the province and the federal Minister, and the person intends to reside in that province (s.87(2)). Under subsection (3) a federal immigration officer, with the concurrence of another officer, may effectively override the nomination. If the officer does not agree that the certificate is a sufficient indication that the person may become economically established in Canada, the officer may, after consulting the province, substitute their evaluation of that likelihood for the criteria in subsection (2).

This Class is jointly administered, (Annex C, Article. 1.3). British Columbia has the sole and non-transferable responsibility to assess and nominate candidates, (Art. 3.1). Canada has agreed to process these applicants as expeditiously as possible (Art. 3.8). Canada is to make the final selection and is to determine admissibility under the legislative requirements such and health and security (Art. 3.10).

The provincial regime is governed primarily by policy. There is no Act or Regulation that specifically prescribes the British Columbia government's role in the process. The minister responsible for this aspect of immigration is the Minister of Economic Development. The Minister's authority is set out in the *Ministry of International Business and Immigration Act*, R.S.B.C. 1996, c. 304. Section 3 provides:

The duties, powers and functions of the minister extend to and include all matters relating to international business and immigration for British Columbia that are not, by law or by order of the Lieutenant Governor in Council, assigned to another minister, ministry, branch or agency of the government.

Section 4 of that Act specifies the Ministry's role in this aspect of immigration. It provides:

The purposes and functions of the ministry are to

...

(f) plan for and manage the government's role in immigration, including the selection and settlement of immigrants to British Columbia

There is no longer a ministry named Ministry of International Business and Immigration, but the responsibilities and authorities in these matters continue. The Ministry of Economic Development has the authority over immigration selection matters and the Ministry of Attorney General has the authority over immigrant settlement matters, pursuant to the 2005 Order in Council No. 450 which set out the responsibilities of the current executive government.

Note: Provincial authorities under the agreement were transferred to the Ministry of Advanced Education and Labour Market Development in June 2008.

\*Transferred from the former Ministry of Regional Economic and Skills Development, March 14, 2011.

# Canada-British Columbia Immigration Agreement

– 2010 –

## Annex B: Provincial Nominees

### 1.0 Purpose and Objectives

#### 1.1 Purpose

The purpose of this Annex is to define the roles and responsibilities of Canada and British Columbia in relation to the Provincial Nominee Class as described in section 87 of the *Immigration and Refugee Protection Regulations* (IRPR).

#### 1.2 Objectives

- 1.2.1 To maintain and strengthen the Provincial Nominee Program as a mechanism to increase the benefits of immigration to British Columbia, based on economic priorities and labour market conditions, by providing British Columbia with a mechanism to admit Provincial Nominees to British Columbia while taking into account the importance of encouraging the economic development of Minority Official Language Communities in British Columbia.
- 1.2.2 To recognize that the Provincial Nominee Class, as identified by subsection 87(1) of the IRPR, is a jointly administered immigration class, where British Columbia has an active role in the processing which may include promotion and nomination, and to acknowledge that both Parties have an interest in the process.
- 1.2.3 To admit British Columbia Provincial Nominees for permanent residence as expeditiously as possible, taking into account:
  - a) British Columbia's Provincial Nominee Program levels plan;
  - b) Canada's immigration projections;
  - c) legislative requirements; and
  - d) operational and resource constraints, and service standards as developed.

### 2.0 Provincial Nominee Levels Planning and Reporting

- 2.1 British Columbia will develop an annual Provincial Nominee Program levels plan which will provide information to Canada to support Canada's immigration levels and operational planning. This will include the elements outlined in Appendix A of this Annex or as otherwise agreed between the Parties.

- 2.2 British Columbia will share this plan with Canada on or before July 1 of every calendar year to allow for national levels planning for the following year.
- 2.3 Canada undertakes to incorporate British Columbia's Provincial Nominee targets for nomination as outlined in British Columbia's Provincial Nominee levels plan into the national levels plan. The Provincial Nominee levels objectives, which must be agreed to by both Parties, may be adjusted at any time during the year upon agreement by both Parties.
- 2.4 British Columbia will report on its levels planning as follows:
- (a) British Columbia will provide Canada with an annual report for the preceding calendar year by March 31<sup>st</sup> of each year, on British Columbia's levels plan and the results achieved; and
  - (b) the annual report will include the elements outlined in Appendix B of this Annex.

### **3.0 Assessment and Nomination**

- 3.1 British Columbia has the sole and non-transferable responsibility to assess and nominate candidates who, based on British Columbia's determination:
- a) will be of significant benefit to the economic development of British Columbia; and
  - b) have a strong likelihood of becoming economically established in British Columbia.
- 3.2 British Columbia will nominate foreign nationals on the basis of economic benefit to British Columbia. The nomination criteria of the Provincial Nominee Program categories shall demonstrate the economic benefit to the Province. Provincial Nominees may be nominated for purposes that include, but are not limited to, meeting critical skill shortages in British Columbia, the immigration of key individuals of businesses that wish to locate in British Columbia and the establishment or enhancement of new and existing businesses.
- 3.3 Non-economic factors shall not provide the primary basis upon which a nomination is made.
- 3.4 In exercising its nomination authority under this Agreement, British Columbia will follow the procedures and criteria for nomination established by British Columbia, as amended from time to time, insofar as those procedures and criteria are consistent with the IRPA, the IRPR or any successor legislation and regulations and the terms of this Agreement and this Annex. British Columbia will respect the purpose and objectives of this Annex in developing and

implementing these procedures and criteria. British Columbia will share its criteria with Canada prior to implementation and keep written records of its assessments of its nominees against those criteria.

- 3.5 Canada will consider foreign nationals who are nominated by British Columbia as applicants in the Provincial Nominee Class.
- 3.6 Canada agrees to process economic class applicants nominated for permanent resident status by British Columbia on a priority basis and as expeditiously as possible with a view to achieving Canada's annual levels plan.
- 3.7 Canada will consider a nomination certificate issued by British Columbia as evidence that British Columbia has conducted due diligence in exercising its authority to assess and nominate candidates pursuant to section 3.1, 3.2 and 3.3 of this Annex.
- 3.8 British Columbia is responsible for conducting the due diligence to ensure that the applicant has the ability and is likely to become economically established in British Columbia. Notwithstanding the foregoing, Canada retains the right to substitute its evaluation of the applicant's ability to become economically established in Canada pursuant to subsection 87(3) of the IRPR. In exercising its responsibilities under sections C.2 and C.4 of Appendix C of this Annex, Canada may also seek clarification from British Columbia on its assessment, the record of which is required under sections 3.4 and 5.3.4 of this Annex. The visa officer may request additional documentation from the nominee which supports the nominee's ability and likelihood to become economically established in British Columbia.
- 3.9 British Columbia will not issue a nomination certificate to anyone whose employment will affect the settlement of any labour dispute in Canada or affect the employment of a person involved in such a dispute, or where their employment will adversely affect employment or training opportunities for Canadian citizens or permanent residents in British Columbia.
- 3.10 British Columbia shall not nominate, as a Provincial Nominee, any applicant who intends to enter, has agreed to enter, or has entered into an "immigration-linked investment scheme" as described in section 87 of the IRPR.

#### **4.0 Program Evaluation**

- 4.1 Canada will conduct a national evaluation of the Provincial Nominee Program on a five-year cycle in order to meet federal accountability and evaluation requirements. The national evaluation will include relevant-components of British Columbia's Provincial Nominee Program. British Columbia is committed to cooperate with Canada to support Canada in meeting the federal accountability and evaluation requirements. Canada will be responsible for the cost of the

national evaluation.

- 4.2 Canada will develop a national evaluation framework for the Provincial Nominee Program, which will include a logic model, a performance measurement framework and an evaluation matrix. The evaluation framework will be developed in consultation with all jurisdictions that have a Provincial Nominee Program, including British Columbia. Canada will collaborate with all jurisdictions to establish common definitions, performance indicators and data collection methodologies for the evaluation framework, which may be adjusted from time to time, as needed. The performance information required by the framework will be collected and reported on an annual basis by all jurisdictions, including British Columbia as appropriate.
- 4.3 British Columbia will conduct evaluations of its Provincial Nominee Program on a five-year schedule. British Columbia will provide a copy of these evaluations to Citizenship and Immigration Canada upon completion.
- 4.4 In addition to data reported annually under section 2.4 of this Annex, British Columbia will ensure that the requisite information as identified in section 4.2 is available for the national evaluation. Canada and British Columbia agree to cooperate for the purpose of evaluation.

For evaluation purposes, British Columbia is to establish appropriate mechanisms to ensure the province's ability to collect the data necessary to measure retention and economic benefit for a minimum of three (3) years after admission. In consultation with British Columbia, data requirements may be adjusted from time to time, as appropriate.

- 4.5 Subject to applicable legislation and policies governing the disclosure of personal information, Canada and British Columbia agree to share information on prospective and actual Immigrant admissions to aid in the evaluation and management of British Columbia's Provincial Nominee Program.

## **5.0 Implementation**

### **5.1 Governance**

- 5.1.1 In accordance with section 10.1.1 of the General Provisions of this Agreement, the Agreement Management Committee (AMC) will determine the appropriate mandate, structure and reporting requirements for the implementation of this Annex. In the absence of specific direction to the contrary, designated representatives (federal and provincial) will report to the AMC on an annual basis.

5.1.2 The designated representatives for the purpose of communication and notification pursuant to this Annex are:

- a) for Canada, the Director, Permanent Resident Policy and Programs, Immigration Branch, Citizenship and Immigration Canada; and
- b) for British Columbia, the Associate Executive Director, Economic Immigration Programs, Labour Market Development Branch, British Columbia Ministry of Advanced Education and Labour Market Development

or successors to these positions designated by the appropriate Party whose duties are the same or substantially similar.

## 5.2 **Dispute Resolution Process**

5.2.1 In the case of a dispute or disagreement under this Annex, Canada and British Columbia agree to follow the dispute resolution process outlined in section 10.3 of the General Provisions of the Agreement.

## 5.3 **Information Sharing**

5.3.1 All arrangements for information sharing shall be in accordance with section 10.4 of the General Provisions of the Agreement.

5.3.2 Canada and British Columbia will ensure that any exchange of information shall be conducted in accordance with applicable federal and provincial legislation and in accordance with their policies relating to protection of privacy, access to information and security of records.

5.3.3 In order to facilitate the exchange of information between Canada and British Columbia, British Columbia will obtain from each nominee applying for nomination and his or her dependants, a signed release allowing Canada to share with British Columbia information regarding the nominee's application, including the processing thereof, and for the purposes of program evaluation.

5.3.4 British Columbia will maintain records with respect to the assessment of each foreign national nominated under this Annex. Subject to applicable provincial privacy legislation, Canada will be provided with access to these records for audit purposes. These records will be retained for a minimum period of six (6) years from the date of nomination.

5.3.5 Canada and British Columbia will investigate means of providing British Columbia with access to an electronic information exchange system in support of the Provincial Nominee Program.

5.3.6 British Columbia will provide monthly nomination reports to Canada.

- 5.3.7 Canada will provide monthly reports on the processing and granting of permanent resident status to Provincial Nominees destined to British Columbia as well as any other type of report provided to any other provinces pursuant to their Provincial Nominee agreements.
- 5.3.8 The Parties undertake to give one another notice of any change in procedure, policy, regulations or legislation relating to their respective programs or operations that is likely to affect this Annex.
- 5.3.9 Canada's and British Columbia's practices under this Annex are subject to audit by the respective audit and evaluation agencies of each jurisdiction. The Parties agree to provide full cooperation if, when and where such audits take place.
- 5.3.10 Canada will communicate the terms of this Agreement to Canadian visa offices and processing centres ensuring effective implementation at visa offices and inland offices.

#### **5.4 Term and Amendments**

- 5.4.1 In accordance with sections 10.8.2 and 11.3 of the General Provisions of the Agreement, this Annex will be valid for five (5) years from the date of the Agreement coming into force.
- 5.4.2 The Parties agree to evaluate the effectiveness of the Annex no later than twelve (12) months prior to its expiry.
- 5.4.3 Upon mutual consent of both Parties in writing, the terms and conditions of this Annex can be extended at any time prior to its expiry, subject to any required approval or authorization including the approval of the Governor in Council.
- 5.4.4 This Annex may be amended at any time by the mutual written consent of the Parties, subject to any required approval or authorization including the approval of the Governor in Council.
- 5.4.5 Either Party may terminate this Annex at any time by providing at least six (6) months notice in writing to the other Party. Upon notice of termination, the AMC will negotiate a transition strategy.
- 5.4.6 In keeping with the purpose and scope of this Annex, Canada will be open and transparent concerning its intention to enter into agreements with other provinces respecting the Provincial Nominee Program and Canada will provide, at British Columbia's request, other federal provincial agreements made under subsection 8(1) of the IRPA, and will negotiate amendments to this Annex, taking into consideration the different needs and circumstances of the provinces.

**APPENDIX A**  
**BRITISH COLUMBIA PROVINCIAL NOMINEE LEVELS PLAN**

British Columbia will include in its annual Provincial Nominee Levels Plan:

- (a) a program description for each category of its Provincial Nominee Program;
- (b) the total number of nomination certificates by category that British Columbia plans to issue, on a calendar year basis, over the next three (3) years;
- (c) the number of foreign nationals admitted on a temporary basis that British Columbia expects to nominate in the following calendar year;
- (d) a list of the top occupations that British Columbia expects to be actively recruiting through its Provincial Nominee Program in the current year; and
- (e) identification of those countries where British Columbia intends to conduct promotion and recruitment activities in the following year including countries and related activities that encourage the economic development of Minority Official Language Communities.

## **APPENDIX B**

### **BRITISH COLUMBIA PROVINCIAL NOMINEE LEVELS REPORT**

British Columbia will include in its Provincial Nominee levels report:

#### **Part A: Overview and Priorities**

1. Overview of Provincial Nominee Program and Priorities.

#### **Part B: Results Achieved**

1. Nominations issued compared to nominations forecasted.
2. Nominations issued for each category compared to nominations forecasted.
3. Nominations issued to individuals whose mother tongue or first official language is French.
4. Requests made under section D.2 of Appendix D of this Annex for temporary work permits for individuals nominated by British Columbia who have received a job offer from a British Columbia-based employer.
5. Top occupations for which nominations were issued.
6. Number of businesses started, number of businesses expanded, number of jobs created under the business categories and total amount invested in new businesses, total amount invested in existing businesses.

#### **Part C: Promotion and Recruitment**

1. Overview of promotion and recruitment activities undertaken and results of these activities.
2. Overview of promotion and recruitment activities undertaken to encourage the economic development of Minority Official Languages Communities.

#### **Part D: Audit and Evaluation**

1. Audit plans and/or results
2. Evaluation plans and/or results

## APPENDIX C

### PERMANENT RESIDENT PROCESSING

- C.1 British Columbia will issue a dated nomination certificate, valid in accordance with British Columbia's administrative requirements for each foreign national whom it has nominated. For security reasons, British Columbia will forward a copy of the certificate or other form of confirmation as agreed by both Parties to the Canadian visa office where the applicant will apply for a permanent resident visa. A nomination certificate received directly from the applicant or any other party will not be accepted as evidence pursuant to section C.4 of this Appendix or sections 3.7 and 3.8 of Annex B of this Agreement. A foreign national who has been nominated by British Columbia must file an application for a permanent resident visa within the time limit specified on the nomination certificate.
- C.2 Upon receipt of the nomination certificate from British Columbia or as alternatively agreed under subsection C.1, Canada will:
- a) exercise the final selection in accordance with section 87 of the IRPR;
  - b) determine whether or not the nominee and his or her dependents are inadmissible pursuant to the legislative requirements including health, criminality and security; and
  - c) issue permanent resident visas to Provincial Nominees and accompanying dependants who meet the requirements of section 87(12) of the IRPR.
- C.3 Processing of applications and issuance of visas may continue beyond the calendar year in which the certificate of nomination was issued.
- C.4 Should Canada determine that an applicant nominated by British Columbia is likely to be refused a permanent resident visa based on a finding that the applicant does not satisfy the requirements for membership in the Provincial Nominee class in accordance with the provisions of section 87 of the IRPR, British Columbia will be notified immediately and consulted regarding the reasons for possible refusal.
- C.5 British Columbia may raise concerns or seek clarification from the officer who made the determination under section 87 of the IRPR with respect to a potential refusal, where the refusal is based on a finding that the applicant does not satisfy the requirements for membership in the Provincial Nominee class in accordance with the provisions of section 87 of the IRPR, within ninety (90) days from the date of being advised by Canada. Further representation, if necessary, may be made to the program manager at the visa office within the 90-day period.
- C.6 Should Canada determine that an applicant nominated by British Columbia will be refused a permanent resident visa based on a finding that the applicant is inadmissible under the IRPA or the IRPR, Canada will forward a copy of the

refusal letter to British Columbia.

## APPENDIX D TEMPORARY ADMISSION

D.1 Canada recognizes the legitimate requirement for exploratory visits by potential British Columbia Provincial Nominees and will take into consideration British Columbia's formal representations in determining applications for temporary resident status from such foreign nationals.

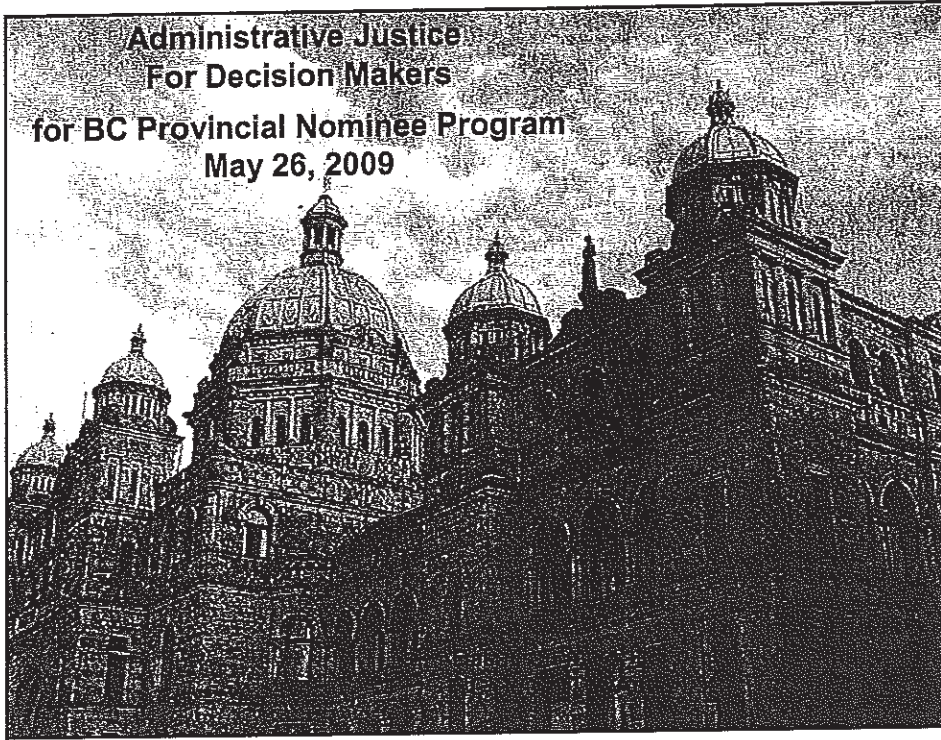
D.2 a) Where British Columbia is considering an application for nomination under the business category of the Provincial Nominee Program and is of the opinion that the entry of a foreign national under that application:

- i. to carry out business activity; or
- ii. as a key staff member of a foreign company or of another foreign national establishing an eligible business in the province

is of significant benefit to British Columbia, a visa officer may issue a temporary work permit to that foreign national pursuant to paragraph 205(a) of the IRPR, if the work permit application includes a letter from British Columbia that:

- iii. states that the foreign national is being considered for nomination for permanent residence based on their stated intention to either conduct business activity or work as a key staff member of a foreign company or another foreign national establishing an eligible business in the province in British Columbia, as the case may be;
  - iv. states that British Columbia is of the opinion that the planned business activity or work of the foreign national will be of significant benefit to the province; and
  - v. requests the visa officer to issue a temporary work permit for a specific period, up to a maximum of two (2) years.
- b) Where a work permit issued under section D.2 a.) of this Appendix has expired and British Columbia has nominated that foreign national, an officer may issue a further temporary work permit pursuant to paragraph 204(c) of the IRPR, if the work permit application includes a letter from British Columbia that:
- i. states that the foreign national has been nominated by British Columbia;
  - ii. states that British Columbia has determined that the business activity or work of the foreign national is of significant benefit to the province; and

**Administrative Justice  
For Decision Makers  
for BC Provincial Nominee Program  
May 26, 2009**



## **Course Overview**

### ***Morning***

- Elements of Natural Justice
- Evidence

### ***Afternoon***

- Evidence (cont.)
- Decision Making & Decision Writing

## **Course Overview (cont.)**

### ***Method***

- **Lecture**
- **PNP Issues**
  - **Discuss in small groups**
  - **Report back to large group**
- **Ask Questions throughout**

3

## **Learning Objectives:**

- **To list and understand the basic elements of the duty to be fair**
- **Apply these elements in the context of a BC PNP application**
- **Learn principles for assessing evidence**
- **Learn principles for sound decision making and decision writing**

4

## **Basics of Administrative Law**

- Administrative law governs the actions of government officials as they affect the public
- Before making a decision, a decision-maker must be sure he or she has the jurisdiction, or legal authority, to act (??)
  - The power to make a statutory decision must be established by legislation – statute or regulation
- Procedural fairness / natural justice is owed to persons who are subject to statutory decisions that are likely to impact their interests

5

## **Duty of Fairness — Basic Components**

1. A person has the right to reasonable access to public information about the BC PNP (know the case and reply).
2. A person is entitled to a decision from an unbiased decision-maker.
3. The person who hears the case must decide the case.
4. The decision-maker must give reasons for the decision.\*
5. Additional elements stressed by BC PNP (timeliness; refusing or closure of application).

6

## **The “Depends” Test For Fairness**

**In any particular case, the requirements of natural justice will depend on the “circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter which is being dealt with and so forth...”**

**Kane v. Board of Governors of University of British Columbia,  
Quoting from Russell v. Norfolk (Duke) [1949] 1 All E.R. 109**

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### **1. KNOW THE CASE AND REPLY**

**Potential elements of the right to know the case and reply:**

- notice
- disclosure
- hearing (can be in writing)
- subsequent information
- participation
  - counsel / representative

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### **1. Know the Case and Reply – NOTICE**

If a person is *affected* by a decision, the person must be given *notice* and the opportunity to respond.

- Example – withdrawal of nomination
- Who is affected?  
Parties are affected
- What is adequate notice? Depends.
  - Time
  - Method of hearing

9

### **1. Know the Case and Reply – DISCLOSURE**

If a decision-maker may base his/her decision on information contrary to the person's interests, the decision-maker must disclose that information.

*But disclosure must be balanced with other interests - (e.g. privacy, security, confidentiality)*

- Questions:
- Is the information relevant and necessary to make the decision?
  - What are the other interests for/against disclosure?

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## **1. Know the Case and Reply – Hearing**

- An oral hearing is not always required
- Written submissions may be sufficient
- Agency may determine its own procedure

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## **1. Know the Case and Reply: SUBSEQUENT INFORMATION**

**"[A] tribunal\* is not entitled privately to obtain evidence between the end of the hearing and the reaching of decision 'without notifying the parties thereafter of the advice or information received, so as to give the parties an opportunity of having a further hearing if need be, or, at any rate, commenting on the information and making their submissions thereon'."**

**Kane v. Board of Governors of University of British Columbia (1980), 18 B.C.L.R. 124 (S.C.C.) at 136 (quoting from Regina v. Deputy Industrial Injuries Commissioner, [1962] 2 Q.B. 677 at 686)**

**\* Same principle applies to statutory decision-makers.**

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## **1. Know the Case and Reply:** **SUBSEQUENT INFORMATION**

- **Investigation**
  - **Call applicant or employer**
  - **Site visits**
  - **Access to databases**
    - ❖ **Public Access**
    - ❖ **Limited Access**
- **Opportunity to respond to findings**

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## **Duty of Fairness – Bias**

- **Bias is a lack of neutrality on the part of the decision-maker.**
- **Actual bias or a reasonable apprehension of bias is required to disqualify a decision-maker.**

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## **2. Duty of Fairness – Bias**

**“What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?”**

***Wewaykum Indian Band v. Canada, [2003]  
2 S.C.R. 259, 2003 SCC 45, at para. 60***

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## **2. BIAS**

***How might bias arise?***

- **Self-identification of bias**
  - **Relative / friend**
  - **Financial implications**
  - **Representative or Employer issues**
- **Allegation of bias by party**
- **The perception of bias may taint an otherwise sound determination**

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## **2. Bias**

***What to do if an allegation of bias or a reasonable apprehension of bias arises?***

- Invite submissions of parties
- Make decision on issue of bias
  - Proceed with hearing
  - OR, if find that bias exists
  - Remove yourself from hearing

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## **3. PERSON WHO HEARS MUST DECIDE**

- Fettering - pressure on the decision-maker from other people/sources regarding the outcome of a decision
- Need to maintain discretion to make decision
- Can use others / policy to inform or guide, but not to bind the decision-maker

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### **3. PERSON WHO HEARS MUST DECIDE**

**Areas where fettering issues may arise:**

- plenary sessions or pressure from supervisors
  - policy guidelines or policy manuals
- ❖ **Recommendation of Program Advisor versus final decision of Program Manager**

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### **3. PERSON WHO HEARS MUST DECIDE**

#### **Guidelines for Plenary Meetings**

- meetings are voluntary
- no attendance or vote taken
- no minutes
- no new evidence introduced or considered
- cannot discuss facts or merits of individual case
- limited to discussion of legal and policy issues and implications of decision
- decision not based on new grounds raised at meetings unless parties informed and can make representations on the new grounds

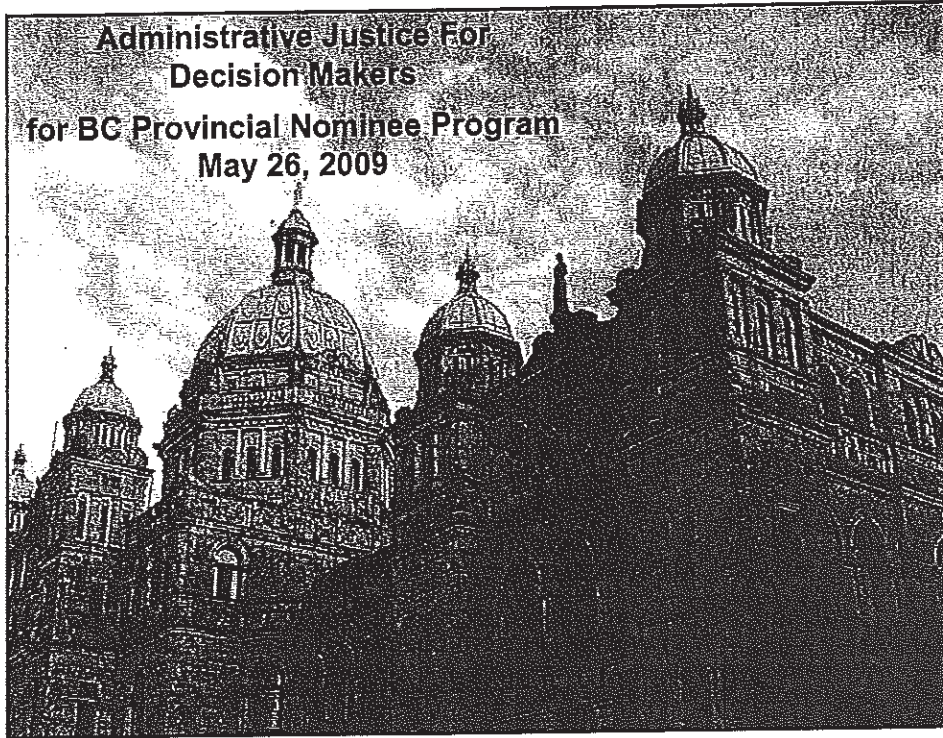
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## **5. Additional Elements**

- **Timeliness**
  - **Process all enquiries and applications without unwarranted delay**
- **Refusal or closure of application**
  - **Not done until the Program Representative is satisfied the application does not meet the program requirements**

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**Administrative Justice For  
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**Evidence**

**Learning Objectives:**

1. Describe what evidence is and the requirement that factual decisions be based on evidence
2. Outline the procedures for admitting evidence

## **What Is Evidence?**

**“Evidence is the material which is submitted to establish the factual basis against which legal interpretation, policy and logical reasoning will operate.”**

Sprague, p. 272

3

## **Evidence -- Material**

- **“Material” may be**
  - Oral testimony
  - Written Documents
  - Other
    - Photographs
    - Maps
    - Video tapes
    - ?

4

## **Evidence – Rules of Procedure**

- Agency has authority to determine its own procedure
- Rules of court do not apply
  - Pros – greater freedom
  - Cons – Cannot simply rely on rules for admissibility
- Cannot ignore the concept of evidence
- Refusal to accept relevant evidence → breach of right to be heard

5

## **Evidence and Proof**

- Burden of Proof – who has the obligation to establish the existence of the matter in question
- Standard of Proof – to what “level” must the thing be proven?
  - Balance of probabilities vs. beyond a reasonable doubt

6

### **Finding Facts Based on Evidence**

- **Decision-maker “finds” (determines) what the facts are, based on the evidence presented**
- **Parties present evidence, directly or through witnesses, documents, other**
- **Decision-maker must “weigh” (evaluate) the evidence to find the facts**

7

### **Assessing Evidence**

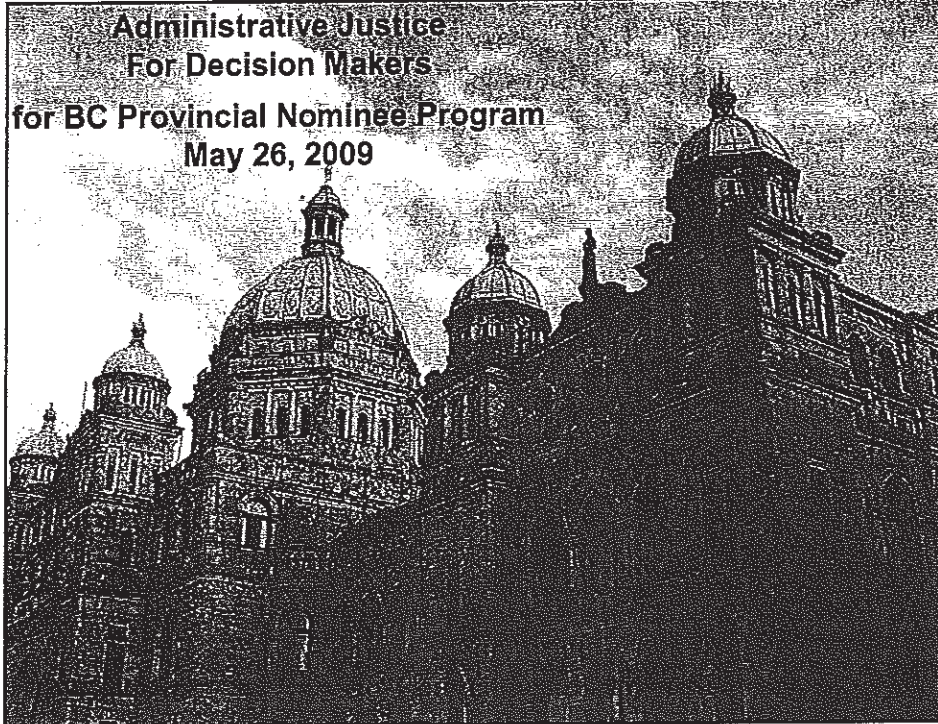
- ***Relevance* – evidence may be relevant if it has some logical value in proving a fact at issue**
- ***Weight* – if evidence is or may be relevant, how much weight to be placed upon it?**
  - **Reliable and persuasive?**
  - **Credibility – subjective – internal inconsistencies in the person’s story?**
  - **Credibility – Objective – Do not believe the person is being truthful or prefer other evidence**

8

## **Assessing Evidence**

- ***Assessment of credibility***
  - No formal rules
  - At best, we apply rules of “common sense”  
(which change from person to person)
  - Test via cross-examination or investigation  
(where possible)
  - Consistency with previous statements and other  
evidence by person (and with other persons)
  - Coherence / believability

9



## **Decision Making & Decision Writing**

### **Learning Objectives:**

- **outline considerations for assessing evidence**
- **list the essential elements of a good decision**
- **identify your strengths as a writer and areas where you can improve**

## **Assessing Evidence**

- **Relevance** – evidence may be relevant if it has some logical value in proving a fact at issue
- **Weight** – If evidence is or may be relevant, how much weight to be placed upon it?
  - Reliable and persuasive?
  - Credibility – Subjective - internal inconsistencies in the person's story?
  - Credibility – Objective – Do not believe the person is being truthful or prefer other evidence.

3

## **Assessing Evidence (cont.)**

- Consider whether there are appropriate admissions and doubts
- Consider powers and abilities of witness
- Beware of your own presumptions and biases. Avoid projecting and over-generalizing

4

## **Person Who Hears Must Decide**

- **Policy and Guidelines** – can use to inform or guide, but not bind
  - **Discretion** – use of decision-maker's own judgment in making decision
- **Peer Review** – very useful tool, but with some limitations
- **Standard Format** – can be useful, but must turn mind to specifics of each decision

5

## **Preliminary Considerations**

**What are reasons for decisions**

**Why write reasons for decisions**

**Who are you writing for**

**When should decisions be written**

**The institutionalization of decisions**

6

## **Standard Elements of a Decision**

- Introduction and Issue(s)
- Background and Facts
- Positions of the Parties
- Analysis and Findings
- Conclusion

7

## **Common Areas for Improvement**

### **Introduction and Issue(s)**

- lack of clarity
- introductions under/over inclusive
- issue(s) not identified

### **Background and Facts**

- facts and evidence confused
- inclusion of irrelevant information
- statutory or legal authority listed in facts
- facts arising in analysis
- extensive quotations (documents)

8

## **Common Areas for Improvement (cont.)**

### **Analysis**

- necessary to provide basis for findings
- conclusions stated w/out giving reasons

### **Language**

- “beliefs” versus findings
- use of passive voice and jargon

### **Unnecessary Information In Decision**

- process and other “boilerplate”

9

## WRITING GOOD DECISIONS

### *The Essential Requirements and Some Related Questions*

John B. Hall

This paper is largely a reproduction of a presentation on decision writing I have given at past seminars held by the Canadian Institute for the Administration of Justice and the B.C. Council of Administrative Tribunals. Other adjudicators have expressed their views on the same topic, some in terms which are considerably more comprehensive than my remarks.

Two recommended references are: *Administrative Decision Writing*, Andrew C.L. Sims, Q.C., April 11, 1991 (CIAJ, Edmonton, Alberta), and *Strategies for Effective Decision Writing*, J. Robert W. Blair, March 16, 1995 (CIAJ, Edmonton, Alberta). Another source of guidance on the subject of decision writing is *Tribunals - Reasons, and Reasons for Reasons* (1990), 3 CJALP 123 (Ellis, Trethewey and Rotter). Although described as a "note", the article is an extensive reference which evolved from a workshop on the "Policy of Reasons" at the first Conference of Ontario Boards and Agencies.

I encourage you to read these papers (which, in turn, list additional worthwhile references). They were prepared by experienced adjudicators and offer different perspectives on writing decisions as in the current paper. To a certain extent, writing is a matter of personal style; you must develop a technique which best allows you to effectively and efficiently prepare reasons. Canvassing the experiences and suggestions of others will contribute to that development.

I also encourage you to re-read the papers several months from now, and again in the future. There are at least two reasons for doing so. First, you should always be seeking to improve your writing; few among us reach a level of excellence which cannot benefit from further refinement. Second, there are common "bad habits" which typically re-appear over time; a refresher course is a simple means of ensuring they do not hinder your writing.

Before discussing the essential elements of a decision, I will address several related questions by way of introduction. The answers to these questions contain guidance which I have personally found beneficial in learning how to write decisions.

## A. SOME RELATED QUESTIONS

### (a) What are reasons for decision?

Reasons for decision are more than simply a conclusion or the result in a particular case. They must adequately reveal the analysis which led to the outcome. Thus, reasons identify the parties, crystallize the issues, accurately set out the relevant facts (and resolve any evidentiary conflicts), and explain the conclusion in light of the parties' arguments and the applicable law or policy.

### (b) Why write reasons?

There are a variety of answers to this question which fall broadly into two categories: legal requirements and practical considerations.

Under the traditional approach to the duty of fairness, administrative tribunals were not as a general rule required to provide reasons for their decisions. Nonetheless, the courts emphasized the usefulness of reasons in ensuring fair and transparent decision making. A frequently cited passage on the subject is these remarks by Mr. Justice Estey in *Re Northwest Utilities and City of Edmonton*, [1979] 1 S.C.R. 684:

The law reports are replete with cases affirming the desirability if not the legal obligation at common law of giving reasons for decisions... This obligation is a salutary one. It reduces to a considerable degree the chances of arbitrary or capricious decisions, reinforces public confidence in the judgement and fairness of administrative tribunals, and affords parties to administrative proceedings an opportunity to assess the question of appeal and if taken the opportunity in the reviewing or appellate tribunal of a full hearing which may well be denied where the basis of the decision has not been disclosed. ... (p. 706)

The law has now evolved to the stage where the duty of procedural fairness will require a written explanation for a decision in certain circumstances. The Supreme Court of Canada adopted the developing common law in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, and held some form of reasons should be required in cases "... where the decision has important significance for the individual, when there is a statutory right of appeal, or in other circumstances ..." (para. 43). Some administrative tribunals may be statutorily obliged to publish reasons under their constituent act or other legislation. For instance, British Columbia tribunals subject to Section 51 of the *Administrative Tribunals Act*, SBC 2004 c. 45, must make their final decisions in writing and give reasons for the decisions.

The practical considerations for giving reasons are equally compelling. Some were alluded to by the Supreme Court in the *Northwest Utilities* case (i.e., avoiding arbitrary decisions and reinforcing public confidence). As well, reasons allow for policy development and provide an avenue for "communication" with the community within which the tribunal operates. The credibility of an administrative tribunal is often judged by the reasons which it publishes; they should be perceived as fair and consistent, and demonstrate a rational application of law or policy to the facts.

Decisions of administrative tribunals are, of course, subject to judicial review by the Courts. There are different standards of scrutiny under the current "pragmatic and functional" approach. But regardless of the applicable test, an examination of the authorities suggests a decision will be more susceptible to judicial intervention where adequate reasons are not provided. Thus, the interests of a successful party are not advanced by a poorly crafted decision.

(c) Who are you writing for?

Reasons are inevitably written for several audiences at the same time. Those audiences are certainly the parties, and may include (in no particular order) the public, the Courts, the press, the legal community, your colleagues and others.

The scope of your audiences and their respective significance may well vary depending on the decision in question. However, almost without exception, I have long believed that the single most important audience is the losing party. I take no credit for this advice and fortunately received it very early in my adjudicative career. A decision must satisfy the parties that their positions were understood and considered. This especially means responding to unsuccessful arguments with a balanced and logical analysis. The losing party may not agree with the result, but they should have a sense of "fair hearing".

On the other hand, there is one audience for which you should *not* write: namely, the law journals. In a similar vein, you must resist the temptation to write reasons which purport to demonstrate the full extent of your knowledge and wisdom. This is an affliction which often strikes new adjudicators who seek to justify their appointments. "Overwriting" will typically be regretted at a later date.

(d) When should decisions be written?

The short answer is "as soon as possible". Parties do not like to wait, and timely decisions generally make the result more palatable. Where reasons are published long after the hearing, there can be a suspicion that evidence or arguments were either overlooked or forgotten entirely. The task of writing is also far easier when the matter is fresh in the adjudicator's mind.

As desirable as this objective may be, the reality of your caseload may mean it is days, if not weeks, before sufficient time can be devoted to writing a decision. I have developed two techniques to assist me in those circumstances. First, I begin "writing" the decision through notes taken during the hearing. This is not actual writing, but merely highlighting key evidence to be included in the reasons, noting assessments of credibility, and writing reminders in the margin for subsequent consideration.

Second, when the hearing is completed, I try to write "something soon". This may be my initial impression of the case, a finding on a key point, or a list of questions to consider at a later date. If time allows, I may make an outline of the decision in point form,

sketching the issues, facts, arguments, and tentative conclusions. The purpose is to have some reminder in my own writing when I return to draft full reasons for the decision.

(e) The "institutionalization" of decisions

This last point is obviously not a question, and is included as a caution. In my experience, the decisions of administrative tribunals tend to become "institutionalized" over time. That is, a decision is immediately recognizable as being from a specific tribunal, both in terms of format and contents. The latter is the more problematic. We all tend to develop and use the terminology of our specific field. However, to most of our "customers" (as distinguished from their legal counsel or other representatives), this jargon can be a foreign language. Reasons lose much of their acceptability if they cannot be readily understood. Look at the format and content of your tribunal's decisions: would the average party be able to readily comprehend what has been written and understand the reasons for those decisions?

B. THE ESSENTIAL ELEMENTS

There is no universal formula for writing decisions. In addition to the factor of personal style, the many different characteristics of cases preclude the development of an inflexible framework. Reasons must be responsive to the specifics of the proceeding. Nonetheless, there are certain essential elements which should form a component of any complete set of reasons. To varying degrees they are: (a) an introduction or description of the application; (b) the issues; (c) the facts; (d) the arguments of the parties; (e) an analysis of the applicable principles; and (f) the conclusion.

There are some frequently repeated recommendations regarding the manner in which you should write when dealing with each of these elements. Bad writing by the standards of ordinary English is bad legal writing. Write with clarity and precision. This usually means using short, simple sentences. Each sentence should convey a single point. At the same time, varying the length of some sentences will make reading your reasons more interesting. Learn to use punctuation properly. Using headings and sub-headings can make the task of writing easier and will assist the reader.

Other guidelines include limiting the use of legalese or technical jargon. Likewise, avoid unnecessary phrases: a common and needless transitional phrase is "Having carefully considered the evidence, I find..." (would you *not* consider the evidence carefully?). Write in the first person and don't attempt to hide behind the anonymous persona of your tribunal. Be direct when making findings and conclusions (as opposed to "The tribunal feels that ..." or "We believe that ..."). Don't overwrite or use flowery language or unwarranted modifiers (e.g., "clearly", "obviously" and so on). These suggestions should all add more force and conviction to your reasons.

(a) Nature of the Application

A brief statement regarding the nature of the application will serve as an introduction to your decision. It may only be one paragraph in length, and should identify the parties, any operative statutory provisions, the subject matter of the application and the decision or order being sought.

In order to write an introduction which will be readily understood, avoid a mere repetition of the formal application giving rise to the proceeding. An example of a plainly worded introduction might be as follows:

The Union complains that its chief organizer was improperly dismissed. It alleges that the Employer committed an unfair labour practice contrary to Section 6 of the Code. The Union seeks an order of reinstatement and damages.

Use the active voice to describe the application (and continue throughout the decision). It is far more effective than using the passive:

This decision concerns an application by the Union under Section 6 of the Code in which it is alleged that the Employer was motivated by anti-union *animus* and committed an unfair labour practice when it dismissed the Union's chief organizer. The remedy specified in the application is an order of reinstatement and damages.

(b) Issue

You should at some point near the beginning of your decision state the issue in your own terms. I normally do this when describing the nature of the application; some of my colleagues state the issue in a separate section of their reasons.

The issue is what must be decided in the case. There may well be more than one issue. Further, the issues may be factual, concern the applicability of legal precedent, or give rise to a question of statutory interpretation.

When the issue is articulated near the beginning of your reasons, the remainder of your decision will have more meaning to readers. This will also assist you in writing the decision. Once the issue has been brought into focus, it is easier to determine what facts are relevant (or irrelevant) and what analysis should be included (or excluded). It is sometimes helpful to indicate what is not in issue.

(c) Facts

Decisions are not made in a vacuum. They are made based on your application of legal principles to the facts in the case. There is a critical (and often overlooked) distinction between facts and evidence. The latter is the testimony of witnesses, documents and other materials which have been placed before you. Findings of fact must be made in light of that evidence.

Recounting the facts can be the most challenging aspect of decision writing. They are usually best recorded as a narrative in chronological order. This is not an invariable rule. If a different format is followed, the reader should be given some sense at the outset as to how the narrative will proceed. In factually complex decisions, you may wish to include a general overview. Maintaining a chronological order can be difficult if several witnesses have testified to the same event at different points of the hearing. You should try and avoid writing "He testified that... . She later testified that...". Where there is no conflict, all of the evidence should be considered together and emerge as a single series of events in your findings of fact.

Where considerable documentary evidence has been introduced, attempt to avoid lengthy quotations. Paraphrase the essential points unless the precise wording is important to your reasons. Quotations can sometimes be incorporated into sentences, rather than adopting all of the original material in a large block. This is easier to read and does not disturb the flow of your narrative.

One of the most difficult tasks faced by adjudicators is assessing credibility when making findings of fact. It is only human nature to recall events differently. Sometimes there is conflicting evidence on matters which are crucial to your decision. You must resolve the conflict and give some basis for your findings. An oft-quoted passage is found in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA):

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, ...

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ... (pp. 356-57)

There are many reasons why evidence may be in conflict – truthfulness is only one. Further, you may accept some aspects of a witness's evidence but not others. Adjudicators typically avoid lengthy findings on credibility, particularly where the parties have an on-going relationship. Rather than saying the evidence of a witness is "disbelieved", a common phrasing is to say you "prefer the evidence" of the other witness. Once again, the reason for this may have nothing to do with intended truthfulness. One witness may have a better recollection of the incident due to notes made at the time. It can be counter-productive (if not destructive) to elaborate at length on a point of credibility.

Where there is a conflict in the evidence, it may be necessary to digress momentarily from your narrative of the facts. The conflicting evidence should be set up in opposition.

This can be followed by a resolution of the conflict (i.e., which evidence is preferred and why it forms part of your findings of fact). Alternatively, if the evidentiary conflict is one of the central issues in the case, your findings may be more appropriately included as part of the analysis.

Making findings of fact requires a knowledge of the rudimentary rules of evidence. You will no doubt have developed these skills in order to properly conduct the hearing. I refer to such matters as the use of hearsay evidence, direct as compared to circumstantial evidence, the drawing of evidentiary inferences and so on.

The only facts which should be recounted are those which are relevant to your reasons. Irrelevant facts should not be included except, perhaps, where they have been heavily relied upon by one of the parties. Where areas of irrelevant evidence have been extensively canvassed during a hearing, I will sometimes allude to those areas but indicate that the testimony was not helpful to my decision.

A simple and obvious point is that the facts must be accurately stated. You risk infuriating a losing party by incorrectly stating the facts (even where the point is not central to your decision). Likewise, nothing can be more upsetting to a witness than to be misquoted in a published decision. Further, findings of fact are normally not disturbed on appeal. Incorrect findings may thus cause irretrievable prejudice to an appellant, unlike erroneous legal determinations which may be overruled. Review your notes of the evidence and any transcript carefully as part of the editing process.

(d) Arguments of the Parties

Some adjudicators will repeat the arguments of counsel in their decisions. I do not like this approach and do not find it useful when reading the decisions of others. At most it indicates the adjudicator heard the arguments and considered them at least to the point of incorporating them in the decision.

I typically follow a practice of briefly summarizing the arguments of the parties in no more than one or two paragraphs. This serves to acknowledge the competing positions and establish the framework for the analysis which follows. If there is substance to a specific argument, it will need to be addressed in my analysis; if there is no merit to the point, it is either not included or rejected with a short statement to that effect.

(e) Analysis

The analysis explains why you reached your decision. It is more than simply a conclusion or a statement of the result. Your analysis must disclose a chain of reasoning. It may include an examination of past authorities, a discussion of their relevance and your application of those authorities to the present facts.

Reasons must impart to the reader a logical understanding as to *why* you reached your conclusion. A common flaw in some decisions is what has been described elsewhere as reasons which require "a leap of faith". The adjudicator may set out the arguments or law, and then decide on one side or the other without explanation. Reasons for decision should flow, so that the conclusion appears obvious from the facts and discussion which precede it. (I accordingly do not favour the style of decision writing which places the conclusion at the beginning.)

The "leap of faith" flaw is related to the "cut and paste" syndrome. I have seen decisions where the adjudicator has quoted numerous and seemingly relevant passages from prior authorities. The quotations are then followed with a sentence along the lines of "Therefore, in this case, it is concluded that ...". The missing step is some discussion on the applicability of the earlier authorities.

This leads to the appropriate use of precedent. My sense is that new adjudicators overuse past decisions in an effort to bolster the persuasiveness of their own decisions. Such "support" is typically unnecessary. Most areas of the law have one leading authority. If it is necessary to use precedent, I suggest that you quote from the leading authority and, perhaps, a more recent case or one which factually resembles the present application. Then get on with it and provide your own reasons.

Before leaving this section, I will briefly mention some other pitfalls. The caution against "overwriting" has already been recorded. Deal only with what is necessary to dispose of the issues before you. Anything more wastes time and creates the potential for future problems. Second, don't be drawn into counsels' ordering or characterization of the issues. Arguments are advanced for tactical reasons which are often not consistent with an objective analysis. Third, limit the use of quotations. If you find yourself emphasizing (by italics or underlining) portions of lengthy quotations, perhaps only those limited passages are required. You can often paraphrase past authorities and then simply give the case citation. Lastly, remember that your most important audience is the losing party. Does your analysis respond to the unsuccessful arguments which warrant discussion?

(f) Conclusion

In anything other than short decisions, a succinct statement of your decision can be included. In longer decisions, you may wish to include a brief summary of your analysis. If there are aspects of the matter you have not decided, the extent to which you remain "seized" should be made evident. This will avoid jurisdictional arguments at a later date.

### C. SOME FINAL THOUGHTS - EDITING

Once you have written and proofed a decision, avoid the urge to send it to the parties. The editing process has just begun and you should take time (if only a day) to reflect on what you have written. The importance of this step cannot be overemphasized.

The object of editing is to shorten and simplify your decision – not to make it longer. Too often editing results in additional thoughts and authorities being included. It is difficult to criticize one's own work, and harder yet to completely delete whole sentences and paragraphs which you believe were initially conceived in moments of brilliance. It must be done!

There is a trade-off between achieving perfection in decisions and meeting the realities of your caseload. A very effective method for editing decisions is to have them critically reviewed by one or more of your colleagues. They will be far more dispassionate in deleting sections which are not required and might more readily identify areas which require elaboration. Your editing of the decision is "writer based"; your colleagues will bring a "reader based" perspective.

I believe it is also in the broader interests of most administrative tribunals to have other adjudicators review draft decisions prior to publication. Vetting decisions will serve policy development objectives and help foster consistent results. This is not to say that decisions should be made by committee – ultimately, it is your decision based on the facts of the case.

March 1997/Revised April 2006

## Decision Making, Structure and Writing

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### A. Decision Making

Sometimes it is easy to make a decision. If you are certain one party is lying, or if an essential element of one side's case is missing, you will have no difficulty. But what about those more frequent cases where it is very difficult to decide? Here are some helpful hints:

1. Clarify for yourself exactly what it is that you are to decide. What is the precise question? Write it down, and then go through the exercise of identifying what facts you need to find to make that decision.

then

2. Divide a page down the middle and on one side list all the findings of fact you are able to make that support one party and do the same on the other side for the opposite party. This may resolve your dilemma.

or

3. Set out in a paragraph or two (as briefly as possible) one side's version of the events, then do the same for the other party's (or do both 2 & 3).
4. Another suggestion: a) List all those issues on which there is no dispute. b) List all those about which there is dispute, but about which there is in fact little disagreement. c) List those issues that are hotly contested. Then review these three categories looking for a "thread" or signpost in a) and b) which will point the way to the decision you should make on the difficult c) issues.
5. Credibility: when it is difficult to decide whether a particular witness is truthful, consider the following:
  - it the testimony internally consistent?
  - is the testimony consistent with:
    - \* other testimony
    - \* documents { hang it on these if you can
    - \* agreed facts
  - is the testimony possible given the circumstances:
    - \* could she see or hear from where she was

- \* how long was she watching or listening
- \* was she focused on the event or distracted
- was it a memorable event that one would remember accurately
- does she have an interest in the outcome
- was she hesitant or evasive
- ask counsel "why should I accept Alice instead of Fred" and importantly, trust your common sense and rely upon "demeanor" only as a last resort.

## **B. Structure**

1. Paint the picture in two or three sentences: Journalism's who, what, where, when and how is useful here.
2. State the question or questions.
3. State your answers.
4. Set out the relevant background
5. Explain why you have decided as you have

## **C. Writing**

- Rule 1      Short, short and shorter. Economy of language is the first rule of writing.
- never use a long word, or a long sentence, where a shorter one will work
  - if you can cut a word, cut it
- Rule 2      Use the active voice; never the passive.
- The panel decided, rather than "the decision was made by the panel that..."
- Rule 3      Avoid the "backhanded" passive: It would appear... or it was suggested. Simply say what happened.
- Rule 4      Rarely use a foreign or obscure word when a common one will do. If a word attracts attention to itself rather than to the idea it is intended to communicate, one should not use it.
- Rule 5      Never use "insider sections" such as "The member brought a s.7...", or "This is an Article 15 application..."
- Rule 6      Avoid long quotations. Readers skip over them. Your introduction to the quotation may make the point.

Rule 7      Do not "overwrite". Avoid exclamation marks. Avoid clearly, obviously,  
or      without doubt. Such words betray weakness.

Rule 8      Wait one day, read it over, and cut it in half.

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## **Supplementary Guidelines for BC PNP Officers**

The BC PNP policy manuals are the primary sources of information for decision-makers in both the Strategic Occupations and Business Immigration streams. Due to the complexity and variation among the types of business cases reviewed in the Business Immigration categories, the following guidelines on select topics provide additional support and clarification for decision-makers.

**Lee, Sun Mi JTI:EX**

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**From:** Poon, SP ALMD:EX  
**Sent:** Wednesday, April 14, 2010 4:36 PM  
**To:** Yee, Helen ALMD:EX; Guo, Benjamin ALMD:EX; Kennedy, Gordon ALMD:EX; Kim, Michael C ALMD:EX; Lee, Sun Mi ALMD:EX; Liu, Marlene ALMD:EX  
**Subject:** RE: Preliminary meeting today

Hi all:

Sorry I couldn't make it to the meeting today. I have two things that I want to talk about.

1. Authorized Representative(AR) – There are Prelims that we received with the corresponding address stated as that of the AR. However, it may list email address more look like that of a third person. Please, if you correspond by email, unless you are sure that the third person is an employee of the consulting firm, send the messages to that of the AR on record. We are trying to avoid communicating with shadowed consultants.
2. Please correspond with clients by email as much as you can and send for example, scanned copy of the "invite to formal" letters by email first so that the good news can reach the client earlier and they can proceed preparing the formal sooner. This will give a better service and hopefully it help to reduce the time between prelim to formal received. By the same token, we can send all nomination and work permit packages by couriers as much as possible.

Thanks

SP

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**From:** Y  e, Helen ALMD:EX  
**Sent:** Wednesday, April 14, 2010 1:51 PM  
**To:** Poon, SP ALMD:EX; Guo, Benjamin ALMD:EX; Kennedy, Gordon ALMD:EX; Kim, Michael C ALMD:EX; Lee, Sun Mi ALMD:EX; Liu, Marlene ALMD:EX  
**Subject:** Preliminary meeting today

Hi All,

We will be having a meeting to discuss preliminary applications today at 2:00pm in the Seymour Room.

Regards,  
Helen

**Lee, Sun Mi JTI:EX**

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**From:** Poon, SP ALMD:EX  
**Sent:** Monday, November 1, 2010 2:45 PM  
**To:** Bains, Tina ALMD:EX; Guo, Benjamin ALMD:EX; Kennedy, Gordon ALMD:EX; Kim, Michael C ALMD:EX; Lal, Jina ALMD:EX; Lee, Sun Mi ALMD:EX; Liu, Marlene ALMD:EX; Rattan, Gurpreet K ALMD:EX; Yee, Helen ALMD:EX  
**Subject:** Answering Phone & Email Enq. - Very Important  
**Importance:** High

Hi all:

We cannot give advice or make assessment of an application over the phone or email with scanty information.

s.13

s.13

s.13

It is not that we have not been.

When we are on duty for inbox or phone or walk-ins answering enquiries, please remember we have the responsibility to provide the requested program information. However, we should not be giving advice to the enquirer/applicant over the phone or answer questions that are not in our program area.

Always refer the enquirer to look at the website for complete information on program criteria and application process.

Refer them to look at CIC's website for general immigration or work permit questions. You can point them to the particular section if you know which section and let the enquirers read and digest the information themselves.

As an illustration:

Instead of saying, "You can apply and see what happens."

You can say, "If you think you qualify for the category after your research, you can decide whether you want to submit an application. "

Thanks  
SP

**Lee, Sun Mi JTI:EX**

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**From:** Poon, SP ALMD:EX  
**Sent:** Thursday, February 24, 2011 3:39 PM  
**To:** Bains, Tina ALMD:EX; Guo, Benjamin ALMD:EX; Kennedy, Gordon ALMD:EX; Kim, Michael C ALMD:EX; Lal, Jina ALMD:EX; Lee, Sun Mi ALMD:EX; Liu, Marlene ALMD:EX; Rattan, Gurpreet K ALMD:EX; Yee, Helen ALMD:EX  
**Subject:** PNP Business - Submission Report

Hi all:

At yesterday's weekly meeting, I recap some of the points we talked about that can help us prepare a better report. We'll continue find ways to improve on other aspects

1. The personal interview is a crucial part of your assessment. Mention about the interview, the date and your impression.
2. Are you satisfied that the applicant has business experience and accumulated the personal net worth legally.
3. Does the applicant understand the nature, the operations of the future business, its pitfalls and how to address them. Are you satisfied that the applicant has done reasonable amount of due diligence work.
4. Mention elements that were negative, its impact and if it can be addressed. And, if there were positives that outweigh the negatives.
5. Review info on the spouse, parents and children
6. What are the milestones of investment, lease space, leasehold improvements, purchase major machineries, hiring, setting up and operating of the BC business. Avoid saying be completed within 24 months. Be specific.

Thanks

SP

## Lee, Sun Mi JTI:EX

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**From:** Poon, SP JTI:EX  
**Sent:** Thursday, June 30, 2011 3:03 PM  
**To:** Bains, Tina JTI:EX; Guo, Benjamin JTI:EX; Kennedy, Gordon JTI:EX; Kim, Michael C JTI:EX; Lal, Jina JTI:EX; Lee, Sun Mi JTI:EX; Liu, Marlene JTI:EX; Rattan, Gurpreet K JTI:EX; Yee, Helen JTI:EX  
**Subject:** Quality Assurance - Schedule 4A and statement check

Hi all:

At yesterday's meeting, we have discussed about the importance of obtaining the signed narrative document required under Schedule 4A from business applicant telling how they accumulate their family and business fortune. The attached is a the result of a random check of WP cases processed during Nov/10 to Mar/11. Please be reminded to request such document if it is missing.

Thanks  
SP

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**From:** Liu, Marlene JTI:EX  
**Sent:** Tuesday, June 28, 2011 1:45 PM  
**To:** Poon, SP JTI:EX  
**Subject:** Schedule 4A and statement check



Schedule A and  
Statement.xlsx

**Lee, Sun Mi JTI:EX**

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**From:** Poon, SP JTI:EX  
**Sent:** Tuesday, November 15, 2011 10:12 AM  
**To:** Bains, Tina JTI:EX; Branch, Kimberley JTI:EX; Guo, Benjamin JTI:EX; Kennedy, Gordon JTI:EX; Kim, Michael C JTI:EX; Lal, Jina JTI:EX; Lee, Sun Mi JTI:EX; Liu, Marlene JTI:EX; Rattan, Gurpreet K JTI:EX; Wideman, Michael JTI:EX; Yee, Helen JTI:EX  
**Subject:** WP or Ltr of Acceptance or Confirmation - Request for extension support letters or nom certs

Hi all:

We are handling a fair amount of request for extension support letters. In continuing doing our due diligence work,

1. Please try to meet up with the applicants where feasible and find out reasons for delay under each of the circumstance and obtain supporting documentations when available.

WP – supporting documentations if they had been actively implementing the plan e.g. sales and purchase agreement, lease agreement, machineries purchased and others  
supporting documentations for reasons of delay such as health or other family issues  
the revised plan if there is one

LOC (applying for WP) – rejection letter from the visa post and CAIPS notes if there was extended delay

LOA (applying for PR) – letter from the visa post requesting valid nomination cert

2. In your extension letter, on the template, please put down the reason for the delay and your view whether it will be back on track and specify date of original documents issued and new period to be extended.

Thanks  
SP

**Lee, Sun Mi JTI:EX**

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**From:** Poon, SP JTI:EX  
**Sent:** Tuesday, November 15, 2011 3:13 PM  
**To:** Branch, Kimberley JTI:EX  
**Cc:** Bains, Tina JTI:EX; Branch, Kimberley JTI:EX; Guo, Benjamin JTI:EX; Kennedy, Gordon JTI:EX; Kim, Michael C JTI:EX; Lal, Jina JTI:EX; Lee, Sun Mi JTI:EX; Liu, Marlene JTI:EX; Rattan, Gurpreet K JTI:EX; Wideman, Michael JTI:EX; Yee, Helen JTI:EX  
**Subject:** Policy Manual - Active On-going management -

Kim:

These are some of the negative examples we discussed before that are drawn from previous applications

- Managerial positions that require prolonged absenteeism or indefinite travel from the physical business, whereby the applicant cannot continually cause action or change in the operation of the business and which casts doubt that the individual is managing a business from within the Province.
- Hiring or appointing someone to act on the applicant's behalf in the business
- Primary role is to serve as an angel investor or find angel investors.
- Holding the title of director or senior manager without having the level of skills or authority and responsibility to initiate business activity.

SP

**Lee, Sun Mi JTI:EX**

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**From:** Poon, SP JTI:EX  
**Sent:** Wednesday, November 16, 2011 1:51 PM  
**To:** Bains, Tina JTI:EX; Branch, Kimberley JTI:EX; Guo, Benjamin JTI:EX; Kennedy, Gordon JTI:EX; Kim, Michael C JTI:EX; Lal, Jina JTI:EX; Lee, Sun Mi JTI:EX; Liu, Marlene JTI:EX; Rattan, Gurpreet K JTI:EX; Wideman, Michael JTI:EX; Yee, Helen JTI:EX  
**Subject:** Assessing Business applications - Deficiency letters

Hi all:

I want to stress the importance of the deficiency letter. It is part of the structured review process. DL cannot be waived or substituted. Use it to address not just deficiencies of the business plan but other missing information/documents of the entire application. In view time is of the essence, it is best communicated to the applicant first by email follow up by mailing out the letter.

State in the deficiency letter that it is imperative the applicant/rep to respond before the interview or the interview will be re-scheduled or cancelled.

SP

## Lee, Sun Mi JTI:EX

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**From:** Poon, SP JTI:EX  
**Sent:** Thursday, November 17, 2011 10:24 AM  
**To:** Bains, Tina JTI:EX; Branch, Kimberley JTI:EX; Guo, Benjamin JTI:EX; Kennedy, Gordon JTI:EX; Kim, Michael C JTI:EX; Lal, Jina JTI:EX; Lee, Sun Mi JTI:EX; Liu, Marlene JTI:EX; Rattan, Gurpreet K JTI:EX; Wideman, Michael JTI:EX; Yee, Helen JTI:EX  
**Subject:** Amount of New Investment required when purchasing an existing business -

Hi all:

As discussed at yesterday's weekly meeting, I wish to clarify that there are 2 underlying minimum requirements that have to be met in the calculations.

- 1<sup>st</sup> Total investment has to be \$400,000 or more.  
2<sup>nd</sup> From the total investment there has to be \$133,000 (1/3 of \$400,000) or more in New Investment

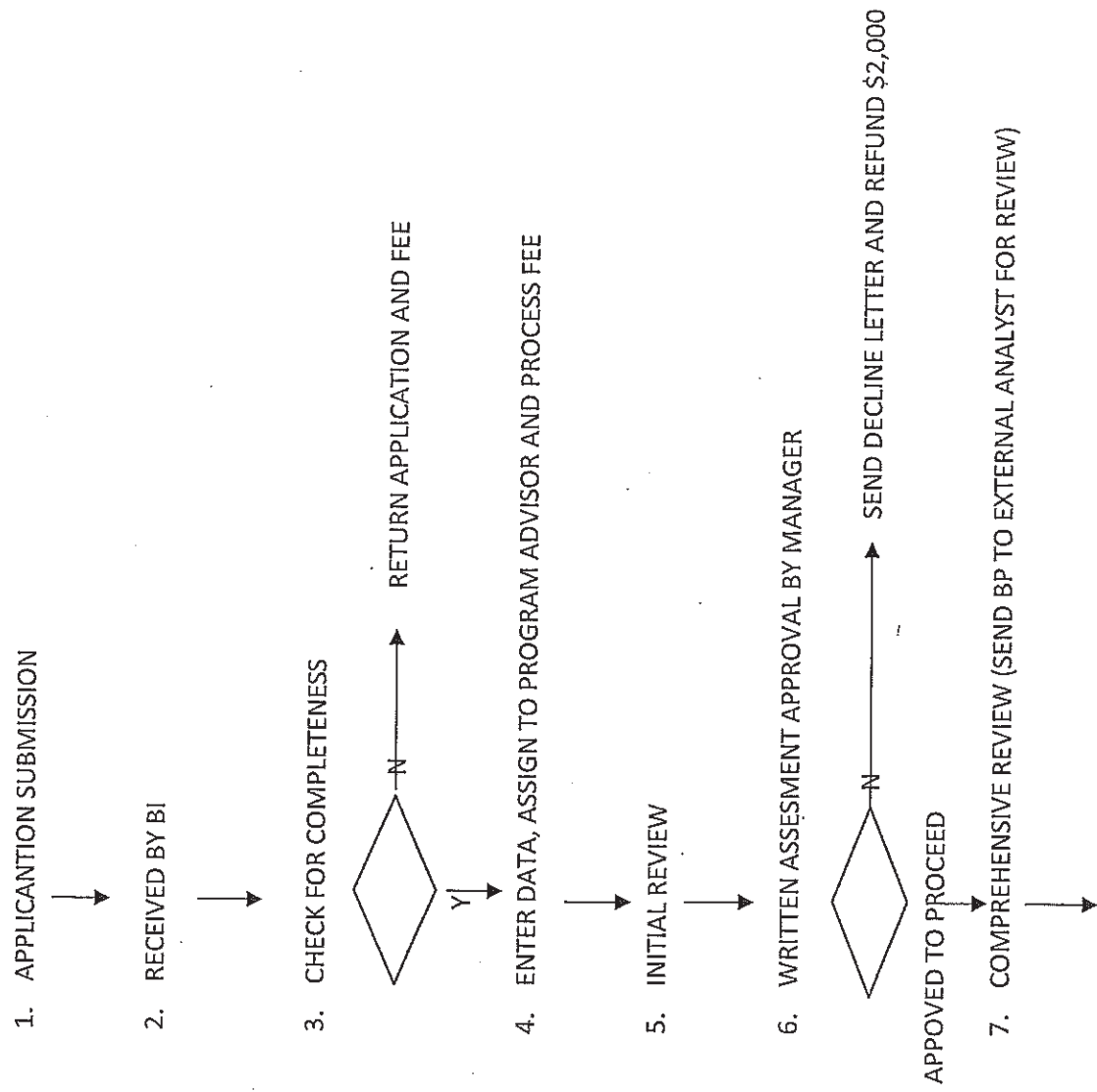
Here are the illustrations for existing business to be purchased at different price. I have highlighted in yellow how the minimum requirements are met

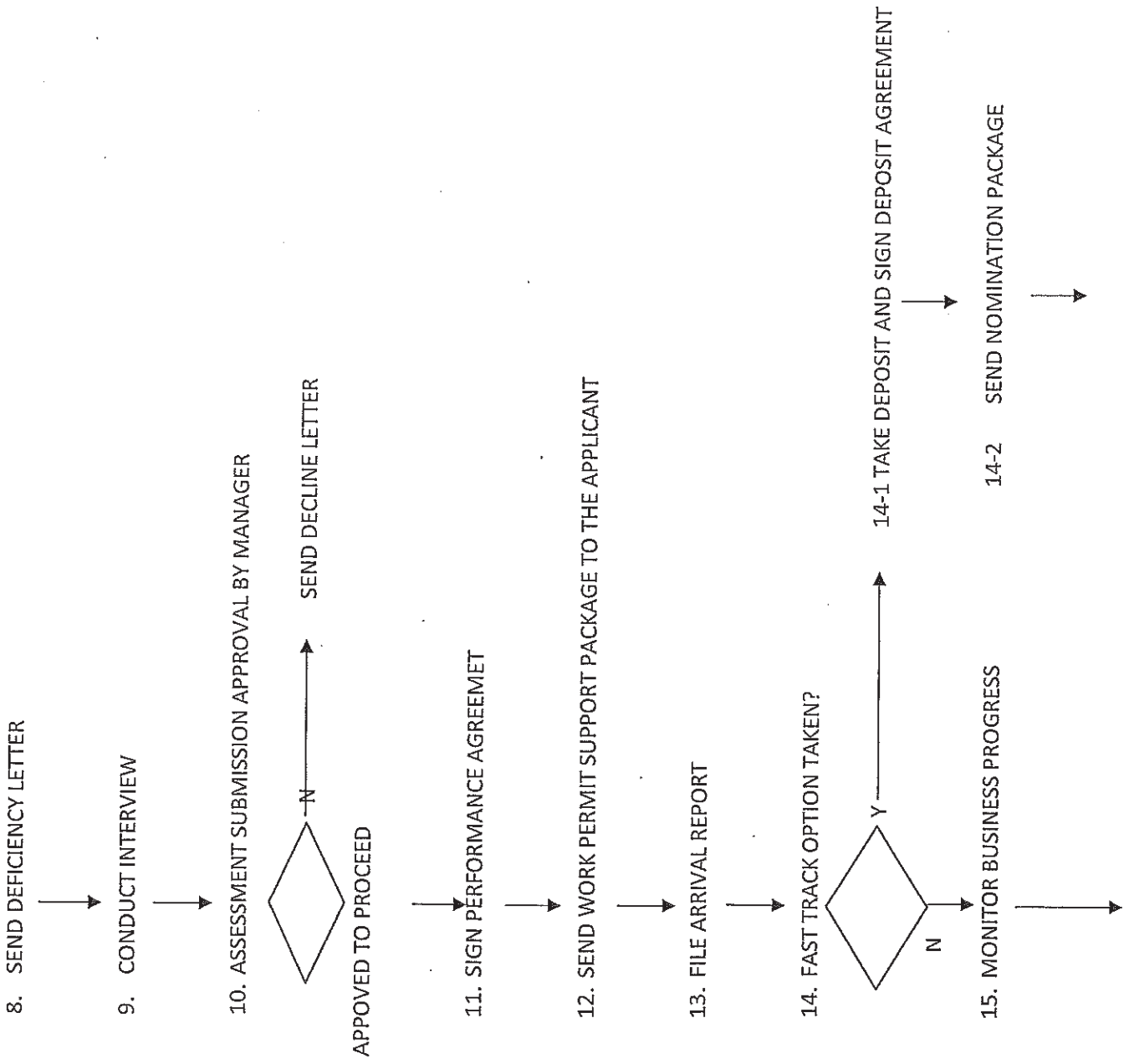
A.	Purchase price of business	\$400,000
	Min. New investment	133,000 (= 1/3 of 400,000 is 133,000)
	Total investment	\$533,000
B.	Purchase price of business	\$100,000
	Min. New investment	300,000 (= 400,000 - 100,000 when 1/3 of 100,000 is less than 133,000)
	Total investment	\$400,000
C.	Purchase price of business	\$267,000
	Min. New investment- 1/3	133,000 (= 400,000 - 267,000 when 1/3 of 267,000 is less than 133,000)
	Total investment	\$400,000
D.	Purchase price of business	\$500,000
	Min. New investment	133,000 (= 1/3 of 500,000 is more than 133,000)
	Total investment	\$633,000

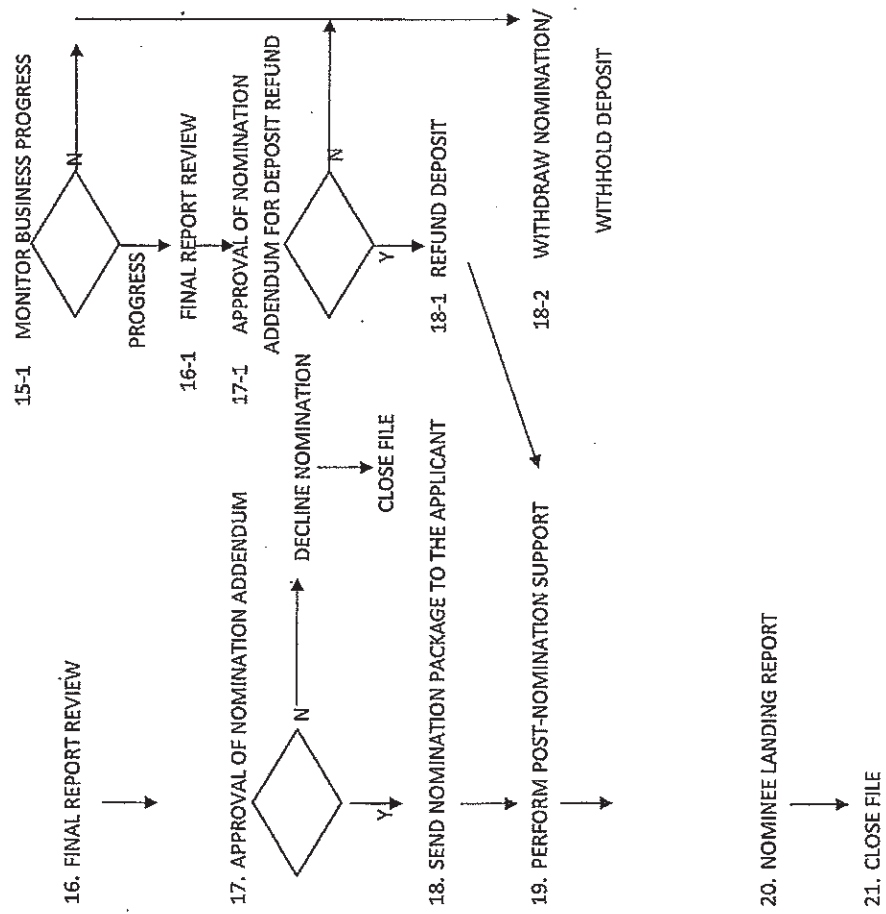
Sorry for the confusion and we'll review information published to make it consistent.

SP

# BI APPLICATION PROCESS MAP







TASKS

PROCESS NO.	OWNER	ACTIVITY/DOCUMENTS	COMMENTS
1.	APPLICANT	Study BC PNP, prepare application package, submit	Make application package downloadable from web, update guide, forms and checklist regularly
2.	ADMIN STAFF	Record and stamp date of receipt	
3.	BI INFORMATION OFFICER	Check for completeness of forms, and package	Main application forms and schedule 4A, use checklist, ensure all original documents are translated
4.	PROGRAM ASSISTANT	Process fee (\$3,000), assign file no., enter data into DB, assign to program advisor	Ensure all fields are entered correctly and accurately
5.	PROGRAM ADVISOR	Perform initial review focusing on eligibility of the applicant, major discrepancies (possible misrepresentation) and viability of business plan	Guideline for review needs regular updating
6.	PROGRAM ADVISOR	Submit written assessment of and recommendation based on initial review to Program Manager for further processing	Modify and revise decline letter template on a regular bases. Also track major reasons for decline for process improvements
7.	PROGRAM ADVISOR	Conduct a thorough assessment of financial background and business experience; business plan and other due diligence and provide NAICS code	Should research business's commercial viability in BC
8.	PROGRAM ADVISOR	Deficiency letter should include request for additional information needed and interview date.	Address concerns regarding information on personal/family, personal and corporate financials, proposed business plan including review inputs from external analyst. This letter should be followed by official invitation letter to those applicants from countries requiring TRV.
9.	PROGRAM ADVISOR	Verify application information; confirm business plan; and assess applicant's capability to manage/operate business proposed; ability to settle in BC successfully.	Make sure that the applicant understand the requirement in terms of meeting program requirements and agree on basic terms and conditions of performance agreement should the applicant be accepted into BC PNP
10.	PROGRAM ADVISOR	Recommend approval/refusal based on information provided via documentations and interview.	The submission summary is a standalone document that provides essential information and rationale which yields unforced conclusion. This also applies to writing a decline letter in refusal case.
11.	PROGRAM ADVISOR/APPLICANT	Aside from active management of commercially viable operation, applicants must fulfill the basic investment, job creation per business plan submitted within a given timeline.	The applicant must be advised that the terms and conditions outlined in the signed performance agreement will be the reference framework that their business performance will be measured for nomination.

12.	PROGRAM ASSISTANT	Prepare a customised package that includes Letter of Acceptance, arrival report and monitoring report forms and final report form along with instructions for approved applicants.	Depending on the visa post, a separate notice is sent to the post to confirm applicant's acceptance into BC PNP. Work permit application is to be made by applicants to relevant visa posts. Work permit support letter is valid for 90 days from the issuing date.
13.	APPLICANT	Within 3-months of entering BC with a valid work permit using arrival report form with a copy of work permit attached.	Applicants are advised that their business performance milestone start date is the date of their work permit issue date at the port of entry.
14.	APPLICANT/PROGRAM ADVISOR	Copy of work permit, proof of investment fund transfer to local Canadian bank, establishment of residence, conditional refundable \$125,000 deposit are needed before signing the Deposit Agreement.	Applicant is advised that a material breach of the signed deposit agreement will result in default of the deposit or withdrawal of nomination or both. If the terms and conditions of performance agreement are met the deposit principal will be returned to applicants without interest. Closer monitoring of the business progress is also required.
15.	APPLICANT/PROGRAM ADVISOR	Monitoring reports (using the form provided) are to be filed by applicants every 6 months and program advisor reviews them for progress.	
16.	APPLICANT/PROGRAM ADVISOR	A comprehensive report with necessary supporting documents is submitted by applicant when performance agreement terms and conditions are fulfilled.	
17.	PROGRAM ADVISOR	Recommend nomination/refusal based on the assessment of submitted final review.	Often site visit is required for verification.
18.	PROGRAM ASSISTANT	Prepare and send nomination package for the applicant and dependants and notify CIC.	Applicants are to submit their permanent resident in Canada application with our nomination within 180 days of the issuing date.
19.	PROGRAM ADVISOR/PROGRAM ASSISTANT	Post nomination work permit renewal supports and communication with CIC regarding nominees	
20.	PROGRAM ASSISTANT	Record landing date form input from applicant/CIC	
21.	PROGRAM ASSISTANT	Check for completeness of file and close	Check to see all the data is updated.
FAST TRACK			
14-1	APPLICANT/PROGRAM ADVISOR	Copy of work permit, proof of investment fund transfer to local Canadian bank, establishment of	Applicant is advised that a material breach of the signed deposit agreement will result in default of the deposit or withdrawal of nomination or both. If the terms and conditions of

	ADVISOR	residence, conditional refundable \$125,000 deposit are needed before signing the Deposit Agreement.	performance agreement are met the deposit principal will be returned to applicants without interest. Closer monitoring of the business progress is also required.
14-2	PROGRAM ASSISTANT	Prepare a customised package that includes Letter of Acceptance, arrival report and monitoring report forms and final report form along with instructions for approved applicants. A FT suffix will be assigned to the file to id it as fast track.	Depending on the visa post, a separate notice is sent to the post to confirm applicant's acceptance into BC PNP. Work permit application is to be made by applicants to relevant visa posts. Work permit support letter is valid for 60 days from the issuing date.
15-1	APPLICANT/PRO OGRAM ADVISOR	Frequent reporting for progress monitoring is to be filed by the applicant and program advisor is to follow up on any indication of divergence.	Performance agreement non-compliance will trigger nomination withdraw/ deposit default. Applicant interview may be arranged as needed.
16-1	APPLICANT/PRO OGRAM ADVISOR	A comprehensive report with necessary supporting documentations is submitted by applicant when performance agreement terms and conditions are fulfilled for deposit return.	Applicant interview may be arranged as needed.
17-1	PROGRAM ADVISOR	Recommend refund/retain deposit based on the assessment of submitted final review.	If performance agreement terms and conditions are not met deposit will not be returned to the applicant.
18-1	PROGRAM ASSISTANT	Have applicant sign a receipt and return the deposit.	
18-2	PROGRAM ASSISTANT	Notify decision to applicant.	
OTHER TASKS			
BUSINESS PLAN CHANGE AND PERFORMANCE AGREEMENT ADDENDUM	PROGRAM ADVISOR		
PRE- NOMINATION WORK PERMIT EXTENSION	PROGRAM ADVISOR/PRO GRAM ASSISTANT		
POST- NOMINATION KEY STAFF	PROGRAM ADVISOR/PRO GRAM		

WORK PERMIT EXTENSION	ASSISTANT		
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## Assessment of Preliminary Business Applications

### Basic requirements

- Business/Management Experience: Match with proposed business
- PNW: Look for liquidity
- Investment: Reasonable
- Employment
- Active Management

Check 3Ms (Money, Manpower, Material) + Business Edge (Ideas, Know-hows, Know-whos, special rights and contracts (Patents, Licences, exclusive contracts etc.)

### Ask

- Does the proposal seem feasible?
- Does it have to be located in BC?
- What other economic benefits, beside the obvious ones, would it bring to BC?

Identify some of the Key Success Factors.

For purchase of existing business, should provide pertinent information on the state of the business including its Fair Market Value (FMV)

Based on the above,

- send for more information
- approve and invite for formal application or
- decline application

## **Business Plan review and formal application documents**

### **Marketing**

- STP
- SWOT
- 4P

### **HR**

- Organization Chart
- Job Description

### **Operations**

- BM
- Process – Primary, Secondary, Tertiary industries
- Barriers to Entry – special requirements

### **Financials**

- Assumptions
- Break-even points
- B/S, P/L (I/S), C/F – will it survive?

### **Other due diligence on the application (confirmation on info provide at prelim)**

- Personal background
- Financials
- Business/management aspects

## **PNP INTERVIEW QUESTIONNAIRE**

### **A - PERSONAL**

1. Name
2. Permanent address
3. Place of birth
4. Date of birth
5. Document identification / verification  
(if the applicant has not been met face to face, request proof of identity)
6. Present occupation
7. Family members accompanying applicant (name / relationship / date of birth)
8. Applicant's approximate net worth
9. Source of applicant's wealth (from work or inheritance - where appropriate, documentary evidence should be supplied)
10. Details of any Canadian bank accounts (if applicable)
11. Canadian bank references
12. Amounts to be transferred to Canada
13. Did anyone refer applicant to us?
14. Details of any relationships applicant may have with other Business Immigrants

### **B - PAST BUSINESS EXPERIENCE**

1. Business / trade name, address, telephone number, website, etc.
2. Type of company
3. Nature of business, number of employees
4. Goods sold and / or services provided (be careful and ask more if you hear the words consultant, investment advisor, gathering capital for investment, adult entertainment and foreign exchange)
5. Status of ownership, role, and incremental employment
6. How was company started
7. How is business being run (if the main decision maker is other than the applicant, explain the relationship)
8. Financial structure of the company
9. Sources of financing for the company
10. Tax and payroll payment of the company:
11. Company bank references
12. If applicant was employed, job(s) description, years in the job(s) and salary range
13. Names and telephone numbers (to verify applicant's employment)

### **C - FOR REGULATED BUSINESSES**

1. Country in which applicant's business is incorporated / constituted
2. Is the applicant's business regulated?
3. Details of regulatory body

4. Confirm that applicant is registered with the appropriate authorities, where this is a local requirement:
5. In the case of a money service business:
  - List the main countries / regions served
  - Record the main reasons for money transfers

#### **D - PROPOSED BUSINESS PLAN**

1. Address / location of the proposed business
2. Nature of business
3. Is the business incorporated / registered?
4. Legal structure of proposed business (sole proprietorship, partnership or corporation)
5. Does the business have partners (name, relationship and percentage of ownership of each partner and other details of partnership agreement)
6. Financial structure of the company
7. Marketing plans
8. Is the applicant an officer, director or sole proprietor or are there other arrangements?
9. Are there any shareholders in the business (passive or active)
10. When will the business be in operation? Amount of initial investment by the applicant.  
Detail project implementation and investment steps
11. Describe the five new jobs and proposed salary range
12. How will the funds be transferred
13. Bank references in British Columbia
14. Applicant's job title and description
15. Does applicant have full control over business?
16. What is the applicant's formal participation in management and salary?
17. Does applicant have signing authority on bank accounts? (if anybody else has signing authority, what is the relationship?)
18. Is applicant planning to close business in home country?
19. Is applicant going to establish residence at the location of the business?

#### **E - APPLICANT'S AND KEY STAFF'S PROFESSIONAL CREDENTIALS**

1. Degrees, diplomas, trade certificates, etc. (for applicant and key staff)
2. Years of experience in related fields
3. Professional references to prove applicant's education and work experience

#### **F - FINAL**

Caution applicant about failure to comply with Performance Agreement!

SK/08-15-03

## BUSINESS PLAN REVIEW

The following highlights some of the major questions that should be considered when reviewing a Business Plan. In no way should this be construed as the definitive list. When reviewing a business plan one should always keep an open questioning mind. Whenever a question comes up always make a note of it. Quite often your question may be answered as you go through the business plan.

1. Clear understanding of exactly what the proposed business does? What products / services does it provide? If there is a manufacturing component to what extent is it done in BC.? For example, are the legs screwed on the table in BC or is the entire table manufactured in BC.? Are there any environmental, other licensing concerns? Why does the immigrant investor believe they have the expertise to oversee and make a success of such a business in BC? Has enough information been provided on the applicant to make this assessment, i.e. resume, bio, etc.
2. Who are the customers for the proposed business? Is there a market for the products / services?
3. Who supplies the (inventory) (raw materials) to the proposed business? Have any arrangements been made with potential suppliers? Is the supply assured? Is there only one supplier --- if so is this cause for concern?
4. How will the business market its products / services? Has a sufficient allowance been made for an advertising budget?
5. What is the sale price of the products / services? What kind of mark up exists for the business? Have assumptions been provided relative to how profit projections have been formulated? What are the expected sales volumes? Are they reasonable? What turnover rate is expected? Do products / services appear to be reasonably priced?
6. Generally, who is the local competition? What advantages will the proposed business enjoy over that of its competitors? Size and scope of competition? Is the market large enough to have a new entrant in the marketplace?

7. Want information on premises? What size? Cost of lease? What is the term of the lease? In the case of a restaurant how many seats? Has the lease payments been appropriately accounted for in the profit / cash flow projections? In the case of a motel / hotel what occupancy rate is being forecasted? In the case of a restaurant what is the projected turnover on a daily basis?
8. Want a detailed breakdown of project costs. Machinery and equipment if at all possible should be identified as to make model, etc. Scope of leasehold improvements? Is working capital allowance adequate or excessive? Are inventory levels reasonable? In the case of a business acquisition or investment being made in an existing business what incremental investment is being proposed? What does this entail?
9. If an existing operation is being purchased or an equity position is being taken, historic financial statements should be provided. Preferably at least three years worth? Look for trends? What are the reasons for any large fluctuations in gross profit margins? Has net after tax profits versus sales remained consistent? What kind of cash flow does the business spin off? What kind of equity does it enjoy? In the case of a buy-out you may want to exclude shareholder(s) loans when doing your equity calculation as existing shareholder(s) loans will probably not continue to exist coinciding with the finalization of the purchase. Take any non reoccurring extra ordinary items into consideration when reviewing historic financial results.
10. In the case of a business acquisition what exactly is being purchased, i.e. does it include real estate, what machinery and equipment, inventory, etc.? How is the sale price being determined – what share valuation methodology / rationale used? Has a sale listing / interim sales agreement been provided? What subjects are contained in the interim agreement if any? Is the immigrant investor purchasing already issued securities relative to the existing business or establishing a brand new company and simply purchasing the assets of the business being sold? Depending on what part of the business is being purchased (i.e. perhaps no real estate being included in the deal) how would historic financial results be affected by this change in business composition going forward? This must be considered when reviewing profit projections and making any comparisons. Has a non completion arrangement / agreement been worked out with the vendor? Has the vendor agreed to provide support for a period of time after the takeover? Has particulars of this arrangement been documented?

11. If a business immigrant is taking a percentage ownership in an existing business – are they purchasing already issued securities or treasury issued shares? Again what share valuation formula other rationale is being used to price the share acquisition? How did the immigrant investor meet the principal(s) of the business they are proposing to invest in? What roles and responsibilities will be assumed by all partners once the investment is finalized? Has a shareholder's agreement been finalized or drafted? If so get a copy. Does the shareholders agreement contain the usual "First Right of Refusal" and "Shotgun clauses", etc.
12. How many new jobs are being created by the project? What are the job titles? What kind of wages are forecasted to be paid for the various positions? What kind of experience / education level would it be expected likely candidates to occupy these positions would have? Have job descriptions been included in the business plan? What is the timing for the various positions to be created? If an existing business is being acquired how many employees does it currently have? How many of these existing jobs are expected to be preserved? Has an organization chart been provided? Does overall staffing levels look realistic for a business operating in BC.? If not this should most definitely be addressed.
13. Have potential risks been clearly identified in the business plan? An assessment of risk must be determined?
14. The business plans should include at least three years worth of Profit Projections, i.e. Yr. 1, Yr. 2 and Yr. 3. In addition an Opening Pro Forma Balance Sheet together with pro forma Balance Sheets that reflect the projected financial position of the business at the end of Yr. 1, Yr. 2 and Yr. 3 should be included. Does the immigrant investor's investment according to that reflected on the Balance Sheets correspond to the proposed project expenditure? Furthermore, cash flow projections for at least the first year on a month by month basis should be provided.

There is no doubt without having some historic results to refer to it is difficult to fully assess a set of profit projections. Use an open mind and look for allowances being made for lease payments, wages as outlined in other parts of the business plan, marketing, cost of goods sold (if applicable) Management Salaries (if any). The advisor should be in a position to make a general comment about projections at the end of their assessment, i.e. realistic, optimistic, overly optimistic, etc.

Prepared by Gordon

**THE BRITISH COLUMBIA**  
***PROVINCIAL NOMINEE PROGRAM (BC PNP)***  
**Performance Agreement Compliance Monitoring Guide**



**Ministry of Jobs, Tourism and Innovation**

This document explains the BC PNP Performance Agreement monitoring process which comes into effect **after\*** you have arrived in Canada.

Please read this document carefully.

**\*Within 1 month of arriving in Canada with your Work Permit.**

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## Introduction

To continue processing your application for provincial nomination, the Province of British Columbia requires you to provide evidence of your efforts to comply with the provisions of your *Performance Agreement* with the Province. You do this by reporting your progress to the Business Immigration Office at regular intervals. Regular monitoring includes but is not limited to:

- submission of Arrival Report; (*attached*)
- submission of 6, 12 and 18 month Performance Agreement Monitoring Reports; (*attached*)
- meeting with a Business Advisor to review implementation progress;
- submission of supporting documentation;
- site visits to offices, production/sales facilities, etc.;
- completion of Final Performance Agreement Report (*attached*)

### Compliance with the Performance Agreement

As a principal Provincial Nominee Candidate, you and your accompanying dependents must comply with the expectations outlined in your formal *Performance Agreement* with the Province. Each *Performance Agreement* is specific to each applicant and his/her business proposal. While the details will vary, your *Performance Agreement* will include provisions:

- identifying investment amounts and timelines;
- specifying the number and type of full-time positions to be created for Canadian residents;
- identifying implementation steps (e.g. purchase/lease of buildings, land, equipment; obtaining permits, etc.);
- stipulating the time frame within which the above requirements are to be completed, with identified milestones.

Compliance monitoring provides the basis for determining whether you will be confirmed as a Provincial Nominee. Applicants who satisfy the expectations identified in their *Performance Agreement* will be confirmed as Provincial Nominees.

However, if performance expectations are not satisfied, the applicant (with spouse/dependents) will be required to leave Canada.

## How do I satisfy the reporting requirements set out in my Performance Agreement?

Remember that you must provide evidence of your efforts to comply with the provisions of your *Performance Agreement* with the Province. You do this by reporting your progress to the Business Immigration Office at regular intervals. At any time during your monitoring, you may be asked to provide additional information or supporting documentation. Make sure you respect the reporting deadlines which are outlined in this document.

### Step 1 Arrival Report (0 – 1month)

Within 1 month of arriving in Canada with your Work Permit, you must provide the Business Immigration Office (*see Appendix B*) with:

- your completed Arrival Report, (*attached*)
- a copy of your work permit
- copies of your spouse's and dependent's status documents (work permits, study permits, visitor records)

### Step 2 Performance Agreement Monitoring Reports (6, 12 and 18 months)

You will find Performance Agreement Monitoring Reports attached for each reporting period. Complete and mail each report within the specified time to the Business Immigration Office (*see Appendix B*). Reports must include supporting documentation (*see Appendix A*).

The *Personal Information Protection Act* requires employers to obtain the consent of their employees when disclosing personal information. It is the employers responsibility to advise employees and obtain their consent.

#### 6 Month Performance Agreement Monitoring Report

Complete this report (*attached*) and submit with supporting documentation (*see Appendix A*) to the Business Immigration Office (*see Appendix B*) any time between 3 and 6 months from the date you arrived in Canada with your Work Permit.

### **12 Month Performance Agreement Monitoring Report**

Complete this report (*attached*) and submit with supporting documentation (*see Appendix A*) to the Business Immigration Office (*see Appendix B*) any time between 9 and 12 months from the date you arrived in Canada with your Work Permit.

### **18 Month Performance Agreement Monitoring Report**

Complete this report (*attached*) and submit with supporting documentation (*see Appendix A*) to the Business Immigration Office (*see Appendix B*) any time between 15 and 18 months from the date you arrived in Canada with your Work Permit.

### **Step 3 Final Report (within 24 months)**

At any time within two years from the date you arrived in Canada with your work permit, when you believe you have fully satisfied the expectations as identified in your *Performance Agreement*, you should complete and submit your Final Report (*attached*) with supporting documentation (*see Appendix A*) to the Business Immigration Office (*see Appendix B*).

A Business Advisor will review your final report and, if necessary, will interview you and/or request additional information and/or supporting documentation. They may also do a site visit. If you have successfully satisfied the expectations as identified in your *Performance Agreement*, the Business Advisor will forward your application for Nomination Certification and Permanent Residence Processing.

### **What happens if I don't satisfy the expectations as identified in my Performance Agreement within two years of arriving in Canada with my Work Permit?**

If you believe you will not be able to satisfy the expectations as identified in your *Performance Agreement* within the two-year period of arriving in Canada with your Work Permit, notify the Business Immigration Office (*see Appendix B*) immediately.

If performance expectations cannot be met within the two-year period, you will be required to leave Canada (with spouse/dependents) unless there are exceptional circumstances that exist.

## **Nomination Certification and Permanent Residence Processing**

When the Province of British Columbia determines that you, as the principal Provincial Nominee, have satisfied *Performance Agreement* expectations, it proceeds to nomination.

The Province of British Columbia provides you with a *Confirmation of Acceptance*, and sends to the appropriate Visa Office a *BC Nomination Certificate* for yourself (and spouse/dependents). The *Nomination Certificate* is valid for 180 days, within which you must apply to Citizenship and Immigration Canada (CIC) for permanent residence status in the Provincial Nominee class.

CIC has final approval authority and must ensure that all federal legislative requirements are met, including medical, criminality and security checks.

The permanent residence application process for Provincial Nominees is typically as follows:

- The principal Provincial Nominee submits the *CIC Application for Permanent Residence* and the *BC Confirmation of Acceptance* to the appropriate Visa Office.
- The Visa Office reviews the application for permanent residence and advises regarding requirements for medical, criminality and security checks.
- The principal Provincial Nominee (and spouse/dependents) comply with requirements for medical examinations, criminality and security checks.
- The Visa Office finalizes the process and advises both the principal Provincial Nominee and the Province of British Columbia. When the decision is positive, a *an Immigrant Visa* is issued to the Nominee (and spouse/dependents).

British Columbia may withdraw the Certificate of Nomination at any time prior to the issuance of the permanent residence visa if the principal Provincial Nominee and/or spouse and dependents is deemed inadmissible as a result of medical, criminality, or security checks, or if the Province is advised that the application includes false or misleading information.

Nomination under the BC PNP is at the sole discretion of the Provincial Government and all decisions made with respect to nominations are final.

### How do Key Staff become nominated?

(applicable under the Business Skills and Projects Categories only)

The nomination of Key Staff applicants is linked to the principal applicant or sponsor's performance in implementing the proposed business. When the Province of British Columbia determines that the principal applicant or sponsor has satisfied *Performance Agreement* expectations, it proceeds to nomination of key staff and follows the same process for nomination as that of a principal applicant, provided the key staff member has undertaken a key role in the proposed business and has provided proof of same.

If the principal applicant or sponsor does not satisfy Performance Agreement expectations, the key staff applicant(s) (and spouse/dependents) will be required to leave Canada.

## Frequently Asked Questions

### Why is my Work Permit valid for less than two years?

This may happen because you or one of your dependent's passports will expire before two years will elapse. If this has happened to you, let the Business Immigration Office know immediately. You will be required to extend the expiring passport(s) and then the Business Immigration Office will request the necessary extension(s) of your Work Permit.

### I have arrived in Canada and I am not able to implement my submitted business proposal. What do I do now?

The Province of British Columbia recognizes that in some instances BC PNP candidates will not be able to carry out their intended business plan. If you find you are in this situation, contact the Business Immigration Office (see *Appendix B*) immediately.

Each case is assessed individually. In some instances, the candidate will be permitted to submit a new business plan, and if accepted by the Province of British Columbia, they will be permitted to carry on. In other instances, the candidate (with spouse/dependents) will be required to leave Canada and will be required, if they choose to proceed, to start the British Columbia Provincial Nomination Program process over again.

### How do I get British Columbia Health Insurance for my dependents and myself?

The Government of British Columbia has a hospital insurance and a medical insurance plan. BC PNP candidates and their dependents are eligible to enroll in these plans. You do not need to register for hospital insurance. To receive insurance through the Medical Services Plan (MSP), for medical services including doctors' fees, you must register. If you don't, you will have to pay for these services yourself, and you may find the cost very high. It is important to register for medical insurance as soon as you arrive in British Columbia. Phone an MSP office to find out how. In Vancouver, call 604 683-7151. In Victoria, call 250 386-7171 or 250 382-8406. Elsewhere in B.C., call 1-800-663-7100.

### How do I enroll my children in school?

All children in B.C. between the ages of 5 and 16 must go to school. Some children go to private schools instead of public schools.

Children begin school when they are about 5 years old. For children under 5 years old, there are preschools. Call your local Health Unit, or Information Daycare, or look in the Yellow Pages under "Pre-School Centres" for a list.

#### Public Schools

Public elementary and secondary schools are free. To register a child for public school, phone your local School Board office (look in the White Pages under "Schools") or ask for information at the school near your home.

#### Private Schools

You may decide you want your child to attend a private school. Some private schools provide religious instruction. Others may have different teaching methods or smaller class sizes. Most private schools charge fees. For a list of these schools, phone the Office of the Inspector of Independent Schools in Victoria at 250 356-2508. Website: [www.bced.gov.bc.ca/independentschools](http://www.bced.gov.bc.ca/independentschools). You can also look in the Yellow Pages of the phone book under "Schools" and find "Schools – Academic – Elementary and Secondary."

#### Public Universities, Colleges and Institutes

Public elementary and secondary schools are free, but public colleges, institutes and universities charge fees. For a list of public colleges and institutes, look in the Yellow Pages of the phone book under "Schools--Academic-Colleges and Universities".

## APPENDIX A

### Recommended Supporting Documents

Element	Criteria	Documentation
<b>Establish a Business</b>	Physical location; Generating revenue; Commercial activity; Potential for continued operation	Proof of Ownership; Business Licences/Registration; Trade Licences; Incorporation documents; Vendor's Permits; Sales Tax licences; Receipts and invoices; Photos of location; Financial Statements
<b>Purchase a Business</b>	Acquiring ownership; Existing business	All of the above plus: <ul style="list-style-type: none"> <li>• Income Tax statements;</li> <li>• Proof of sale;</li> <li>• Purchase agreement;</li> <li>• Share transfers;</li> </ul>
<b>Substantial Investment</b>	Degree of control	Percentage of voting shares; Proof of investment; Owner's equity; Partnership agreements; Loan/business agreements
<b>Employment Opportunity</b>	Maintained/created employment; Duration of employment: <ul style="list-style-type: none"> <li>• hours of work</li> <li>• full or part-time employment</li> </ul>	Payroll documents; Employee registration; Revenue Canada remittance; T-4 Summary & copies of T-4's; Record of Employment (EI); Wages & benefits paid from financial statements
<b>Active and Ongoing Management</b>	Input into management decisions; Continued hands-on involvement in operations	Knowledge of day-to-day operations; Signed business contracts, correspondence, cheques and directives to staff;  Partnership agreements; Bills, statements, purchase orders in your name;  Minute-book to verify position title in business, voting shares, etc.

## APPENDIX B Business Immigration Office

### Province of British Columbia Provincial Nominee Program

**Address** Business Immigration Office  
Ministry of Jobs, Tourism and Innovation  
Suite 800 – 360 West Georgia Street  
Vancouver, BC V6B 6B2  
Canada

**Telephone** 604 775-2227  
**Facsimile** 604 660-4092  
**Email** [bus.imm@gov.bc.ca](mailto:bus.imm@gov.bc.ca)  
**Website** [www.businessimmigration.gov.bc.ca](http://www.businessimmigration.gov.bc.ca)

## APPENDIX C Useful Information

### ➤ Starting Up a Business

\*Canada/BC Business Service Centre [//smallbusinessbc.ca](http://smallbusinessbc.ca)  
On-line Small Business workshop, various on-line government publications and the Interactive Business Planner.

•Canada Business Service Centre [www.cbsc.org](http://www.cbsc.org)  
Connected to the national network, which has one location in each province and territory.

\*Government of Canada - Business Gateway [BusinessGateway.ca](http://BusinessGateway.ca)  
Excellent website from Industry Canada. Intended as a first portal (entry point) for people seeking to establish a business.

•Business Start-up Assistance [www.bsa.cbsc.org](http://www.bsa.cbsc.org)  
Gateway to government information for businesses. Information available by region or by business topic.

### ➤ Registering a Business

\*BC Corporate Registry [www.fin.gov.bc.ca/registries/corppg](http://www.fin.gov.bc.ca/registries/corppg)  
Legal framework and documents for the incorporation, registration, maintenance and dissolution of companies, societies and cooperatives in BC.

•Federal Incorporation [strategis.gc.ca/corporations](http://strategis.gc.ca/corporations)  
For stronger business name protection. Electronical filing available.

•One-Stop Business Registration (OSBR) [www.onestopbc.ca](http://www.onestopbc.ca)  
Introductory information regarding an easy-to-use registration system with one visit to a single location near you.

•Business License [www.city.vancouver.bc.ca/commssvcs/PandL/bllicense/blinfo.htm](http://www.city.vancouver.bc.ca/commssvcs/PandL/bllicense/blinfo.htm)  
If your business is located in a municipality, check with municipal authorities to ensure conformity with zoning and building regulations. If your business is located in an unincorporated area, check with the Regional District. (The above site provides business licensing information for the City of Vancouver (Municipality of Vancouver))

•Workers' Compensation Board (WCB) [www.worksafebc.com](http://www.worksafebc.com)

Most business operations in BC are required to have accident compensation coverage. Phone inquiries at: 1-800-621-7233.

• **Trademarks: Canadian Intellectual Property Office (CIPO)**

[ciplo.gc.ca](http://ciplo.gc.ca)

Detailed information, database and application form available not only for trademark but also for patent, copyright, industrial design and integrated circuit topographies.

➤ **Taxation**

• **Canada Customs & Revenue Agency (Federal Taxes)**

[www.ccr-aadrc.gc.ca](http://www.ccr-aadrc.gc.ca)

Useful taxation information for business sector. Phone inquiries to the Business Window at 1-800-959-5525 in Canada.

• **Consumer Taxation Branch (Provincial Sales Tax)**

[www.fin.gov.bc.ca/revenue/ctb](http://www.fin.gov.bc.ca/revenue/ctb)

Applicable to most of the retail, wholesale and some service sectors. Phone inquiries at (604) 660-4524 (in Greater Vancouver)

➤ **Becoming an Employer**

\* **Employers Online**

[www.employers.gc.ca](http://www.employers.gc.ca)

All the necessary information you would need as an employer.

• **Employment Standards in BC**

[www.labour.gov.bc.ca/esb](http://www.labour.gov.bc.ca/esb)

➤ **Exporting/Importing**

\* **How-to-Export Guide**

[exportsource.ca](http://exportsource.ca)

A single access point to all trade-related government departments and agencies on subjects including: preparing to export, researching, marketing, entering the market, etc.

• **Canada Border Services Agency (CBSA) - Customs**

<http://www.cbsa-asfc.gc.ca/menu-e.html>

For duties, select: General Information & Services → Technical Publications → Customs Tariff → Most Recent Customs Tariff

\* **Export and Import Control Bureau**

[www.dfait-maeci.gc.ca/~eicb](http://www.dfait-maeci.gc.ca/~eicb)

Federal government permit or quota system that you may need to obtain for importing and exporting businesses.

• **Export Sourcing Guide**

[www.sb.gov.bc.ca/smallbus/pdf/export.pdf](http://www.sb.gov.bc.ca/smallbus/pdf/export.pdf)

Downloadable publication for exporters-to-be; information including regulatory, useful publications, statistics, financing and association contacts.

• **Foreign Market Reports**

[www.infoexport.gc.ca](http://www.infoexport.gc.ca)

Canadian Trade Commissioners' site providing sector-specific market reports as well as business climate information by country.

• **World Information Network (WIN)**

[win.infoexport.gc.ca](http://win.infoexport.gc.ca)

A commercially confidential database of Canadian exporters and their capabilities operated by Department Foreign Affairs and International Trade. Check out the benefits when you become a member; registration available on-line.

• **Trade Policies and Free Trade Agreements**

[www.dfait-maeci.gc.ca/trade/menu-e.asp](http://www.dfait-maeci.gc.ca/trade/menu-e.asp)

Canada's trading policies and free trade agreements including NAFTA.

• **Insurance Programs for Exporters (Export Development Corporation)**

[www.edc.ca](http://www.edc.ca)

Various insurance programs for exporters to minimize possible risk.

• **Importing Sourcing Guide**

[www.sb.gov.bc.ca/smallbus/pdf/importing.PDF](http://www.sb.gov.bc.ca/smallbus/pdf/importing.PDF)

Downloadable publication for an importing business.

• **Importing a Motor Vehicle**

[www.ccr-aadrc.gc.ca/E/pub/cp/rc4140eq/rc4140-e.html](http://www.ccr-aadrc.gc.ca/E/pub/cp/rc4140eq/rc4140-e.html)

Detailed information how to import a motor vehicle into Canada. For other customs inquiries, phone Canada Customs and Revenue Agency (CCRA) at 1-800-461-9999 in Canada.

# **SELF COMPLIANCE CHECKLIST** *(for personal use)*

Form	When	Mailed? Mark an "X" once mailed
Arrival Report	Mail within 1 month of arriving in Canada with your Work Permit.	<input type="checkbox"/>
6 Month Performance Agreement Monitoring Report	Mail within 3 to 6 months of arriving in Canada with your Work Permit. Be sure to include supporting documentation if applicable. <i>(see Appendix A)</i>	<input type="checkbox"/>
12 Month Performance Agreement Monitoring Report	Mail within 9 to 12 months of arriving in Canada with your Work Permit. Be sure to include supporting documentation if applicable. <i>(see Appendix A)</i>	<input type="checkbox"/>
18 Month Performance Agreement Monitoring Report	Mail within 15 to 18 months of arriving in Canada with your Work Permit. Be sure to include supporting documentation if applicable. <i>(see Appendix A)</i>	<input type="checkbox"/>
Final Report	Mail within 24 months of arriving in Canada with your Work Permit <i>or</i> at the time when you believe you have fully satisfied the expectations as identified in your <i>Performance Agreement</i> . Be sure to include supporting documentation if applicable. <i>(see Appendix A)</i>	<input type="checkbox"/>



## Provincial Nominee Program (BC PNP) Performance Agreement Arrival Report

The information on this form is being collected for the purpose of administering the Provincial Nominee Program as authorized by the Agreement for Canada-British Columbia Co-Operation on Immigration – 2004. The Information will be used for the purpose of evaluating an individual's eligibility under the program. Personal information will be disclosed in accordance with the Freedom of Information and Protection of Privacy Act (RSBC 1996) chapter 165. If you have any questions about the collection, use or disclosure of this information, contact the Administrative Coordinator of the Business Immigration Office by telephone (604) 775-2227, fax (604) 660-4092 or by e-mail, bus.imm@gov.bc.ca.

1 ☐ Principal Applicant.

2 ☐ Key Staff (Business Skills & Projects category only)



Please complete this form and mail it within 1 month of arriving in Canada to the Business Immigration Office (see Appendix B). (It is recommended that you mail in this form once you have established a residence in Canada)

(PLEASE PRINT CLEARLY)

### Personal Information

Family Name:	Given Names:	PNP File No.: <b>BSP-</b>
Phone Number:	Fax Number:	Date of Birth: (dd/mm/yyyy):
Current Residential Address:		E-mail Address:
Current Mailing Address: (if different then above)		

### Arrival Information

On what date did you arrive in Canada with your Work Permit? (dd/mm/yyyy) _____	Your Work Permit No.: (attach photocopy of Work Permit)	
Did any dependents accompany you?  <input type="checkbox"/> Yes <input type="checkbox"/> No		
If you answered yes to the above question, please provide details below?		
Name: (family name, given names)	Relationship to Applicant:	Status Document No.: (attach copy of work permit, study permit, etc.)
Do you have any other dependents that will be arriving in Canada at a later date?  <input type="checkbox"/> Yes <input type="checkbox"/> No		
If you answered yes to the above question, please provide details below?		

Is there any other information you would like to share with us at this time?

☐

Yes

☐

No

If you answered yes to the above question, please provide details below?

Signature of Principal or Key Staff Applicant:

Date Signed: (dd/mm/yyyy)

Once you have completed and signed your Performance Agreement Arrival Report, return it along with copies of your work permit and copies of your dependent's status documents, to the Business Immigration Office (refer to Appendix B of Performance Agreement Compliance Monitoring Guide).

**FOR OFFICE USE ONLY** (do not complete anything below this line)

Has Nominee Candidate submitted required copies of Work Permit(s), etc.?

☐

Yes

☐

No

If "No" why? \_\_\_\_\_

Have the Work Permit(s), etc. been issued for the full two-year period?

☐

Yes

☐

No

If "No" why? \_\_\_\_\_

Comments or other information relevant to Nominee Candidate's application since arrival in British Columbia:



## Provincial Nominee Program (BC PNP) Performance Agreement Monitoring Report

The information on this form is being collected for the purpose of administering the Provincial Nominee Program as authorized by the Agreement for Canada-British Columbia Co-Operation on Immigration – 2004. The Information will be used for the purpose of evaluating an individual's eligibility under the program. Personal information will be disclosed in accordance with the Freedom of Information and Protection of Privacy Act (RSBC 1996) chapter 165. If you have any questions about the collection, use or disclosure of this information, contact the Administrative Coordinator of the Business Immigration Office by telephone (604) 775-2227, fax (604) 660-4092 or by e-mail, bus.imm@gov.bc.ca.

- 1 ☐ Enter "X" when reporting between 3 to 6 months.      2 ☐ Enter "X" when reporting between 9 to 12 months.      3 ☐ Enter "X" when reporting between 15 to 18 months.

(PLEASE PRINT CLEARLY)

<b>Personal Information</b>		PNP File No.:
Family Name:	Given Names:	Date of Birth: (dd/mm/yyyy):
Phone Number:	Fax Number:	E-mail Address:
Current Residential Address:		
Current Mailing Address: (if different then above)		

### Business Information

Have you purchased, established or made a substantial investment in a business in British Columbia as stated under the provisions of your Performance Agreement with the Province?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If you answered yes to the above question, how much have you invested in Canadian dollars thus far? (CAD\$) _____		
Is your business now in operation?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If you answered no to the above question, what is your anticipated first day of operations? _____		
Business Name:		% of Ownership:
Business Address:		
Business Phone Number:	Business Fax Number:	Business E-mail Address:
Additional Information:		

Have you participated actively and on an ongoing basis in the management of the business?



☐ Yes

☐ No

If "Yes"



a) What is your Position Title? \_\_\_\_\_

b) How many hours per week do you spend managing the business? \_\_\_\_\_ Hours per week.

c) Describe the management activities you perform:

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### Job Creation

Since you purchased, established or made a substantial investment in a business as stated under the provisions of your Performance Agreement with the Province, have you created employment for a Canadian citizen or permanent resident?



☐ Yes

☐ No

If "Yes"



List the names, current salaries, the date employment began, the date employment ended (if applicable), the hours worked per week, etc. (Please use a separate piece of paper to list additional new employees and/or information)

**NOTE:** The *Personal Information Protection Act* requires employers to obtain the consent of their employees when disclosing personal information. It is your responsibility to advise employees and obtain the consent to provide their names, addresses and employment dates to the Ministry of Community, Aboriginal and Women's Services.

Name:

Job Title:

Date Began (dd/mm/yyyy):

Date Ended (dd/mm/yyyy):

Hours Per Week:

Duties:

Name:

Job Title:

Date Began (dd/mm/yyyy):

Date Ended (dd/mm/yyyy):

Hours Per Week:

Duties:

Name:		Job Title:	
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:	
Duties:			
Other Relevant Information on Progress Thus Far:			
Signature of Principal Applicant:		Date Signed: (dd/mm/yyyy)	
<b>Once you have completed and signed your Performance Agreement Monitoring Report return it, along with supporting documentation, (refer to Appendix A of Performance Agreement Compliance Monitoring Guide) to the Business Immigration Office (refer to Appendix B of Performance Agreement Compliance Monitoring Guide).</b>			
<b>FOR OFFICE USE ONLY (do not complete anything below this line)</b>			
Is Nominee Candidate meeting Performance Agreement commitments thus far?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If "No" why? _____			
Is the actual business undertaken consistent with commitments in Performance Agreement?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If "No" why? _____			
Is Site Visit recommended at this time?		<input type="checkbox"/> Yes <input type="checkbox"/> No (provide reasons for yes or no)?	

**FOR OFFICE USE ONLY** (do not complete anything below this line)

Is Nominee Candidate meeting Performance Agreement commitments thus far?



☐ Yes

☐ No

If "No" why? \_\_\_\_\_

Is the actual business undertaken consistent with commitments in Performance Agreement?



☐ Yes

☐ No

If "No" why? \_\_\_\_\_

Is Site Visit recommended at this time?



☐ Yes

☐ No (provide reasons for yes or no)?

Were the necessary supporting documents submitted with this report?



☐ Yes

☐ No

If "No" what is outstanding? \_\_\_\_\_

Other communications with Nominee Candidate since arrival in B.C. (eg. Phone calls, visits to BIO, site visit(s), emails, etc.):



## Provincial Nominee Program (BC PNP) Performance Agreement Monitoring Report

The information on this form is being collected for the purpose of administering the Provincial Nominee Program as authorized by the Agreement for Canada-British Columbia Co-Operation on Immigration – 2004. The Information will be used for the purpose of evaluating an individual's eligibility under the program. Personal information will be disclosed in accordance with the Freedom of Information and Protection of Privacy Act (RSBC 1996) chapter 165. If you have any questions about the collection, use or disclosure of this information, contact the Administrative Coordinator of the Business Immigration Office by telephone (604) 775-2227, fax (604) 660-4092 or by e-mail, bus.imm@gov.bc.ca.

- 1 ☐ Enter "X" when reporting between 3 to 6 months.      2 ☐ Enter "X" when reporting between 9 to 12 months.      3 ☐ Enter "X" when reporting between 15 to 18 months.

(PLEASE PRINT CLEARLY)

### Personal Information

Family Name:		Given Names:	PNP File No.: <b>BSP-</b>
Phone Number:		Fax Number:	Date of Birth: (dd/mm/yyyy):
Current Residential Address:		E-mail Address:	
Current Mailing Address: (If different then above)			

### Business Information

Have you purchased, established or made a substantial investment in a business in British Columbia as stated under the provisions of your Performance Agreement with the Province? ➤

☐ Yes    ☐ No

If you answered yes to the above question, how much have you invested in Canadian dollars thus far?

(CAD\$) \_\_\_\_\_

Is your business now in operation? ➤

☐ Yes    ☐ No

If you answered no to the above question, what is your anticipated first day of operations?  
\_\_\_\_\_

Business Name:

% of Ownership:

Business Address:

Business Phone Number:

Business Fax Number:

Business E-mail Address:

Additional Information:

Have you participated actively and on an ongoing basis in the management of the business?



☐ Yes

☐ No

If "Yes"



a) What is your Position Title? \_\_\_\_\_

b) How many hours per week do you spend managing the business? \_\_\_\_\_ Hours per week.

c) Describe the management activities you perform:

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### Key Staff Information

**NOTE:** The *Personal Information Protection Act* requires employers to obtain the consent of their employees when disclosing personal information. It is your responsibility to advise employees and obtain the consent to provide their names, addresses and employment dates to the Ministry of Community, Aboriginal and Women's Services.

Have your previously identified Key Staff begun employment in your business?



☐ Yes

☐ No

If "Yes"



List the names, current salaries, the date employment began, the date employment ended (if applicable), the hours worked per week and job duties of your Key Staff. *(Please use a separate piece of paper to list additional key staff and/or information)*

Name:		Job Title:
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:
Duties:		
Name:		Job Title:
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:
Duties:		

Name:		Job Title:
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:
Duties:		

### Job Creation

Since you purchased, established or made a substantial investment in a business as stated under the provisions of your Performance Agreement with the Province, have you created employment for a Canadian citizen or permanent resident?


☐

Yes

☐

No

If "Yes"






List the names, current salaries, the date employment began, the date employment ended (if applicable), the hours worked per week, etc. *(Please use a separate piece of paper to list additional new employees and/or information)*

**NOTE:** The *Personal Information Protection Act* requires employers to obtain the consent of their employees when disclosing personal information. It is your responsibility to advise employees and obtain the consent to provide their names, addresses and employment dates to the Ministry of Community, Aboriginal and Women's Services.

Name:		Job Title:
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:
Duties:		

Name:		Job Title:
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:
Duties:		

Name:		Job Title:
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:
Duties:		
Other Relevant Information on Progress Thus Far:		
Signature of Principal Applicant:		Date Signed: (dd/mm/yyyy)
<p>Once you have completed and signed your Performance Agreement Monitoring Report return it, along with supporting documentation, (refer to Appendix A of Performance Agreement Compliance Monitoring Guide) to the Business Immigration Office (refer to Appendix B of Performance Agreement Compliance Monitoring Guide).</p>		
<b>FOR OFFICE USE ONLY (do not complete anything below this line)</b>		
Is Nominee Candidate meeting Performance Agreement commitments thus far?		 <input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" why? _____		
Have Key Staff undertaken a key role in the business thus far?		 <input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" why? _____		
Is the actual business undertaken consistent with commitments in Performance Agreement?		 <input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" why? _____		

Is Site Visit recommended at this time?

☐

Yes

☐

No (provide reasons for yes or no)?

Were the necessary supporting documents submitted with this report?

☐

Yes

☐

No

If "No" what is outstanding?

Other communications with Nominee Candidate since arrival in B.C. (eg. Phone calls, visits to BIO, site visit(s), emails, etc.):

Comments or other information relevant to Nominee Candidate's progress since arrival in British Columbia:



## Provincial Nominee Program (BC PNP) Performance Agreement Final Report

The information on this form is being collected for the purpose of administering the Provincial Nominee Program as authorized by the Agreement for Canada-British Columbia Co-Operation on Immigration – 2010. The Information will be used for the purpose of evaluating an individual's eligibility under the program. Personal information will be disclosed in accordance with the Freedom of Information and Protection of Privacy Act (RSBC 1996) chapter 165. If you have any questions about the collection, use or disclosure of this information, contact the Administrative Coordinator of the Business Immigration Office by telephone (604) 775-2227, fax (604) 660-4092 or by e-mail, bus.imm@gov.bc.ca.

Please complete this form at any time within two years from the date you arrived in Canada with your work permit, when you believe you have fully satisfied the expectations as identified in your *Performance Agreement*, and mail it along with supporting documentation to the Business Immigration Office.

(PLEASE PRINT CLEARLY)

### I. Nominee Candidate Personal Information

Family Name:	Given Names:	Date of Birth: (dd/mm/yyyy):
PNP File No.:	Work Permit Expiry Date:	
Phone Number:	Fax Number:	E-mail Address:
Current Residential Address:		
Current Mailing Address: (if different then above)		

### II. Business Information (attach additional sheets if necessary)

Business Name:	Type of Business:	Business Website:
Business Phone Number:	Business Fax Number:	Business E-mail Address:
Business Address:		

<input type="checkbox"/> Newly established business <input type="checkbox"/> Purchased an existing business	Type of ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	List of Shareholders and % ownership held by each:
Business Commencement Date:	Business Hours:	Number of Employees:
Physical description of business site: <i>(zone, land area, floor space and layout)</i>		
Description of Major Equipment and Machineries Purchased:		
Description of Products/Services:		
Inventory Listings: <i>(finalized products, raw materials)</i>		
List of Major Business Customers and Their Contact Information:		
List of Major Suppliers and Their Contact Information:		
Business Outlook:		
Have you participated actively and on an ongoing basis in the management of the business? <input type="checkbox"/> Yes <input type="checkbox"/> No	If "Yes" a) What is your Position Title? _____ b) How many hours per week do you spend managing the business? _____ Hours per week. c) Describe the management activities you perform: _____ _____ _____ _____ _____	

### III. Investment (per Performance Agreement)

List investment made in for each of the major investment breakdown categories of the signed Performance Agreement (*for hard capital investments provide itemized details*):

Investment Item	Performance Agreement	Actual Investment
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Total Eligible Investment	\$	\$

For leasehold improvements, provide description of work involved:

List and describe items included in working capital:

### IV. Job Creation (attach additional sheets if necessary)

List of employees and their title, duties, pay and weekly work hours (*they must be employed for more than 3 months at the time of documentation submission*)

Name	Job Title	Duty	Date Began	Date Ended	Pay	Hours per Week

**NOTE:** The *Personal Information Protection Act* requires employers to obtain the consent of their employees when disclosing personal information. It is your responsibility to advise employees and obtain the consent to provide their names, addresses and employment dates to the Ministry.

### V. Key Staff (attach additional sheets if necessary)

Have your previously identified Key Staff begun employment in your business?

☐ Yes

☐ No

If "Yes"

List the names, current salaries, the date employment began, the date employment ended (if applicable), the hours worked per week and job duties of your Key Staff. (Please use a separate piece of paper to list additional key staff and/or information)

**NOTE:** The *Personal Information Protection Act* requires employers to obtain the consent of their employees when disclosing personal information. It is your responsibility to advise employees and obtain the consent to provide their names, addresses and employment dates to the Ministry.

Name:

Job Title:

Phone Number:		E-mail Address:	
Current Residential Address:			
Current Mailing Address: <i>(if different then above)</i>			
Date Began (dd/mm/yyyy):	Date Ended (dd/mm/yyyy):	Hours Per Week:	Current Salary:
Duties: <hr/> <hr/> <hr/> <hr/>			

## VI. Declaration

<p>I certify that the information given on this form is correct and complete.</p> <p>I understand that any false statements or concealment of information may result in British Columbia refusing my nomination.</p> <p>I understand that the information provided in this form may be used for the purpose of evaluating the Provincial Nominee Program.</p>	
Signature of Principal Applicant:	Date Signed: (dd/mm/yy)

**Once you have completed and signed your Performance Agreement Final Report return it, along with supporting documentation as indicated in the checklist, to the Business Immigration Office.**



## Provincial Nominee Program (BC PNP) Performance Agreement Final Report Checklist

The checklist below summarizes supporting documentation that you must submit with the Final Report. You must check all of the applicable items listed below to confirm that they are included with your Final Report. This checklist must be submitted together with your Final Report.

*To speed up the processing of your report, please arrange the submitted documents in the following order:*

<b>I. Nominee Candidate Personal Information</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Copy of all the pages of your passport</li><li><input type="checkbox"/> Copy of title deed if own or rent agreement of the residence</li><li><input type="checkbox"/> Copy of work permit</li></ul>
<b>II. Business Information (as applicable)</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Copy of incorporation documents</li><li><input type="checkbox"/> Copy of business licenses</li><li><input type="checkbox"/> Copy of trade licenses and other business specific licenses</li><li><input type="checkbox"/> Copy of title deed or lease agreement for business premises</li><li><input type="checkbox"/> Copy of shareholders' agreement</li><li><input type="checkbox"/> Copy of shareholder registry</li><li><input type="checkbox"/> Copy of signed purchase agreement and share transfers</li><li><input type="checkbox"/> Copy of signed franchise agreement</li><li><input type="checkbox"/> Copy of lists and photos of major equipment and machineries</li><li><input type="checkbox"/> Photos of business premise (exterior and interior)</li><li><input type="checkbox"/> Copy of lists, amounts and photos of inventory (final products, in process and raw materials)</li><li><input type="checkbox"/> List of products and their photos</li><li><input type="checkbox"/> Copies of business transaction with major business customers and suppliers</li><li><input type="checkbox"/> Financial statements (most recent fiscal year end as well as up-to-date interim). Financial statements must include a balance sheet and profit and loss statement.</li></ul>
<b>III. Investment</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Copies of paid bills, statements, purchase orders in your name (principal applicant) and company name related to major eligible investment expenditures</li></ul>
<b>IV. Job Creation</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Resumes for all employee</li><li><input type="checkbox"/> Copies of employment offer letters accepted by employees</li><li><input type="checkbox"/> T-4 summary and copies of T-4s/pay stubs</li><li><input type="checkbox"/> Most recent monthly payroll records</li></ul>
<b>V. Key Staff</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Copy of work permit</li><li><input type="checkbox"/> T-4 summary and copies of T-4s/pay stubs</li></ul>
<b>VI. Reference Documentations</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Other supporting documents that are relevant to your business performance evaluation may also be submitted in this section</li></ul>

**Lee, Sun Mi JTI:EX**

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**From:** Yee, Helen JTI:EX  
**Sent:** Wednesday, November 9, 2011 9:56 AM  
**To:** Guo, Benjamin JTI:EX; Bains, Tina JTI:EX; Kim, Michael C JTI:EX; Wideman, Michael JTI:EX; Rattan, Gurpreet K JTI:EX; Lee, Sun Mi JTI:EX; Branch, Kimberley JTI:EX; Kennedy, Gordon JTI:EX  
**Cc:** Poon, SP JTI:EX  
**Subject:** Interview confirmation form  
**Attachments:** In-person Interview confirmation.docx

Hi team,

Attached is the finalized form to be used when conducting your interviews. Please ensure the applicant signs the form at the interview.

It's located in the G Drive:

PNP\Business\Forms and Letter Templates\New Process Application Forms 2011\misc\In-person Interview Confirmation

Regards,  
Helen

I, \_\_\_\_\_, hereby confirm that I have attended my scheduled Provincial Nominee Program Business Immigration interview that was conducted in conjunction with my Provincial Nominee Program application number \_\_\_\_\_ the interview of which was held in \_\_\_\_\_, British Columbia on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

I declare that all the information I have provided is complete and accurate.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Witness



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

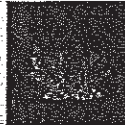


# INTRODUCTION TO IRPA

Ottawa

SEPTEMBER 2011

Citizenship and Immigration Canada  
INTERNATIONAL REGION



Citoyenneté et Immigration Canada  
RÉGION INTERNATIONALE



Canada

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## Course Schedule

	Day One	Day Two	Day Three
8:30 to 10:00	Module #1 Intro to Course & History of Immigration		
Break	Module #3 Overview of Immigration Operations & Program Delivery	Module # 4 Temporary Residents (Visitors, Students and Temporary Workers)	Module #5 Permanent Residents (Federal Skilled Workers and Business)
10:15 to 11:45	Module #2 The Act & Regs  Module #7 Appeals, Judicial Review and Procedural Fairness		
11:45 to 12:45	Lunch	Lunch	Lunch
12:45 to 14:15			Module #8 Interview techniques
Break	Module #6 Inadmissibility	Module #5 Permanent Residents (Family Class and Refugees)	
14:30 to 16:00			Questions & answers

MODULE 02 -  
THE ACT & REGS

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Synopsis of the *Immigration and Refugee Protection Act*  
Synopsis of the Regulations  
IRPA Terminology

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## **Synopsis of the Immigration & Refugee Protection Act**

### **SUMMARY**

Short Title  
Interpretation  
Objectives and Application  
Enabling Authority  
Agreements

### **PART 1 - IMMIGRATION TO CANADA**

Division 1 - Requirements before entering Canada and Selection  
Division 2 - Examination  
Division 3 - Entering and Remaining in Canada  
Division 4 - Inadmissibility  
Division 5 - Loss of Status and Removal  
Division 6 - Detention and Release  
Division 7 - Right of Appeal  
Division 8 - Judicial Review  
Division 9 - Protection of Information  
Division 10 - General Provisions

### **PART 2 - REFUGEE PROTECTION**

Division 1 - Refugee Protection, Convention Refugees and Persons in Need of Protection  
Division 2 - Convention Refugees and Persons in Need of Protection  
Division 3 - Pre-Removal Risk Assessment

### **PART 3 - ENFORCEMENT**

Human Smuggling and Trafficking  
Offences Related to Documents  
General Offences  
Proceeds of Crime  
Prosecution of Offences  
Forfeiture  
Officers Authorized to Enforce Act  
Peace Officers  
Ticketable Offences  
Debt Due to Her Majesty  
Collection of Debts Due to Her Majesty  
Transportation Companies

## PART 4 - IMMIGRATION AND REFUGEE BOARD

Composition of Board  
Head Office and Staff  
Duties of Chairperson  
Functioning of Board  
Provisions that Apply to All Divisions  
Refugee Protection Division  
Refugee Appeal Division  
Immigration Division  
Immigration Appeal Division  
Remedial and Disciplinary Measures

## PART 5 - TRANSITIONAL PROVISIONS, COMING INTO FORCE

Transitional Provisions  
Consequential and Related Amendments  
Coordinating Amendments  
Repeals  
Coming Into Force

## SCHEDULE 1

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## Synopsis of the Regulations

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Part 2: General Requirements	6-13.1
Part 3: Inadmissibility	14-24
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Schedule 1 – Ports of Entry

Schedule 2 – Source Country List

## IRPA Terminology

**CANADIAN CITIZEN** - A person who acquired citizenship by birth or to whom it was granted under the Citizenship Act.

**FOREIGN NATIONAL** - A person who is not a Canadian citizen or a permanent resident, includes a stateless person.

**PERMANENT RESIDENT** - A person who has acquired permanent resident status and has not subsequently lost that status under section 46 of IRPA.

**REGISTERED INDIAN** - A person registered as an Indian pursuant to the Indian Act.

**REMOVAL ORDER** - A departure order, an exclusion order or a deportation order.

**STUDY PERMIT** - Written authorization to engage in studies in Canada issued by an officer to a foreign national.

**TEMPORARY RESIDENT** - A person authorized to enter and remain in Canada on a temporary basis as a visitor, student, worker or as a holder of a temporary resident permit.

**TEMPORARY RESIDENT PERMIT** - A document issued by an officer to an inadmissible person to permit them to enter Canada as a temporary resident.

**WORK** - An activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.

**WORK PERMIT** - Written authorization to work in Canada issued by an officer to a foreign national.

**MODULE 03 -  
OVERVIEW OF IMMIGRATION OPERATIONS AND PROGRAM DELIVERY**

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Division of Roles and Responsibilities  
Immigration Operation Centres Overseas  
Visa Staff Exercise  
A Quick Guide to Personnel and Visa Services Abroad  
Immigration Operation Centres in Canada

## Division of Roles and Responsibilities

C.I.C. - What We Do	C.B.S.A. - What We Do
<ul style="list-style-type: none"> <li>• Citizenship</li> <li>• Medical Services</li> <li>• Refugee Sponsorship</li> <li>• Settlement</li> <li>• Permanent Resident processing and cards</li> <li>• Temporary Resident processing, status and documents</li> <li>• Non-status documents</li> <li>• Visa policy</li> <li>• Desk investigations – portion of immigration investigation relating to the screening of applications to identify inadmissibility or violations of IRPA (administrative and interview activities)</li> <li>• Pre-Removal Risk Assessment (PRRA)</li> <li>• All admissibility policies except security, war crimes and organized crime - but including rehabilitation</li> </ul>	<ul style="list-style-type: none"> <li>• Arrest</li> <li>• Detention</li> <li>• Intelligence</li> <li>• Interdiction</li> <li>• Immigration Warrant Response Centre</li> <li>• Ministerial Relief</li> <li>• Security, war crimes and organized crime</li> <li>• Warrants</li> <li>• Removals</li> <li>• Admissibility</li> </ul>

## Immigration Operation Centres Overseas

### Visa Offices

Visa offices are located in Missions. "Mission" is a generic term that refers to Canadian embassies, high commissions, consulates and trade offices. "Missions" are also sometimes called "Posts".

"Head of Mission" is a generic term for Ambassador, High Commissioner, Consul General, etc.

The head of the visa office is an Immigration Program Manager (IPM) and she or he reports to the Head of Mission (HOM). The Immigration section may consist of Canada-based Officers (CBO), Medical Officers (MOF), Migration Integrity Officers (MIO) and Locally-engaged Officers and Staff (LEP and LES) all reporting to the IPM.

Depending on the office's function, services offered vary. Some visa offices offer a full range of processing while others offer limited processing services. Services include Permanent Resident processing (immigrants and refugees), Temporary Resident processing (visitors, students and workers), Permanent Residency Determinations and reporting and liaison functions. Some offices do not process applications and have been established exclusively as reporting and liaison bases.

## Visa Staff Exercise

**CBO:**

Canadian Base Officer

1. MOF: Medical officer

2. Cashier

3. FS: Foreign Imm. officer

4. MIO: Migration Integrity officer

5. Security guard

**LEP:**

Locally Engaged  
personnel

6. NIO: Non-immigrant officer

7. Receptionist

8. IPO: Imm. Program officer

9. Clerk

**LES:**

locally engaged staff

10. DIO: Designated Imm. officer

11. Interpreter

12. FAO Foreign Assignment officer

## **A Quick Guide to Personnel and Visa Services Abroad**

### **Visa Office Staff**

There are three broad categories of staff at a visa office:

#### **Canada-Based Officers (CBO)**

- Foreign Service Officers (FS)
- Foreign Assignment Officers (FAO)
- Migration Integrity Officers (MIO)
- Medical Officers (MOF)

#### **Locally-engaged program officers (LEP)**

- Immigration Program Officers (IPO)
- Non-Immigrant Officers (NIO)
- Designated Immigration Officers (DIO)

#### **Locally engaged staff (LES)**

**1. Canada-based officers (CBOs)** are any officer-level staff sent abroad from Canada.

Foreign Service officers (FS) are a pool of immigration officers who are permanently rotational. They are posted to different missions overseas and move after their assignment is completed. The length of each assignment depends on a standard assessment of health, security, and living conditions at the post. The range is from two to four years. Foreign Service officers spend approximately 2/3 of their career in assignments abroad and 1/3 at headquarters.

Foreign Assignment Officers (FAO) are non-rotational officers from CIC who have agreed to serve abroad for one assignment. Contracts are for an initial period of two years. After the overseas assignment, these officers return to their permanent jobs in the regions or at NHQ.

Migration Integrity Officers (MIO) are concerned with irregular migration, fraud detection and prevention, investigation and removals. They frequently interact with local authorities, airlines, and other countries facing similar concerns. MIO positions are jointly administered by CBSA and CIC, and may be staffed by CIC FS officers or CBSA enforcement or intelligence officers.

Medical officers (MOF) are medical doctors who work for CIC. They assess whether immigrants and visitors are medically admissible to Canada. Like Foreign Service officers, MOFs rotate between assignments abroad and at NHQ.

Visa Officer (VO) is a generic term for Foreign Service officers and Foreign Assignment Officers who have the authority to issue visas abroad.

**2. Locally-Engaged Officers** (sometimes known as Locally-Engaged Program Staff or LEP) are hired outside Canada. They are usually, but not always, citizens of the country where the mission is located. LEP provide visa offices with valuable expertise about local customs and documents, and help maintain continuity when Canada-based officers change assignments. There are three levels of locally-engaged officers – IPOs, NIOs and DIOs.

- **Designated Immigration Officers (DIOs)** have the authority to issue both permanent resident and temporary resident visas. To become a DIO, an individual must have worked as an IPO for a minimum of one year, passed a security check, participated in a formal training program, and have passed an examination on the *Immigration and Refugee Protection Act and Regulations*.

- **Immigration Program Officers (IPOs)** screen permanent resident and temporary resident applicants "on paper", conduct non-selection interviews, and assist Visa Officers with the interpretation and assessment of foreign documents.

- **Non-Immigrant Officers (NIOs)** have the authority to issue non-immigrant, or temporary resident, visas, study permits and work permits. To become an NIO, an individual must have worked in the visa section for a minimum of 6 months, passed a security check, participated in a formal training program, and have passed an examination on the *Immigration and Refugee Protection Act and Regulations*.

**3. Locally-engaged staff (LES)** are support staff (clerks, receptionists, interpreters, security guards, etc.) who have been hired locally to work in the immigration section. They are residents of the country where the mission is located and are often, but not always, citizens of that country.

Although they report to the Immigration Program Manager, LEP and LES are employed by the Department of Foreign Affairs and International Trade (DFAIT) in accordance with local wage scales and labour laws.

### Services

Services offered at visa offices vary. Some offer a full range of processing while others offer limited processing services. In addition, some offices do not process visa applications at all, but have been established as reporting and liaison bases.

A visa office usually covers an area comprising several different countries. Applications are forwarded to that office for screening and those requiring interview are interviewed during area trips by officers from that Mission.

### Permanent resident services

The *Immigration and Refugee Protection Act* requires all persons seeking to reside in Canada permanently (immigrants) to apply for, and obtain, a permanent resident visa before appearing at a port of entry.

The application is assessed at a visa office. This involves confirming the identity of the applicant, determining eligibility for immigration, and determining if the applicant meets security, medical and criminality admissibility screening requirements. Sometimes, this can be done on paper, that is, through an assessment of the documents provided with the application. More complex or ambiguous cases may require interview. An officer with delegated authority must make the decision whether to issue a visa or refuse the application.

### **Temporary resident services**

Nationals of certain countries must apply for and obtain a temporary resident visa or TRV before coming to Canada. The CIC Website lists all the countries whose citizens **require** a visa. Applications for TRVs are assessed at visa offices. The assessment of a TRV application includes – among other things - assessing the intended purpose of the visit, the intention of the applicant to leave Canada at the end of their authorized period of stay, and the availability of funds, as well as determining whether the applicant meets Canadian medical, security and criminality admissibility screening requirements.

Visitors who intend to work or study in Canada may also be required to apply for a work permit or a study permit.

### **Reporting and Liaison**

All visa offices are involved in gathering and reporting information on issues of interest to the department. Some visa offices specialize in this function.

### **Migration Integrity Officers**

Migration Integrity Officers, or MIOs, provide training to local officials and airlines on Canadian immigration legislation and documentation, gather intelligence and information on smugglers and fraudulent documents, and work to combat fraud in immigration applications. The primary goal of this program is to reduce the number of "irregular" foreign nationals who seek to enter Canada for either a temporary period or to remain permanently.

### **Promotion and Recruitment**

Visa offices may also be involved in efforts to encourage entrepreneurs and skilled workers to apply for permanent residence in Canada.

### **Overseas Health Program**

All permanent resident applicants and some temporary resident applicants are required to undergo a medical examination as part of the assessment of their applications. Medical officers posted abroad review the medical reports provided by designated, locally-engaged doctors, and decide whether or not the applicant will pose a risk to Canadian public health or public safety, or will place excessive demands on Canadian health and/or social services.

### **Port of Entry (POE)**

Foreign nationals, Permanent Residents and Canadians must appear for an examination to determine whether they have either a right to enter Canada or are, or may become, authorized to enter and remain in Canada.

There are two types of examination depending on the situation:

**Primary Examination:** persons seeking to come into Canada are first examined at the primary inspection line (PIL). The vast majority of travelers are authorized to enter Canada by the Border Services Officer (BSO) working at the PIL.

**Immigration Secondary Examination:** The BSO may determine that a further examination is required in accordance with the immigration secondary referral list which includes situations such as:

- Authorizing entry to foreign nationals by issuing visitor records, study permits, work permits, temporary resident permits
- Determining eligibility for refugee protection claimants
- Documenting new permanent residents
- Identifying and processing inadmissible people by writing and reviewing A44 reports, issuing removal orders and causing admissibility hearings, allowing people to leave Canada, arresting and detaining persons who pose a danger or would not appear for a hearing.
- Confirming the departure of persons who are the subject of a removal order.

This work is done by CBSA officers at various types of POEs including ports, airports and land borders.

### **Pre-Removal Risk Assessment Offices (PRRA)**

Failed refugee claimants and anyone else who is subject to a removal order that is in force are eligible to have a pre-removal risk assessment to ensure their removal from Canada will not subject them to risk.

PRRA officers conduct risk assessments to determine if the person is a Convention Refugee, is at risk of torture or at risk to life or cruel and unusual treatment or punishment. If it is determined that the person is at risk, the person is allowed to remain in Canada and, depending on the grounds of inadmissibility, they may also be allowed to apply for permanent residence.

PRRA offices are located in centralized offices in Vancouver, Calgary, Montreal, Toronto, Niagara Falls and Halifax. Risk assessments are done by CIC officers.

### **Case Processing Centre – Vegreville (CPC-V)**

CPC-Vegreville is located in Alberta and is the central processing center for in-Canada immigration applications.

CPC-V processes Temporary Resident extension applications (visitor extensions, work permits, study permits, temporary resident permits).

CPC-V processes requests for Protected Person Status Documents from persons found to be protected persons by the Immigration and Refugee Board or by CIC.

CPC-V also processes applications for permanent residence made from within Canada by protected persons, spouses or common-law partners of Canadians or Permanent Residents, Live-in Caregivers, and on humanitarian and compassionate grounds. Where applicable, they also work with the visa offices for concurrent processing of overseas dependents.

Identified complex cases are referred to local Citizenship and Immigration Centres (CICs) for further review.

This processing work is done by CIC officers.

#### **Case Processing Centre – Mississauga (CPC-M)**

CPC-Mississauga is located in Ontario and is the central processing center for Family Class sponsorship applications. CPC-M is responsible for assessing undertakings and financial requirements by sponsors. Once a decision is made regarding the sponsor's eligibility to sponsor a family class relative, the assessment is downloaded electronically to the overseas mission for processing of the application for permanent residence.

In cases where the mission determines that an in-Canada interview or investigation is warranted, CPC-M is notified and the file is referred to the Citizenship and Immigration Center (CIC) nearest the sponsor's place of residence. CIC relays the information obtained through interview or investigation back to the mission processing the application for permanent residence.

CPC-M also works closely with the province in exchanging information on individuals who have not fulfilled their financial obligations relating to sponsorships.

The work at CPC-M is done by CIC officers.

## Citizenship & Immigration Centres (CIC)

CICs are located in all major cities across Canada and provide services for both the citizenship and the immigration programs. CICs vary in size and number of employees depending on the demand in that particular area.

CICs deal with cases referred from CPCs:

- assessing *bona fides* of temporary residents (visitors, students, workers)
- writing and reviewing reports, issuing removal orders for inadmissible persons (selected inadmissibilities)
- recalculation of financial capacity for sponsorship commitments
- assessing applications for permanent residence on humanitarian and compassionate grounds
- ensuring statutory requirements are met for persons who have been approved for permanent residence by CPC-V

CICs also deal with cases not referred from CPCs:

- determination of eligibility on refugee claims
- monitoring of terms and conditions of entrepreneurs

## CIC Call Centre

The Call Centre is based in Montreal and has a 24 hour-a-day automated telephone service. Callers receive general information on both citizenship and immigration matters and are able to order application kits and get status updates about their files on specific issues. Service is available in both official languages.

## CPC-Sydney (CPC-S)

CPC-Sydney is located in Nova Scotia and is responsible for processing a variety of applications related to citizenship, including applications for proof of citizenship, and applications for a grant of citizenship, among others. The processing of Permanent Resident Cards for new and existing permanent residents is another of the CPC's responsibilities. In late November 2008, the Centralized Intake Office was opened at CPC-S. It is responsible for accepting all new applications in the federal skilled worker category.

### **Immigration and Refugee Board (IRB)**

The IRB is an impartial administrative tribunal operating independently of CIC and CBSA. The IRB reports directly to the Minister of CIC. Offices are located in Vancouver, Calgary, Toronto and Montreal.

The IRB consists of 3 divisions:

**Refugee Protection Division (RPD):** RPD members hear an individual's claim for refugee status to determine if the person is a Convention Refugee or a person in need of protection. If the claim is approved the person is then able to submit an application for permanent residence to CPC –V and include their dependents. A negative decision results in the referral of the file to CBSA for removal.

**Immigration Appeal Division (IAD):** This division deals with appeals related to:


- family class sponsorships
- refusal of a permanent resident travel document to a permanent resident holder for failure to meet the residency obligations
- issuance of a removal order to a permanent resident or a protected person
- Minister of CIC against a decision of a member made at an admissibility hearing

**Immigration Division (ID):** The ID conducts admissibility hearings held in relation to persons who are alleged to be in violation of IRPA. The ID member hears both sides of the case – presented by a Hearings Officer and the individual. If the individual is found to be inadmissible, the ID member will issue a removal order. The ID also conducts hearings with respect to arrest and detention deciding whether the person should be detained or released on terms and conditions.

## MODULE 04 - TEMPORARY RESIDENTS

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Seeking to come to Canada  
Temporary Residents  
Counterfoil Coding for Temporary Residents  
Study Permits  
Work Permits  
HRSDC Confirmation (LMO)  
Temporary Resident Permit



## Seeking to come to Canada

### Application before entering Canada

A11. (1) 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 may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

### Obligation on entry

A20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

### Permanent resident

A21. (1) A foreign national becomes a permanent resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(a) and subsection 20(2) and is not inadmissible.

### Temporary resident

A22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) and is not inadmissible.

### Dual intent

(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

## Temporary Residents

### Temporary resident

A22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) and is not inadmissible.

Paragraph 20(1)(b) : to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

### Temporary resident

R7. (1) A foreign national may not enter Canada to remain on a temporary basis without first obtaining a temporary resident visa.

### Exception

(2) Subsection (1) does not apply to a foreign national who

- (a) is exempted under Division 5 of Part 9 from the requirement to have a temporary resident visa;
- (b) holds a temporary resident permit issued under subsection 24(1) of the Act; or
- (c) is authorized under the Act or these Regulations to re-enter Canada to remain in Canada.

*long Kong + Taiwan*  
*special adm. passport for Hong Kong*  
R190(1) - visa exemption based on nationality - Namibia, Botswana (based on economic/political situation of the country of origin)  
R190(2) - visa exemption based on documents - diplomatic accreditation  
R190(2.1) - visa exemption based on nationality and documents - Lithuania or Poland (get an accreditation to enter the country of origin)  
R190(3) - visa exemption based on purpose of entry - members of a crew of other passengers on a flight to/from us for that needs to refuel in Canada  
program Transit without a Visa from members of the armed forces from the Philippines, Taiwan, a vessel (flight attendant)  
Can re-enter on same visa but if it's a different function

### Temporary Resident Visa (TRV)

#### Issuance

R179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

- (a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class; - complete applic., signed, right office + fees paid
- (b) will leave Canada by the end of the period authorized for their stay under Division 2; - some fines
- (c) holds a passport or other document that they may use to enter the country that issued it

or

another country;

(d) meets the requirements applicable to that class; - Visa / students / TFW

(e) is not inadmissible; and

(f) meets the requirements of section 30. (Medical requirements)

- workers w/ children / health

- more than 6 mos stay

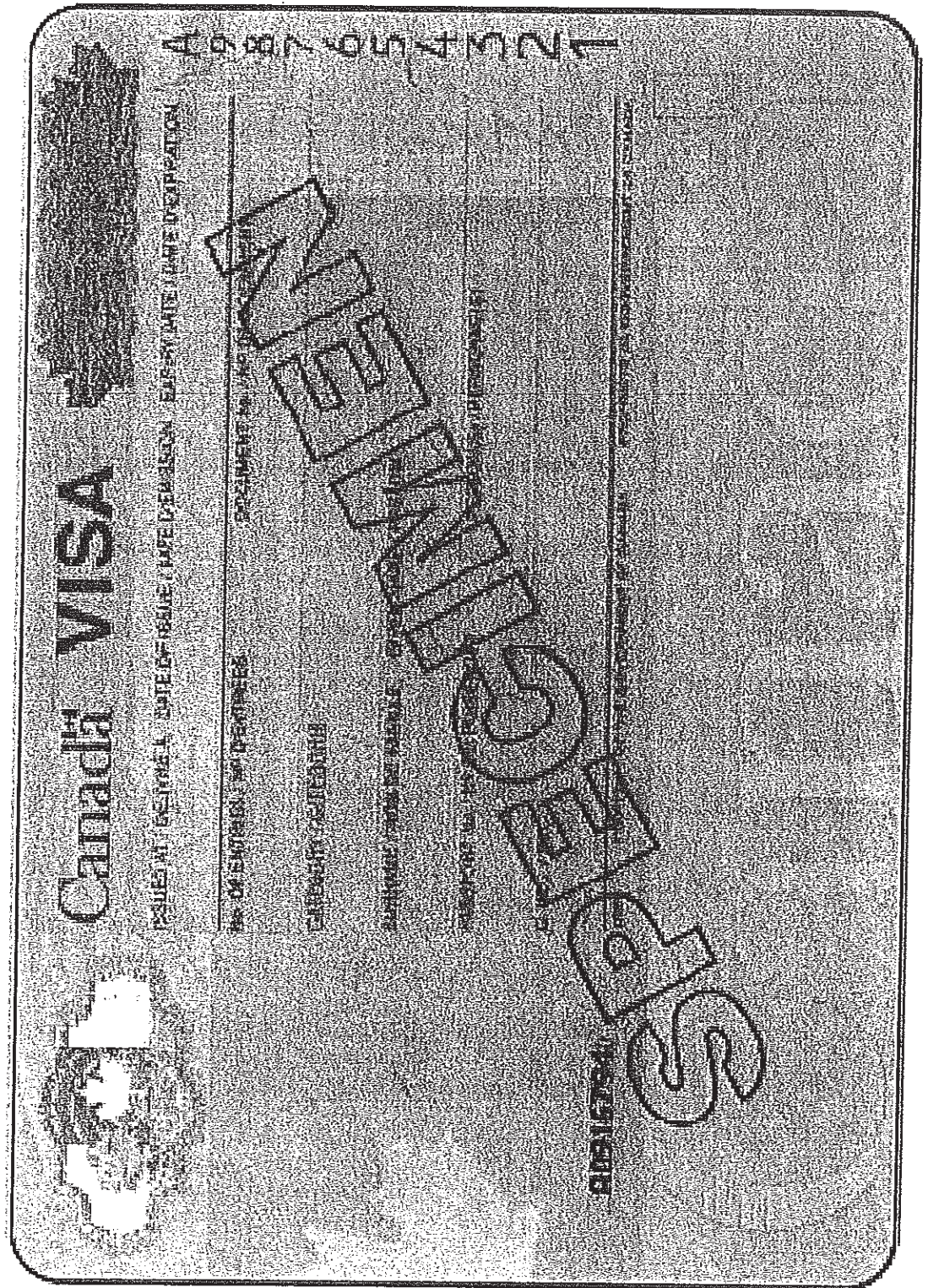
have lived in a designated country for ~~at least~~ more than 6 mos in the last year

higher incidents of communicable disease

when visa officer has reasonable ground to believe that somebody is sick

### Counterfoil Codes for Temporary Residents

C-1	Courtesy visa
D-1 or O-1	To indicate that the holder is entitled to the appropriate privileges and immunities normally granted to diplomats or foreign government officials in Canada. Diplomatic (D) or Official (O) status.
W-1	TRV issued with a work permit or a letter authorizing its issuance at POE.
WX-1	TRV issued to a person exempt from the requirement to obtain a work permit.
B-1	TRV issued to a business visitor, ie. Worker exempt from the requirement to obtain a work permit as per R.186(a).
F-1	Facilitation visa issued to a Canadian, coming to Canada for the first time, or to assist in other consular circumstances.
S-1	TRV issued with a study permit or a letter authorizing its issuance at POE.
SW-1	TRV issued together with a study permit and a work permit, or with a letter authorizing their issuance at POE.
SX-1	TRV issued to a person exempt from the requirement to obtain a study permit.
V-1	Visitor visa (normal tourist entry).
VH-1	Visa issued to airplane passenger transiting through Canada for less than 48 hours for refuelling or for transferring to another airplane for the continuation of the journey.



## Study Permits

Everyone who is not a Canadian citizen or permanent resident needs a study permit to study full-time or part-time at a degree-granting university, a college, a primary or a secondary school, or to take any academic, professional or vocational course. The exceptions to this rule are the following:

Reference	Summary
A30(2) Minor Child	A minor child already in Canada is authorized to study without a study permit. There is one exception: a child who is accompanying temporary resident parents who are not authorized to work or study
R188(1)(a) Diplomats	Family member or member of private staff of an accredited foreign representative (eg. diplomats).
R188(1)(b) Designated Forces	Members of the armed forces of a country that is a designated state for the purposes of the Visiting Forces Act
R188(1)(c) Courses lasting six months or less.	Foreign nationals may enter Canada or remain in Canada without a study permit to attend a course or study program of six months' duration or less.

OP-12

## Study Permits

216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

- (a) applied for it in accordance with this Part;
- (b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;
- (c) meets the requirements of this Part (*acceptance letter + financial resources*); and
- (d) meets the requirements of section 30.

## Exception

(2) Paragraph (1)(b) does not apply to persons described in section 206 and paragraphs 207(c) and (d).

## Study in Quebec

(3) An officer shall not issue a study permit to a foreign national who intends to study in the Province of Quebec — other than under a federal assistance program for developing countries — and does not hold a Certificat d'acceptation du Québec, if the laws of that Province require that the foreign national hold a Certificat d'acceptation du Québec.

\* Instructions to Issue Multiple Entry Visa

## Work Permits

To determine whether or not a foreign national needs a work permit, an officer must answer the following two questions:

1. Is the work described within the 'definition of work'?
2. Is the work described within one of the twenty-one situations listed in the *Regulations* as being authorized without the issuance of a work permit?

If the answer to question 1 is no, a work permit is not required. If the answer to question 2 is yes, a work permit is not required.

### Definition of Work (R2)

"Work" is defined as:

- an activity for which wages or commission is earned, or
- an activity that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

### What kind of activities are considered to be 'work'?

The term 'wages or commission' is straightforward: If a person performs an activity which will result in them being paid, they will be engaging in work. Officers should also examine whether there is really entry into the labour market in order to decide if a person's intended activity is 'work'

### What is an activity that competes directly with Canadians?

Examples of activities for which wages or commission is not earned but which is still considered work because it competes directly with the activities of Canadians include, but are not limited to:

Self-employment which could constitute a competitive economic activity such as opening a dry-cleaning shop or fast-food franchise.

Unpaid employment undertaken for the purpose of obtaining work experience, such as an internship or practicum normally done by students.

## What kind of activities do we *not* consider to be 'work'?

Examples include, but are not limited to:

Volunteer work for which a person would not normally be remunerated. Such as, sitting on the board of a charity or religious institution, being a 'big brother', or 'big sister' to a child, being on the line at a rape crisis centre. Normally this type of work would be part time and incidental to the main reason that a person is in Canada.

Unremunerated helping of a friend or family member during a visit, such as a mother assisting a daughter with childcare, or an uncle helping his nephew repair the dock at his cottage.

Long distance (by telephone or internet) work done by a visitor whose employer is outside Canada and who is remunerated from outside Canada

Self-employment where the work to be done would have no real impact on the labour market; examples include a U.S. farmer crossing the border to work on some fields that she owns, or a miner coming to work on his own claim.


There may be other types of unpaid short-term work where **the work is really incidental to the main reason that a person is visiting Canada and is not a competitive activity**. For instance, if a tourist wishes to stay on a family farm and work part time just for room and board for a short period (i.e. 1-3 weeks), this person would not be considered a worker.

There is overlap in activities that are not considered work and those activities which are defined as work not requiring a work permit. However, the net effect (no work permit required) is the same.

### Who Does Not Require a Work Permit? (R186 & 187)

1. Properly accredited diplomat posted to Canada.
2. Family members of diplomats who have a letter of no-objection from DFAIT.
3. Members of the armed forces of a country designated by the *Visiting Forces Act*.
4. Full time students working on campus.
5. Officer of a foreign government sent under an exchange agreement between Canada and one or more countries to work in a provincial or federal agency.

6. **Performing Artists** – except:
- performances primarily for a film production, television or radio broadcast
  - where they are in an employment relationship with the business in Canada that is contracting their services, or
  - performing in a bar, restaurant or similar type establishment
7. **Participants in sports activities or events**, as an individual or group for a foreign based team or Canadian amateur team.
8. **Employees of foreign news companies** reporting on events in Canada.
9. **Guest speaker** – no more than five days
10. **Convention organizers** – executives / admin. Staff of a committee organizing a convention or meeting in Canada.
11. **Religious workers** – assisting a congregation or group in the achievement of its spiritual goals. Main duties to include: preaching of doctrine, performing functions related to gatherings of a group or to provide spiritual counselling.
12. **Judge, referee or similar official** – International amateur sports competitions, cultural or artistic events or competitions or an animal or agricultural competition.
13. **Examiner or evaluator** of research proposals, academic projects or university theses.
14. **Expert who conducts surveys or analysis** to be used as evidence in a regulatory body or court of law or expert witness
15. **Student in health field** medical elective or clinical clerk at a medical teaching institution for training if they have written approval from the body that regulate that field
16. **Civil aviation inspectors** - Inspectors coming to Canada to do safety inspections of flight operations or cabin safety of commercial airlines doing international flights.
17. **Accredited representative** participating in an **aviation accident or incident** investigation.

18. **Member of a crew** employed by a foreign company.
  19. **Provider of emergency services** for the protection or preservation of life or property.
  20. **Until a decision is made**, if they have remained after the expiry of their work permit and they continued to comply with conditions
  21. **Business visitors** - foreign national who seeks to engage in international business activities in Canada without directly entering the Canadian labour market
- 

## Labour market opinion

### Work permits requiring HRSDC Confirmation (R203)

Unless a specific exemption applies, officers only issue work permits on the basis of a labour market opinion from Human Resources and Skills Development Canada (HRSDC). HRSDC weighs several factors in assessing the impact on the Canadian labour market. Traditional factors such as wages and working conditions and the availability of Canadians or permanent residents to do the work in question are still factors. But additional factors are also considered such as whether skills and knowledge transfer would result from confirming the foreign worker and whether the work is likely to create other jobs for the benefit of Canadians or permanent residents.

Also important is the fact that HRSDC can provide a labour market opinion (LMO) as to whether the issuance of a work permit to a foreign national will have a neutral or positive effect. This allows HRSDC officer to confirm unpaid employment.

HRSDC has provided national labour market opinions for foreign workers which apply to all foreign workers who have job offers in the described fields.

### Work Permits exempt from HRSDC Confirmation

Sections 204 to 208 provide the regulatory authority to issue a work permit to a worker that does not have an HRSD Confirmation.

Regulation
<b>R204 International Agreements</b> <ul style="list-style-type: none"><li>i) NAFTA/CCFTA Trader</li><li>ii) NAFTA/CCFTA Investor</li><li>iii) NAFTA/CCFTA Professional</li><li>iv) NAFTA/CCFTA Intra-company transferee</li><li>v) GATS Professional</li></ul>
<b>R205 Canadian Interests</b> <ul style="list-style-type: none"><li>a) Significant benefit<ul style="list-style-type: none"><li>i) Entrepreneurs,</li><li>ii) Intra-company Transferees</li><li>iii) Emergency Repairs</li></ul></li><li>b) Reciprocal employment</li></ul>

<b>Regulation</b> i) Youth Exchange Programs ii) Exchange Professors, Visiting Lecturers  c) Designated by Minister  i) Research, Educational or Training Programs  ii) Competitiveness and Public Policy  A. Spouses of temporary skilled workers B. Spouses of students C. Post-Grad employment D. Post-doctoral Fellows and Award recipients  d) Charitable or Religious Work
<b>R206 Self- support</b>  a) Refugee Claimants  b) Persons under an unenforceable removal order
<b>R207 (PR) Applicants in Canada</b>  a) Live-in-caregiver class  b) Spouse or common-law partner class  c) Protected persons under section A95(2)  d) Section 25 exemption  e) Dependants of the above
<b>R208 Humanitarian Reasons</b>  a) Destitute Students  b) Holders of a TR Permit valid for minimum of 6 months

## Temporary Resident Permits

Temporary Resident Permits should be issued with caution and only in special circumstances.

Temporary resident permits may be issued if:

- The need to enter to remain in Canada is compelling and sufficient to overcome the risk
- The risk to Canadians or Canadian society is minimal and the need for the person's presence in Canada outweighs the risk.

**Table 1. Issuing or Extending a Temporary Resident Permit**

GENERAL CONSIDERATIONS		
<ul style="list-style-type: none"> <li>➤ The factors that make the person's presence in Canada necessary</li> <li>➤ The intention of the legislation</li> </ul>		
RISK ASSESSMENT AND SPECIFIC FACTORS		
CRIMINALITY	MEDICAL	OTHER
<ul style="list-style-type: none"> <li>➤ What was the seriousness of the offence?</li> <li>➤ Did the crime involve physical harm or violence?</li> <li>➤ What was the punishment received for the offence?</li> <li>➤ What are the chances of successful settlement without committing further offences?</li> <li>➤ Were there behavioral factors involved (i.e. drugs, alcohol)?</li> <li>➤ Is there evidence that the person has been reformed or is rehabilitated?</li> <li>➤ Is there a pattern of criminal behavior?</li> <li>➤ Is the person eligible for a pardon or rehabilitation?</li> <li>➤ How long has it been since the offence occurred?</li> </ul>	<ul style="list-style-type: none"> <li>➤ Is the person suffering from a communicable or contagious disease?</li> <li>➤ How severe is the person's anticipated need for health or social services in relation to the demand for these services by Canadian residents?</li> <li>➤ What is the cost of the treatment?</li> <li>➤ How will the costs be covered?</li> <li>➤ Will provincial public health insurers provide insurance coverage?</li> </ul>	<ul style="list-style-type: none"> <li>➤ Is there a pattern of previous or multiple violations of the Act/Regulations?</li> <li>➤ Is the violation inadvertent and accidental, or the result of careless or flagrant disregard for the law?</li> <li>➤ Are there public controversial elements to the case that warrant a referral to NHQ?</li> <li>➤ Is there a settlement risk as persons continuously on a permit for a specified period of time will be granted permanent residence?</li> </ul>

## MODULE 05 - PERMANENT RESIDENTS

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Categories of Persons Seeking to Become a Permanent Resident from Outside  
Canada  
Permanent Residence from Within Canada  
Loss of Permanent Resident Status  
Residency Obligations

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## Categories of Persons Seeking to Become a Permanent Resident from outside Canada

### Family Class

The objectives of IRPA recognize the importance of family reunification. Family class applications serve the purpose of reunifying a Canadian citizen or permanent resident with close family from abroad. The process is initiated by a sponsor in Canada, who submits a completed application with supporting documentation to CPC-M. This office is not open to the general public. The staff deals only with mail-in family class applications. They ensure that the person is eligible to sponsor and that the person named on the sponsorship undertaking is a **member of the family class**, as defined in the IRP Regulations.

#### Definition of Sponsor:

For the purposes of sponsoring an application for permanent residence by a member of the Family Class or an application to remain in Canada as a member of the Spouse or Common-Law Partner In-Canada Class, the sponsor must meet the following requirements:

- Be a Canadian citizen or permanent resident
- Be at least 18 years of age
- Be residing in Canada (limited exception for Canadian citizens)
- Have filed a sponsorship application in accordance with the IRP Regulations.

#### Requirements to be met to be approved as a sponsor:

- financial requirements (not applicable if sponsoring a spouse, common-law partner, or conjugal partner, or a dependent child who has no children)
- requirements for sponsors relating to criminality (i.e., no convictions for offences of a sexual nature or domestic abuse in previous 5 years, not in any jail, penitentiary, reformatory or prison; limited exceptions)
- has not defaulted on previous sponsorship commitments or on court-ordered payments
- not in receipt of social assistance (unless for a disability)
- not subject to a removal order or an immigration report
- does not owe any debt (as referred to in the *Immigration and Refugee Protection Act*) payable to Her Majesty in right of Canada
- is not an undischarged bankrupt under the *Bankruptcy and Insolvency Act*

Note: the province of Québec has its own criteria for sponsor eligibility.

## Members of the family class

- Spouse (*marriage* defined in R2), Common-law partner (defined in R1(1)), Conjugal partner (defined in R2)
- Dependant child (as defined in R2) is:
  - Biological child of the parent, or adopted child of the parent;
  - Less than age 22 and not a spouse/common-law partner; *Broken dependency*
  - Age 22 or more, a full-time student, and financially supported by parent since turning 22 or since marrying, whichever was earlier; or
  - Age 22 or more, mentally or physically disabled, incapable of self-support, and financially supported by parent.
- Father, mother, grandfather, grandmother
- Brother, sister, nephew, niece, grandchild if:
  - Orphaned;
  - Less than 18; and
  - Not a spouse or common-law partner
- Child to be adopted if:
  - Less than 18
  - Not primarily to obtain permanent residence
  - Agreement or non-objection (in writing) by province of destination
- Any other relative (if sponsor has no relative who is a Canadian citizen, Indian or permanent resident and no relative who could be otherwise sponsored)

## Refugee Class

The following are categories of refugees who are assessed abroad but who come to Canada as permanent residents:

- **Convention refugee abroad (A96)**

A person who:

- Is outside his/her country(ies) of citizenship or habitual residence
- Has reasonable grounds to fear persecution for reason of:

- Race
- Religion
- Nationality
- Political opinion or
- Membership in a particular social group

*sexual orientation*  
*(gay/lesbian group)* → *something that you cannot change unless it's a fundamental right*

- **Humanitarian protected person abroad:**

- **Country of asylum class –**

- outside the home country or the country of habitual residence
- have been, and continue to be, seriously and personally affected by civil war or armed conflict, or have suffered massive violations of human rights
- cannot find an adequate solution to the situation within a reasonable period of time and
- will be privately sponsored or have the funds required to support self and dependants.

- **Source country class –**

- live in a country that has been named a source country of refugees
- lives in the home country
- have been, and continue to be, seriously and personally affected by civil war or armed conflict
- have lost the right of freedom of expression, the right of dissent or the right to engage in trade union activity, and have been detained or imprisoned as a result
- fear persecution because of race, religion, nationality, membership in a particular social group or political opinion
- cannot find an adequate solution to the situation within a reasonable period of time and
- will be assisted by the Government of Canada, be privately sponsored or have the funds needed to support self and dependants after arrival in Canada.

### The Process:

- The refugee's application must be accompanied by a referral from the UNHCR (or other organization) or an undertaking (R150(1)).
- The officer determines if the person meets the definition of the classes.
- If so the person is informally assessed to determine if they can be resettled in Canada and become successfully established in Canada given the support that will be available to them (sponsorship). This does not apply to the refugee and their family members if they intend to reside in Quebec. [R139(1)(g)] The provincial authority of that province must be of the opinion that they meet the selection criteria and are not otherwise inadmissible.

This also does not apply if an officer determines they are particularly vulnerable (unaccompanied minor, woman at risk) or in urgent need of protection (life, liberty or physical safety is under immediate threat). [R139(2)]

- The refugee is assessed for criminality/security and medical admissibility.
- If all requirements are met a visa can be issued.
- On arrival in Canada the refugee becomes a Permanent Resident and is eligible for certain benefits to help with his/her settlement in Canada (i.e. language training, temporary housing, assistance from sponsoring organization etc.).

## Economic Class

The third category of permanent residents concerns applicants who are assessed on the skills and/or expertise they could bring to Canada. Permanent resident applicants in the economic class are assessed against a selection system divided into "classes":

1. Federal skilled worker class
2. Quebec skilled worker class
3. Provincial nominee class
4. Business class;
  - Entrepreneurs
  - Investors
  - Self-employed
5. Canadian Experience class

Note that applicants in certain economic classes must have work experience in prescribed occupations as set out in HRSDC's National Occupation Classification. The National Occupational Classification (NOC) is the nationally accepted reference on occupations in Canada. It organizes over 30,000 job titles into 520 occupational group descriptions which are subdivided into skill levels.

### **1. Federal skilled workers**

Skilled workers can be selected as permanent residents on the grounds that they are able to establish themselves economically in Canada.

To be accepted as a skilled worker, applicants must:

- Meet the Ministerial Instructions;
- Meet the minimum work experience requirements;
- Prove that they have the funds required for settlement; and
- Earn enough points under the six selection factors to meet the pass mark (education, official languages, work experience, age, employment arranged in Canada and adaptability)

**NOTE:** Applies only to applicants who intend to reside in a province other than Quebec.

## Federal Skilled Workers Assessment

### Ministerial Instructions 1 (Bill C-50)

(applications received on February 27, 2008, and after and before 26 June 2010)

Applicant has an Arranged Employment offer

or

Applicant is residing legally in Canada and has been in Canada for at least one year as a Temporary Foreign Worker or International Student

or

Applicant has a minimum of one year experience in selected NOC (see Ministerial Instructions list)

### Ministerial Instructions 02 and 03 (Bill C-50)

(applications received on 26 June 2010 and after) *before July 1, 2011*

Applicant has an Arranged Employment offer

or

Applicant has a minimum of one year experience in selected NOC (see Ministerial Instructions list)

### Minimum Requirements (R75(2)) *37.5 hrs/week*

- One year (within past 10 years) of continuous full-time paid work experience in NOC type 0 or level A or B) or continuous part-time equivalent.
- During that period of employment, has performed the actions described in the lead statement and a substantial number of the main duties of the occupation as set out in the NOC.

### Points Assessment (R76(1a))

*MI-3 Bill C-50 - 10,000 cap July 11/2011*

AGE (R81)	MAX 10
21 – 49 y.o. at time of application	10
Less 2 points for each year over 49 y.o. or under 21 y.o.	-2

EDUCATION (R78)	MAX 25
<b>University Degrees</b>	
Ph.D. or Masters AND at least 17 years of study	25
Two or more university degrees at the Bachelor's level AND at least 15 years of study	22
A two year university degree AND at least 14 years of study	20
A one year university degree AND at least 13 years of study	15
<b>Trade or Non-University Certificate or Diploma</b>	
A three year diploma, trade certificate or apprenticeship AND at least 15 years of study	22
A two year diploma, trade certificate or apprenticeship AND at least 14 years of study	20
A one year diploma, trade certificate or apprenticeship AND at least 13 years of study	15
A one year diploma, trade certificate or apprenticeship AND at least 12 years of study	12
<b>High School Diploma</b>	
Secondary School education credential	5

*Only from  
accepted by  
the government  
of origin*

*\* distant education ok. If instructions given by author, person, not self study*

EXPERIENCE (R80)					MAX 21
Recent (in past 10 yrs) paid full-time skilled (type 0 or level A or B) work experience	1 yr 15pts	2 yrs 17pts	3 yrs 19pts	4 yrs 21pts	15 – 21

ARRANGED EMPLOYMENT (only for Type 0, or Level A or B) (R82)		MAX 10
Arranged employment in Canada approved by HRSDC		10
Applicants in Canada holding a work permit that is:		10
1. HRSDC validated (including sectoral validations)		
2. HRSDC validation exempt (e.g. NAFTA, GATS, CCFTA)		

ADAPTABILITY ELEMENTS (R83)				MAX 10
Spouse/partner education	12-15 3pts	20-22 4pts	25 5pts	3 – 5
Minimum 1 year full-time work in Canada on a permit (PI or spouse/partner)				5
Arranged employment (on top of the 10 pts already given)				5
Family relation in Canada: (grand-)parent, (grand-)child, sibling, aunt/uncle, nephew/niece, spouse/c-l partner				5
Minimum 2 years full-time post-secondary study in Canada after 17 y.o. (PI or spouse/partner)				5

LANGUAGE ABILITIES (R79)				MAX 24
Proficiency				
TEF (French) IELTS or CELPIP	HIGH 1 <sup>st</sup> lang.: 4 pts 2 <sup>nd</sup> lang.: 2 pts	MODERATE 1 <sup>st</sup> & 2 <sup>nd</sup> : 2 pts	BASIC 1 <sup>st</sup> & 2 <sup>nd</sup> : 1 pt (max of 2 pts)	
Canadian Language Benchmarks				
Speaking (exp. orale)	Benchmark 8 -12	Benchmark 6-7	Benchmark 4-5	
Reading (comp. écrite)	Benchmark 8 -12	Benchmark 6-7	Benchmark 4-5	
Writing (exp. écrite)	Benchmark 8 -12	Benchmark 6-7	Benchmark 4-5	
Listening (comp. orale)	Benchmark 8 -12	Benchmark 6-7	Benchmark 4-5	
IELTS (Applications received and test reports dated before November 28)				
Speaking (exp. orale)	7.0 – 9.0	5.0 – 6.9	4.0 – 4.9	
Reading (comp. écrite)	7.0 – 9.0	5.0 – 6.9	4.0 – 4.9	
Writing (exp. écrite)	7.0 – 9.0	5.0 – 6.9	4.0 – 4.9	
Listening (comp. orale)	7.0 – 9.0	5.0 – 6.9	4.0 – 4.9	
IELTS (applications received or test reports dated after November 28, 2008)				
Speaking (exp. orale)	6.5 - 9.0	5.5 - 6.0	4.0-5.0	
Reading (comp. écrite)	6.5-9.0	5.0 – 6.0	3.5 – 4.5	

fraud w/  
photo  
blending

Writing (exp. écrite)	6.5-9.0	5.5 – 6.0	4.0-5.0
Listening (comp. orale)	7.5-9.0	5.5 – 7.5	4.5-5.0
<b>CELP</b> (as of 10 october 2008)			
Speaking (exp. orale)	4H - 5 - 6	3H - 4L	2H - 3L
Reading (comp. écrite)	4H - 5 - 6	3H - 4L	2H - 3L
Writing (exp. écrite)	4H - 5 - 6	3H - 4L	2H - 3L
Listening (comp. orale)	4H - 5 - 6	3H - 4L	2H - 3L
<b>TEF</b>			
Speaking (exp. orale)	Niveau 5-6 349-450	Niveau 4 271-348	Niveau 3 181-270
Reading (comp. écrite)	Niveau 5-6 233-300	Niveau 4 181-232	Niveau 3 121-180
Writing (exp. écrite)	Niveau 5-6 349-450	Niveau 4 271-348	Niveau 3 181-270
Listening (comp. orale)	Niveau 5-6 280-360	Niveau 4 217-279	Niveau 3 145-216

**TOTAL (Pass Mark = 67 pts) MAX 100**

*Half the LICO*

← **Settlement Funds<sup>1</sup> (R76(1)b))**

Family Members	Funds Required
1	\$11,115
2	\$13,837
3	\$17,011
4	\$20,654
5	\$23,425
6	\$26,419
7	\$29,414

*Exception to settlement funds: if the applicant has arranged employment.*

<sup>1</sup> OP 6, 2011

1,000 applications per eligible NOC language test

capo - 20,000 - 25,000 max. for arranged job

able and likely to perform job offered

arranged employment or experience

NOC List - Ministerial Instructions-1 (MI-1), 02 (MI-02) and 03 (MI-03)

38 29 29

Skill Type	NOC	MI-1	MI-02/03
0 - MANAGEMENT	0631 Restaurant and Food Service Managers	X	X
	0111 Financial Managers	X	
	0213 Computer and Information Systems Managers	X	
	0311 Managers in Health Care	X	
	0632 Accommodation Service Managers	X	
	0711 Construction Managers	X	
	0811 Primary Production Managers (Except Agriculture)		X
1 - BUSINESS, FINANCE AND ADMINISTRATION	1111 Financial Auditors and Accountants	X	
	1122 Professional Occupations in Business Services to Management		X
	1233 Insurance Adjusters and Claims Examiners		X
2- NATURAL AND APPLIED SCIENCES	2113 Geologist, geochemist & Geophysicist	X	
	2121 Biologists and Related Scientists		X
	2143 Mining Engineers	X	
	2144 Geological Engineers	X	
	2145 Petroleum Engineer	X	
	2151 Architects		X
3- HEALTH	3111 Specialist Physicians	X	X
	3112 General Practitioners and Family Physicians	X	X
	3113 Dentists		X
	3131 Pharmacists		X
	3141 Audiologists and Speech-Language Pathologists	X	
	3142 Physiotherapists	X	X
	3143 Occupational Therapists	X	
	3151 Head Nurses and Supervisors	X	
	3152 Registered Nurses	X	X
	3215 Medical Radiation Technologists	X	X
	3222 Dental Hygienists & Dental Therapists		X
	3233 Licensed Practical Nurses	X	X
4- SOCIAL SCIENCE, EDUCATION, GOVERNMENT SERVICE AND RELIGION	4121 University Professors	X	
	4131 College and Other Vocational Instructors	X	
	4151 Psychologists		X
	4152 Social Workers		X
6- SALES AND SERVICE	6241 Chefs	X	X
	6242 Cooks	X	X
7- TRADES,	7213 Contractors and Supervisors, Pipefitting Trades	X	

MI-03  
July 1/10,000 max. 50 per NOC language test

<b>TRANSPORT AND EQUIPMENT OPERATORS</b>	<b>7215</b> Contractors and Supervisors, Carpentry Trades	X	X
	<b>7216</b> Contractors and Supervisors, Mechanic Trades		X
	<b>7217</b> Contractors and Supervisors, Heavy Construction Equipment Crews	X	
	<b>7241</b> Electricians (Except Industrial & Power System)	X	X
	<b>7242</b> Industrial Electricians	X	X
	<b>7251</b> Plumbers	X	X
	<b>7252</b> Steamfitters, Pipefitters and Sprinkler System Installers	X	
	<b>7265</b> Welders & Related Machine Operators	X	X
	<b>7312</b> Heavy-Duty Equipment Mechanics	X	X
	<b>7371</b> Crane Operators	X	X
	<b>7372</b> Drillers & Blasters — Surface Mining, Quarrying & Construction	X	X
<b>8- PRIMARY INDUSTRY</b>	<b>8221</b> Supervisors, Mining and Quarrying	X	
	<b>8222</b> Supervisors, Oil and Gas Drilling and Service	X	X
<b>9- PROCESSING, MANUFACTURING AND UTILITIES</b>	<b>9212</b> Supervisors, Petroleum, Gas and Chemical Processing and Utilities	X	

**Note:**

- MI-02: For applications received on or after 26 June 2010, and before 01 July 2011, a total maximum of 20,000 applications will be considered for processing each year. Within the 20 000 cap, a maximum of 1,000 applications per occupation will be considered for processing each year.
- MI-03: For applications received on or after 01 July 2011, a total maximum of 10,000 applications will be considered for processing each year. Within the 10 000 cap, a maximum of 500 applications per occupation will be considered for processing each year.

## 2. Quebec Skilled Worker Class

Persons who are destined to become permanent residents in Quebec are assessed under the Quebec skilled worker class and must meet Quebec's selection criteria to be eligible.

If they are successful, they will receive a Quebec Selection Certificate (CSQ). These applicants also need to meet the federal requirements for admissibility. If they fail to meet either provincial eligibility or federal admissibility requirements, they will not be accepted.

### 3. Provincial Nominee Class

Another type of independent permanent resident applicant is a provincial nominee.

#### Member of the class

87. (2) A foreign national is a member of the provincial nominee class if
- (a) subject to subsection (5), they are named in a nomination certificate issued by the government of a province under a provincial nomination agreement between that province and the Minister; and
  - (b) they intend to reside in the province that has nominated them.

#### Substitution of evaluation

- (3) If the fact that the foreign national is named in a certificate referred to in paragraph (2)(a) is not a sufficient indicator of whether they may become economically established in Canada and an officer has consulted the government that issued the certificate, the officer may substitute for the criteria set out in subsection (2) their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada.

#### Concurrence

- (4) An evaluation made under subsection (3) requires the concurrence of a second officer.

#### Exclusion

- (5) Subject to subsection (6), a foreign national who is named in a certificate referred to in paragraph (2)(a) shall not be considered a member of the provincial nominee class if
- (a) the nomination was based on the provision of capital by the foreign national; or
  - (b) the foreign national intends to participate in, or has participated in, an immigration-linked investment scheme.

#### Exception

- (6) Subsection (5) does not apply if
- (a) the capital is provided by the foreign national to a business in the province that nominated them, other than a business operated primarily for the purpose of deriving investment income such as interest, dividends or capital gains;
  - (b) the foreign national controls or will control
    - (i) a percentage of equity in the business equal to or greater than 33 1/3 per cent, or
    - (ii) an equity investment in the business of at least \$1,000,000;
  - (c) the foreign national provides or will provide active and ongoing management of the business from within the province that nominated them; and
  - (d) the terms of the investment in the business do not include a redemption option.

(7) and (8) [Repealed, SOR/2008-253, s. 10]

#### Definitions

(9) The following definitions apply in this section.

"immigration-linked investment scheme" - "immigration-linked investment scheme" means a strategy or plan

- (a) where one of the objectives of the strategy or plan is to facilitate immigration to Canada and one of the objectives of the promoters of the strategy or plan is to raise capital; or
- (b) where the agreement or arrangement in respect of the strategy or plan was entered into primarily for the purpose of acquiring a status or privilege under the Act.

"percentage of equity" "percentage of equity" has the same meaning as in subsection 88(1).

#### Non-application

(10) Subsections (5), (6) and (9) do not apply in respect of a foreign national who is issued a nomination certificate referred to in paragraph (2)(a) before September 2, 2008.

#### Transitional

(11) Subsections (5) and (6) as they read immediately before September 2, 2008 apply in respect of a foreign national referred to in subsection (10).

#### Requirements for accompanying family members

- (12) A foreign national who is an accompanying family member of a person who makes an application as a member of the provincial nominee class shall become a permanent resident if, following an examination, it is established that
- a) the person who made the application has become a permanent resident; and
  - b) the foreign national is not inadmissible.

#### 4. Business Class

The fourth group under the economic class permanent resident category is the business class. This particular type of economic applicant is divided into three types. These applicants are also assessed using selection factors.

Because business applicants are awarded a substantial number of bonus points, a key element for selection hinges on the applicant being able to meet the definition of the category under which they are applying.

After meeting specific eligibility criteria all applicants still need to be admissible (that is, they must not be described in the inadmissibility provisions under sections 34-42 of IRPA). Generally, this would include meeting medical requirements and background checks for criminality/security. Once all members of the family meet all requirements each individual then gets a permanent resident visa that is processed when they first arrive in Canada.

##### ***Business class definitions***

- **Entrepreneur**

An applicant who has a net worth of at least \$300,000 and who intends and has the ability to establish, purchase, or make a substantial investment in a business or commercial venture in Canada which will make a significant contribution to the economy and create or continue employment opportunities in Canada for one or more Canadian citizens or permanent residents, other than the entrepreneur and his/her dependants. The applicant must also intend and have the ability to provide active and ongoing management of the business or commercial venture.

- **Investor**

An applicant, who has successfully operated, controlled or directed a business. This person must have a net worth of at least \$800,000 and agree to make an investment in the sum of \$400,000 to an agent for allocation into all approved funds, and in the case of an investor approved by a province, that investment is non-refundable for at least five years. The approved funds will contribute to the creation or continuation of employment opportunities for Canadian citizens or permanent residents and actively foster the development of a strong, viable economy and regional prosperity in Canada.

- **Self-Employed**

A person seeking to enter Canada as a permanent resident under the self-employed category is a person who has the ability to establish or purchase a business in Canada. The business will create an employment opportunity for himself and make a significant contribution to the cultural or artistic life of Canada, or to athletics in Canada at the world-class level, or purchasing and managing a farm in Canada.

**Ministerial Instructions:** An administrative pause was implemented on Federal Immigrant Investor applications between June 26 and November 30<sup>th</sup> 2010. Starting December 1<sup>st</sup> 2010, the net worth requirement was increased to \$1.6 million and the required investment to \$800,000. Finally, on July 1<sup>st</sup>, 2011, a cap of 700 applications was imposed for this class. On the same date, a temporary moratorium was implemented for application in the Entrepreneur class.

## 5. The Canadian Experience Class

The Canadian Experience Class is a class of persons who may become permanent residents on the basis of their Canadian experience and who:

- intend to reside in a province or territory other than Quebec;
- have maintained temporary resident status during their qualifying period of work experience as well as during any period of full-time study or training in Canada.

There are two streams available:

### *Temporary Foreign Worker Stream*

Under this stream an applicant must have two years of full-time equivalent, skilled-work experience at the NOC 0, A or B level (i.e., managerial, professional, or skilled and technical), acquired in Canada within the three years preceding the date the application is made.

### *Post-Graduation Stream*

Under this stream the applicant must have:

- completed a required program of study in Canada and obtained a Canadian educational credential (e.g., degree, diploma, or certificate);
- been enrolled full-time in this program of study or training for two years;
- acquired one year of full-time equivalent, skilled-work experience at the NOC 0, A or B level in Canada, within the two years preceding the date the application is made.

Both streams require applicants to demonstrate that they have met the **minimum language requirements**. They must provide evidence that their proficiency in English or French has been assessed by a designated language testing agency for their abilities to speak, listen, read and write, or they must submit written evidence of their proficiency in English or French. The minimum-required language levels must correspond to benchmarks in *Canadian Language Benchmarks 2000* (for English) or *Niveaux de compétence linguistique canadiens 2006* (for French).

must have a legal status (does not include refugees)

## Permanent Residence from within Canada

Members of the in-Canada classes may apply for permanent residence from within Canada. These applications are made to CPC- Vegreville. The following is a brief description of these classes.

### 1. Spouse or Common-Law Partner in Canada class - R124

In order to qualify for this class, the person must:

- be a spouse or common-law partner of the sponsor
- have a bona fide relationship with the sponsor
- be cohabiting with the sponsor
- be the subject of a sponsorship application
- not be inadmissible (other than not having legal immigration status in Canada)

**NOTE:** These persons are exempt from inadmissibility on health grounds due to excessive demand on health/social services.

### 2. Live-in caregiver in Canada class:

To become a permanent resident as a member of this class, a foreign national must:

- submit an application
- be a temporary resident
- hold a work permit as a live-in caregiver
- have completed a total of two (2) years of full-time employment in Canada as a live-in caregiver within three (3) years after being authorized to enter to Canada
- is not, or whose dependants are not, the subject of an enforceable removal order or an admissibility hearing or of an appeal or application for judicial review arising from such a hearing
- not have misrepresented their education, training or work experience and
- have a CSQ if living in Quebec

### 3. Protected Persons

To become a permanent resident in this class, a foreign national must:

- have been finally determined to be a Convention refugee (A.96) or a person in need of protection (A.97) by the Refugee Protection Division or the Minister

**Note:** A protection claim to the Minister, known as a Pre-Removal Risk Assessment (PRRA) cannot be made until the removal order is in force.

- apply within 180 days of the determination (R.175(1))
- not be inadmissible for security (A34), war crimes (A35), serious criminality (A36(1), organized crime (A37) or a health condition that would be a danger to public health or safety (A38(1)(a) or (b).

### 4. Permit Holders Class

To become a permanent resident in this class, a foreign national must:

- have been issued a temporary resident permit;
- have continuously resided in Canada as a permit holder for:
- at least 3 years if inadmissible on health grounds
- at least 5 years if inadmissible for any other grounds except for security, war crimes, serious criminality or organized crime
- not have become inadmissible on any other ground; and
- have a CSQ if living in Quebec

### 5. Protected Temporary Resident

To become a permanent resident in this class, a foreign national must:

- have become a temporary resident under a temporary resident permit for protection reasons after making a claim for refugee protection outside Canada under section 99 of the Act; or
- have been issued a Minister's permit under section 37 of the former Act after seeking admission to Canada under section 7 of the former Regulations or section 4 of the Humanitarian Designated Classes Regulations.


This class was created to allow refugees in urgent need of protection to apply for permanent residence from within Canada but without the delay associated with the permit holder class.

## 6. Under A 25 - Humanitarian and Compassionate Grounds (H&C):

In order to become a permanent resident on H&C grounds, the foreign national must:

- satisfy an officer that there are sufficient humanitarian and compassionate grounds to waive the permanent residence requirements of the Act and Regulations;
- hold a passport or other travel document, medical, security clearance and, for Quebec cases, a CSQ (certificat de sélection du Québec); and
- not be otherwise inadmissible nor have an inadmissible family member

Foreign nationals do not have the right to apply for permanent residence from within Canada except as provided by the legislation. Therefore, foreign nationals who do not qualify under IRPA to apply from within Canada must seek an exemption from the requirement to be a member of a class referred to in R72(2). A25(1) provides the authority to approve deserving cases that were not anticipated in the legislation and to process applications for permanent residence from within Canada.



## Loss of Permanent Resident Status

### Loss of Status

#### Permanent resident

A46. (1) A person loses permanent resident status

- (a) when they become a Canadian citizen;
- (b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;
- (c) when a removal order made against them comes into force; or
- (d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination under subsection 114(3) to vacate a decision to allow their application for protection.

(2) A person who ceases to be a citizen under paragraph 10(1)(a) of the Citizenship Act, other than in the circumstances set out in subsection 10(2) of that Act, becomes a permanent resident.

## Residency Obligations

### Residency obligation

28. (1) A permanent resident must comply with a residency obligation with respect to every five-year period.

#### Application

(2) The following provisions govern the residency obligation under subsection (1):

(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are

(i) physically present in Canada,

(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,

(iii) outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province,

(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province, or

(v) referred to in regulations providing for other means of compliance;

(b) it is sufficient for a permanent resident to demonstrate at examination

able (i) if they have been a permanent resident for less than five years, that they will be to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;

the (ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and

(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

**MODULE 06 -  
INADMISSIBILITY**

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Not Allowed In  
Burden of Proof and Reasonable Grounds  
Inadmissible classes  
Officer Options  
Sample report 44  
Sample refusal letter  
Definitions and Effects of Removal orders

## NOT ALLOWED IN

The people listed may be dead or alive, fictitious or non-fictitious, but the two things they all have in common is that they are famous/well known and would likely be inadmissible to Canada.

Review each of the people below and determine why they should not be allowed into Canada?

PERSON	WHY?
s 22	36.2
	34.1(8)
	35.1(a)
	37
	34.1(8)
	37.1, 36.1
	40.1(a)

## Burden of Proof & Reasonable Grounds

### 1. Mere suspicion

This means exactly what it says: An unfounded suspicion without any credible proof. Possible examples of mere suspicion would be:

- He looked like a criminal/terrorist.
- People from that region tend to be involved in criminality/terrorism.
- His uncle/brother/father is a criminal/terrorist, so he must be too.

### 2. Reasonable Grounds

This is relatively low evidentiary threshold: less than a balance of probabilities but more than a mere suspicion. It may be met with hearsay evidence and other forms of proof not normally admissible at trial. It has been described in the context of immigration proceedings as a *bona fide* belief in a serious possibility based on credible evidence. In other words, it must be based on compelling and credible information that provides an objective basis for the finding of fact.

For example:

- In an admissibility case pursuant to A37 (membership in a criminal organization), the Federal Court ("FC") upheld the panel's determination that police reports and the testimony of police officers indicating their belief in the applicant's membership in a criminal organization constituted reasonable grounds to believe that the applicant was inadmissible.
- In another case, the FC upheld a visa officer's determination that there were reasonable grounds to believe an applicant was inadmissible pursuant to A37 based on the applicant's criminal history, contacts with Triad members, and confidential information not available to the applicant pursuant to an A87 non-disclosure order.
- In a third case, the FC upheld a visa officer's determination that there were reasonable grounds to believe an applicant for a temporary work permit would be unable to perform the work required (warehouse manager) because he could not speak English or use a computer, even though the company had indicated that English was not required.

Reasonable grounds to believe were not made out in the following case:

- The visa officer relied on the claimant's testimony before the IRB in finding reasonable grounds to believe the applicant had violated human or international rights and, therefore, was inadmissible pursuant to A35. The FC found, however, that the applicant's testimony before the IRB could not constitute reasonable grounds because the IRB had determined that the applicant was not credible. (In addition, the applicant had subsequently recanted that testimony.)

### 3. Balance of Probabilities

This is the degree of proof required in civil cases generally and for determining the existence of a fact in immigration matters; it is also referred to as "a preponderance of evidence". It is lower

than the degree of proof required for a criminal case. It may be useful to think of this standard of proof in terms of 50% + 1, or more likely than not. In other words, if the evidence is such that the decision maker can say: "I think it more probable than not," the burden is discharged, but, if the probabilities are equal, it is not.

For example:

- In a case where the balance of probabilities was used to deny an applicant's visa application under A40(1)(a) (misrepresentation), the applicant argued that the standard of proof should have been much higher because the misrepresentation related to the applicant's involvement in criminal activities. The FC held that "a balance of probabilities", not "beyond a reasonable doubt" was the correct standard in a matter of administrative procedure in an immigration context, as a breach of A40(1)(a) was not a criminal offence, nor would it have resulted in criminal consequences.

Example of a case where a balance of probabilities was not the appropriate standard:

- A visa officer applied the wrong test for Convention refugee status when she found "I was not satisfied that the treatment you would receive were you to return to Sri Lanka would amount to persecution on any of the grounds enumerated in the Convention refugee definition" [emphasis added]. The FC found the use of the word "would" problematic, as it indicated that the visa officer applied the balance of probabilities test rather than the applicable (and lower) refugee protection standard of a "reasonable" or "serious possibility" of persecution.

#### 4. Beyond a reasonable doubt

The standard of "beyond a reasonable doubt" is the standard required for a criminal conviction and, therefore, it is not often used in the immigration context. (It should be noted, however, that Part III of IRPA contains a number of criminal offences; "beyond a reasonable doubt" is the standard of proof required to obtain a criminal conviction under this Part.) Basically, this standard of proof requires that the decision maker be completely satisfied or "sure" of the defendant's guilt.

- Generally, the standard of proof is only referred to in immigration cases in as far as it is rejected in favour of either "a balance of probabilities" or "reasonable grounds" as the appropriate standard to be applied.

# Inadmissible classes

	Section	Inadmissibility	Sub-section	Applicable Regulation
A33: Reasonable grounds, past, present or future events. Unless otherwise specified e.g. A36(3)(d)	A34	Security	1(a)	Subversion/espionage of democratic govt. <i>or institution</i>
			1(b)	Subversion by force
			1(c)	Terrorism
			1(d)	Danger to Security
			1(e)	Violence/endanger safety - <i>physical threat</i>
			1(f)	Membership in org described (a)(b)(c) <i>reasonable grounds to believe someone in Canada</i>
	A35	Human or International Rights Violations	1(a)	Crimes against Humanity and War Crimes Act
			1(b)	Prescribed senior official
			1(c)	Sanctions
	A36(1)	Serious Criminality	1(a)	Convicted <u>in</u> Canada
			1(b)	Convicted <u>outside</u> Canada
			1(c)	Act <u>outside</u> Canada
	A36(2)	Criminality	2(a)	Convicted <u>in</u> Canada
			2(b)	Convicted <u>outside</u> Canada
				R18
			2(c)	Act <u>outside</u> Canada
				R18
Balance of probabilities, present events only	A37	Organized Criminality	1(a)	Member of Organized Crime
			1(b)	Transnational crime
	A38	Health Grounds	1(a)	Danger to Public Health
			1(b)	Danger to Public Safety
			1(c)	Excessive Demand
	A39	Financial Reasons		R21
	A40	Misrepresentation	1(a)	Misrepresentation/withholding
			1(b)	Being sponsored by a person inadmissible for misrepresentation
			1(c)	Final determination on refugee claim
			1(d)	Ceasing to be a Canadian citizen

	A41	Non-compliance	1(a)	Foreign national non-compliance	
			1(b)	Perm resident & residency obligation	
	A42	Inadmissible Family Member	1(a)	Accompanying/ non-accompanying family member is inadmissible	R23
			1(b)	Accompanying family member of inadmissible person	

### **Overseas**

#### **Not issue the visa or document**

The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is **not inadmissible** and meets the requirements of this Act.

#### **Temporary Resident Permit**

A Temporary Resident Permit (TRP) may be issued to a foreign national who has been determined to be inadmissible, for the purpose of overcoming the inadmissibility and granting temporary resident status.

### **Port of entry**

#### **Withdrawal of Application**

This is commonly referred to as 'allowed to leave' and refers to cases where the person has been found to be inadmissible and voluntarily wants to leave Canada. This only applies in cases where an officer has decided not to prepare an A44(1) report.

#### **Direction to leave**

A direction to leave is issued to a person who cannot be properly examined. This action occurs in instances where a person is intoxicated and cannot be properly examined, or cannot be examined due to mental incapacity. This action is more often used in the land border environment.

#### **Direct back**

A 'direct back' is used only in cases where travelers are arriving from the United States and used almost exclusively in the land border environment.

#### **Detention on Entry**

An officer may detain a foreign national or a permanent resident upon entry if they consider it necessary to do so in order for the examination to be completed or there are reasonable grounds to suspect that the person is inadmissible on security grounds or violating human or international rights.

This provision is often used in the airport environment and accompanies a 'withdrawal of application' or allowed to leave.

## **Arrest**

An officer may without a warrant arrest a foreign national other than a protected person if there are reasonable grounds to believe the foreign national is inadmissible and a danger to the public or unlikely to appear for examination, a hearing, removal from Canada or a proceeding that could lead to the making of a removal order. A foreign national may also be arrested if they fail to satisfy the officer as to their identity.

**NOTE:** The rights conferred by the Vienna Convention apply any time a non-Canadian is arrested under any act.

## **Temporary Resident Permit**

A Temporary Resident Permit (TRP) may be issued to a foreign national who has been determined to be inadmissible, for the purpose of overcoming the inadmissibility and granting temporary resident status.

## **A44 Report**

An A44 report is a document that states a person is inadmissible to Canada. It serves as notification of an allegation of inadmissibility. These can only be made within Canada.

Sample A44(1) Report

REPORT UNDER SUBSECTION 44(1)  
OF THE IMMIGRATION AND REFUGEE PROTECTION ACT

DOCUMENT NO: N000000000  
000000  
CLIENT ID : 0000-0000

OFFICE FILE NO.: 5133-

TO: THE MINISTER OF CITIZENSHIP AND IMMIGRATION

FROM: E. FISHNET

IN ACCORDANCE WITH SUBSECTION 44(1) OF THE IMMIGRATION AND REFUGEE  
PROTECTION  
ACT, I HEREBY REPORT THAT:

JOHNNY B. GOOD BORN 31 DECEMBER 1960 IN USA

IS A PERSON WHO IS:

A FOREIGN NATIONAL WHO HAS BEEN AUTHORIZED TO ENTER CANADA

AND WHO, IN MY OPINION, IS INADMISSIBLE TO ENTER CANADA

PARAGRAPH 41(A)

SUBSECTION 41(A) IN THAT, ON A BALANCE OF PROBABILITIES, THERE ARE  
GROUNDS TO BELIEVE IS A FOREIGN NATIONAL WHO IS INADMISSIBLE FOR  
FAILING TO COMPLY WITH THIS ACT THROUGH AN ACT OR OMISSION WHICH  
CONTAVENES DIRECTLY OR INDIRECTLY, A PROVISION OF THIS ACT,  
SPECIFICALLY:

PARAGRAPH 29(2)

THE REQUIREMENT OF SUBSECTION 29(2) OF THE ACT THAT A TEMPORARY  
RESIDENT MUST COMPLY WITH ANY CONDITIONS IMPOSED UNDER THE  
REGULATIONS AND WITH ANY REQUIREMENTS UNDER THIS ACT AND MUST  
LEAVE CANADA BY THE END OF THE PERIOD AUTHORIZED FOR THEIR STAY.

THIS REPORT IS BASED ON THE FOLLOWING INFORMATION:

THAT JOHNNY B. GOOD

- IS NOT A CANADIAN CITIZEN OR PERMANENT RESIDENT
- WAS AUTHORIZED ENTRY TO CANADA AS A VISITOR ON 20 DECEMBER 2006 AT  
VANCOUVER INTERNATIONAL AIRPORT AND, WITH EXTENSIONS, WAS ALLOWED  
TO REMAIN IN CANADA UNTIL 30 JANUARY 2008

- DID NOT APPLY FOR AND RECEIVE AN EXTENSION OF HIS STATUS BEFORE IT EXPIRED ON 30 JANUARY 2008 AND THEREFORE REMAINS IN CANADA FOR A PERIOD OF TIME GREATER THAN THAT FOR WHICH HE WAS AUTHORIZED BY AN IMMIGRATION OFFICER
- HAS NOT LEFT CANADA

DATED AT: \_\_\_\_\_ ON 28 FEBRUARY 2008

OFFICER: \_\_\_\_\_

## Sample of a refusal letter

Dear:

After careful and thorough consideration of all aspects of your application and the supporting information provided, I have determined that you do not meet the requirements for a permanent resident visa/ temporary resident visa.

There are reasonable grounds to believe that you/ **(or: name of family member)** are/is a member of the inadmissible class of persons described in section 35(1)(b) of the *Immigration and Refugee Protection Act* which states that a permanent resident or foreign national is inadmissible on grounds of violating human or international rights for (b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*.

Specifically, in **(specify time period)**, you/**(or: name of family member)**were/was **(specify position)** in the service of **(name of country)** government. In the opinion of the Minister, that government engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*. I have reached this conclusion because **(specify reasonable grounds for belief)**.

As a result, you/**(or: name of family member)** are/is inadmissible to Canada pursuant to section 35(1)(b) of the Act. I am therefore refusing your application.

I understand that this negative decision will be a disappointment to you but, for the reasons mentioned above in this letter, it cannot be otherwise.  
Sincerely,

Officer

## Definitions and Effects of Removal Orders

### Departure Order:

**Definition:** A departure order is made under R228(2) or R228(3) or under R229(1)(k).

A departure order is a removal order issued by the Minister's delegate or an RPD board member to persons who have contravened the *Immigration and Refugee Protection Act* or Regulations and are the subject of an A44(1) report.

**Effect:** The person concerned must leave Canada within the prescribed time (30 days from the effective date of the order); and

- must obtain, on leaving Canada, a certificate in the prescribed form issued by a border services officer confirming his/her departure; otherwise
- the departure order becomes a deportation order.

### Exclusion Order:

**Definition:** An exclusion order is made under R228(1)(c)(i), (iii), (iv) or (v) or under paragraphs R229(1)(f), (g), (h), (j), (l), (m) or (n).

An exclusion order is a removal order issued by the Minister's delegate or an RPD member to persons who have contravened the *Immigration and Refugee Protection Act* or Regulations and are the subject of an A44(1) report.

**Effect:** The person concerned may not return to Canada without written authorization within the 12-month period following the enforcement of the exclusion order. If the order was issued due to misrepresentation, the person may not return to Canada without written authorization during the 2-year period following enforcement of the exclusion order.

### Deportation Order:

**Definition:** A deportation order is made under subsections R228(1)(a), (b), (c)(ii) or R229(1)(a), (b), (c), (d), (e) or (i),

A deportation order is a removal order issued by the Minister's delegate or an RPD member to persons who have **seriously** contravened the *Immigration and Refugee Protection Act* or Regulations and are the subject of an A44(1) report.

**Effect:** The person concerned may not return to Canada without written authorization at any time after leaving Canada.

## MODULE 07 - APPEALS AND JUDICIAL REVIEW

### A Decision Maker's Guide to Procedural Fairness

When an officer makes a decision they must be sure that they have the legal authority to make the decision and they must proceed fairly. The set of legal rules that lay down the procedural requirements that decision-makers must follow are sometimes called the rules of natural justice or the principles of procedural fairness. For the purposes of this training we shall call them the principles of procedural fairness. Decision follows the administrative law principles of natural justice and procedural fairness.

The principles of natural justice procedural fairness exist as a safeguard for individuals in their interaction with the state. These principles stipulate that whenever a person's "rights, privileges or interest" are at stake, there is a duty to act in a procedurally fair manner.

Parliament has the authority to give officers decision-making powers and has done so in many instances under the Immigration and Refugee Protection Act. On judicial review, the Court is not supposed to take over the decision-making function; its role is to ensure that the decision was made in accordance with the law and that the decision-maker proceeded fairly. For this reason, judicial review is said to be concerned with the manner in which the decision is made rather than whether the right decision was made. The principles of natural justice concern the manner in which a decision is made. Essentially, procedural fairness does not concern the correctness of the decision. Rather, principles of natural justice focus upon ensuring that the decision-maker followed the proper procedure in arriving at his/her decision. The principles of procedural fairness natural justice are based on the theory that when Parliament delegates a decision-making power, it intends the decision-maker to proceed fairly. Another rationale for requiring procedural fairness is that a decision-maker is more likely to base their decision on all the relevant facts and considerations if the decision-maker has proceeded fairly the substance of a decision is more likely to be fair if the procedure through which the decision has been made has been just.

#### Difference between Natural Justice and Procedural Fairness

Historically, it was said that the principles of natural justice only had to be applied to judicial or quasi-judicial decisions. By this, the courts meant that the principles of natural justice only applied to decision-makers whose proceedings resembled proceedings in the courts, i.e. who conducted oral hearings, heard from witnesses and considered arguments from opposing sides. Over time, however, as more and more important decisions came to be made by tribunals that had none of these features, the courts perceived a need to impose procedural safeguards on decision-makers who did not function like a court, i.e. received a written application and determined whether to grant the application or not, frequently without providing any reasons for the decision. Consequently, the courts developed the concept of the duty of fairness in answer to the seemingly unchecked ability of the government to act in any fashion it wished when making a decision that could not be classified as quasi-judicial which imposed procedural requirements on decision-makers who did not operate like a court.

Originally, the principles of procedural fairness were considered a far less rigorous set of procedural requirements than the rules of natural justice. However, the Supreme Court, *Martineau (No.2)* ([1980] 1 S.C.R. 602), held that there should not be a distinction between the two concepts of fairness and natural justice, that they really are one and the same thing. Therefore, for all practical purposes, there is not a difference between fairness and natural justice.

### **Components of Natural Justice Procedural Fairness**

The duty to act fairly is comprised of various rights and obligations which must be observed.

The two fundamental components of natural justice procedural fairness are:

1. the right to be heard, and
2. the right to a hearing free of bias (Impartiality).

#### **1. The right to be heard:**

Whenever an individual is to be affected by a decision, he/she should be given a fair opportunity to present his/her case.

Not all cases will require a full hearing with right to counsel and the right to call witnesses. In some situations, the duty to act fairly may simply require that the individual be allowed to state their case to the decision-maker.

This right to be heard carries with it certain implications. In order for an individual to exercise this right in an effective and meaningful way, there are certain events that must follow:

- **Notice**

Adequate notice in any proscribed fashion that the decision is to be made must be given to the affected individual(s), allowing the individual sufficient time to prepare and to respond.

- **Disclosure**

A right to be heard is not very meaningful if the party that will be affected by the decision is unaware of significant facts that are likely to affect the outcome of the application. In order to ensure that the party has a meaningful opportunity to participate, the courts require that the affected party must be made aware of the "case to be met"; i.e., information held by the decision-maker must be made available to those concerned prior to the decision being made. The basic test is that those affected cannot be taken by surprise. Even confidential information must be disclosed in certain circumstances; and

- **Opportunity to Present One's Case**

Those affected have a right to bring evidence and make an argument.

## **2. The right to a hearing free of bias (Impartiality):**

Is the right of the affected person to have a fair and impartial decision-maker and/or hearing?

To disqualify a decision-maker, it is not necessary to show actual bias or acts which are not impartial. The mere perception or possibility of bias may suffice. This is because the courts recognize that a reasonably grounded perception of bias will undermine the functioning of our legal system as completely as the existence of actual bias. This rule is often referred to as "the rule against bias".

A perception of bias may arise in various situations. Almost inevitably, if anyone involved in the decision-making process has a monetary interest in the matter in issue, that person will not be entitled to take part in the process.

The rule against bias will be invoked in instances where there is a real apprehension that the concerned decision-maker may not be able to make an impartial decision. Some examples of situations that may suggest bias are:

- judging a matter before it is heard;
- prejudicial attitudes;
- previous involvement in the cases;
- some dealing between the decision-maker and one of the interested parties;
- a clear expression of hostility towards one of the parties involved.

Generally speaking, each case must be decided on its own set of facts. What constitutes bias in one case may not necessarily be so in another.

It is exceedingly important for a decision-maker not to get involved in the decision at two different levels.

For example, there would be a serious apprehension of bias if one person was both the decision-maker and prosecutor. As well, an individual cannot sit on appeal of one's own decision.

### **Other ancillary elements of Natural Justice and Procedural Fairness:**

While "the right to be heard" and "the right to an impartial decision maker and hearing" are considered the cornerstone principles of natural justice and procedural fairness, the following are nine (9) of the most common rules associated with those principles.

- **Opportunity to respond**

When the decision-maker uses extrinsic evidence not brought by the applicant, the finder of fact must allow the applicant an opportunity to know and respond to the evidence presented.

While a decision-maker is not always required to draw perceived contradictions to the applicant's attention, there may be instances where a failure to do so may result in a breach of procedural fairness. For example, if a contradiction is so critical as to be

decisive of the applicant's case it is good practice to put the contradiction to the applicant and allow him/her an opportunity to respond.

- **Duty to Consider All the Evidence**

The decision-maker is required to consider all relevant evidence and info.

- **Right to Counsel**

In some cases fairness will dictate that the applicant be granted a right to counsel.

- **Right to an Interpreter**

In some cases fairness will dictate that the applicant be granted a right to an interpreter.

- **Legitimate Expectation**

Where a person has been assured by a statutory authority that a particular procedure will be followed, the individual may be entitled to that procedure.

- **Institutional Independence**

The decision-maker must be independent. Institutional independence requires that the person or body entrusted with making the decision has sufficient decision making independence such that there is a perception of independence and impartiality.

- **He Who Hears Must Decide**

There is a general requirement that the person who hears the case is the only body that should make the final determination. The requirement, however, does not prevent an officer from conferring with a colleague, before making a final decision, in particularly difficult cases.

However, in certain circumstances, it may be possible for someone else to make the final determination (e.g. if a citizenship judge becomes ill and is unable to make the decision).

- **Delay**

The premise is that unreasonable delay may cause prejudice to the applicant and therefore may breach the principles of fairness.

- **The Right to Reasons**

The right to reasons exists particularly when the applicant has a right to make an appeal or to seek judicial review and needs to know the reasons to properly prepare for the case. The reasons must be sufficiently clear, precise and intelligible to enable the individual to know the basis of the tribunal's decision.

### 3. Right to Appeal

Right to appeal - visa refusal of family class

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.

Right to appeal - visa and removal order

(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.

Right to appeal - removal order

(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.

Right of appeal - residency obligation

(4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.

Right of appeal - Minister

(5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.

No appeal for inadmissibility

64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

Serious criminality

(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years.

Misrepresentation

(3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

## MODULE 08 - INTERVIEW TECHNIQUES

---

Four Phases  
Defusing Hostility

---

## Four phases

### Phase 1: Orientation

- Establish the purpose
- Identify each person (i.e. Visa Officer, client, client's representative, interpreter)
- Establish adequate level of language comprehension
- Establish rapport : pacing
- Establish a baseline

### Phase 2: Narration

- Maintain or deepen rapport (don't confront at this stage)
- Go for breadth using interview techniques : open questions, mirroring, paraphrasing
- Listen, observe and analyze verbal and non-verbal behaviors
- Detect deception (fear, guilt, cognitive loading)

### Phase 3: Cross-examination

- Your time to probe in chosen areas (closed questions)
- The Truth lies three questions deep. Go for depth.
- Ask questions related to verifiable information
- Stay on topic as long as necessary

### Phase 4: Resolution

- Outline your concerns. Confront if necessary.
- Give the opportunity for the applicant to explain
- Explain your decision taking into account any rebuttal
- Explain the next step (i.e. appeal rights, options available)
- Document the decision

## Defusing Hostility

An angry person wants to be understood.

In a situation involving an angry client, if you can demonstrate the intent to suspend judgement, and attempt to understand the angry person without getting angry yourself, you will be more likely to be able to defuse his or her anger.

The C.A.L.M. approach is a systematic approach to defusing hostility that builds on the existing skills and knowledge taught earlier in the course.

<b>C – Calm</b>	as in calm yourself
<b>A – Acknowledge</b>	as in acknowledge the other person's feelings and emotions
<b>L – Listen</b>	as in listen actively to what the client is saying
<b>M– Mediate</b>	as in mediate between the client and the requirements

By practicing and drawing on an existing base of skills and knowledge, experts believe, you will dramatically increase your chances for success and the likelihood of employing these new skills in a field application.

Applicant's Name	File #	Country	Name of Representative	Consulting Company	Formal Rec'd	WP Approved	Advisor	Schedule 4A	Statement
					30-Nov-10	08-Mar-11	HY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					05-Aug-10	25-Nov-10	SML	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					26-Jul-10	25-Nov-10	HY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					10-Aug-10	25-Nov-10	MK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					04-Aug-10	25-Nov-10	MC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					15-Sep-10	25-Nov-10	MC	<input checked="" type="checkbox"/>	
					05-Aug-10	23-Dec-10	GK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					26-Aug-10	23-Dec-10	GR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					27-Jul-10	23-Dec-10	SML	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					05-Jul-10	23-Dec-10	TB	<input checked="" type="checkbox"/>	
					25-Aug-10	23-Dec-10	BG	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					07-Dec-10	27-Jan-11	HY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					19-Aug-10	27-Jan-11	BG	<input checked="" type="checkbox"/>	
					05-Jul-10	27-Jan-11	SML	<input checked="" type="checkbox"/>	
					31-Aug-10	27-Jan-11	MK	<input checked="" type="checkbox"/>	
					17-Dec-10	16-Feb-11	GK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					29-Sep-10	23-Feb-11	SML	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					12-Aug-10	22-Feb-11	TB	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					03-Nov-10	28-Feb-11	BG	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					18-Oct-10	02-Mar-11	GR	<input checked="" type="checkbox"/>	
					22-Dec-10	02-Mar-11	MC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					10-Nov-10	03-Mar-11	HY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					19-Oct-10	04-Mar-11	MK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					11-Jan-11	07-Mar-11	DW	<input checked="" type="checkbox"/>	
					16-Nov-10	15-Mar-11	GK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
					15-Oct-10	16-Mar-11	TB	<input checked="" type="checkbox"/>	
					20-Jan-11	18-Mar-11	CT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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## Citizenship and Immigration Canada

# Backgrounder — Transitioning to the Immigration Consultants of Canada Regulatory Council, the designated regulator of immigration consultants

Among other measures found in Bill C-35, the Act provides the Minister of Citizenship, Immigration and Multiculturalism with the authority to make regulations in relation to the designation or removal of the body responsible for the regulation of immigration consultants.

By virtue of his new authority under the Act, the Minister will be enacting regulations designating the Immigration Consultants of Canada Regulatory Council (ICCRC) as the regulator of immigration consultants. Accordingly, the reference to the Canadian Society of Immigration Consultants (CSIC) in the *Immigration and Refugee Protection Regulations* will be removed. As a result of these measures, the ICCRC will replace the CSIC as the governing body for immigration consultants. The Act will also give the Minister the authority to establish transitional measures.

## Transitional measures

With the designation of the ICCRC as regulator of immigration consultants, consultants who are currently members in good standing of CSIC will be deemed members of the ICCRC for a period of 120 days. To ensure a smooth transition, this transitional provision will allow CSIC members who are in good standing to continue to represent and advise applicants, for a fee or other consideration, during this 120-day period. The transition period starts June 30, 2011, and ends October 28, 2011.

A registration package is available on the ICCRC's website at [www.iccrc-crcic.ca](http://www.iccrc-crcic.ca), by calling 1-877-836-7543 or by e-mail at [info@iccrc-crcic.ca](mailto:info@iccrc-crcic.ca).

Current members of CSIC, in good standing at the time of the ICCRC's designation, will be able to continue to practise throughout the transition period and won't have to pay ICCRC membership fees during the 120-day transition period. During that time, they will need to become members in good standing of the ICCRC in order to continue to provide their services after the transition period ends.

Current CSIC members in good standing are encouraged to register with the new regulator promptly, because if the 120-day transitional period passes and they are not yet registered as members of the ICCRC, they will no longer be recognized as authorized immigration consultants. They would therefore not be authorized to represent or advise a person, or even offer to do so, for a fee or other consideration, in connection with a proceeding or application under the *Immigration and Refugee Protection Act*. After the 120-day deadline, CIC will not deal with CSIC members who have not registered with the ICCRC.

## The Immigration Consultants of Canada Regulatory Council

The ICCRC has information on its website for immigration consultants about how to register with them. There is information on the organization itself and its plans for not only immigration consultants, but also students, stakeholders and the general public. For more information, visit its website at [www.iccrc-crcic.ca](http://www.iccrc-crcic.ca), call 1-877-836-7543 or send an e-mail to [info@iccrc-crcic.ca](mailto:info@iccrc-crcic.ca).

**If you have recently hired or plan to hire an immigration consultant, here is what you need to know.**

Any immigration consultant who is a member in good standing of CSIC on June 30, 2011, will have until October 28, 2011, to register with the ICCRC if they wish to remain authorized.

It is your responsibility to ensure that any immigration consultant you have hired for a fee or other consideration is and remains authorized.

Please note that members in good standing of a law society of a province or territory, including paralegals, and members of the *Chambre des notaires du Québec* can also be immigration representatives. They, of course, will not need to register with the ICCRC.

It is your decision whether or not to use an immigration consultant, a lawyer, or another representative. No immigration consultant has special access to our programs and services. All the forms and guides you need to apply for any type of visa are available for free at [www.cic.gc.ca](http://www.cic.gc.ca).

If you have hired a member of CSIC or plan to hire a member of the ICCRC, a lawyer or another representative, make sure they are accredited. Don't get cheated by a crooked consultant. If you have any questions or concerns, visit CIC's website at <http://www.cic.gc.ca/english/Information/protection/antifraud.asp>.

## Why the ICCRC?

A notice was published on March 19, 2011, in the *Canada Gazette*, Part I, proposing to amend the *Immigration and Refugee Protection Regulations* so that the ICCRC becomes the regulator of immigration consultants. The proposed amendments were open for public comment for a 30-day period.

A total of 207 comments from 196 respondents were received and over 70 percent of the public comments supported the proposal to establish a new regulator of immigration consultants, indicated dissatisfaction with their current regulator, or supported the recognition of the ICCRC as the governing body for immigration consultants. One of the submissions received also included a petition signed by 479 CSIC members that were supportive of the naming of the ICCRC.

A large number of these comments referred to CSIC fees being too high. A number of comments referred to the transparency and integrity issues related to CSIC. Thirty-nine of the submissions received were opposed to the removal of CSIC's recognition as regulator and 19 were neutral in nature.

June 28, 2011

Date Modified: 2011-06-28



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

## IP 9

### Use of Representatives Paid or Unpaid

## IP 9 – Use of Representatives Paid or Unpaid

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## IP 9 – Use of Representatives Paid or Unpaid

### Updates to chapter

#### Listing by date:

**Date: 2008-10-15**

Minor changes and clarifications have been made throughout IP 9. The highlights include:

- Changes were made in order to bring IP 9 up-to-date regarding the end of the transition period for unauthorized immigration consultants. The letters provided in Appendices B to G have also been updated.
- Changes were made to reflect the creation of Operational Management and Coordination (OMC).
- All references to the Public Rights Administration Directorate (PRAD) have been replaced with *Access to Information* and *Privacy Acts* (ATIP).
- Section 3, Table 1 has been expanded to include more relevant Acts and Regulations.
- Section 3.1, Table 2 has been reworked to clarify the difference between the IMM 5475 – Authority to release personal information to a designated individual and the IMM 5476 – Use of a Representative.
- Section 3.2, important instructions have been added to provide guidance when documenting the IMM 5475 and IMM 5476 authorizations in our systems. Standardized documentation of these authorizations is now mandatory.
- Section 5.2, the definition of “paid representative” has been revised to further explain the time-of-payment issue.
- Section 7.2, several changes and clarifications were made throughout this section.
- Section 9.2, Table 3 has been reworked.
- Section 10, the CIC Investigation Process chart and Section 10.2 have both been removed. These issues are currently under discussion and new instructions will be posted as soon as they are available.
- Section 10.4, information has been added regarding the *Privacy Act*.
- Appendix A, contact information and URLs have been updated.

For further information, please contact: [OMC-GOC-Immigration@cic.gc.ca](mailto:OMC-GOC-Immigration@cic.gc.ca).

## IP 9 – Use of Representatives Paid or Unpaid

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### 1. What this chapter is about

This chapter provides policy and procedural guidelines for implementing the Regulations on the use of representatives, by persons who are the subject of proceedings or applications pertaining to immigration and refugee matters. These Regulations came into force on April 13, 2004.

These guidelines should be used by officers of Citizenship and Immigration Canada (CIC) and the Canada Border Service Agency (CBSA). As an independent organization, the Immigration and Refugee Board (IRB) has implemented its own policies and procedures regarding the new Regulations (see, for example, the [IRB Practice Notice Update](#)). Therefore, for the purpose of this chapter, the terms "office" and "officer" refer to the CBSA or CIC.

---

### 2. Program objectives

Representatives can play a constructive role in assisting applicants in immigration and refugee matters. These representatives fall into two groups: individuals who charge fees for their services and individuals who provide such services at no cost (family members, friends, non-governmental and religious organizations, etc.). Representatives who charge a fee must be registered with one of the regulatory bodies. These bodies are the Canadian provincial/territorial law societies, the *Chambre des notaires du Québec* and the Canadian Society of Immigration Consultants (CSIC).

The program objectives of the Regulations governing the use of representatives are:

- to ensure that all applicants are represented in a professional, competent and lawful manner;
- to preserve the integrity of Canada's immigration program; and
- to provide consumer protection.

The Regulations prescribe which immigration representatives may (or may not) represent, advise or consult, for a fee, a person who is the subject of either an immigration or refugee proceeding, or an application before the Minister, a CIC officer, the IRB or the CBSA. The amendments restrict CIC, the CBSA and the IRB (including its three divisions—Immigration Appeal Division, Immigration Division and Refugee Protection Division) to deal only with members in good standing with one of the regulatory bodies.

It is important to understand that CIC, the IRB and the CBSA are interpreting the Regulations to mean that R13.1(1) does not apply to any representation made to a client before an application is submitted to CIC. In other words, an applicant is obliged to disclose the name of their representative (paid or unpaid) on the Use of a Representative ([IMM 5476](#)) form only if the individual will represent them once the application is submitted to CIC (i.e., either at the time of submission or after).

---

### 3. The Act and Regulations

Consistent with the need for the immigration consulting industry to self-regulate, R2, R10(2) and R13 were amended. These amendments came into force on April 13, 2004. The objectives for the amendments are:

- to help protect vulnerable applicants from unscrupulous representatives; and
- to preserve the integrity of Canada's immigration system.

## IP 9 – Use of Representatives Paid or Unpaid

A91 provides the authority for the Government to enact regulations concerning who may represent a person who is the subject of a proceeding before the Minister, an officer or the IRB.

These amendments affect only those applications or proceedings that are subject to the *Immigration and Refugee Protection Act* (IRPA). Some examples are the Provincial Nominee Program as well as sponsorship and residency appeals.

The CBSA is affected by the IRPA amendments at different points of intervention; for example, at the time of:

- detention,
- referral to an admissibility hearing,
- detention review,
- removal order appeal, or
- danger opinion.

These amendments, however, do not affect citizenship applications, educational agents (see Section 5.4) or Human Resources and Skills Development Canada applications for labour market options.

Pertinent amendments to the *Immigration and Refugee Protection Regulations* regarding immigration representatives may be found at:

<http://canadagazette.gc.ca/partII/2004/20040414-x/html/sor59-e.html>

**Table 1**

For information about	Refer to
Inadmissibility	
• Misrepresentation	A40
• Non-compliance with Act	A41
Representation – Regulations	A91
General Offences	
• Contravention of Act	A124(1)
• Counselling misrepresentation	A126
• Misrepresentation	A127(a), A127(b)
• Penalties	A126
Definition – Interpretations	R2
Applications	R10
• Form and content of application	R10(1)
• Required information	R10(2)
Return of an application	R12
Representation for a fee	R13.1
Criminal activity under IRPA	ENF 2/OP 18

### 3.1. Required forms

All the information on the IMM 5476 is mandatory unless the question clearly states "if applicable" or "if known." If any of the mandatory items are missing, CIC has the authority to return the application (see Section 7.2) with a letter explaining why (see Appendix D).

The applicant can appoint only one representative per application. If more than one representative has been identified on one IMM 5476, CIC has the authority to consider the application incomplete and to return the application, as described in Section 7.2.

## IP 9 – Use of Representatives Paid or Unpaid

If an applicant has multiple immigration applications and is using a representative for each, the applicant must complete a separate IMM 5476 for each application. Immigration representatives are authorized to represent an applicant only on matters related to the specific application for which they have been authorized.

The forms required are shown in the following table.

**Table 2**

Form Title/Purpose	Form number
<u>Use of a Representative</u> This form is used to appoint (or cancel the appointment of) a representative and to give CIC and the CBSA consent to disclose the applicant's personal information to that representative. The appointed representative can conduct business with CIC and the CBSA on the applicant's behalf.  The IMM 5476 is available on the CIC Web site and through the CIC Call Centre.	<u>IMM 5476</u>
<u>Instructions – Use of a Representative</u> This form is the cover instruction page for the IMM 5476 form. IMM 5561 provides an applicant with a brief explanation about representatives and types of representatives as well as instructions on how and where to submit IMM 5476.  The IMM 5561 is available on the CIC Web site and through the CIC Call Centre. The instructions are found under "How to complete the form."	<u>IMM 5561</u>
<u>Authority to release personal information to a designated individual</u> This form, from CIC's <i>Access to Information and Privacy Acts</i> (ATIP), permits the designated individual to inquire about the status of an application and/or change the applicant's address. However, this individual cannot conduct business with CIC or the CBSA on the applicant's behalf.  Please note that a completed IMM 5475 does not authorize CIC or the CBSA to send correspondence to the designated individual.  For example, the IMM 5475 may be used if an applicant wishes to have their personal information disclosed to a designated person, other than their representative (a friend or family member, the representative's assistant, another consultant during a temporary absence of the representative, etc.)  The IMM 5475 is available on the CIC Web site and through the CIC Call Centre.	<u>IMM 5475</u>

### 3.2. Entering the required forms in FOSS and CAIPS

Completed Authority to Release Personal Information to a Designated Individual (IMM 5475) and Use of a Representative (IMM 5476) forms must be documented in the appropriate system(s) as soon as possible upon receipt. The Call Centre, and sometimes other CIC and CBSA offices, need to be able to view this information in order to respond to inquiries from counsel and to take the necessary actions.

In the FOSS system, the information should be input as a non-computer-based entry (NCB), type 23. This NCB has a validity period pre-set by the system.

In the CAIPS system, the information should be entered in the case notes.

#### Details to be documented

Regardless of the system used, the following information must be entered:

- The type of authorization submitted by applicant (specify whether it is an Authority to Release Personal Information to a Designated Individual or a Use of a Representative);

## IP 9 – Use of Representatives Paid or Unpaid

- The type of application to which this authorization is linked (as identified in Question 3 of the IMM 5476 form); and
- The name of the designated individual or representative, their mailing address and their telephone number.

### Subsequent withdrawal of an authorization

The appropriate sentence should be entered within the original NCB, in the FOSS system, or in the case notes, for the CAIPS system:

- "The authority to release information on this application to the name of [enter the designated individual] was withdrawn on [enter the date the withdrawal was received at your office]"; or
- "The appointment of a representative on this application to the name of [enter the representative's name] was cancelled on [enter the date the cancellation was received at your office]."

---

**Note:** If the authorization was never entered in FOSS or CAIPS, please provide an explanation and add any other relevant information that you might have, such as the name of the representative or designated individual, that the client thought they had identified, and the application to which the authorization was to be linked. This information could become important later in the processing.

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## 4. Instruments and delegations

Nil

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## 5. Departmental policy

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### 5.1. What the Regulations accomplish

- They define "authorized representative" as an individual who is a member in good standing with a Canadian provincial/territorial law society, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants.
- They specify that a fee-charging person who is not an authorized representative may not provide immigration advice, represent or consult once an application is submitted.
- They instruct CIC, the IRB and the CBSA to deal only with authorized representatives in cases where the representative charges a fee.
- They require applicants using authorized representatives to submit the name of their authorized representative, the organization they are a member of, their identification or membership number, their telephone number and mailing address, and whether they were paid or unpaid for verification purposes.
- They allow unpaid representatives to represent, consult or provide immigration advice prior to the submission of the application and also during the processing.
- They permit applicants to continue to utilize paid services for administrative services such as filling out forms, translation, and dropping off or picking up documents, as these services cover pre-submission work.

## IP 9 – Use of Representatives Paid or Unpaid

### 5.2. Paid representatives

Representatives who wish to conduct business with CIC, the IRB or the CBSA must be authorized members of one of the following designated bodies in order to charge a fee for immigration and refugee services.

CIC, the IRB and the CBSA are interpreting the Regulations to mean that, if the services of representing, advising or consulting are rendered during a proceeding or an application, it is irrelevant **when** the applicant has paid, or will pay, their representative. The fact is that the representative is paid. This includes monetary or other compensation such as goods or services, whether paid by the applicant or on behalf of the applicant.

#### **Canadian Society of Immigration Consultants (CSIC)**

An independent, not-for-profit organization and self-regulating body, CSIC operates at arm's length from the Government of Canada. CSIC is responsible for regulating the activities of immigration consultants who are members and who provide immigration services for a fee.

Membership is granted only to those individuals who have demonstrated their knowledge and ability to advise, consult and represent people who seek Canadian immigration. Members must demonstrate their good character and have met the Society's membership standards (knowledge, ethics and language requirements).

To ensure the competent and professional conduct of its members, the Society has also developed stringent Rules of Professional Conduct by which all its members must abide.

For the CSIC Web site address and contact details, see [Appendix A](#).

#### **Lawyers and Quebec notaries**

Lawyers and Quebec notaries are not required to become members of CSIC, as they are regulated by their own law societies.

A law society's mandate is to govern the legal profession and safeguard the public interest. It aims to ensure that clients are served by lawyers who meet high standards of learning, competence and professional conduct, and to uphold the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

A lawyer can be a member of any Canadian law society, and does not necessarily have to be registered in the province where their client is located in order to provide immigration services. In order to confirm if a lawyer is in good standing, it may be necessary to ask the lawyer which province they are registered with.

For more information on sub-agents and employees of lawyers and consultants, see Section 5.4 below.

For Web site addresses and contact details, see [Appendix A](#).

#### **Students-at-law**

Students-at-law, as stated in R13.1(3), are deemed not to be representing, advising and consulting for a fee, as long as the student-at-law is acting under the supervision of a member in good standing with a provincial/territorial law society or the *Chambre des notaires du Québec* who is authorized to represent the applicant. In other words, students-at-law may represent, advise or consult with a person who is the subject of an immigration or refugee application provided that they are under the supervision of a Canadian provincial/territorial law society or the *Chambre des notaires du Québec*.

Students-at-law are authorized to complete and sign the **IMM 5476**. Officers should verify students-at-law on the Web sites of the Canadian provincial/territorial law societies and Quebec notaries' association. The Regulations apply to students-at-law in the same manner as they would a lawyer.

## IP 9 – Use of Representatives Paid or Unpaid

### 5.3. Unpaid representatives

The primary objective of the Regulations concerning the use of representatives is to protect applicants from exploitation and to safeguard program integrity. They are not intended to eliminate all traditional partners from playing a legitimate role. Some of these partners are listed below.

Family, friends, and religious and non-governmental organizations (NGOs) who do not charge a fee for their services do not need to be members of a regulatory body in order to act as a representative.

#### **Family, friends, non-governmental and religious organizations**

Family, friends, international agencies (e.g., United Nations High Commissioner for Refugees), and religious and non-governmental organizations play an important role for applicants with limited resources who feel the need for support and advice. Family, friends, and international, religious and non-governmental organizations who **do not** charge fees for providing immigration advice or services can continue to represent applicants before CIC or the CBSA without being members of CSIC or a Canadian provincial/territorial law society, at pre-submission of the application and during processing.

#### **International organizations**

Certain international organizations, such as the International Organization for Migration (IOM), have agents who provide a variety of services to clients. When the services are provided prior to the submission of an application, it is not necessary for clients to identify IOM agents on the IMM 5476, even if they have been paid for those services. However, this is operating on the assumption that IOM agents do not represent the client and have no intention of representing them in the future after the application has been submitted.

#### ***Pro bono* work**

CIC and the CBSA should not be discouraging *pro bono* work by authorized representatives (and students-at-law under a lawyer's supervision). *Pro bono* activity by lawyers, notaries and CSIC members is encouraged by their regulatory bodies. If the representatives are members of a law society or the CSIC, it is irrelevant whether they are paid or unpaid, as they are in good standing and regulated.

However, local offices should be mindful of unauthorized representatives who identify themselves as unpaid on the Use of a Representative (IMM 5476) form and who submit a significant number of applications as *pro bono*. If local offices have concerns about how many submissions from unauthorized representatives are truly *pro bono* submissions, they should continue their current practice of investigating in order to preserve program integrity. If in doubt, they should report their concerns by e-mail to Operational Management and Coordination (OMC) at OMC-GOC-Immigration.

### 5.4. Other stakeholders

There are specialized areas in the immigration and refugee program where individuals may be providing advice to clients but not representing them in dealings with CIC, the CBSA or the IRB. The Regulations do not preclude this.

As the regulatory amendments do not apply to citizenship applications, educational agents or Human Resources and Skills Development applications for labour market options, certain functions are permissible by individuals who are not authorized. These individuals include educational agents, translators, shipping agents, facilitators for the Immigrant Investor Program, recruiters for provincial nominees and live-in caregivers, tour organizers and adoption agents. This list is not complete as there are many individuals who receive payment for filling out forms and applications, translating documents, and dropping off and picking up documents. However, as these individuals do not meet the definition of an authorized representative, there are functions that they cannot perform. These functions include making interventions on behalf of the applicant during processing, and requesting information about the progress of the application. In order to make interventions and request information on behalf of the applicant during application processing, these individuals must be members of one of the regulatory bodies.

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### Educational stakeholders in Canada

Educational stakeholders in Canada include international student advisors, school administrators, churches and cultural organizations. Since these educational stakeholders are not paid a fee by the student for providing immigration services, they fall under the category of “other” unpaid representatives in Question 6 of the IMM 5476.

Educational stakeholders can continue to provide students with information, assist in completing work/study permit applications or extensions at local CIC offices, and advocate or intervene on behalf of international students, if they are unpaid and designated as representatives. They can also provide their mailing address as the point of contact for the student's study permit application.

In the case of unaccompanied minors, the relationship between the student and the institution is particularly strong. The school administrator functions as a custodian in many instances, albeit not in the legal sense. It is crucial that this relationship continue. The same principle would apply for those educational stakeholders facilitating off-campus employment pilot projects.

The rules are distinctly different for overseas educational agents (see below).

### Educational agents abroad

Educational agents, who are often engaged by Canadian educational institutions to assist their foreign students, charge a fee for all their services up to and including sending a signed study permit application to the Canadian embassy. Under the Regulations, agents do not need to meet the definition of an authorized representative to provide services prior to the submission of the application.

However, agents who wish to represent students after their student applications have been submitted will need to be members of a Canadian provincial/territorial law society, the *Chambre des notaires du Québec* or the CSIC in order to conduct business with CIC and the CBSA.

### Employees of lawyers and consultants

Employees of law firms or consulting companies are not authorized representatives; therefore, they cannot represent clients at CIC, IRB and CBSA hearings or proceedings, including interviews.

However, following the submission of a Use of a Representative (IMM 5476) form it is acceptable for directly supervised and co-located employees to prepare documentation and correspondence on behalf of the authorized representative and to send this documentation to the CIC processing office. Under the provisions of their relevant professional codes of conduct the lawyer or the CSIC member is accountable and responsible for their employee's actions and conduct. Written correspondence from employees of authorized representatives must:

- be prepared on the authorized representative's company letterhead;
- clearly indicate in the signature block that an employee is “acting on behalf of” the authorized representative;
- clearly indicate the name of the authorized representative and the membership number of the regulatory body to which they belong.

Offices that allow for the pick-up of documents may continue to do so, provided the applicant has notified the office in writing that they have given this individual their permission to collect the document. Suitable identification is required at the time of pick-up in order for officers to adequately identify the designated individual. Section 7.4 identifies written and oral office procedures for communicating with representatives.

### Adoption agencies

Adoption agencies are still in a position to provide advice and service prior to the submission of the immigration application, such as filling out forms and liaising with overseas agents to identify a child for adoption; however, those agents who want to act as a representative following submission of the application for permanent residence will need to be members of a Canadian provincial/territorial law society, the *Chambre des notaires du Québec* or the CSIC.

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### Live-in caregivers' agents

Agencies are still in a position to provide advice and service prior to the submission of the temporary foreign worker application, such as filling out forms and liaising with overseas agents to help recruit live-in caregivers to Canada. However, those agents who want to act as representatives, after submission of the work permit or permanent residence application, will need to be members of a Canadian provincial/territorial law society, the *Chambre des notaires du Québec* or the CSIC.

## 6. Definitions

<b>Paid Representatives</b>	An individual who charges a fee to represent, advise or consult with a person who is the subject of a proceeding or application before CIC, the CBSA or the IRB on behalf of a client on immigration and refugee matters. The amended Regulations state that fee-charging individuals must be authorized representatives.
<b>Authorized Representatives</b>	Individuals who are members in good standing with a Canadian provincial/territorial law society, the <i>Chambre des notaires du Québec</i> or the Canadian Society of Immigration Consultants; whether they are paid or unpaid.
<b>Unpaid Representatives</b>	A family member, friend, member of an international, religious or non-governmental organization, or any other person who does not charge a fee for services.
<b>Unauthorized Representatives</b>	Individuals who charge a fee for services and who are not members of a Canadian provincial/territorial law society, the <i>Chambre des notaires du Québec</i> or the Canadian Society of Immigration Consultants.
<b>Concealed Representatives</b>	Individuals who continue to intercede between the client and CIC or the CBSA once the application is submitted and who do not submit an IMM 5476 declaring their professional relationship with the client.
<b>Pro bono</b>	Representing someone without charging a fee.
<b>Designated Individual</b>	An individual who is not acting as a representative, but with whom the applicant permits CIC and the CBSA to share their personal information. This individual has the capacity to change the client's address and enquire about the status of the client's application (see <a href="#">Section 3.1</a> ). However, this individual cannot conduct business with CIC or the CBSA on the applicant's behalf.
<b>Fee</b>	Includes all types of fee arrangements, direct or indirect. Please note that disbursements such as travelling expenses to represent a client free of charge may, but do not necessarily, constitute a fee <i>per se</i> .

## 7. Procedure: Application processing

### 7.1. Cases submitted prior to April 13, 2004 [R13.1(2)]

Individuals whose applications were submitted before the coming into force of the new provisions, on April 13, 2004, had a four-year transition period during which CIC continued to deal with an unauthorized representative for these specific applications only. As of April 13, 2008, if the applicant is still using the services of an unauthorized representative, the office must no longer communicate with that representative. CIC must inform the applicant that the department will no longer communicate with the representative, as they are not a member in good standing with one of the regulatory bodies (a letter template is found in [Appendix G](#)). The office should make reasonable and timely efforts to send this letter directly to the applicant along with a copy to the unauthorized representative, by using

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a personal address on file or by obtaining such an address by phone. If a personal address cannot be obtained, the letter may be sent to the mailing address on file, even if this is the address of the unauthorized representative.

If the applicant chooses to hire a new representative, they must provide a new IMM 5476 to the processing office. In the meantime, or if they choose to proceed without a representative, the office must continue to process the application and must communicate directly with the applicant. The applicant will still have the option of obtaining the services of an authorized representative at any time during the process.

If a judicial review is granted by the Federal Court, or if the Immigration and Refugee Board grants a request for appeal in a family class matter, the matter is to be redetermined by a different officer and is still considered to be the original application. Nevertheless, R13.1(2) still applies and the applicant will have to either engage an authorized representative or choose to be self-represented. For more details on judicial review, refer to A72(1) of IRPA.

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### 7.2. Cases submitted on or after April 13, 2004

#### **Complete application [R10(2)]**

All applicants using a paid or unpaid representative to represent them must submit a Use of a Representative (IMM 5476) form.

R10(2) of the amended Regulations defines what constitutes a complete application. If the application provides all the necessary information required to satisfy R10, the application should be processed.

R10(2)(c.1) and (c.2) require that detailed information concerning representatives be provided, where applicable. An application is considered complete when it includes the representative's name, postal address and telephone number and, if applicable, the representative's fax number and e-mail address. If the information is incomplete, the application will be returned as per R12. Returned applications are discussed later in this section.

If the paid representative is not an authorized member, the application is not considered complete. CIC has the authority to return the entire application package and fees, accompanied by the "unauthorized representative" letter (see [Appendix C](#)), to the applicant's mailing address rather than the unauthorized representative's address (unless the applicant's personal address cannot be obtained).

CIC must be notified of any change of representative. Applicants can notify CIC by completing and submitting a new IMM 5476. To cancel the appointment of a representative without appointing a new one, applicants need to complete sections A, C and D of the IMM 5476. To revoke a representative and appoint a new one, sections A, B and D need to be completed, as the new appointment will cancel the previous one.

Only one representative may be retained per application in order to prevent the problem of conflicting direction or information and to ensure that the authorized representative is at all times ultimately responsible for the file. If more than one authorized representative has been identified on the one IMM 5476, the applicant or representative should be contacted by phone to discuss the situation and remove the additional name(s), instead of returning the application (in order to give the applicant an opportunity to rectify the problem). The applicant or representative's decision to delete additional names from the IMM 5476 should be documented on the IMM 5476 and signed and dated by the CIC officer who was advised of the deletion. If the applicant/representative(s) cannot be reached, the application should be considered incomplete and returned as explained below.

#### **Initial screening of applications**

The following points should be verified:

- Paid representatives must be members in good standing with a Canadian law society, the *Chambre des notaires du Québec* or the CSIC.

## IP 9 – Use of Representatives Paid or Unpaid

- ♦ The name of the representative and their unique identification number should be checked on-line to validate their status with the CSIC or a Canadian provincial/territorial law society (see [Appendix A](#) for Web site information and [Appendix B](#) for membership number formats).

Since the CSIC's Web site is continuously updated as members are added or removed, only those representatives whose names appear on the "Membership List" of the [CSIC Web site](#) are considered to be members of the CSIC. It should be noted that CSIC membership may be revoked, suspended or reinstated. In all circumstances, the Web site is to be considered the final authority regarding the current status of CSIC members.

Applicants and representatives have been instructed on the Instructions – Use of a Representative ([IMM 5561](#)) form, which accompanies the IMM 5476, to "print his or her name as it appears on the organization's membership list"; however, not all representatives may do this. If the membership number identified on the IMM 5476 is valid, but the name associated with the number differs slightly, officers should verify the name with the designated organization (see [Appendix A](#)). However, if the name on the IMM 5476 is significantly different from the member's name as it appears on the designated organization's Web site, officers may return the application, explaining in the letter the reason for the return.

While it is not a requirement, CSIC members may occasionally provide a copy of their Member Identification Card or Membership Certificate in an applicant's application package. Copies of these membership identification products appear in [Appendix H](#).

- ♦ The law societies of New Brunswick and Saskatchewan do not currently have on-line lists. A representative's membership can be confirmed by contacting the appropriate designated body by phone or e-mail, or requesting that the representative provide proof of membership by sending a facsimile of their membership card (see [Appendix A](#) for contact information).
- ♦ Please note that four Canadian provincial/territorial law societies (New Brunswick, Newfoundland and Labrador, the Yukon and the Northwest Territories) do not have membership identification numbers.

The Law Society of the Yukon has roll numbers which are unique, like a membership number. In theory, at least, Yukon lawyers could interpret the membership number box on the IMM 5476 to also mean roll number, and fill it in. However, since roll numbers are not specified on the IMM 5476, it is at least conceivable that some lawyers might think that the box does not apply to them. Given the membership size of the Law Society of Yukon, rejecting forms which do not identify a roll number as incomplete under the R10 definition seems harsh. Officers should treat the Yukon in a similar manner as another province, such as New Brunswick, which does not have membership numbers.

The other law societies have a variety of membership number formats. For a list of membership number formats, see [Appendix B](#).

- ♦ CSIC membership numbers contain an alphanumeric character followed by a six-digit number (for example, M041234).
- The representative needs to be identified by the name of an *individual* and not that of an organization. All these regulatory bodies (Canadian law societies, the *Chambre des notaires du Québec* and the CSIC) issue memberships on an **individual basis and do not offer corporate memberships**.
- The representative's mailing address and telephone number;
- Indication whether the representative is paid or unpaid.

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- Both the applicant's and the representative's signatures with a date are mandatory on the new IMM 5476.

It is not necessary to verify each application from a given representative, especially when the local office is familiar with the representative as an authorized member of one of the regulatory bodies. However, occasional verification that they remain a member in good standing is advisable. Some offices circulate a list of representatives they have constant dealings with.

Please note that an applicant can be represented by only one individual at a time per application. This is to prevent the possibility of conflicting directions on one application.

### Returning an application

If CIC and the CBSA hope to assist in changing the marketplace, applications from unauthorized representatives need to be returned so that these representatives and their clients are reminded that the government will deal only with members of one of the regulatory bodies. It is necessary to present this message consistently in order to bolster our amended Regulations and further protect vulnerable clients.

**Incomplete IMM 5476:** If the IMM 5476 does not include all of the information required under R10(2), the entire application, the letter concerning an incomplete form (see letter template in [Appendix D](#)), and any attached fees should be returned, as should all subsequent incoming documents. The letter and the application should be sent to the applicant using the mailing address provided.

**Unauthorized representative:** If the paid representative is not authorized, CIC has the authority to return the entire application, to the home or mailing address provided by the applicant, stating that it could not be confirmed that the individual was an authorized member with any of the designated bodies and, therefore, cannot represent the applicant (see letter template in [Appendix C](#)). It is preferable that the applicant's address be used, as there is no guarantee that the unauthorized representative will contact the applicant. However, there may be occasions when the only address available is that of the unauthorized representative.

**Ministère de l'immigration et des communautés culturelles (MICC):** The Regulations stipulate which paid representatives can represent a client during the federal immigration process. Therefore, they do not directly affect the activities of the Quebec provincial immigration officers. However, should CIC receive an application that has been approved by the MICC, but has the name of an unauthorized paid representative for the purposes of the federal immigration process, the office should return the application with the letter in [Appendix C](#).

### Concern over use of a concealed representative

A concealed representative is an individual who continues to intercede between the client and CIC or the CBSA once the application has been submitted and who **does not submit an IMM 5476** declaring their professional relationship with the client [R10(2)(c.1) and R10(2)(c.2)].

Officers could have concerns that an applicant is using a concealed representative when:

- they receive an application form that does not include an IMM 5476, but gives an unauthorized immigration representative's address as the mailing address;
- an address search reveals multiple cases going to the same mailing address.

When an officer is satisfied, on the basis of specific evidence, that an applicant is concealing a paid representative, the application can be returned to the applicant's home or mailing address along with the letter in [Appendix E](#) explaining the reason for the application's return.

To return an application in this manner, an officer must have credible evidence. Evidence could include confirmed information from the public, admission by the applicant, or confirmation as a result of an investigation. It is preferable that the applicant's address be used as there is no guarantee that

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the unauthorized representative will contact the applicant. However, there may be times when the only address available is that of the unauthorized representative.

See [Section 9](#) and [Section 10](#) for details on how to report concerns.

When an officer becomes aware of a number of applications being submitted by the same unidentified third party, either through evidence of the use of the same organization, style of presentation of the application, or contact addresses, then a program integrity review may be required. Other program integrity issues, such as the use of fraudulent documents, could also be involved. Officers should be guided by the same program integrity standards and procedures that are adhered to in administering all immigration programs.

Below are three scenarios and suggested courses of action for officers regarding concealed representatives:

- If there is no proof to support their concerns about the use of a concealed representative, officers should process the application.
- If there is substantive proof of a concealed representative, officers should return the application and the letter shown in [Appendix E](#) to the applicant's home address, if available. CIC and the CBSA need to communicate a consistent message that bolsters the new Regulations to show that they are serious about not conducting business with unauthorized representatives. CIC and the CBSA have an obligation to protect vulnerable clients and this is one mechanism to do so.
- If there is substantive proof of the use of a concealed representative during processing, officers should refer to [ENF 2](#) to determine whether they meet the high standard of proof and fairness required under A40 in order to refuse an application on the basis of misrepresentation.

### Family class applications

The Case Processing Centres (CPCs) will ensure that the sponsorship applications meet the requirements of R10(2). This includes verifying that the IMM 5476 is complete, if submitted. As part of the family class redesign process, CIC may receive two separate IMM 5476 forms (one from the sponsor and one from the foreign national/applicant) per application.

Staff at CPC Mississauga are required to verify the sponsor's representative, and the visa office is required to verify the foreign national's representative, if different from the sponsor's representative. However, to assist the visa office, it is recommended that:

- the Work in Progress (WIP) remarks reflect that the representative has been verified in the on-line database; and
- the IMM 5476, filled out by the foreign national, is forwarded to the visa office.

### Family members of live-in caregiver applicants in Canada

Live-in caregivers submit applications to CPC Vegreville, which subsequently notifies the visa office to contact the family member(s) of the applicant to the Live-in Caregiver Program. If the family member chooses to hire a paid representative, the representative would need to be authorized.

### Extensions

An application for extension of status is a new application. These applications, therefore, require an IMM 5476 identifying a paid or unpaid representative (if a representative is counselling the applicant).

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### 7.3. Disclosure of personal information is case-specific

The Use of a Representative (IMM 5476) form has two purposes: (1) it designates a representative, and (2) it gives authority to disclose an applicant's personal information to that representative. However, the IMM 5476 needs to be linked to a specific application, as it gives authority to represent and disclose personal information concerning a specific application only.

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If the applicant wants to disclose their personal information to an individual other than their representative, they should complete an Authority to Release Personal Information to a Designated Individual (IMM 5475) form (see [Section 3.1](#)).

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### 7.4. Communication with lawyers, notaries, CSIC members and other representatives

The following principles are to be observed.

#### Written versus oral communication on files

- A professional, non-adversarial relationship must be maintained in which the office's fairness and objectivity cannot be called into question because of the appearance of conflict of interest or bias.
- Immigration representatives may contribute to the design of policies at National Headquarters but they are not partners in the field, as they represent the interests of individual cases. It is important to provide all representatives and applicants with the same service standards and courtesies, whether they have hired a representative or not. This ensures a level playing field between applicants who are represented and those who are not and provides all applicants with equal access to our offices.
- Once the office is satisfied that a representative has been designated by the applicant, the office may respond to straightforward case status inquiries verbally or in writing. If there is any doubt as to a representative's identity, information should not be given over the telephone. Any complex or in-depth inquiry or discussion related to an individual case should be accepted and responded to in writing only.

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### 7.5. Call Centre

Call Centre agents are mandated to only provide case-specific information on applicants being processed within Canada.

Case-specific information can be released to a representative or a designated individual on the telephone if that person has been permitted and appointed by the applicant in writing to receive information on the case. This individual will also be expected to answer specific client identifiers relating to the applicant. According to the *Access to Information* and *Privacy Acts*, if the information provided matches details in FOSS/CRS (GCMS), the Call Centre agent can release case-specific information to a third party in good faith. The applicant, and members of Parliament who are enquiring on behalf of the applicant, can also receive case-specific details about their file, on the condition that they provide the required client identifiers.

One of the biggest challenges for Call Centre agents lies not with the release of information, but the amendment of information currently on file by a third party, specifically change of address. Call Centre agents can allow a representative or designated individual to update a client's address if the applicant has permitted this individual in writing to receive information on the case. This decision is based on CIC recognizing that the designated individual can change a client's address electronically using CIC's Secure OnLine Services. This also resolves the challenge for a number of clients who face language barriers and who require assistance with providing their new address in French or English.

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### 7.6. Refugee protection claimants

In order for a paid representative to conduct business with the IRB, the representative must be authorized and must complete the *Counsel Contact Information* form. This form needs to be completed only once by each counsel, whether paid or unpaid.

If the representative is unpaid, both the person concerned and their representative must also complete and sign the Notice of Representation without a Fee form. This form must be completed at each proceeding before the IRB where that representative is acting as counsel.

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Both of these IRB forms are applicable to all three IRB divisions and their proceedings, that is, refugee protection proceedings before the Refugee Protection Division, admissibility hearings and detention reviews before the Immigration Division and appeals before the Immigration Appeal Division.

If the forms are required but are not provided to the IRB, the IRB will deal only with the person appearing before the IRB and treat them as unrepresented.

### **Pre-Removal Risk Assessment (PRRA) applicants**

Pre-Removal Risk Assessment (PRRA) applicants who identify an unauthorized representative for the processing of their applications will be sent letters similar to that in Appendix C. Applicants are given the option of retaining an authorized representative or continuing their processing as unrepresented. They will also be informed that no decision will be made on their application until 30 days following their PRRA notification (this is the due date for their written submissions). Should the applicant not respond in time to meet the deadline, they will be deemed to have indicated a wish to proceed as unrepresented and CIC will continue with the assessment of the application.

Should their application necessitate an oral hearing, they will not be permitted to be accompanied at the hearing by the unauthorized representative. The applicant has the option of submitting a new IMM 5476 at the time of the hearing or declaring a new individual as their authorized representative, as long as that representative meets the criteria set out in the Regulations. A new representative could be designated at a hearing if the original representative is on holiday, or cannot appear for various reasons, or if the original representative's membership was suspended.

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### **7.7. Refusal to deal with a representative (case in process)**

If it is discovered through a complaint and/or investigation (see Section 9) that the applicant is paying for the services of an unauthorized representative **while the application is being processed**, the office must no longer conduct business with this individual until they become authorized and a new IMM 5476 is submitted.

The office must send the applicant a letter informing them that their representative is not authorized and that CIC will deal only with the applicant directly (Appendix F provides a sample letter). If the application contains a home mailing address for the applicant, this address should be used. If the office has no other way of contacting the applicant, the letter should be sent to the mailing address on file.

If officers obtain proof of the use of a concealed representative during processing, they could consider using their authority under A40 to refuse the applicant for misrepresentation.

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### **7.8. Loss of status [R10(2)]**

Individuals whose applications are returned as per R12 may lose their status (for example, temporary residents who wish to extend or vary the conditions of their stay as a visitor, worker or student). Regardless of the length of time remaining in which the applicant has status in Canada, if the application does not meet the requirements of the Regulations (including R10) it should be returned with a letter explaining the reasons for the return. It is the applicant's responsibility to ensure that their temporary resident status does not expire while they are in Canada.

When such an application is returned, *it is not considered to be in process*. Consequently, the foreign national does not benefit from the implied status provisions of R183(5) or R183(6).

Foreign nationals who have lost their temporary resident status for any of the reasons found in A47 may, within the time frame prescribed by R182, apply for restoration of their temporary resident status.

For more information on implied status, see IP 6, Section 5.5; for information on restoration, see IP 6, Section 5.7.

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### 8. Procedure: Misrepresentation

A127(a) and A127(b) concerning misrepresentation state as follows:

No person shall knowingly:

(a) directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) communicate, directly or indirectly, by any means, false or misleading information or declarations with intent to induce or deter immigration to Canada.

Examples of direct and indirect misrepresentation that might induce an error in the administration of IRPA are provided in ENF 2/OP 18, Section 9, and include misrepresentations made by a consultant.

Representatives who are members in good standing with their respective regulatory bodies and who have been found to have misrepresented a client or provided false information should also be reported to the local manager to determine if further investigation is warranted.

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#### 8.1. Misrepresentation

A permanent resident or a foreign national is inadmissible to Canada for misrepresentation pursuant to A40(1)(a) "for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act."

If the applicant fails to identify that their representative is not authorized, officers should be guided by the comments in Section 9 of ENF 2/OP 18 concerning the high level of fairness and proof required in these circumstances, before commencing procedures for charging the client for misrepresentation pursuant to A40. An individual should always be given the opportunity to respond to concerns about a potential misrepresentation. It is also necessary to gauge whether, on a balance of probabilities, the applicant should have known that their representative was not authorized as defined in the Regulations. The standard of proof for inadmissibility based on alleged misrepresentation is based on a balance of probabilities and is a higher standard than that of reasonable grounds to believe.

With the very high standard of fairness to be applied in the case of this provision, an individual should always be given the opportunity to respond to concerns about a possible misrepresentation. The consequence to the applicant for a finding of misrepresentation is a period of inadmissibility of two years.

In addition to being inadmissible to Canada for a two-year period, the applicant may also be charged under the offences section of IRPA [A126, A127 and A128].

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#### 8.2. Counselling misrepresentation, misrepresentation, counselling offences

A126 and A127 make reference to counselling offences and include scenarios in which an applicant is indirectly misrepresented.

A126 states:

Every person who knowingly counsels, induces, aids or abets or attempts to counsel, induce, aid or abet any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act is guilty of an offence.

The same consideration outlined in Section 8.1 above, including the high level of fairness, should be applied to counselling misrepresentation.

If an office suspects that an immigration representative has committed a counselling offence, the office must follow the investigation process identified (see Section 10). If an immigration representative is found guilty of committing a counselling offence, they may be subject to the same penalties as the applicant who commits misrepresentation (see Section 8.1 above) in that they may be charged with an

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offence under IRPA. However, in addition to being charged with an offence under A126, A127 and A128, the applicant may also be inadmissible to Canada for a two-year period pursuant to A40.

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### 9. Procedure: Complaints

The complaints and investigation processes (see Section 10) will be discussed individually; however, these two processes may intertwine as some complaints could lead officers to conduct an investigation. When officers have concerns that a representative's conduct is affecting the program's integrity, they should commence the investigation process.

Associations such as the Canadian provincial/territorial law societies, the *Chambre des notaires du Québec* and the CSIC are independent, self-regulating bodies whose mandates include consumer protection and ensuring the professionalism of their respective members. These bodies have their own complaints and discipline mechanisms and investigation procedures for members who breach their codes of professional conduct. Therefore, when clients want to lodge a complaint against a member who belongs to one of these designated organizations, officers should direct them to the respective regulatory body (see Section 9.2 below).

Offices may also receive complaints about the actions of unauthorized, fee-charging individuals who do not belong to any of the regulatory bodies. These include concealed or "ghost" representatives, representatives who claim to be doing *pro bono* work yet may be charging a fee, and representatives who may have had their membership suspended or revoked.

The purpose of the complaints processes is to identify how complaints from clients about authorized or unauthorized representatives should be reported and to whom.

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#### 9.1. Types of complaints

Officers could receive a variety of complaints. Table 3 below provides guidance on how officers should deal with the various types of complaints. Some examples of complaints include the following:

- misleading advertising;
- inappropriate behaviour by an immigration representative;
- immigration offences that involve criminality;
- professional misconduct by an authorized representative;
- misrepresentation;
- impersonation/identity theft;
- dissatisfaction with the Regulations concerning immigration representatives;
- dissatisfaction with the operational implementation of the Regulations concerning immigration representatives; and
- dissatisfaction with the IMM 5476 or IMM 5561 forms.

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#### 9.2. Handling complaints

This section outlines the steps officers should take when they receive a complaint. CIC, the IRB and the CBSA need to remain at arm's length from the Canadian law societies, the *Chambre des notaires du Québec* and the CSIC, and, therefore, these Departments cannot mediate in disputes between

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clients and authorized representatives, nor should they communicate complaints directly to a regulatory body on the client's behalf.

If a client complains to an officer, the officer should encourage the client to visit CIC's Web page on this topic and to contact the respective regulatory body. This information can be found at <http://www.cic.gc.ca/english/information/representative/complaints.asp>. If officers require clarification regarding where the complaint should be directed, they should e-mail OMC at [ImmigrationRepresentatives](mailto:ImmigrationRepresentatives).

The following table indicates who is responsible for handling various types of complaints.

Table 3

Complaint from a client about...	Action...
<ul style="list-style-type: none"><li>• A lawyer, CSIC member or Quebec notary, and their students-at-law</li><li>• Misleading advertising of an authorized representative (see subsection on misleading advertising below)</li></ul>	Direct client to the regulatory body to which the representative belongs (e.g., a Canadian provincial/territorial law society, the <i>Chambre des notaires du Québec</i> or the CSIC).
<ul style="list-style-type: none"><li>• A regulatory body (a Canadian provincial/territorial law society, the <i>Chambre des notaires du Québec</i> or the CSIC)</li><li>• A non-governmental, international or religious organization (individual or organization)</li><li>• The Regulations or procedures concerning authorized representatives</li></ul>	Forward complaint to OMC at <a href="mailto:ImmigrationRepresentatives">ImmigrationRepresentatives</a> .
<ul style="list-style-type: none"><li>• Operational processes concerning the immigration representative Regulations</li></ul>	Forward complaint to OMC at <a href="mailto:ImmigrationRepresentatives">ImmigrationRepresentatives</a> .
<ul style="list-style-type: none"><li>• An educational agent who is not a member of a Canadian provincial/territorial law society, the <i>Chambre des notaires du Québec</i> or the CSIC</li></ul>	Forward complaint to OMC at <a href="mailto:ImmigrationRepresentatives">ImmigrationRepresentatives</a> .
<ul style="list-style-type: none"><li>• Non-CSIC immigration consultants, including concealed representatives (see complaints against non-CSIC immigration consultants and immigration consulting firms below)</li><li>• An immigration consulting firm, applicable only when immigration consultant's name is unknown (see below: Complaints against non-CSIC immigration consultants and immigration consulting firms)</li></ul>	<p>Direct client to:</p> <ul style="list-style-type: none"><li>• inform the CSIC (for future reference in case the individual eventually applies for membership);</li><li>• file a complaint with the Canadian Council of Better Business Bureaus (<a href="http://www.ccbbb.ca/">http://www.ccbbb.ca/</a>); and</li><li>• contact local law enforcement, if necessary.</li></ul> <p>Forward complaint to OMC at <a href="mailto:ImmigrationRepresentatives">ImmigrationRepresentatives</a>.</p>

### Misleading advertising

Misleading advertising by representatives should be pursued with the regulatory bodies that have established guidelines on advertising. Misleading advertising includes guaranteed acceptance of the application, declaration of a close or preferential relationship with a CIC office, or references to CSIC membership without giving the individual names of the members.

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If a complaint triggers an investigation, it is essential that officers retain a copy of the complaint/advertisement, as the relevant documentation may be required during the investigation process. Misleading advertising may be an IRPA offence as identified in A127(b), which states, "No person shall knowingly ... communicate, directly or indirectly, by any means, false or misleading information or declarations with intent to induce or deter immigration to Canada." Risk management and due diligence principles for document verification should continue to be applied.

### **Complaints against non-CSIC immigration consultants and immigration consulting firms (applicable only when immigration consultant's name is unknown)**

Officers should direct clients with complaints against concealed or unauthorized representatives and complaints against immigration consulting firms (only if immigration consultant's name is unknown) that are in North America to the following organizations: (1) the CSIC, for future reference in case the individual chooses to apply to become an authorized member (the CSIC can be diligent in its checks and screening of new members); and (2) the Canadian Council of Better Business Bureaus, which may investigate complaints against an unauthorized representative's fraudulent activities. Clients also have the option of taking the non-authorized individual to small claims court at their own expense, and they may report their case to a local law enforcement agency, if necessary.

The CCBBB's contact information is:

Canadian Council of Better Business Bureaus  
2 St. Clair Avenue East  
Suite 800  
Toronto, Ontario, Canada  
M4T 2T5  
Telephone: (416) 644-4936  
Fax: (416) 644-4945  
Web site: [www.ccbbb.ca](http://www.ccbbb.ca)

### **9.3. Office concerns that may lead to further investigation**

Some concerns that originate from clients may require further action by an office, even though the client has been referred to the appropriate regulatory body. This is essential when the complainant's allegations reveal that program integrity may be compromised. If officers have credible evidence, through a complaint or through their own discovery, of potential IRPA criminal offences or professional misconduct in a case or a series of cases, they should report the matter to their senior officer as per existing office procedures (see Section 10).

The following table identifies four examples of concerns that may require the local office to take further investigative action.

**Table 4**

Complaint concerning	Potential action
Misrepresentation	Misrepresentation process ( <a href="#">Section 8</a> )
Concealment	Concealed representative process ( <a href="#">Section 7.2</a> )
IRPA offence or criminal activity	Investigation process ( <a href="#">Section 10</a> )
Professional misconduct	Investigation process ( <a href="#">Section 10</a> )

## **10. Procedure: CIC office investigation process**

Offices should continue to use their existing procedures for performing local investigations and to engage their local enforcement agencies. It is important that OMC at NHQ is kept informed of all major developments regarding investigations so that it can report on the effectiveness of the Regulations concerning authorized representatives.

Investigations could originate from a complaint (see Section 9.3) or an officer's concerns about maintaining program integrity standards. If a representative's actions constitute an IRPA offence

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and/or professional misconduct, it is necessary to determine whether the issue affects the integrity of the Regulations concerning immigration representatives.

If an officer becomes aware of an issue through a complaint, or notices common trends/patterns among immigration representatives that cause concern, they should raise the matter with their direct supervisor. If the supervisor determines that the concern is justified, they should consult their director to determine whether the issue warrants a local investigation. If the director, in consultation with the supervisor, confirms that the concern affects the integrity of the Regulations concerning immigration representatives, they may authorize a local investigation that involves allocating staff and resources to monitor, research and gather information about an individual or issue to prove that unscrupulous activity (whether criminal or involving professional misconduct) has occurred.

However, if the director and supervisor determine that the issue is of limited concern and does not affect the integrity of the Regulations, the representative's information should be filed for possible future reference and sent to OMC for tracking purposes.

When completing a local investigation, it is important to identify whether the representative is authorized or not. If the representative is unauthorized, only the IRPA offence investigation process may apply. However, if the representative is a member of one of the designated organizations, the person responsible for overseeing the investigation must determine whether it falls under the rubric of an IRPA offence (see Section 10.1 below) or professional misconduct (see Section 10.3 below).

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### 10.1. IRPA offences

The examples of IRPA offences described in this section fall under both the *Criminal Code* and IRPA.

It is important to note that an investigation will only be initiated on the basis of information and circumstances that would lead an officer to believe that there has been a violation of the *Immigration and Refugee Protection Act* and Regulations. The Department's enforcement activities are both proactive, in preventing violations of the *Immigration and Refugee Protection Act* and Regulations, and reactive, in recognizing the constraints on a civilian organization with enforcement duties (see ENF 7 Section 5.1).

#### Types of immigration offences

Table 5

IRPA Offence	Refer to
1) Contravention of Act	A124
2) Fraudulent documents	A122
3) Misrepresentation (civil)	A40
4) Counselling misrepresentation	A126
5) Misrepresentation (criminal)	A127
6) Counselling offence	A131
7) Organizing entry into Canada	A117
8) Trafficking in persons	A118
9) Crimes against humanity and war crimes	A35(1)(b)
10) Terrorism	A34(1)(c)

A124(1)(a) states:

Every person commits an offence who

(a) contravenes a provision of this Act for which a penalty is not specifically provided or fails to comply with a condition or obligation imposed under this Act.

Officers should be as specific as possible when identifying whether an individual is in violation of an IRPA offence, as the particulars of the offence will help local law-enforcement authorities to prioritize the case.

For more information about offences under IRPA and inadmissibility, see ENF 2/OP 18.

### 10.2. IRPA offence investigation process

The previous version of this section (dated 2005-08-17) is obsolete. A new paragraph is being developed.

### 10.3. Professional misconduct

Professional misconduct means conduct in a professional capacity that tends to bring discredit upon the profession and might include the following:

- violating or attempting to violate the organization's or association's code of professional conduct;
- violating or attempting to violate a requirement of IRPA or its Regulations;
- being found guilty of an offence that is relevant to the member's suitability to practise;
- knowingly assisting or inducing an employee or agent to violate or attempt to violate a requirement of IRPA or its Regulations;

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- stating or implying an ability to improperly influence a government agency or official; and
- engaging in conduct that is prejudicial to the administration of justice.

The office should continue to monitor applications received from any representative about whom they have specific concerns. Risk management and due diligence principles for document verification should be applied.

---

### 10.4. Professional misconduct investigation process

In cases of professional misconduct, the CIC office should perform a local investigation using current practices to compile evidence.

If the individual is an authorized representative with a regulatory body, the results of the investigation should be forwarded to the OMC. The Branch will review the investigation report, gather input from key stakeholders, such as Legal Services, the CBSA (if required), and determine the appropriate action.

Once a course of action has been established, OMC will notify the office of its decision and, if permitted under the provisions of the *Privacy Act* or IRPA/IRPR, will refer the case to the appropriate designated organization and provide follow-up.

Under s. 8(2)(m)(i) of the *Privacy Act*, CIC's Deputy Minister has the authority to approve the disclosure of instances of professional misconduct. Other agencies, such as the CBSA or the IRB, may also utilize the *Privacy Act* to disclose such issues.

Each designated body (the Canadian provincial/territorial law societies, the *Chambre des notaires du Québec* and the CSIC) has its own complaints and discipline process. Members of these designated organizations are subject to their principles and, thus, may be penalized pending the outcome of the designated organization's internal investigation.

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### 10.5. Suspended or disbarred authorized representatives

Offices must continue to deal with the representative as long as they remain a member in good standing with their respective regulatory body.

If a representative is under investigation, offices must continue to conduct business with the representative until the investigation by the regulatory body has been concluded.

Suspended members are not considered to be in good standing for a specific period of time. If a member is suspended, the regulatory bodies normally require that the suspended member contact their active clients to inform them of their change in status. The client will then have the option of selecting a new representative by submitting a new IMM 5476.

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## 11. Procedure: Sharing information

Offices should continue to share information with key players and follow the process that they have used in the past when concerns regarding program integrity issues have arisen.

As suggested earlier in the chapter, the following steps should be taken regarding representatives:

- the office should encourage the applicant/client to contact the regulatory body directly about a complaint against one of its members;
- if an office shares additional information about a CSIC member with OMC, the branch will take appropriate action; and

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- If there is a complaint against one of the regulatory bodies, the office should share the complaint with OMC. The branch will follow up with Legal Services and the regulatory body to determine the appropriate action.

See Section 10.4 for information on the *Privacy Act*.

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### Appendix A Validating a representative

Consult the table below and the URLs provided to find a registered representative in good standing with the designated organizations.

If a member's name is not available on-line, or if no on-line verification service is available (i.e. Law Society of Saskatchewan and Law Society of New Brunswick), please telephone or send an e-mail to the organization directly.

	Law Society (Links to Homepage)	Contact Information	Frequency of Web Site Updates	Membership Validation Service (Member Lists)
Consultants	<b>Canadian Society of Immigration Consultants</b>	Munich Re Center 390 Bay Street, Suite 1600 Toronto, Ontario, Canada M5H 2Y2 Telephone: (416) 572-2800 Toll Free Telephone: 1-866-308-CSIC (2742) Fax: (416) 945-6276	Updated when required	Web site: <a href="http://www.csic-scci.ca">http://www.csic-scci.ca</a> E-mail: <a href="mailto:information@csic-scci.ca">information@csic-scci.ca</a>  Complaints & Discipline Committee: <a href="mailto:discipline@csic-scci.ca">discipline@csic-scci.ca</a> <a href="mailto:complaintsintake@csic-scci.ca">complaintsintake@csic-scci.ca</a>
	<b>Federation of Law Societies of Canada</b>	Constitution Square 360 Albert Street, Suite 1700 Ottawa, Ontario, Canada K1R 7X7 Telephone: (613) 236-7272 Fax : (613) 236-7233	N/A	Web site: <a href="http://www.flsc.ca/en/lawSocieties/web/sites.asp">http://www.flsc.ca/en/lawSocieties/web/sites.asp</a> E-mail: <a href="mailto:info@flsc.ca">info@flsc.ca</a>
Canadian Law Societies	<b>Law Society of British Columbia</b> (English only)	845 Cambie Street Vancouver, British Columbia, Canada V6B 4Z9 Telephone: (604) 669-2533 TTY: (604) 443-5700 Toll free (in province): 1-800-903-5300 Fax: (604) 669-5232	Updated previous business day	Web site: <a href="http://alt.lawsociety.bc.ca/lkup/mbr_search.cfm">http://alt.lawsociety.bc.ca/lkup/mbr_search.cfm</a> E-mail: <a href="mailto:memberinfo@lsbc.org">memberinfo@lsbc.org</a>
	<b>Law Society of Alberta</b> (English only)	500, 919 - 11th Avenue S.W. Calgary, Alberta, Canada T2R 1P3 Telephone: (403) 229-4700 Toll free (in province): 1-800-661-9003 Fax: (403) 228-1728	Updated when required	Web site: <a href="http://www.lawsocietyalberta.com/memberSearch/Index.cfm">http://www.lawsocietyalberta.com/memberSearch/Index.cfm</a> E-mail: <a href="mailto:membership@lawsocietyalberta.com">membership@lawsocietyalberta.com</a>
	<b>Law Society of Saskatchewan</b> (English only)	1100 - 2002 Victoria Avenue Regina, Saskatchewan, Canada S4P 0R7 Telephone (ask for Membership Services): (306) 569-8242 Toll free (in province): 1-800-667-9886 Fax: (306) 352-2989	N/A	E-mail: <a href="mailto:reception@lawsociety.sk.ca">reception@lawsociety.sk.ca</a>

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<b><u>Law Society of Manitoba</u></b> (English only)	219 Kennedy Street Winnipeg, Manitoba, Canada R3C 1S8 Telephone: (204) 942-5571 Fax: (204) 956-0624	N/A	Web site: <a href="http://www.lawsociety.mb.ca/lookup/lawyer_lookup.asp">http://www.lawsociety.mb.ca/lookup/lawyer_lookup.asp</a> General e-mail: <a href="mailto:admin@lawsociety.mb.ca">admin@lawsociety.mb.ca</a>
<b><u>Law Society of Upper Canada</u></b>	Osgoode Hall, 130 Queen Street W. Toronto, Ontario, Canada M5H 2N6 Telephone: (416) 947-3300 Toll free: 1-800-668-7380 Fax: (416) 947-5263	Updated previous business day	Web site: <a href="http://www1.lsuc.on.ca/LawyerParalegalDirectory/index.jsp">http://www1.lsuc.on.ca/LawyerParalegalDirectory/index.jsp</a> E-mail: <a href="mailto:lawsociety@lsuc.on.ca">lawsociety@lsuc.on.ca</a> Complaints: <a href="mailto:comail@lsuc.on.ca">comail@lsuc.on.ca</a>
<b><u>Barreau du Québec</u></b>	445 Saint-Laurent Boulevard Montréal, Quebec, Canada H2Y 3T8 Telephone: (514) 954-3400 Toll free: 1-800-361-8495 Fax: (514) 954-3464	Updated when required	Web site: <a href="http://www.barreau.qc.ca/repertoire/en/">http://www.barreau.qc.ca/repertoire/en/</a> E-mail: <a href="mailto:tableau@barreau.qc.ca">tableau@barreau.qc.ca</a> General e-mail: <a href="mailto:information@barreau.qc.ca">information@barreau.qc.ca</a>
<b><u>Nova Scotia Barristers' Society</u></b> (English only)	Centennial Building 1101-1645 Granville Street Halifax, Nova Scotia, Canada B3J 1X3 Telephone: (902) 422-1491 Fax: (902) 429-4869	Daily	Web site: <a href="http://www.nsbs.org/membershipSearch.php">http://www.nsbs.org/membershipSearch.php</a>  E-mail: <a href="mailto:info@mail.nsbs.ns.ca">info@mail.nsbs.ns.ca</a>
<b><u>Law Society of New Brunswick</u></b>	1133 Regent Street, Suite 206 Fredericton, New Brunswick, Canada E3B 3Z2 Telephone: (506) 458-8540 Fax: (506) 451-1421	N/A	E-mail: <a href="mailto:general@lawsociety-barreau.nb.ca">general@lawsociety-barreau.nb.ca</a>
<b><u>Law Society of Prince Edward Island</u></b> (English only)	49 Water Street PO Box 128 Charlottetown, Prince Edward Island, Canada C1A 7K2 Telephone: (902) 566-1666 Fax: (902) 368-7557	Updated when required	Web site: <a href="http://www.lspei.pe.ca/members.php">http://www.lspei.pe.ca/members.php</a>  E-mail: <a href="mailto:jwyatt@lspei.pe.ca">jwyatt@lspei.pe.ca</a> General e-mail: <a href="mailto:lawsociety@lspei.pe.ca">lawsociety@lspei.pe.ca</a>
<b><u>Law Society of Newfoundland and Labrador</u></b> (English only)	P.O. Box 1028 St. John's, Newfoundland, Canada A1C 5M3 Telephone: (709) 722-4740 Fax: (709) 722-8902	Weekly	Web site: <a href="http://www.lawsociety.nf.ca/">http://www.lawsociety.nf.ca/</a> click on "Members Directory" E-mail: <a href="mailto:janice.whitman@lawsociety.nf.ca">janice.whitman@lawsociety.nf.ca</a>
<b><u>Law Society of Yukon</u></b> (English only)	Suite 202 - 302 Steele Street Whitehorse, Yukon, Canada Y1A 2C5 Telephone: (867) 668-4231 Fax: (867) 667-7556	Updated when required	Web site: <a href="http://www.lawsocietyyukon.com/membership.php">http://www.lawsocietyyukon.com/membership.php</a> E-mail: <a href="mailto:lsy@yknet.yk.ca">lsy@yknet.yk.ca</a> General e-mail: <a href="mailto:info@lawsocietyyukon.com">info@lawsocietyyukon.com</a>

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Notaries	<b><u>Law Society of the Northwest Territories</u></b> (English only)	Main Floor, 5004 - 50th Avenue, P.O. Box 1298 Yellowknife, Northwest Territories, Canada X1A 2N9 Telephone: (867) 873-3828 Fax: (867) 873-6344	Updated when required	Web site: <a href="http://www.lawsociety.nt.ca/">http://www.lawsociety.nt.ca/</a> and click on "Member Information" E-mail: <a href="mailto:LSNT@TheEdge.ca">LSNT@TheEdge.ca</a> or <a href="mailto:lawsocnt@lawsociety.nt.ca">lawsocnt@lawsociety.nt.ca</a>
	<b><u>Law Society of Nunavut</u></b> (English only)	P.O. Box 149 Iqaluit, Nunavut, Canada X0A 0H0 Phone: (867) 979-2330 Fax: (867) 979-2333	Updated occasionally	Web site: <a href="http://lawsociety.nu.ca/members.html">http://lawsociety.nu.ca/members.html</a> E-mail: <a href="mailto:lawsociety@qiniq.com">lawsociety@qiniq.com</a>
	<b><u>Chambre des notaires du Québec</u></b>	1801 avenue McGill College Bureau 600 Montréal, Quebec, Canada H4Z 1L8 Telephone: (514) 879-1793 Toll Free: 1-800-668-2473 Fax: (514) 879-1923	Daily	Web site: <a href="http://www.trouverunnotaire.com/">http://www.trouverunnotaire.com/</a> (French only) E-mail: <a href="mailto:information@cdnq.org">information@cdnq.org</a>

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### Appendix B Authorized representative membership number formats

Canadian Provincial/Territorial Law Society Membership Number Formats			
LAW SOCIETY	FORMAT	EXAMPLE	NOTES
Law Society of British Columbia	<b>Numeric:</b> number of characters varies	703492	Students assigned a number when called to Bar; number stays with them.
Law Society of Alberta	<b>Numeric:</b> maximum 6 digits, sequential as admitted	13456	Students assigned a number when called to Bar; number stays with them.
Law Society of Saskatchewan	<b>Alphanumeric:</b> "B" (for Barrister) and sequential number	B-1000	
Law Society of Manitoba	<b>Numeric:</b> Year of call followed by 3 digits	1999123	
Law Society of Upper Canada	<b>Alphanumeric:</b> 5 numbers and 1 letter	00001-F	
<i>Barreau du Québec</i>	<b>Numeric:</b> 7 numbers	1234567	
Law Society of New Brunswick	<b>Numeric:</b> consecutive as admitted		Does not typically use member numbers, instead uses last name
Nova Scotia Barristers' Society	<b>Numeric:</b> year of call to the Bar + 4 sequential numbers, assigned randomly	1999-0005	
Law Society of Prince Edward Island	<b>Numeric:</b> same as admission date, yy-mm-dd	92-04-14	If 2 people admitted on same day (albeit rare) either a "1" or "2" will follow date
Law Society of Newfoundland	<b>Numeric:</b> consecutive as admitted		
Law Society of Yukon	<b>Numeric:</b> consecutive "roll numbers" starting at 1		No membership number, rather "roll numbers"
Law Society of the Northwest Territories	<b>Numeric:</b> consecutive as admitted		
Law Society of Nunavut	<b>Numeric:</b> year admitted and 3-digit roll number, consecutive as admitted	1999001	No longer uses phone number
Canadian Society of Immigration Consultants (CSIC) Membership Number Format			
SOCIETY	FORMAT	EXAMPLE	NOTES
CSIC	<b>Alphanumeric:</b> One letter followed by 6 numbers	M040000	"M" followed by 2 digits that represent year, plus a rollover number
<i>Chambre des notaires du Québec</i> Membership Number Format			
SOCIETY	FORMAT	EXAMPLE	NOTES
<i>Chambre des notaires du Québec</i>	<b>Alphanumeric:</b> One letter followed by 4 numbers	K1234	

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### Appendix C Notice to Applicant: Authorized Representative Cannot be Verified

[To be used when returning an application under R10 when the representative indicates that they are authorized on the Use of a Representative (IMM 5476) form, but their membership cannot be verified with that regulatory body]

Dear .....

This letter refers to your application for ----, which was received at (office) on (date).

The Use of a Representative (IMM 5476) form in your application indicates that you have hired an individual to represent you, but unfortunately we cannot confirm this. Therefore, we regret that we will not be able to process your application.

Based on the *Immigration and Refugee Protection Regulations*, we will only conduct business with *authorized representatives*. To be an authorized representative, the person you have *paid* to assist you must be a member in good standing with a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants.

If you choose to resubmit your application, you must either use the services of an authorized representative or an unpaid representative, or apply without anyone's assistance. If the representative you have identified is a member in good standing with a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants, please resubmit your application with documentation that provides evidence of this and inform us as soon as possible.

To learn more about the types of individuals who may represent you, visit our Web site at <http://www.cic.gc.ca>. If you are in Canada, you can also contact the Call Centre toll free at 1-888-242-2100.

You are not obliged to hire a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to hire a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

Yours sincerely,

(Officer's Name, Title)

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### Appendix D Notice to Applicant: Incomplete Use of a Representative (IMM 5476) form

[To be used when returning an incomplete application under R10]

Dear .....

This letter refers to your application for ----, which was received at (office) on (date).

Under section 10 of the *Immigration and Refugee Protection Regulations*, representatives and clients are required to provide all the information requested in the Use of a Representative (IMM 5476) form unless the question states "if known" or "if applicable."

The Use of a Representative (IMM 5476) form in your application indicates that you have appointed an individual to represent you, but unfortunately the form is either incomplete or not completed correctly. Therefore, we regret that we will not be able to process your application.

Please ensure that each question has been answered and the appropriate section(s) in the Use of a Representative (IMM 5476) form have been signed and dated by all the relevant parties.

For further instructions, please refer to the Instructions – Use of a Representative (IMM 5561) form.

If you choose to resubmit your application and require a new form, the Use of a Representative (IMM 5476) and Instructions – Use of a Representative (IMM 5561) forms are available on our Web site at <http://www.cic.gc.ca/english/information/applications/representative.asp>. If you are in Canada and require assistance, you can contact the Call Centre toll free at 1-888-242-2100.

You are not obliged to hire a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to hire a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

Yours sincerely,

(Officer's Name, Title)

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### Appendix E Notice to Applicant: Concealed Representative

[To be used when it is suspected that an applicant's mailing address is that of a paid consultant, but no Use of a Representative (IMM 5476) form was submitted]

Dear .....

This letter refers to your application for ----, which was received at (office) on (date).

Although no Use of a Representative (IMM 5476) form was included, we have determined that you have an unauthorized immigration representative based on [insert reasons: i.e., the mailing address that you have provided on your application].

Failure to disclose the use of a paid representative may be considered misrepresentation. The consequence of misrepresentation under the *Immigration and Refugee Protection Act* could be a two-year period of inadmissibility.

Please review this matter carefully. If you wish to submit an application using a paid representative, please review the Instructions – Use of a Representative (IMM 5561) form and complete a Use of a Representative (IMM 5476) form and resubmit your application.

To verify if a representative is authorized to conduct business with Citizenship and Immigration Canada and the Canadian Border Services Agency, refer to our Web site at <http://www.cic.gc.ca/english/information/representative/verify-rep.asp>.

To obtain a Use of a Representative (IMM 5476) form to identify an authorized representative, you can retrieve it on-line at <http://www.cic.gc.ca/english/information/applications/representative.asp>, or contact the Call Centre toll free at 1-888-242-2100 (in Canada only), 8 a.m. – 4 p.m. local time, Monday to Friday.

You are not obliged to hire a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to hire a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

However, if you decide to be represented by a paid representative, it is necessary for the representative to be authorized, that is, a member in good standing with a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants.

Yours sincerely,

(Officer's Name, Title)

## IP 9 – Use of Representatives Paid or Unpaid

### Appendix F Notice to Applicant: Use of an Unauthorized Representative during Case File Processing

[To be used when it is discovered that an applicant is using an unauthorized representative during application processing]

Re: Client Identification/File number: \_\_\_\_\_

Dear .....

The Use of a Representative (IMM 5476) form in your application indicates that you have hired an individual to represent you, but unfortunately we are unable to confirm that this individual is an authorized representative.

Under the *Immigration and Refugee Protection Regulations*, we will only conduct business with *authorized representatives*. To be an authorized representative, the person you have *paid* to assist you must be a member in good standing with a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants. If the representative you have identified is a member in good standing with one of these organizations, please provide us with evidence of this. If your representative is not a member of any of these organizations, we can no longer deal with this representative, but we will continue to process your application and will communicate directly with you.

You may choose to be self-represented or you may appoint a new representative by submitting a new Use of a Representative form (IMM 5476). Please ensure that the new representative is authorized.

To learn more about the types of individuals who may represent you, visit our Web site at <http://www.cic.gc.ca/english/information/representative/rep-who.asp>. To obtain a Use of a Representative form (IMM 5476) in order to identify an authorized representative, you can retrieve it on-line at <http://www.cic.gc.ca/english/information/applications/representative.asp>, or contact the Call Centre toll free at 1-888-242-2100 (in Canada only), 8 a.m. – 4 p.m. local time, Monday to Friday.

You are not obliged to hire a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to hire a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

Yours sincerely,

(Officer's Name, Title)

## IP 9 – Use of Representatives Paid or Unpaid

### Appendix G Notice to Applicant: Use of an Unauthorized Representative after Transition Period (i.e., after April 13, 2008)

[To be used when the application was received before April 13, 2004 and where the representative is not a member of a bar of a province or territory, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants (CSIC)]

Re: Client Identification/File number: \_\_\_\_\_

Dear .....

The Use of a Representative form (IMM 5476) in your application indicates that you have hired an individual to represent you; however our records indicate that this person is no longer authorized to represent immigration clients.

Under the transitional regulations your representative was only entitled to represent you until April 13, 2008 unless they became an authorized representative, meaning that your representative is a member of a bar of a province or territory, the *Chambre des notaires du Québec* or the Canadian Society of Immigration Consultants.

As of the date of this letter, CIC will continue to process your application and will communicate directly with you. You may choose to be self-represented or you may appoint a new authorized representative by submitting a new "Use of a Representative" form (IMM 5476) Please advise this office of your choice within 30 days of the date of this letter. Should we not hear from you in that time, we will continue processing your file and will communicate directly with you. You still have the option of obtaining the services of an authorized representative at any time in the process.

Please be advised that you are not obliged to have a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to have a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

To learn more about the types of individuals who may represent you, visit our Web site at <http://www.cic.gc.ca/english/information/representative/rep-who.asp>. To obtain a Use of a Representative form (IMM5476) to identify an authorized representative, you can retrieve it on-line at <http://www.cic.gc.ca/english/information/applications/representative.asp>, or contact the Call Centre toll free at 1-888-242-2100 (in Canada only), 8 a.m. – 4 p.m. local time, Monday to Friday.

Yours truly,

(Officer's Name, Title)

cc: former representative



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# **National Occupational Classification (NOC)**

## **Tutorial**

***Revised April 2006***

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# Introduction

## Overview

The *National Occupational Classification* (NOC) is a system for describing the occupations of Canadians. It gives statisticians, labour market analysts, career counsellors, employers and individual job seekers a standardized way of describing and understanding the nature of work. The system includes a series of publications that help these people to organize and use statistics and other labour market facts.

This *tutorial* is a companion to these publications and a training resource for anyone who is using or intends to use the NOC. By the end of this training, you will be able to:

- understand the structure and components of the NOC
- understand the importance and applications of the NOC
- properly classify occupations according to the NOC

In order to complete this training you will need to have access to the NOC *Occupational Descriptions*, the NOC *Matrix* and the *Index of Titles* either in hardcopy format or via the Internet at: [www5.hrsdc.gc.ca/NOC-CNP/app/index.aspx?lc=e](http://www5.hrsdc.gc.ca/NOC-CNP/app/index.aspx?lc=e).

The structure of this tutorial is based on a progressive learning format. We will first look at the origin of the NOC, its importance and its uses and examine the structure of the NOC. You will learn the meaning of the digits of NOC codes and how they relate directly to the structure. By the end of this training you will know how to use the NOC for looking up occupational titles, finding occupational descriptions, for coding purposes and for other applications.

Let us start by understanding the origin of the NOC and its significance in Canada.

## History

The NOC was implemented in 1992 as a replacement for the *Canadian Classification and Dictionary of Occupations* (CCDO). It was created through an extensive program of research, collecting information from employers, workers, educators and associations. Analyses and consultations were also conducted with providers and users of labour market data across the country. Human Resources and Social Development Canada (HRSDC) worked closely with Statistics Canada to ensure strong links between the NOC and Statistics Canada's *Standard Occupational Classification* (SOC), for the collection and use of labour market data.

This training guide introduces the revised editions of the NOC. The NOC 2001 replaced the original publication and the parallel 1991 SOC produced by Statistics Canada. The revised SOC is now entitled the *National Occupational Classification for Statistics* (NOC-S). The NOC 2001 and the NOC-S fill the gaps that were identified as shortcomings of the 1992 NOC. These included a missing technical level for information technology occupations, inconsistencies in relation to the statistical structure and the challenges in capturing the emergence of new work methods and new titles used in the labour market. The NOC 2001, while conservative with respect to structural change, reflected the evolution of occupations over the past decade in Canada.

The NOC is updated on a regular basis through an ongoing program of research. This results in updates or revisions which coincide with Census cycles. The NOC has been updated for Census 2006 in collaboration with Statistics Canada. This was a minor update and is available online only (with the possibility of an update insert or addendum which will be available upon request). Research continues for the 20th anniversary of the NOC, which will result in the release of the revised NOC for Census 2011. Structural changes and significant content revisions are expected for this edition.

The goal of the NOC is to make it easier for users at all levels to achieve a better understanding of the world of work. For this reason, there are two main NOC publications:

1. The *Occupational Descriptions* binder provides formal descriptions of 520 occupational groups. These descriptions are identified by codes and titles organized in a three-level numerical hierarchy.

The NOC ensures that labour market statistics are collected and assembled in a standard way that will be meaningful to users. At the same time, the descriptions allow technical users, such as economists and business analysts, to understand exactly what the statistics mean.

2. The *Career Handbook* is the counselling version of the NOC. It links work performed in occupations with worker characteristics. This two-volume set provides details of aptitudes and interests as well as physical activities and educational requirements for over 900 occupations, along with information about potential workplaces in each. This resource is intended primarily for guidance and employment counsellors, but individuals seeking to plan their own careers will also find it useful.

The second edition or 2003 release of the *Career Handbook* is used in conjunction with the NOC 2001 structure to ensure proper concordance. A new, on-line only, edition of the *Career Handbook* will be available for consistency with the NOC 2006 Update. Information on this release will be posted on the Web site.

The NOC publications support a variety of career information resources published by the Government of Canada and others. For example, Job Futures, the widely-used source of information about occupational outlooks, and the national Job Bank, an electronic listing of jobs, work or business opportunities provided by Canadian employers are both organized according to the structure of

the NOC. By providing a standard way of organizing labour market information, the NOC helps all Canadians to be better informed about the world of work.

## Applications

The NOC provides a standardized language for describing the work performed by Canadians. It is used at all stages of the process from defining and collecting data, to managing information databases, to analyzing labour market trends and extracting practical career planning information.

### Data Collection

The hierarchical coding structure of the NOC is used in the collection of occupational information. For example, economists and statisticians use the NOC to guide the collection and compilation of data. And, the Government of Canada uses the NOC-S for the analysis of occupational data collected from the Census, Labour Force Survey and other surveys.

The NOC is also used for a variety of special surveys with respect to worker mobility, technological change, administrative data and other indicators of labour market behaviour. In addition, provincial governments and private survey companies use the NOC to ensure that the information they collect will be directly comparable to data they get from other sources.

### Labour Market Analysis

Labour market researchers use the NOC to understand the underpinnings of the statistics they use, and more importantly, to interpret them correctly. The NOC provides the context for the interpretation of statistical information. These users analyze the Canadian labour market to understand emerging trends, to guide policy decisions and to develop systems for training, recruiting and job matching. National, regional, and local labour market information can be accessed by visiting [www.labourmarketinformation.ca](http://www.labourmarketinformation.ca).

Labour market analyses include work done within the government to set policy and make the labour market work more efficiently. For example, the Federal Government uses this type of analysis to allocate spending for labour market programs, to manage its systems for matching jobs with people and for immigration selection procedures. Provincial and municipal governments have similar applications.

### Career Planning and Job Seeking

Career developers, counsellors and students use the NOC and the *Career Handbook* for career planning. An understanding of occupational definitions, requirements and opportunities is central to their goal of matching the interests and aptitudes of individuals to the requirements and opportunities associated with occupations.

Job seekers, employment counsellors and employers rely on the NOC to make effective use of labour market information services provided by the Federal Government and other sources. An important application is the national Job Bank, which is accessible over the Internet and can be viewed at [www.jobbank.gc.ca](http://www.jobbank.gc.ca).

## Exploring the NOC

In a nutshell, the NOC is a tool that is used to classify occupations according to their Skill Level and Skill Type. A four-digit code, called the "NOC code", identifies the occupation. Each digit of this code reflects an important trait of the occupation it represents.

Let's begin by looking at each digit and the significance it has with respect to the NOC.

### Skill Type

Skill Type is based on the type of work performed, but it also reflects the field of training or experience that is normally required for entry into the occupation. This includes the educational area of study required, as well as the industry of employment in cases where experience within an internal job ladder is required for entry. These categories are intended to indicate easily understood segments of the world of work.

The first digit of the NOC code normally designates the Skill Type (see chart below). For example, *Occupations Unique to Processing, Manufacturing and Utilities* start with the digit 9. *Management Occupations*, which are found across all Skill Types, start with 0. Remember that an occupation that is coded with a first digit of 1 through 9 refers to the Skill Type of that occupation. An occupation that has a 0 as the first digit indicates management.

The 10 Skill Types that represent the first digit of a NOC code.

NOC Skill Types	
Skill Type	Occupation
0	Management Occupations
1	Business, Finance and Administration Occupations
2	Natural and Applied Sciences and Related Occupations
3	Health Occupations
4	Occupations in Social Science, Education, Government Service and Religion
5	Occupations in Art, Culture, Recreation and Sport
6	Sales and Service Occupations
7	Trades, Transport and Equipment Operators and Related Occupations
8	Occupations Unique to Primary Industry
9	Occupations Unique to Processing, Manufacturing and Utilities

Let us look at each Skill Type in more detail.

#### 0. Management Occupations

This Skill Type category contains legislators, senior management occupations and middle and other management occupations. These occupations span all Skill Type categories.

#### 1. Business, Finance and Administration Occupations

This category contains occupations that are concerned with providing financial and business services, administrative and regulatory services and clerical supervision and support services. Some occupations in this Skill Type are unique to the financial and business service sectors; however, most are found in all industries.

## 2. Natural and Applied Sciences and Related Occupations

This category contains professional and technical occupations in the sciences, including physical and life sciences, engineering, architecture and information technology.

## 3. Health Occupations

This category includes occupations concerned with providing health care services directly to patients and occupations that provide support to professional and technical health care staff.

## 4. Occupations in Social Science, Education, Government Service and Religion

This Skill Type category includes occupations that are concerned with law, teaching, counselling, conducting social science research, developing government policy, and administering government and other programs.

## 5. Occupations in Art, Culture, Recreation and Sport

This Skill Type category includes professional and technical occupations related to art and culture, including the performing arts, film and video, broadcasting, journalism, writing, creative design, libraries and museums. It also includes occupations in recreation and sport.

## 6. Sales and Service Occupations

This Skill Type category contains sales occupations, personal and protective service occupations and occupations related to the hospitality and tourism industries.

## 7. Trades, Transport and Equipment Operators and Related Occupations

Skill Type category includes construction and mechanical trades, trades supervisors and contractors and operators of transportation and heavy equipment. These occupations are found in a wide range of industrial sectors, with many occurring in the construction and transportation industries.

This Skill Type includes most of the apprenticeable trades, including all of those related to the construction industry. Other occupations in this category usually require completion of college or other programs combined with on-the-job training. Progression to supervisory or self-employed contractor status is possible with experience. There is limited mobility or transferability of skills among occupations in this category due to specific apprenticeship, training and licensing requirements for most occupations.

## 8. Occupations Unique to Primary Industry

This category contains supervisory and equipment operation occupations in the natural resource-based sectors of mining, oil and gas production, forestry and logging, agriculture, horticulture and fishing. Most occupations in this category are industry specific and do not occur outside of the primary industries.

## 9. Occupations Unique to Processing, Manufacturing and Utilities

This category contains supervisory and production occupations in manufacturing, processing and utilities.

You now know how occupations are classified according to a work domain that is called "Skill Type". We will now learn how the NOC further categorizes occupations according to different levels of skill required within each Skill Type.

## ***Skill Level***

In the context of the NOC, Skill Level corresponds to the type and/or amount of training or education typically required to work in an occupation. The NOC consists of four Skill Levels identified A through D and each is assigned a numerical value ranging from 1 to 6. To illustrate this concept, have a look at the following chart to see the relationship between the alphabetical value of each Skill Level and its accompanying numerical value.

Skill Level is primarily based on the nature of education and training required to work in an occupation. This criterion also reflects the experience required for entry and the complexity of the responsibilities involved in the work, compared with other occupations. In most cases, progression to Skill Level A, from B, is not usually possible without completion of additional formal education, whereas progression from Skill Level D to Skill Level C is often achievable through on-the-job training and experience.

Each Skill Level is intended to reflect commonly accepted paths to employment in an occupation. Where there are several paths to employment, the Skill Level most commonly identified by employers is used, considering the context of the occupation and the trends in hiring requirements.

For *Trades, Transport and Equipment Operators and Related Occupations*, Skill Level B occupations may be coded with either a 2 or a 3. The reason for this is that there are more than 9 minor groups within the major group. When there are more than 9 minor groups within a major group, the Skill Level digit is increased by one, but corresponds to the same alphabetical character. The same applies for Skill Level C in *Occupations Unique to Processing, Manufacturing and Utilities*, where the second digit can be either 4 or 5. We will discuss Major and Minor Groups in more detail shortly. For now, just understand that the second digit of the NOC code represents the Skill Level of an occupation.

The 4 Skill Levels (both alphabetic characters and numerical values) used in the NOC.

<b>NOC Skill Levels</b>		
Skill Level (alpha)	Skill Level (digit)	Nature of Education/Training
<b>A</b> Occupations usually require university education.	1	University degree at the bachelor's, master's or doctorate level.
<b>B</b> Occupations usually require college or vocational education or apprenticeship training.	2 or 3	Two to three years of post-secondary education at a community college, Institute of technology or CEGEP or Two to five years of apprenticeship training or Three to four years of secondary school and more than two years of on-the-job training, specialized training courses or specific work experience. Occupations with supervisory responsibilities and occupations with significant health and safety responsibilities, such as firefighters, police officers and registered nursing assistants are all assigned the Skill Level B.
<b>C</b> Occupations usually require secondary school and/or occupation-specific training.	4 or 5	One to four years of secondary school education or Up to two years of on-the-job training, specialized training courses or specific work experience.
<b>D</b> On-the-job training is usually provided for occupations.	6	Short work demonstration or on-the-job training or No formal educational requirements.

## Management Occupations

Management occupations are not assigned to a Skill Level category. Factors other than education and training (e.g., previous experience, ownership of real property and capital, ownership of Intellectual property, inherent decision-making skills and organizational capabilities) are often more significant determinants for employment in management occupations.

Management occupations span the Skill Types of the entire classification structure and are found in all areas of the labour market. All NOC codes that begin with a zero represent management occupations. When the second digit is zero, this represents "senior" management occupations. To identify all other management occupations, the *second digit* (1 through 9) is the corresponding Skill Type.

To illustrate this concept let us look at the following:

- Management occupations in sales and services begin with 06. The 0 indicates that it is a management level occupation and the 6 indicates that the occupation falls under the Sales and Service Skill Type.
- Now consider an NOC code that has a zero as its *first* and *second* digit. Similar to the example above, we know that this occupation is a management occupation because it begins with zero. We also know that the second digit for management occupations may reflect the Skill Type. However, because there is no Skill Type 0, we can conclude that this is a senior management occupation.

## Major Groups

A *major group* is simply the first two digits of an NOC code. It is a roll-up, or, an aggregation of minor groups (which we will look at shortly). There are 26 major groups in the NOC and these are classified as follows:

### MANAGEMENT OCCUPATIONS

**00** Senior Management Occupations

**01-09** Middle and Other Management Occupations

### BUSINESS, FINANCE AND ADMINISTRATION OCCUPATIONS

**11** Professional Occupations in Business and Finance

**12** Skilled Administrative and Business Occupations

**14** Clerical Occupations

### NATURAL AND APPLIED SCIENCES AND RELATED OCCUPATIONS

**21** Professional Occupations in Natural and Applied Sciences

**22** Technical Occupations Related to Natural and Applied Sciences

### HEALTH OCCUPATIONS

**31** Professional Occupations in Health

**32** Technical and Skilled Occupations in Health

**34** Assisting Occupations in Support of Health Services

### OCCUPATIONS IN SOCIAL SCIENCE, EDUCATION, GOVERNMENT SERVICE AND RELIGION

**41** Professional Occupations in Social Science, Education, Government Services and Religion

**42** Paraprofessional Occupations in Law, Social Services, Education and Religion

<b>OCCUPATIONS IN ART, CULTURE, RECREATION AND SPORT</b>
--

<b>51</b> Professional Occupations In Art and Culture
---

<b>52</b> Technical and Skilled Occupations In Art, Culture, Recreation and Sport
---

<b>SALES AND SERVICE OCCUPATIONS</b>
--------------------------------------

<b>62</b> Skilled Sales and Service Occupations
---

<b>64</b> Intermediate Sales and Service Occupations
--

<b>66</b> Elemental Sales and Service Occupations
---

<b>TRADES, TRANSPORT AND EQUIPMENT OPERATORS AND RELATED OCCUPATIONS</b>
--

<b>72-73</b> Trades and Skilled Transport and Equipment Operators
---

<b>74</b> Intermediate Occupations In Transport, Equipment Operation, Installation and Maintenance
--

<b>76</b> Trades Helpers, Construction Labourers and Related Occupations
--

<b>OCCUPATIONS UNIQUE TO PRIMARY INDUSTRY</b>
---

<b>82</b> Skilled Occupations In Primary Industry
---

<b>84</b> Intermediate Occupations In Primary Industry
--

<b>86</b> Labourers In Primary Industry
---

<b>OCCUPATIONS UNIQUE TO PROCESSING, MANUFACTURING AND UTILITIES</b>
--

<b>92</b> Processing, Manufacturing and Utilities Supervisors and Skilled Operators
---

<b>94-95</b> Processing and Manufacturing Machine Operators and Assemblers
--

<b>96</b> Labourers In Processing, Manufacturing and Utilities
--

As we have learned, the first digit represents the Skill Type for an occupation and the second digit of the code generally separates occupations according to Skill Level, or the type and duration of training required. Therefore, we can have several major groups within each Skill Type. In the example of *Sales and Service Occupations*, there are three major groups:

**62** Skilled Sales and Service Occupation

- 64 Intermediate Sales and Service Occupations
- 66 Elemental Sales and Service Occupations

## Minor Groups

At the three-digit level, the major groups are further divided into 140 *minor groups*. For example, major group 64, Intermediate Sales and Service occupations, includes eight minor groups:

- 641 Sales Representatives, Wholesale Trade
- 642 Retail Salespersons and Sales Clerks
- 643 Occupations in Travel and Accommodation
- 644 Tour and Recreational Guides and Casino Occupations
- 645 Occupations in Food and Beverage Service
- 646 Other Occupations in Protective Service
- 647 Childcare and Home Support Workers
- 648 Other Occupations in Personal Service

By now you have probably realized that each digit of the NOC code helps to further specify an occupation. At the minor group level, you can pinpoint a domain in which an occupation is carried out. However, we need to go one step further to identify an actual occupational group.

## Unit Groups

At the four-digit level, the system is expanded into 520 occupational groups identified as *unit groups*. Unit groups represent further specificity within an occupational domain. To continue with the same example from above, minor group 643, *Occupations in Travel and Accommodation*, is further divided into five unit groups:

- 6431 Travel Counsellors
- 6432 Purser and Flight Attendants
- 6433 Airline Sales and Service Agents
- 6434 Ticket Agents, Cargo Service Representatives and Related Clerks (Except Airline)
- 6435 Hotel Front Desk Clerks

You have now learned about the structure of the NOC and how codes are related to Skill Level and Skill Type. The question now is: how do you find these codes and use them in practical terms? This will be addressed in the following section, which will introduce you to the NOC tools that you can use to code and describe occupations. We will begin by looking at the *Occupational Descriptions* binder that contains all of the information that you need to code occupations. We will then look at the NOC *Matrix* - a tool to help you see the entire NOC structure. Finally, we will discuss the importance and usefulness of the *Index of Titles*.

## Occupational Descriptions

Whether you are an economist analyzing labour market data for a specific occupation or an employment counselor helping someone determine what type of training to take, occupational descriptions help us understand an occupation using a standardized language.

Occupational descriptions are published for each of the 520 unit groups included in the NOC. Each description is referred to as a "NOC group". Each description includes the following elements:

### ***Lead Statement***

The lead statement provides a general description of the occupation and the boundaries of the unit group. It also indicates the kinds of industries, workplaces or establishments where the occupation is found.

### ***Example Titles***

Example titles are the occupational titles commonly found within the group. This list is not exhaustive. A more complete listing of alphabetical job titles can be found in the NOC Index of Titles.

### ***Main Duties***

The main duties section describes the most significant duties of the occupations in the group. It may include:

- a series of statements that can be applied to all occupations in the group;
- two or more sub-sets of occupations with statements that apply to each component; and/or
- a series of brief statements that are linked to specific occupations, that, while similar enough to be in the same group, can be described separately.

Statements in *italics*, at the end of this section, identify a specialization that may exist within the occupation.

## ***Employment Requirements***

Employment requirements are prerequisites generally needed to enter the occupation. Several types of requirements are listed:

- type and level of education, starting with the lowest possible requirement for entry into the occupation;
- specific training required, including apprenticeship, on-the-job or internal training;
- experience in a related occupation, especially for supervisory or managerial occupations;
- licences, certificates or affiliations; and/or
- other requirements not dependent on formal education, such as athletic abilities, artistic talent or presentation of a portfolio.

While some occupations have very specific employment requirements, others have a wide range of acceptable requirements. The following terminology is used to indicate the level of the requirement:

- *"Is required"* indicates a definite requirement.
- *"Is usually required"* means that the qualification is generally expressed as required by a majority of employers, but not always mandatory.
- *"May be required"* describes requirements that some employers may impose, but are not universal.

Qualities related to personal suitability that may have an impact on employability are not described in this publication. These factors are subjective and determined by employers and assessed during the hiring process.

## ***Additional Information***

Some descriptions include additional information to give details on:

- mobility patterns;
- progression to another occupation;
- trends and anticipated changes in employment requirements; and/or
- other information that may clarify the occupational description.

## ***Classified Elsewhere***

The classified elsewhere section helps to clarify the boundaries of the unit group by identifying similar groups or occupations that are separately classified.

## The Matrix

A chart called the *NOC Matrix* shows the Major and the Minor groups, and the relationship between Skill Types and Skill Levels. This provides an overview of the entire classification structure. The Matrix is included in the NOC and it may also be viewed at: [www5.hrsdc.gc.ca/app/Index.aspx?lc=e](http://www5.hrsdc.gc.ca/app/Index.aspx?lc=e).

Skill Types are represented in the columns while the Skill Levels are found in rows. Managerial occupations are found in the top portion of the chart, indicating the presence of management across all segments of the labour market.

While the Matrix can be helpful in identifying Major and Minor Groups, it does not identify Unit Groups due to space limitations.

## Index of Titles

As useful as the unit group headings are, they do not always correspond with the real-world job titles we use every day. For this reason, the *Index of Titles* is a tool used to search for occupational titles that do not appear in the occupational descriptions.

### *Scope of the Index of Titles*

The *Index of Titles* contains thousands of titles classified within the 520 occupational groups of the NOC. With millions of people in the employed labour force, it is impossible to capture all of the individualized job titles that could potentially exist. While the listing in the Index is not meant to be exhaustive, it does provide extensive coverage of commonly used and understood titles in the economy, as well as the more obscure and specific titles found in many occupational areas. Some of the more commonly used titles in an occupation are listed within each NOC Unit Group description.

Approximately 20,000 titles included in the Index have been carried forward from the original NOC, published in 1992, as they are still currently used in the labour market. Many new and additional titles were added to the revised NOC 2001 and to the 2006 update. These titles have been collected in ongoing occupational research conducted since the implementation of the first edition.

To assist users, the Index includes both formally recognized occupational titles (e.g., radiography technologist) and less formal titles that are commonly used (e.g., X-ray technician). Some titles represent **occupations** (e.g., librarian; chef), while other titles refer to **specializations** within an occupation (e.g., music librarian; pastry chef). Still, others correspond to a range of jobs (e.g., furniture assembler; sawmill machine operator).

### *Inversions*

Occupational titles appear in the Index both in natural order (e.g., travel agent) and in inverted order (e.g., agent, travel). Inverted titles use a comma as a separator in the title string. To facilitate the location of particular generic titles, such as clerk, director, supervisor, etc., many inversions have been included.

However, when an occupational title is modified to provide more specificity, such as **criminal** lawyer, **tax** lawyer and **real estate** lawyer, and are all classified in the same NOC unit group, the Index includes the modified titles in natural order. It also includes the generic title, **lawyer**, but does not list all the inversions. When the modified titles are classified in different NOC unit groups (e.g., chemical engineer, civil engineer and industrial engineer), inversions are included in the Index to assist users in finding the appropriate unit group from the range of choices.

## Modifiers

Industry, institution or subject matter modifiers are added to many titles. This information is attached to the title following a dash (e.g., customer service supervisor - retail; electronics mechanic - avionics) to provide a means of differentiation among titles. Often, the extensions provide further information to clarify the placement of titles in the classification structure (e.g., painter - visual arts; painter - motor vehicle manufacturing). These modifiers should be considered when coding an occupational title.

## Military Titles

Titles of military occupations are indicated by adding the modifier **military** after a dash (e.g., sonar technician - military). In a very few cases where military appears in the title itself (i.e., military police officer; military pilot), the modifier is not added.

When a military occupation includes more than one NOC unit group, the title has been given a descriptive modifier in brackets as well as the military modifier, for example, medical officer (specialist) - military.

## Concordance Between Languages

The terminological research conducted for the translation and adaptation of the titles contained in this revised *Index of Titles* has dealt with a component that was not previously addressed. Concordances for all titles in both official languages have been identified. The level of concordance identifies correspondence between one title (or several where there are equivalent titles) to one or many titles in the other language. Contact us if you wish to learn more about concordance information.

## Putting It All Together

Now that you have a better understanding of the structure and concepts surrounding the NOC, it is time to put what you have learned into practice. The remainder of your learning will bridge the gap between theory and application. We will concentrate on learning how to code an occupation based on minimal criteria. This will enable you to better understand the uses of the NOC. Finally, we will learn advanced tips and strategies to classify some of the more difficult occupations. So, let's go...

## ***Learning to Code***

The numerical hierarchy upon which the NOC is based is familiar to regular users of statistics; it offers the convenience of describing the entire structure, and all its underlying definitions, with one number.

It is important that all users learn how to properly code. Accurate coding is especially important to users who depend on data that is collected using the NOC. For example, when analyzing Census occupational data, an economist must be aware of the potential impacts of coding error.

Understanding how coding works will help users recognize errors, why they are made and how to avoid making the same errors in the future.

The usefulness of the NOC occupational descriptions is enhanced by the fact that each occupational code reflects the skills required; this means that the NOC is directly focused on the work performed. Each occupation is defined in terms of the *type* and *level* of skill required.

The type of skill is assigned based on 10 broad occupational areas (0 to 9). These areas combine work type - such as management, work sectors - such as health or sales, and some other characteristics of work - for example, subject matter domains such as natural and applied sciences. The first digit of an occupational code normally reflects the Skill Type.

The level of skill required is based on the type of education or training needed to perform the work. There are four basic levels where occupations require either university, college/technical school or apprenticeship/training, high school/on-the-job training, or short demonstration training. Skill Level is shown as the second digit of the NOC code, except for management occupations.

Together, the first and second digit make up the Major Group. The first, second, and third digit make up the Minor Group, with the third digit representing more specificity related to the area in which an occupation is carried out.

The Unit Group refers to the four-digit NOC code. The four-digit code represents the occupation within the area represented by the Minor Group.

If you're thinking, "Ok, I already know all of this" that's great - you are almost an expert in the NOC! Now, your last challenge will be to apply what you have learned.

## Classification Criteria

As much as a classification system is important, it cannot deliver valid results without having a reliable method for organizing data. This is the point where learning how to properly classify occupations is critical.

Often, the easiest way to classify occupations is achieved by using the *Index of Titles*. While this is an easy method, it is not necessarily the most reliable method. The person coding an occupation must always keep in mind that occupational titles defined by only one source does not always coincide with the NOC definition.

For example, most private companies create their own occupational titles without consulting the NOC. Therefore, a "customer service representative" who works for a particular company may in fact be a "telemarketer" according to the NOC. This case exemplifies one of the major fallacies of the coding practice - the assumption that all occupational titles and descriptions are universal or standardized - they are not and the coder must recognize this fact.

Unfortunately, there is no simple formula or recipe to identify whether an occupational title or description is the same as the title and description in the NOC. However, we will discuss the most important criteria to consider when assigning codes. You may inevitably come across any of the following challenges when coding:

## Coding Examples

### A. Coding an occupation with only a job description

A personnel administrator in a large corporation wants to find the occupational code for a proposed new position within the company. The duties indicate the new position is assistant to a senior executive and it has been decided that a community college diploma in business administration will be required. The company wants to use the NOC to classify their new position. The NOC may also be used to assign a title to the position. Here is how the administrator would locate the occupational code for the position.

The administrator identifies the Skill Type and Skill Level specified in the job description and consults the *Occupational Descriptions* binder. Starting with the Skill Type, she concludes that the occupation is part of the group called *Business, Finance and Administration Occupations*, all of which start with the digit 1.

Next, she considers that community college graduation indicates Skill Level B, which can be reflected as either a 2 or a 3 in the second digit of the code. She finds three *major groups*: professional (11), skilled (12) and clerical (14), so the position will be in Major Group 12: *Skilled Administrative and Business Occupations*.

Next, she considers the four minor groups in this category, which are delineated by area or domain of work:

- 121 Clerical Supervisors
- 122 Administrative and Regulatory Occupations
- 123 Finance and Insurance Administrative Occupations
- 124 Secretaries, Records and Transcriptionists

The new position is not supervisory and does not involve finance or insurance, so the choice is narrowed down to *minor groups* 122 and 124. After reviewing the 8 *unit groups* included in *Administrative and Regulatory Occupations*, the administrator finds that the most relevant unit group is 1222 Executive Assistants. The NOC description of duties includes such elements as analysis, research and meeting independently with clients. However, the proposed position is oriented more towards handling correspondence and scheduling meetings on behalf of the executive and therefore, she decides that this is not the appropriate code.

Turning to minor group 124, the administrator finds that *unit group* 1241 Secretaries (Except Legal and Medical) is a possibility, since the other unit groups in that category are specialized. The duties for NOC 1241 Secretaries listed in the *Occupational Descriptions* closely match those listed in the new job description. Also, the description indicates that completion of a one- or two-year college diploma is a typical requirement. She checks the "Classified Elsewhere" section and finds that none of them are appropriate, so codes the position as 1241 Secretaries. Using the example titles, she assigns the "executive secretary" title to the company's new position.

### ***B. Coding an occupation using the title and description***

In this example, a paralegal in an immigration lawyer's office wants to find the occupational classification code for a client who is seeking to immigrate to Canada. He knows that the client assists with patient care in a dentist's office, and that she will be seeking similar work in Canada. Here is how he would locate the code for her occupation.

The paralegal knows that the title of the client's previous job in another country was "Clinical Assistant". He uses his copy of the NOC *Index of Titles* and looks at the listings. Clinical Assistant is shown with a reference to unit group 3414. The paralegal locates the entry for classification 3414 in the NOC *Occupational Descriptions* binder, and he discovers that this group does not include dental occupations. He looks in the Index again, this time under "dental". There are nearly 40 titles beginning with the word "dental". There are a number of assistants listed in the dental field and he finds *dental assistant* and *dental clinical assistant* titles, both referring to the same unit group, 3411.

In the NOC, the paralegal locates unit group 3411 Dental Assistant. The duties and education requirements are very similar to the experience and qualifications outlined in the client's resume. The paralegal checks the "Classified Elsewhere" section and sees that there is also a related occupation called 3223 Dental Technicians. He reviews that description and notes that the duties relate to the manufacture of dentures, which he realizes is not relevant to his client. After reviewing all of the dental related occupations and their descriptions, the paralegal concludes to code the occupation as 3411 Dental Assistant.

### ***C. Coding an occupation with only the title***

Occasionally, the only information you will have in order to assign an NOC code is the title of an occupation. In this case, when there is no way of obtaining additional information, use the Index to search for the occupational title or for the closest approximation, and use the corresponding NOC code. Be sure to look at possible inversions as well.

When titles do not appear in the *Index of Titles*, assign an NOC code that reflects as closely as possible the essence of the work. For example, the title *forensic scientist* or its inversion *scientist, forensic* does not appear in the Index. In this example, we would assign a 2 (Natural and Applied Sciences) for the first digit given that scientist forms part of the occupation title. Secondly, we can assign digit 1 as the second digit of the code because scientists are classified in Skill Level 1 of the NOC. Thirdly, we narrow our search by looking at the minor groups for Major group 21. We have several options, however, there are two that relate much more to the occupation that we are trying to code: 211 - Physical Science Professionals and 212 - Life Science Professionals. At this point, you must exercise your own judgment as to which minor group and unit group you choose.

Remember that the NOC is only as good as the person using it. Guessing should be avoided unless it is absolutely necessary.

#### Other Coding Tips:

- Apprentices are coded in the same group as qualified workers.
- Residents and articling students are coded in their respective professional groups.
- Supervisors of professionals are usually classified within the occupational group they supervise, in Skill Level A.
- Supervisors of other occupations are usually classified in specific unit groups in Skill Level B within the same Skill Type as those supervised.
- Self-employed construction contractors and supervisors are usually classified as Skill Level B.
- Management occupations start with 0, and for middle and other management occupations, the second digit (1 to 9) of the major group classification indicates the Skill Type, rather than Skill Level.
- In certain cases, you may consider the wage that a person is making to help you code their occupation. For example, a person may indicate that they work as a manager in a retail store. If the person is making minimum wage, this may be an indication that the occupation is supervisory rather than managerial.

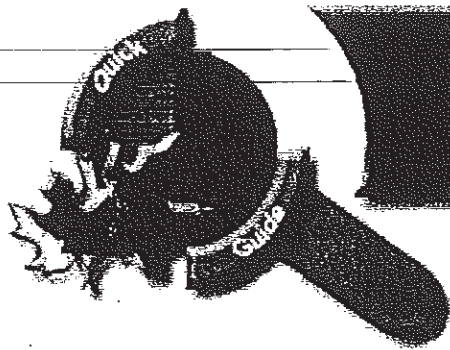
## For more information

For additional information about the NOC and related occupational publications, or to obtain NOC information in an alternate format, please contact us:

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 Program Policy and Coordination Directorate  
 Human Resources and Social Development Canada  
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 140, promenade du Portage  
 Gatineau, Quebec K1A 0J9

Internet: [www5.hrsdc.gc.ca/app/index.aspx?lc=e](http://www5.hrsdc.gc.ca/app/index.aspx?lc=e)  
 E-mail: [noc-cnp.response-reponse@hrsdc-rhdsc.gc.ca](mailto:noc-cnp.response-reponse@hrsdc-rhdsc.gc.ca)

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Version 3.2



# Interviewing Techniques

## QUICK GUIDE

### FOUR PHASES OF AN INTERVIEW

control your baseline/establishing

Orientation Phase	Narration Phase	Cross Examination Phase	Decision Phase
<ul style="list-style-type: none"> <li>Establish the purpose</li> <li>Identify each person (i.e. Visa Officer, client, client's representative, interpreter)</li> <li>Establish adequate level of language comprehension</li> <li><u>Establish rapport</u>: people like people who are like them: pacing</li> <li>Establish a baseline</li> </ul>	<ul style="list-style-type: none"> <li>Maintain or deepen rapport (don't confront at this stage)</li> <li>Go for breadth using interview techniques: <u>open questions</u>, <u>mirroring</u>, <u>paraphrasing</u></li> <li><u>Listen</u>, observe and analyse verbal and non-verbal behaviours</li> <li><u>Detect deception</u> (fear, guilt, cognitive loading)</li> </ul>	<ul style="list-style-type: none"> <li>Your time to probe in chosen areas (<u>closed questions</u>)</li> <li>The Truth lies three questions deep. Go for depth.</li> <li>Ask questions related to verifiable information</li> <li>Stay on topic as long as necessary</li> </ul>	<ul style="list-style-type: none"> <li>Outline your concerns. Confront if necessary.</li> <li>Give the opportunity for the applicant to explain</li> <li>Explain your decision taking into account any rebuttal</li> <li>Explain the next step (i.e. appeal rights, options available)</li> <li>Document the decision</li> </ul>

### TALKING

#### Establishing rapport

People feel comfortable with people who are like them

You can be like another person by adjusting your tone, your language, your rate and volume of speech, your posture

Similarity aids trust, trust aids communication

#### Open Questions

- Can reveal more information
- Give applicant the opportunity to be heard
- Require applicant to think
- Draw out feelings, attitudes

#### Mirroring

- The act of intentionally duplicating a person's words to encourage expansion.
- Can be rapport building

#### Paraphrasing

- The act of restating what the applicant has said in different words
- Creates confidence in the client that they have been heard

#### Closed Questions

- Give interviewer high level of control
- Are quick and easy to formulate but also easy to answer
- Deprive interviewer of opportunity to observe
- Can deprive client of opportunity to be heard

### LISTENING

#### Listening Skills will

- Help you get more information & co-operation
- Reduce likelihood of misunderstandings
- Help you assess a person's credibility
- Make your interviews more productive

#### Active Listening:

- Listening to understand the content and feeling being expressed and to communicate that understanding
- Structured form of listening/responding that focuses attention on the speaker
- Involves analysis of how words are spoken

#### Active Listening "Do's"

- Establish and maintain appropriate eye contact
- Give verbal and visual feedback (I see, nod the head, ...)
- Use paraphrasing and mirroring
- Use pauses effectively
- Make notes at the right moment
- Keep an open mind and be non-judgemental
- Analyse how things are said

#### Active Listening "Don'ts"

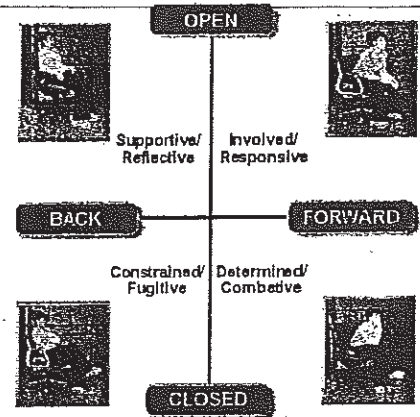
- Don't interrupt the speaker
- Don't complete the speaker's sentences
- Don't allow your body language to send the wrong message

#### Verbal Indicators of Deception:

• Delayed Responses	• Mumbling
• Speaking Slowly	• Speaking Quickly
• Change in Pitch	• Inappropriate Laughter
• Evasive Responses	• Generalized Responses
• Bolstered Responses	• Qualified Responses

# OBSERVING

- Experts estimate that 55% of meaning is communicated by body language.
- Facial expressions communicate the most meaning. But an adult easily conceals emotions by suppressing facial expressions. However, these suppressed emotions leak out in the form of micro-expressions.
- Postures include hand, arm, leg and feet position and movement. Postures communicate less than the face, but they are less subject to control. The face might be the most expressive, but the rest of the body speaks the truth more openly.



## Reading Body Language

Body language consists of

- facial expressions,
- postures and
- gestures.

1. Micro Facial Expressions
2. Body Posture
3. Barriers
4. Protective Gestures
5. Grooming Gestures
6. Illustrators
7. Eye Contact
8. Lip Blocking

### 1- Micro Facial Expressions

- Look for micro, partial and slight facial expressions. Which of the seven universal human expressions are displayed - sadness, anger, surprise, fear, disgust, contempt or happiness?

### 2. Body posture

Posture:

- How is the body oriented? Forward (engaged) back (disengaged)? Open (receptive) or closed (unreceptive)?
- What are the hands, arms, legs and feet doing?

### 2. Body Posture

Honest Body	Deceptive Body
Facing	→ Oriented away
Upright	→ Slouched
Comfortable and relaxed	→ Rigid or fidgety
Engaged	→ Disengaged
Dynamic	→ Static or fidgety

### 3. Barriers

- A very common response to emotional discomfort is to create a barrier between the receiver and the source of the discomfort. Arms and legs crossed in a variety of positions in front of the body make handy barriers. The shift into a crossed position is significant when it coincides with a particular statement or topic.

### 4. Protective Gestures

- These gestures stem from the subconscious desire to stop the flow of words that is causing discomfort. As a child we are likely to place our hands over our mouths. As we get older and more sophisticated, this gesture is modified and the hand is placed on or near the mouth, nose or cheek.

### 5. Grooming Gestures

These gestures are meant to distract the observer and to relieve the speaker's anxiety.

- Adjusting clothing
- Dusting pants
- Picking lint
- Stroking the head
- Wiping the chin

### 6. Illustrators

Honest applicants typically will emphasize and demonstrate the points they are making with hand gestures. An applicant that is attempting to deceive will do one of two things:

- Either suppress their illustrators to the point that their hand movements are absent or curtailed.
- Or they will exaggerate their movements.

It is a comparison with their baseline movements that is telling.

### 7. Eye Contact

- Conclusions based on eye contact must be drawn very carefully given the wide range between individuals and cultures. When assessing eye contact, establishing a baseline, or what is normal, is critical. After establishing a base line, pay attention to any reduced eye contact that occurs in relation to certain statements or topics.

### Five Important Rules

1. Establish the client's baseline and look for deviations.
2. Take context into account
3. Look for clusters of behaviours.
4. Use both body language indicators and verbal indicators.
5. Remember - changed behaviour indicates discomfort, not necessarily deception.



Prepared by:  
Learning & Development Division  
September, 2005

## MISREPRESENTATION TYPES (6)

<i>definition</i>	<i>Examples</i>
<b>IDENTITY</b>	
<i>Where an individual claims to be someone (real or fictional) they are not by using some form of counterfeit, altered, or improperly issues/ obtain (IIO) document.</i>	<p><i>ID documents - birth certificate, national ID cards, marriage certificates, evidence of name change, passports...</i></p> <p><i>Supporting documents – documents which are used to complete a narrative, education certificates, transcripts, letters or evidence of employment, tax statements...</i></p> <p><i>Impostors using genuine documents that are stolen or borrowed.</i></p>
<b>PERSONAL HISTORY</b>	
<i>Where an individual alters or hides events in their past which may be relevant for processing through straight omission or submit some for of counterfeit, altered or IIO document.</i>	<p><i>Omission of relevant information – previous refugee claim in Canada, deportation from USA, military service, political activities...</i></p> <p><i>Fraudulent refugee narratives</i></p> <p><i>Fraudulent supporting documents – police certificates, military service forms, letters of employment, education certificates to account for missing years spent at a KGB college, tax or accounting documents designed to disguise source of funds, travel history in passports...</i></p>
<b>RELATIONSHIP</b>	
<i>Where an individual claims or omits a relationship to include or exclude another person through use of a counterfeit, altered or IIO documents.</i>	<p><i>Fraudulent official documents – birth/death certificates, marriage/divorce certificates, custody judgements...</i></p> <p><i>Fraudulent supporting documents – photos, letters/e-mails, joint bank account statements, tenancy agreements, calling cards or misrepresentation of phone numbers, consent to travel letters of parents...</i></p>

<i>QUALIFICATIONS</i>	
<i>Where an individual claims to possess qualifications or experience that they do not have in order to meet immigration requirements through use of counterfeit, altered or IIO documents.</i>	<i>Fraudulent supporting civil documents- education certificates, transcripts, professional qualifications, letters of employment, evidence of funds, bank statements, house deeds...</i>  <i>Impostors used to obtain professional qualifications, for medical examinations, or language testing...</i>
<i>INTENTIONS</i>	
<i>Where an individual is concealing their real intentions in travelling to Canada through a variety of means.</i>	<i>Invitations to genuine conferences, letters from hosts, letters from business contracts, new passports to conceal travel history, school registrations, offers of employment and LMO's...</i>  <i>False statements and narratives</i>  <i>Omission of relevant of the presence of spouse or would-be-spouse in Canada or the United States, loss of most recent employment or financial turn-around</i>
<i>3<sup>RD</sup> PARTY</i>	
<i>Where the applicant may not be a participant in the perpetration of fraud but is instead the victim.</i>	<i>Exploitive job offers, fake schools, unscrupulous consultants, internet 419 scams</i>

## **11 CATEGORIES OF FRAUD**

### **Documents:**

- (1) Counterfeit ID or Supporting or Official or Civil Documents – i.e. counterfeit marriage certificate
- (2) Altered ID or Supporting or Official or Civil Documents – i.e. altered bank statement
- (3) Genuine but improperly issued (IIO) ID or Supporting or Official or Civil Documents – i.e. purchased birth certificate
- (4) Improperly obtained documents to support story
  - Invitations to Genuine Conferences
  - Letters from Hosts
  - Letters from business contacts
  - New passport to conceal travel history
  - School registrations
  - Offers of employment and LMO's
- (5) Genuine Documents from 3<sup>rd</sup> party to misrepresent clients – i.e. invitation to genuine conferences
- (6) Fantasy documents to support story or to misrepresent clients –i.e. fictitious employees

### **Impostors:**

- (7) Identity - Impostors using genuine documents, stolen or borrowed.
- (8) Qualifications - Impostors used to obtain professional qualifications (e.g. pilot's licence), for medical examinations or language testing

### **Omission:**

- (9) Omission of relevant information from clients –i.e. failure to disclose spouse residing in Canada

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**Narratives:**

(10) Fraudulent narratives from clients to support story –i.e. stories related to marriages of convenience

(11) Fraudulent narratives from related 3<sup>rd</sup> parties to support story or documents presented

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# **BC PROVINCIAL NOMINEE PROGRAM**

## **POLICY MANUAL**

### *BUSINESS IMMIGRATION CATEGORIES*

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Economic Immigration Program  
Ministry of Jobs, Tourism and Innovation

November 21, 2011

## **BC PNP Policy Manual – Business Categories**

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**Subject:**

Public Information

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**Policy:**

Selection criteria, requirements, application procedures and forms are posted on the BC PNP website: [www.WelcomeBC.ca/PNP](http://www.WelcomeBC.ca/PNP)

In the event of a conflict between information in the BC PNP Policy and Procedures Manual and the BC PNP website, the current website shall be considered correct.

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Policy Number: (ii)

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**Subject:**

Public Information

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**Policy:**

Selection criteria, requirements, application procedures and forms for the BC PNP Business Categories are posted on the BC PNP website:

[http://www.welcomebc.ca/wbc/immigration/come/work/about/business\\_immigrants/index.p  
age?](http://www.welcomebc.ca/wbc/immigration/come/work/about/business_immigrants/index.page?)

In the event of a conflict between information in this Policy Manual and information on the BC PNP website, the current website information will be considered correct.

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**Subject:**Communication With Applicants

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**Policy:**

Communication of decisions to Applicants (or Authorized Representatives) must be conducted in writing, whether electronically (by fax or e-mail) or by letter. In either case the date of the communication must be prominently displayed at the top of the document as this date may indicate the start date of certain response deadlines for the Applicant.

When correspondence is received from the Applicant, whether directly or through an Authorized Representative, via fax or e-mail or attachment to e-mail the correspondence will be deemed to be an original document authorized and executed by the Applicant provided the sender's e-mail address or the fax transmission number on the document correspond to the known address/phone number of the Applicant or Authorized Representative.

Requests for information from Applicants or Authorized Representatives may be conducted electronically (e-mail, fax or phone) or by letter. Where a request for information requires a response from the Applicant within a defined time limit, the request must be made by e-mail with a "read receipt" request attached, by dated fax or by dated letter. The read receipt response must be recorded in the application file.

Documents signed by the Applicant and returned to the BC PNP by electronic transmission will be deemed to be original signed documents.

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**Subject:**

Date of Notification – Starting the Clock

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**Background and Objectives:**

The BC PNP application process requires an Applicant to take an action within a specified period of time.

To ensure administrative fairness, a logical and consistent starting point for all time-critical actions must be established. This starting point is referred to as **the notification date**.

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**Policy:**

Communication of decisions to Applicants (or Authorized Representatives) must be conducted in writing, either electronically (by fax, or by e-mail if a delivery receipt is requested) or by letter. In every case the date of the communication must be prominently displayed at the top of the document.

Where an e-mail delivery receipt is received, or where a confirmation of fax transmission is received that date must serve as **the notification date**. In the case of notification by letter, the date displayed at the top of the letter must be the **notification date**.

Requests for information from Applicants or Authorized Representatives may be conducted electronically (e-mail, fax or phone) or by letter. Where a request for information requires a response from the Applicant within a defined time limit, the request must be made by e-mail (with a "read receipt" request attached), by dated fax or by dated letter. In the case of e-mail, the read receipt acknowledgement, and in the case of a fax, the successful transmission date must be considered **the notification date**. In the case of notification by letter, the date displayed at the top of the letter must be the **notification date**.

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Policy Number: (v)

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**Subject:**

Date of Notification – Stopping the Clock

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**Policy:**

Where the Applicant is required to submit documents to Citizenship and Immigration Canada (*hereafter CIC*) by a specified end date, the document submission date will be the date the document is received and stamped in at CIC.

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**Subject:**Seminar and Application Fee Schedule

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**Background and Objectives:**

All applications received under the BC PNP – Business Immigration categories are subject to processing fees.

A portion of the processing fee may be refunded to the Applicant under prescribed circumstances.

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**Policy:**

The fee schedule is as follows:

- Seminar attendance (optional) - \$125 per Principal Applicant
- Application for Nomination Processing Fee - \$3,000 per Principal Applicant
- Application for Nomination of Key Staff - \$1,000 per Key Staff applicant.

The Processing Fee, less \$1,000, and any Key Staff fees will be refunded in cases where the application fails in the **initial screening** phase (Policy 6-0 and 6-1 refer).

Once the application enters the **assessment phase** there will be no refunds except under extraordinary circumstances which, in the opinion of the Director, warrant a refund.

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**Subject:**Methods of Payment and Receipts

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**Policy:**

All application fees will be paid by bank draft, cashier's cheque, Visa, MasterCard, or a lawyer's trust cheque payable to the "Minister of Finance for the Province of British Columbia" at the time of application.

Deposits required under the Fast-Track option will be paid by cashier's cheque or bank draft payable to the Minister of Finance for the Province of British Columbia when the *Deposit Agreement* is executed.

Seminar fees may be paid by cash, or credit card – Visa or Master Card.

Official receipts for fees and deposits received will be issued to the Payer by BC PNP.

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**Subject:**Critical Timelines

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**Background and Objectives:**

Completion of the application process requires the Applicant or the BC PNP to respond at various points in the process within specific prescribed timelines. These timelines are triggered by a start date which is **the notification date**. See Policy Number (iv) for a description of the notification date.

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**Policy:**

The critical timelines are:

- 90 days from the date of the Letter of Support to submit an application to Citizenship and Immigration Canada (CIC) for a Work Permit;
  - 180 days from nomination to submit Permanent Residence Visa application to CIC;
  - 30 days from dated notice of nomination withdrawal to respond;
  - Two years from the date of the Work Permit to comply with *Performance Agreement* (the **Business Establishment Period**);
  - Six months from the date of the Work Permit to elect Fast-Track nomination;
  - Not less than 90 days from the end of the Business Establishment Period to request an extension;
  - 30 days from written notification from CIC that Permanent Resident visa will not be issued to return the Deposit in the absence of any enduring default;
  - 30 days from the date the BC PNP is satisfied with compliance to return the deposit.
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**Subject:**

"Day" - Defined

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**Policy:**

Unless otherwise specified in a in a BC PNP-produced document or written communication, a "day" means a *calendar* day.

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**Subject:**

Terminology – Applicant, Nominee Candidate, Nominee

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**Policy:**

From the receipt of an application up to the point of application for a Work Permit, the applicant is referred to as the **Applicant**. Once the Work Permit has been issued by CIC, the Applicant becomes the **Nominee Candidate**. Once the nominee candidate has fulfilled the *Performance Agreement* to the satisfaction of the BC PNP, the applicant becomes the **Nominee**.

Nominee Candidate who select the Fast-Track nomination option become Nominees upon execution of the *Deposit Agreement* and confirmation that the candidate has established a permanent residence in the province, has opened a bank account with sufficient funds to complete the *Performance Agreement*, has paid all required fees and deposits, has received a Work Permit, and has delivered any other documentation required by the BC PNP.

The terms Applicant, Nominee Candidate and Nominee are designations for BC-PNP administration purposes only and do not confer any immigration status on an individual.

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**Subject:**

"Business Establishment Period" - Defined

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**Policy:**

The *Performance Agreement* executed by the Nominee Candidate will specify that the candidate has a period of up to 24 months from the date of the issuance of the Work Permit to establish the business and fulfil the requirements of the Performance Agreement. This period is the ***Business Establishment Period***.

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**Subject:**

Translators/Interpreters

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**Policy:**

An applicant may use the services of a translator/interpreter at any stage in the application process, including the interview, provided that the translator/interpreter is properly **certified**.

If the translation/interpretation is performed in Canada, the translator/interpreter must be:

- a member of the *Society of Interpreters and Translators of BC*, or,
- a licence or certificate holder authorized to work as a Court interpreter in BC.

If the translation is performed outside of Canada, the translated documents must be stamped and certified by a person officially authorized to notarize documents as accurate translations.

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**Subject:**

Correspondence Signatories

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**Policy:**

Nomination Certificates, Letters of Confirmation and Support for Work Permits are signed by the Program Director, or designate.

Work permit renewal support letters are signed by Program Managers, or designate.

Letters of Refusal are signed by the Program Advisor assigned to review the application.

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**Subject:**

Administrative (Procedural) Fairness

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**Background and Objectives:**

Whenever the legal rights of an individual may be affected by officials exercising legal decision-making authority, the decision must be made in accordance with the principles of administrative or "procedural" fairness.

In the BC PNP, administrative fairness means:

- Applicants and prospective Applicants are not denied *reasonable* access to public information about the program. *Reasonable* access may be provided electronically through the program website or through electronic or telephonic correspondence with the inquirer;
  - all enquiries and applications are processed without unwarranted delay;
  - no application is refused or closed until the Program Advisor is satisfied the Applicant does not meet the test for nomination for a Permanent Resident visa; and
  - the decision-maker always acts in a manner which is unbiased, fair and open-minded.
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**Policy:**

BC PNP staff must adhere to the principle of Administrative Fairness in the review of applications.

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**Subject:**

Administrative Fairness – Timely Processing

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**Policy:**

Administrative fairness dictates that every qualified applicant have an equal opportunity to apply and to be processed in a timely manner.

Timely processing is also substantially in the hands of the Applicant as time taken to respond to the Program Advisor's requests for clarification, or additional documentation will have a bearing on when a decision can be reached. It is a reasonable expectation that the Program Advisor who is handling several applications at one time will deal with those applications that are ready to proceed rather than those where a response is awaited from the Applicant. Doing so does not impair administrative fairness.

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**Subject:**Administrative Fairness in Refusing Applications

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**Background and Objectives:**

An application will be reviewed by a Program Advisor and a Program Manager or Director, before a decision is rendered on an application. At any stage, the Applicant may be consulted for more information.

It is critical to the integrity of the BC PNP that the principles of administrative fairness are adhered to in that the Applicant has the right to know the reason(s) for the refusal.

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**Policy:**

The Program Advisor will inform in writing the Applicant or the sponsoring company, in the case of Strategic Project applications, of the reason(s) for refusal of the application and will, if the application is in the assessment phase, provide the Applicant with a reasonable period of time to respond to the reason(s) for pending refusal.

In the **check for completeness** and **initial screening** phases, the applicant's recourse is to remedy the shortcoming and reapply. When an application has advanced to the **assessment** phase, the Applicant must have the opportunity to resolve the reasons before the refusal is finalised. The application process, including the delivery of a Deficiency Letter to the Applicant and the personal interview, affords the Applicant a fair and reasonable opportunity to understand the reason(s) for refusal and to respond to the reason(s).

The applicant will have no right of appeal of a refusal.

When a previously refused Applicant submits a new application, the Program Manager or Director will assign the file to a Program Advisor who was not involved in the assessment of the previous application.

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**Subject:**

Administrative Fairness – Onus on Applicant

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**Background and Objectives:**

While it is the responsibility of the Program Advisor to thoroughly assess the information submitted in an application before rendering a decision, it is the sole responsibility of the Applicant to provide full and correct information to allow the Program Advisor to properly assess the application.

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**Policy:**

The onus is on the Applicant to provide full and correct information in the application.

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**Subject:**Documenting the Decision

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**Background and Objectives:**

The principle of administrative (procedural) fairness requires disclosure of decisions and the reasoning behind decisions to applicants. This in turn dictates that the steps taken in reaching a decision be properly documented so as to leave a complete record of the decision process beginning with receipt of the application and proceeding through the check for completeness, the initial screening, detailed assessment and ending with the decision to nominate or refuse.

This record ensures that the rights of the Applicant are protected, and can be shown to have been protected. This record also protects the program and staff against claims of bias, mistreatment, delay and other elements of administrative unfairness when nominations are denied. In addition, *Annex B* requires that BC maintain permanent records of its assessments of provincial nominee candidates.

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**Policy:**

While the Program Advisor will typically have the largest impact on an application file, it is the responsibility of all staff involved to ensure that action taken on the file is fully and properly recorded so as to leave a complete record of the receipt, assessment and decision of the application.

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**Subject:**Decisions Where Discretion Applied

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**Background and Objectives:**

The Program Advisor, the Program Manager or the Director will need to use discretion, from time to time, in making decisions required to move an application from receipt to conclusion, or an applicant from Applicant to Nominee Candidate to Nominee. In keeping with the principles of procedural fairness, it is essential that use of discretion, with the rationale for the decision taken, is properly documented.

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**Policy:**

Whenever discretion is utilised in reaching a decision that has a material impact on the progress or outcome of an application or an applicant, the decision will be documented.

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**Subject:**

Coordinated Intake of Applications

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**Policy:**

To avoid any perceptions of bias, favouritism or conflict of interest, incoming applications must be centrally received through the Officer charged with responsibility for receiving and logging in new applications.

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Policy Number: 1-1-6

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**Subject:**

Random Assignment of Files

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**Policy:**

To avoid any perceptions of bias, favouritism or conflict of interest, all incoming applications will be randomly assigned to Program Advisors by the person charged with responsibility for assignment of files.

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**Subject:**

Conflict of Interest – Duty to Report

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**Background and Objectives:**

A conflict of interest is commonly defined as a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his/her official duties.

The **perception** of conflict of interest is equally damaging as actual conflict of interest and must be remedied as quickly as actual conflict of interest.

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**Policy:**

Every program officer has an on-going duty of care to avoid conflict of interest and the perception of conflict of interest in the performance of duties under the BC PNP. If a program officer becomes aware:

- that the officer is in a conflict of interest; or
- that the officer may be **perceived** by others to be in a conflict of interest; or
- that participation by the officer in the processing of a file will create a conflict of interest

the officer must immediately return the file to the assigning officer and avoid any further participation in the processing of the application.

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**Subject:**

No Review Without Application

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**Background and Objectives:**

BC PNP staff is often asked to review investment schemes or investment projects prior to application in order to receive an endorsement of eligibility.

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**Policy:**

Each investment proposal will be considered on its own merits.

An investment proposal will not be reviewed unless it is contained within a formal application in a BC PNP-Business Immigration category.

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**Subject:**Due Diligence

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**Background and Objectives:**

As per the *Canada-British Columbia Immigration Agreement, Annex B: Provincial Nominees*:

3.1 British Columbia has the sole and non-transferable responsibility to assess and nominate candidates who, based on British Columbia's determination:

- a. will be of significant benefit to the economic development of British Columbia; and
- b. have a strong likelihood of becoming economically established in British Columbia.

3.2 British Columbia will nominate foreign nationals on the basis of economic benefit to British Columbia. The nomination criteria of the Provincial Nominee Program categories shall demonstrate the economic benefit to the Province. Provincial Nominees may be nominated for purposes that include, but are not limited to, meeting critical skill shortages in British Columbia, the immigration of key individuals of businesses that wish to locate in British Columbia and the establishment or enhancement of new and existing businesses.

3.3 Non-economic factors shall not provide the primary basis upon which a nomination is made.

3.7 Canada will consider a nomination certificate issued by British Columbia as evidence that British Columbia has conducted due diligence in exercising its authority to assess and nominate candidates pursuant to section 3.1, 3.2 and 3.3 of this Annex.

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**Policy:**

To maintain program integrity and minimise the opportunity for immigration fraud through a BC PNP application, Program Advisors and Program Managers conduct an *appropriate* degree of due diligence on each Applicant. Appropriate means the level of investigation that any reasonable person would take to verify the material facts concerning a BC PNP application before making a decision on the application.

Due diligence is applied in the following manner:

- confirm that the Applicant has provided documentation of legal status in Canada, is as represented, and that the authorized representative is properly certified/licensed;

- verify information critical to the nomination decision with reliable sources and, where necessary, reliable documentation;
  - confirm the proposed business activities of the Applicant have a reasonable prospect of commercial viability, thereby creating significant economic benefit for British Columbia; and
  - confirm the Applicant has the skills, knowledge, intention and the legally acquired financial resources necessary to successfully undertake and sustain the proposed activities.
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**Subject:**

Authority to Disclose Information

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**Policy:**

The BC PNP collects a significant amount of information on the Applicant. Disclosure of information provided to the BC PNP is in accordance with the *Freedom of Information and Protection of Privacy Act (1996)*.

BC PNP may not disclose information to anyone other than the Applicant without the express written consent of the Applicant to whom the information relates.

Authority is given by the Applicant through the Information Release Form (BC PNP F-003) for an exchange of information between BC PNP, CIC and CBSA for the purpose of assessing, verifying and evaluating the BC PNP.

The *Authorized Representative Form* authorizes BC PNP to release information to designated representatives.

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**Subject:**

Authorized Representative

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**Policy:**

The Program Advisor may contact the Applicant directly at any stage in the application process, regardless of the involvement of an authorized representative. This unfettered access to the applicants is an essential element of the due diligence process.

The BC PNP requires immigration representatives to meet the definition of "authorized representative":

- **immigration consultants** who are members in good standing of the Immigration Consultants of Canada Regulatory Council (<http://www.iccrc-crcic.ca/home.cfm>)
- **lawyers** who are members in good standing of a Canadian law society, and students-at-law under their supervision
- **notaries** who are members in good standing of the Chambre des notaires du Québec, and students-at-law under their supervision

Applicants to the BC PNP are not obliged to hire a representative.

Applications are treated equally, regardless of the assistance of an authorized representative.

BC PNP staff must obtain written authorization on form Authorized Representative Form to discuss case information with the Authorized Representative before engaging in correspondence or discussions on specific case information.

When authorization has been received, BC PNP staff will facilitate the Applicant's relationship with authorized representatives by including them on correspondence.

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**Subject:**Refusal to Deal with a Representative

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**Policy:**

Applicants are required to confirm the eligibility of their representative by completing the *BC PNP Authorized Representative Form*.

When an unauthorized representative is identified during initial screening, the application will be returned to the Applicant unprocessed.

When an unauthorized representative is identified in an application after processing has begun, the Applicant will be notified that his/her representative does not meet requirements of an Authorized Representative and that the BC PNP will not communicate with the ineligible party. If the BC PNP finds evidence of the use of a concealed representative during the processing of an application the Applicant may be refused for misrepresentation.

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**Subject:**Questions Regarding Material Facts

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**Policy:**

When due diligence identifies questions regarding material facts in a BC PNP application, no decision will be made until the Applicant has had a **reasonable** opportunity (Policy 2-3-1 refers), to resolve the question.

If the Applicant is unwilling or unable to respond within a reasonable time, the Program Advisor will consider all of the relevant facts and decide either:

- to extend the period for a response, if the Program Advisor has reason to believe a response is likely to be forthcoming within a reasonable time; or,
  - to refuse the file.
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**Subject:**

"Reasonable Opportunity to Respond" - Defined

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**Background and Objectives:**

Procedural fairness dictates that the Applicant be given **reasonable** period of time to respond to a request for additional information or to resolve an issue which if not resolved could lead to a refusal decision.

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**Policy:**

A "reasonable" opportunity for the purposes of the BC PNP is normally a **maximum** of 30 days from the date the Applicant is notified of the issue/request for information.

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**Subject:**

Approval Not Guaranteed by Eligibility

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**Background and Objectives:**

The BC PNP nominates for permanent residence Applicants who:

- have the ability to establish themselves successfully in BC; and
- develop and actively manage a business that will provide significant economic benefits to the province.

The BC PNP establishes nomination targets for the program, and gives priority to candidates who demonstrate the greatest potential to create a successful business and contribute economically to the province.

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**Policy:**

The onus is on the Applicant to present an application which meets the eligibility requirements for the Applicant, the relevant program category, the proposed investment, the proposed location of the business and a Business Plan that supports the investment in that location. Meeting the minimum eligibility requirements does not guarantee approval.

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**Subject:**

Processing Priority for Certain Business Proposals

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**Background and Objectives:**

Certain business proposals may be deemed to be priorities based on their demonstrated potential to create exceptional economic benefits for British Columbia.

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**Policy:**

At the discretion of the BC PNP, applications that demonstrate the potential to create exceptional economic benefits for British Columbia may receive priority processing. .

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**Subject:**General Eligibility Requirements – All Categories

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**Policy:**

The basic criteria for consideration under all three of the business categories relates to business eligibility:

1. the primary purpose of the business is to earn profits from active income from the supply of products/services;
  2. the business must have potential for sustained commercial viability;
  3. the business must have the potential to create significant economic benefit. The benefits may contribute to one of the following:
    - increasing the exports of goods/services;
    - increasing value-added manufacturing, processing, or primary resource activity;
    - increasing destination tourism;
    - increasing research and development and technology commercialization;
    - developing innovative and creative approaches to traditional businesses;
    - servicing an underserved regional market;
    - transferring skills, technology, and specialized know-how to the province;
    - succession plan buy-outs where eligible businesses are purchased from retiring owners.
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**Subject:**General Eligibility Requirements – Business Skills

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**Policy:**

Applicants in the Business Skills category are required to:

1. make a personal investment of at least \$400,000 CAD to establish or to purchase and expand an eligible business anywhere in BC;
2. create at least three new jobs in the business for Canadians or permanent residents, except where the Applicant will maintain existing jobs as part of an eligible regional succession plan buy-out, in which case the job-creation requirement will be reduced in accordance with Policy 3-4;
3. own at least one-third (33 1/3%) of the equity of the business;
4. provide active and on-going participation in the day to day management and direction of the business;
5. demonstrate that they have:
  - the skills and experience necessary to establish and operate a commercially viable business in BC;
  - a personal net worth of at least \$800,000 CAD obtained from legal sources;
  - sufficient unencumbered personal funds to make the required investment; and
  - a viable business proposal;
6. sign a *Performance Agreement* with the Province of British Columbia; and
7. sign a *Deposit Agreement* with the Province of British Columbia, if they are seeking a **fast-track** nomination.

Principal Applicants may include one foreign, key staff essential to the proposed business as a co-Applicant, but must still create three jobs for Canadians or permanent residents.

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**Subject:**General Eligibility Requirements – Regional Business

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**Policy:**

Applicants in the Regional Business category are required to:

1. make a personal investment of at least \$200,000 CAD to establish or to purchase and expand an eligible business outside of the defined Vancouver metropolitan area or the Abbotsford metropolitan area\*;
2. create at least one new job in the business for a Canadian or permanent resident except where the Applicant will maintain existing jobs as part of an eligible regional succession plan buy-out in accordance with Policy 3-4;
3. own at least one-third (33 1/3%) of the equity of the business;
4. provide active and on-going participation in the day-to-day management and direction of the business;
5. demonstrate that they have:
  - the skills and experience necessary to establish and operate a commercially viable business in BC;
  - a personal net worth of at least \$400,000 CAD obtained from legal sources; and
  - sufficient unencumbered personal funds to make the required investment a viable business proposal;
6. sign a *Performance Agreement* with the Province of British Columbia; and
7. Sign a *Deposit Agreement* with the Province of British Columbia if they are seeking a **Fast-Track** nomination.

Applications in the Regional Business category are limited to principal applicants. Foreign key staff cannot be included as co-applicants.

\*As defined on the BC PNP website.

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**Subject:**General Eligibility Requirements – Strategic Projects

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**Background and Objectives:**

The Strategic Projects category assists foreign-controlled companies establish an eligible business in BC with the timely entry of foreign key managerial, professional or technical staff, up to a maximum of 5 per company, who intend to become permanent residents of Canada and settle in BC.

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**Policy:**

Sponsoring companies applying in this category are required to:

1. make a minimum equity investment of \$500,000 to establish or purchase and expand an eligible business in BC;
2. incorporate a Canadian subsidiary or register an extra-provincial company in BC to operate the proposed business;
3. acquire, through the investment, at least one-third (33 1/3%) ownership and control of the voting shares of the company, without any rights of redemption;
4. create at least three jobs for Canadians or permanent residents in BC for each Key Staff except where the Applicant will maintain existing jobs as part of an eligible regional succession plan buy-out, in which case the job-creation requirement will be reduced in accordance with Policy 3-4;
5. demonstrate a record of good business practices and successful business operations outside of Canada relevant to the proposed business;
6. demonstrate that the Key Staff are qualified senior personnel essential to establishing or expanding and operating the proposed business; and,
7. sign a *Performance Agreement* with the Province of British Columbia.

The **Fast-Track** option is NOT available in this category.

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**Subject:**

Job Creation and Job Maintenance – Regional Succession Plan Buy-Outs

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**Background and Objectives:**

Business succession and the maintaining of existing jobs have been identified as critical issues for communities outside of the Vancouver and Abbotsford metropolitan areas. An objective of the BC PNP is to help sustain regional economic activity and employment.

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**Policy:**

**Regional Business** applicants who commit to purchase an existing business that has been in operation for at least 5 years will not be required to create a new job where they commit to maintain existing employment for Canadian citizens or permanent residents.

**Business Skills** applicants and sponsoring companies under **Strategic Projects** that commit to purchase an existing business outside of the defined metropolitan areas that has been in operation for at least 5 years will have their stipulated job creation requirements reduced by one job for each existing job that is to be maintained for Canadian citizens or permanent residents.

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**Subject:**Ineligible Business Activities

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**Background and Objectives:**

Certain types of business activity are ineligible under the BC PNP as they are deemed not to offer significant economic benefits to British Columbia or are otherwise inconsistent with program objectives or are precluded under the *Immigration and Refugee Protection Regulations*.

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**Policy:**

Applications will not be considered where the Applicant presents a business proposal involving any of the following activities:

- bed and breakfasts, hobby farms and home-based businesses;
- pay day loan, cheque cashing, money changing and cash machine businesses;
- pawnbrokers;
- coin-operated laundries;
- automated car wash operations;
- sale of used goods (excluding collectibles, or where the business provides value-added services such as repairs, refurbishing, or recycling);
- real estate development/brokerage, insurance brokerage or business brokerage;
- businesses involved in the production, distribution or sale of pornographic or sexually explicit products or services, or in the provision of sexually oriented services;
- an otherwise eligible business activity that is proposed for a community or region which is deemed by the BC PNP to be already fully served by existing business in the region; and
- any other type of business that by association would tend to bring the program or the Government of British Columbia into disrepute.

Applications will not be considered when a proposed investment does not satisfy the requirements of Section 87 of the federal *Immigration and Refugee Protection Regulations*.

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**Subject:**Ineligible Business Activities in Defined Metropolitan Areas

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**Background and Objectives:**

In addition to the Ineligible Business Activities defined in Policy 4-0, certain other types of business activity, if they were to be undertaken within the Vancouver and Abbotsford metropolitan areas\*, are deemed not to offer significant economic benefits to British Columbia and are therefore ineligible under the BC PNP.

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**Policy:**

The following activities are ineligible activities within the defined metropolitan areas.

- convenience stores;
- video and DVD rental stores;
- gasoline service stations; and
- personal dry cleaning services.

\*As defined on the BC PNP website.

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**Subject:**Significant Economic Benefit

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**Background and Objectives:**

As per the *Canada-British Columbia Immigration Agreement, Annex B: Provincial Nominees*:

3.1 British Columbia has the sole and non-transferable responsibility to assess and nominate candidates who, based on British Columbia's determination:

- a. will be of significant benefit to the economic development of British Columbia; and
- b. have a strong likelihood of becoming economically established in British Columbia.

3.2 British Columbia will nominate foreign nationals on the basis of economic benefit to British Columbia. The nomination criteria of the Provincial Nominee Program categories shall demonstrate the economic benefit to the Province. Provincial Nominees may be nominated for purposes that include, but are not limited to, meeting critical skill shortages in British Columbia, the immigration of key individuals of businesses that wish to locate in British Columbia and the establishment or enhancement of new and existing businesses.

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**Policy:**

To be approved, applications must demonstrate **significant economic benefit**. For the purposes of the BC PNP, the **potential** for significant economic benefit occurs when a Business Plan proposes to make at least the applicable minimum investment in an eligible business activity and, in so doing, create and/or maintain at least the applicable minimum number of jobs for Canadians or permanent residents.

For application approval, the Program Advisor must be satisfied that, notwithstanding the *eligibility* of the proposed business activity, the business and the Applicant's presence in British Columbia will likely result in significant economic benefit to the province.

The second part of the assessment of economic benefit, irrespective of the quality of the Business Plan, requires the Program Advisor to make a determination of the Applicant's ability to execute the Business Plan and to establish successfully in British Columbia.

Where the Applicant's Business Plan meets all of the requirements of the relevant business category and the Program Advisor is satisfied:

- the Applicant has a reasonable prospect of executing the plan successfully; and,
- the target community has sufficient under-serviced capacity to absorb the good or service; and,
- the community can accommodate a new competitor without harm to existing jobs in the community;

then significant economic benefit is presumed to follow.

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**Subject:**Eligible Investment

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**Background and Objectives:**

The BC PNP places limitations on the allocation of the Applicant's minimum prescribed investment.

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**Policy:**

The Applicant's investment must result in ownership and/or control of at least one-third of the voting common shares. The shares must be common full-voting and must not have a redemption option.

- Where the investment is in an existing business, at least one-third of the applicable minimum investment must be applied directly to the expansion of the business through acquisition of typical expansion items:
  - additional machinery and equipment;
  - inventory building;
  - acquisition of **relevant** patents and licenses;
  - additional promotion and marketing;
  - additional market-priced real estate **where it is clearly an essential element of the expansion**; and,
  - other typical expansion expenditures clearly necessary to the success of the expansion.
- Where the investment is in a start-up business, the investment may be applied to:
  - market-priced real estate **that is clearly necessary for the start-up**;
  - machinery, equipment, furniture and fixtures;
  - leasehold improvements;
  - inventory;
  - patents and licenses;
  - franchise purchase fees;
  - allowable real estate and franchises;
  - initial promotion and marketing;
  - other start-up expenses, such as incorporation and permit fees, legal and other professional fees.

If, due to the nature of the business, the full amount of the minimum required personal equity investment cannot be applied to these types of expenditures, the Applicant may apply the balance to wages, building rent and other normal operating expenses **during the first six months of operations** if a new business, **or three months if buying a franchise or an existing business.**

The limitations on application of the eligible investment are:

- no more than two-thirds of the minimum investment can apply to the purchase of the assets or shares of an existing business.
  - the Applicant **cannot** apply any of the minimum investment to payments to the Applicant or to any family members whether or not they are employees of the company, during the relevant six month or three month period.
  - expenditure amounts on specific items or categories of items, that cannot be demonstrated to be reasonable in the context of the expansion or start-up will not be considered eligible investment.
  - BC PNP will not recognize any investment made prior to the approval of the application.
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**Subject:**

Active Management

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**Background and Objectives:**

It must be clear from the Business Plan and the personal interview that the Applicant and Key Staff, if any, will be fully and actively engaged in day-to-day operation of the business through an identified key management role.

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**Policy:**

The application must clearly demonstrate that the nominee or nominee candidate will be fully and actively engaged in the day-to-day management of the business enterprise which has received the required minimum investment.

*Fully and actively engaged in the day-to-day management* means the nominee or nominee candidate holds or will hold a senior management position with substantial day-to-day and on-going managerial responsibility normally conducted at the place of business.

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**Subject:**

The Complete Application – Principal Applicant – **except** Strategic Projects

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**Policy:**

An application must contain:

- BC PNP C-001 Application Checklist
- BC PNP F-001 Application Form
- BC PNP F-002 Additional Business Information Form, *if applicable*
- BC PNP F-003 Information Release Form – *principal applicant, key staff as appropriate;*
- BC PNP F-006 Business Immigration Fee Payment Form – *including fees for Key Staff if applicable*
- Business Plan, in duplicate;
- Sources of Funding, *see Policy Number 5-0-3;*
- IMM 0008 Generic Application Form for Canada – *principal applicant only;*
- IMM 5669: Background / Declaration – *principal applicant, spouse/partner, dependent children over 18 years;*
- IMM 5406 Additional Family Information - *principal applicant, spouse/partner, dependent children over 18 years;*
- Schedule 4: Economic Classes – Provincial Nominees
- Schedule 4A: Economic Classes – Provincial Nominees – Business Nominees – *principal applicant only.*
- Travel documents and/or passports - *principal applicant, spouse/partner, dependent children;*
- Identity and Civil Status Documents including:
  - A Birth Certificate which includes the names of the parents;
  - A marriage, final divorce, annulment or separation certificate for each of the applicant and spouse (if any);
  - A Death Certificate for a former spouse, where applicable, for each of the applicant and spouse;
  - Original photos of each member of the family included in the application;

and

- any other information/documentation the BC PNP may require.

All documents must be in English or must be accompanied by a certified translation.

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**Subject:**

The Complete Application – Strategic Projects

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**Policy**

A Strategic Projects application must contain:

- BC PNP C-002 Application Checklist
- BC PNP F-007 Project Sponsor Information Form – sponsoring company
- BC PNP F-003 Information Release Form – *key staff*;
- Letter of Authorization for Release of Information to A Third Party
- Business Plan, in duplicate;
- Performance Agreement
- Sources of Funding – *see Policy 5-0-3*;
- Documentation of Key Staff - *see Policy 5-0-2*;
- Application Fee Payment – including fees for Key Staff.

All documents must be in English or must be accompanied by a certified translation.

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**Subject:**

The Complete Application – Key Staff

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**Policy**

When Key Staff are included in an application the following **additional** documentation is required for each Key Staff:

- BC PNP C-002 Application Checklist Key Staff
- BC PNP A-001 Authorized Representative Form
- BC PNP F-004 Key Staff Information Release Form
- BC PNP F-005 Key Staff Information Form
- Application for Permanent Residence for Provincial Nominees:
- IMM 0008 Generic Application Form for Canada - completed by Key Staff applicant only;
- IMM 5669 Schedule A: Background / Declaration – *Key Staff, spouse/partner, dependent children over 18 years;*
- IMM 5406 Additional Family Information – *Key Staff, spouse/partner, dependent children over 18 years;*
- Schedule 4: Economic Classes – Provincial Nominees
- Schedule 4A: Economic Classes – Provincial Nominees – Business Nominees - *completed by Key Staff applicant only*
- Travel documents and/or passports – *Key Staff, spouse/partner, dependent children;*
- Original photos of each member of the family included in the application
- Identity and Civil Status Documents including:
  - A Birth Certificate which includes the names of the parents;
  - A marriage, final divorce, annulment or separation certificate for each of the applicant and spouse (if any);
  - A Death Certificate for a former spouse, where applicable, for each of the applicant and spouse;
- and
- any other information/documentation the BC PNP may require.

All documents must be in English or must be accompanied by a certified translation.

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**Subject:**

Source of Funds Documentation

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**Background and Objectives:**

Thorough verification of financial resources and net worth is required to qualify the applicant and to confirm ability to complete the obligations of the *Performance Agreement*.

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**Policy:**

For Business Skills and Regional Business applications both personal and corporate verification is required. For Strategic Projects, only corporate verification is required.

Following are examples of the documents that will assist in verification.

**Personal:**

- Personal income tax returns;
- Personal bank statements;
- Proof of company ownership, or a partnership agreement;
- Proof of ownership of real estate;
- Proof of business participation and/or employment
- Bank references;
- Documents detailing or explaining any other outstanding sources of funds.

**Corporate Financial Information:**

- Corporate income tax returns;
- Bank account statements;
- Balance sheets, income statements, statements of changes in financial position (cash flow);
- Company certificates, including registration;
- Legal documents detailing the acquisition of the company (sales agreements, company minutes, etc.);
- bank references;
- Evidence of authority to sign banking documents for the business;
- List of officers and shareholders showing ownership;

**And**, additionally, for Strategic Projects, the sponsoring company's:

- Proof of ownership of major assets, including real estate;
- Documents detailing or explaining any other outstanding sources of funds.

Applicants may include other relevant documentation.

All documents must be in English or must be accompanied by a certified translation.

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**Subject:**Acceptable Travel Documents and Passports

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**Policy:**

Applicants must submit with their application a legible photocopy of travel document and passport information for:

- the principal applicant;
- the spouse or common-law partner (if applicable);
- each dependent child (if applicable).

Photocopy of the passport need only include pages showing:

- the passport number;
- date of issue;
- date of expiry; and,
- the passport holder's photo, name, date and place of birth.

When the applicant is living in a country different from the applicant's nationality, a legible photocopy of the applicant's resident visa for that country is also required.

Original photos ("head shots"):

- one each for each member of the family included in the application;
- each photo must measure between 25mm and 35 mm (1" to 1 3/8") from chin to crown;
- have a 35mm x 45mm (1 3/8" x 1 3/4") finished size

Applicants must hold a valid **regular** passport. Diplomatic, official, service or public affairs passports are not acceptable documents for application under the BC PNP.

All documents must be in English or must be accompanied by a certified translation.

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**Subject:**

Exploratory Visit and Seminar Attendance

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**Background and Objectives:**

The recommended exploratory visit and the Business Immigration Seminar are intended to ensure the Applicant has every opportunity to identify useful information regarding living and conducting business in the province.

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**Policy:**

While the Program Advisor will consider positively the actions of applicants to undertake an exploratory visit and/or attend a seminar, the Policy Advisor will not negatively assess an Applicant who has not visited the province or attended the seminar.

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**Subject:**

The Business Plan

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**Background and Objectives:**

The Program Advisor must have reasonable cause to believe the Applicant has the business skills, sector knowledge, market familiarity, the resources and the intention to establish or expand and to maintain a successful business enterprise. The Business Plan submitted by the Applicant and the personal interview are the two most important tools in this assessment.

The Business Plan is the primary means for the Applicant to articulate that he/she understands the local business environment, understands the proposed business, recognizes the challenges in establishing or expanding the business and has a good sense of the financial demands and characteristics of the business.

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**Policy:**

The Program Advisor will consider approval of the application when the Program Advisor is satisfied the Applicant has the skills, means, knowledge and intention to undertake the proposed business activity, that the proposed activity has a reasonable prospect of commercial success and that the proposed activity is likely to create significant economic benefit for British Columbia.

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**Subject:**

Requirements for the Business Plan

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**Background and Objectives:**

Applications must include a Business Plan that addresses covers prescribed topics in sufficient detail and clarity to allow the Program Advisor to make an informed decision regarding the proposed business, the Applicant's understanding of the economic environment in which the business will operate and the timeframe for business establishment.

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**Policy:**

Form BC PNP G-001 (08-2011) *Business Plan Guidelines* provides detailed requirements. The prescribed topics are:

- Executive summary
  - Business concept/overview
  - Company and Ownership Structure
  - Management Structure
  - Operations
  - Industry and Market Research
  - Staffing
  - Market Analysis
  - Financial Analysis
  - Investment Schedule and milestone dates and events to achieve the investment
  - Governing Laws, Regulations and Licensing
  - Risk Management
  - Appendix 1 – Financial Statements
  - Appendix 2 – Resumes of Applicant, any Key Staff, any local partner(s)
  - Appendix 3 – Other Supporting Documents – purchase/sale agreements etc.
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**Subject:**

Key Staff

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**Background and Objectives:**

In assessing key staff's eligibility as a co-applicant to the Principal Applicant, the Program Advisor must have reasonable cause to believe the Key Staff is essential to the proposed business.

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**Policy:**

The Key Staff must attend the personal interview with the Applicant, and demonstrate an understanding of the business plan and their role in the proposed business.

The Key Staff must not displace the potential employment of a Canadian or permanent resident.

The Program Advisor will consider acceptance of the Key Staff into the Program only when the Program Advisor is satisfied the Key Staff is essential to the proposed business and holds a unique skill set. The program advisor must be satisfied that a Canadian or permanent resident would not be able to fill the position.

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**Subject:**Three-phase Review Process – Business Skills and Regional Business

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**Policy:**

An application in the *Business Skills* and *Regional Business* categories will undergo a three-phase review process. In the **first phase** – the ***check for completeness*** -, the application will be examined to confirm all of the requisite documents and fees are included.

If deficiencies are identified at this stage, the application and all fees will be returned to the sender. A complete application will proceed to the **second phase** - the ***initial screening***. The ***initial screening*** will confirm:

- the Applicant is personally qualified; and,
- the proposed activity is an eligible business activity.

If any material deficiencies are revealed in documents, *other than the Business Plan*, through the initial screening that can be readily remedied by the Applicant within 30 days of notification (electronically or otherwise) to the Applicant of the deficiency, activity on the file will be suspended until the earlier of the expiry of the 30 days or resolution of the deficiency.

If the deficiency has not been resolved at the end of 30 days, the application will be returned to the Applicant.

If any material deficiencies are revealed through the initial screening that cannot be easily remedied by the Applicant, the application will be returned.

The **third phase** – the detailed ***assessment phase***, begins once the application passes the initial screening and the Program Advisor is satisfied with the initial assessment.

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**Subject:**

Four-phase Review Process – Strategic Projects

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**Policy:**

Applications in the Strategic Projects category and any application which qualifies as a **priority** investment (Policy 2-5 refers), will undergo a four-phase review process.

The **first phase** focuses on communication with the sponsoring foreign company to discuss the proposed investment, confirm general eligibility of the proposed venture.

**Phase Two** – the *check for completeness*, **phase three** – the *initial screening*, and **phase four** – the *assessment* of Strategic Projects follow the process for Business Skills and Regional business applications as described in Policy 6-0.

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**Subject:**

Personal Interview

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**Background and Objectives:**

The personal interview is an integral and important component of the review process. The objectives of the interview are to:

- confirm the identity of the principal applicant and any Key Staff;
  - confirm the Applicant's ability and preparedness to undertake the proposed business activity;
  - confirm the role and qualifications of any Key Staff; and
  - answer any remaining deficiencies identified and conveyed to the Applicant by the Program Advisor before or during the interview.
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**Policy:**

The principal applicant and each Key Staff is required to attend a personal interview. The Principal Applicant and the Key Staff may be interviewed together or separately, at the sole discretion of the Program Advisor.

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**Subject:**The Personal Interview – Who May Attend

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**Policy:**

The Principal Applicant may bring the following persons to an interview:

- the spouse;
- an Authorized Representative (Policy 2-1 refers); and
- a **certified** translator (Policy (xii) refers).

The Applicant, and key staff if any, is to be the primary participant during the interview.

The authorized represented may attend the interview in an observer capacity.

The translator must **translate/interpret** only. The translator must not act as a coach or advisor to the Applicant.

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**Subject:**

The Personal Interview – The Disclosure Declaration

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**Policy:**

The Principal Applicant will sign a Disclosure Declaration at the interview. The Disclosure Declaration confirms that:

- all of the information provided is accurate and complete; and
  - the Applicant attended the interview on the date stated on the Declaration.
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**Subject:**Refusals

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**Background and Objectives:**

In the course of receiving and evaluating an application, the Program Advisor will initiate on-going dialogue with the Applicant, or the Applicant's Authorized Representative, including a formal interview with the Applicant, in order to identify and discuss deficiencies which, if unresolved, could lead to refusal of the application.

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**Policy:**

Throughout the application process, the Applicant will have had ample opportunity to understand all pending reasons for refusal and reasonable time to resolve any identified deficiencies within the Applicant's control.

A letter of refusal will be initiated when:

- the Program Advisor has taken reasonable steps in the circumstances to ensure the Applicant understands the reason(s) for pending refusal; and
- the Applicant has been afforded a reasonable period of time to take any available corrective action.

The Applicant, having already received opportunity to understand and to resolve the reasons for refusal, will have no right of appeal.

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**Subject:**

Refusal When Key Staff Involved

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**Policy:**

When a Principal Applicant is refused, all Key Staff included in the application are refused.

When a Principal Applicant is accepted as nominee candidate but a Key Staff is refused, the Applicant may proceed without the Key Staff provided the Program Advisor is satisfied the Applicant can achieve the proposed business activity without the Key Staff.

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Policy Number: 8-0

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**Subject:**The Performance Agreement

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**Policy:**

An approved applicant must execute a *Performance Agreement* with the Province of British Columbia.

The requirements of the *Performance Agreement* are:

- that the BC PNP have the right to and the nominee candidate will facilitate access to information about the activities of the nominee candidate;
  - that the BC PNP have the right to and the nominee candidate will facilitate the monitoring of business progress;
  - a description of the intended business activity;
  - a breakdown of the proposed Eligible Investment into significant components by cost and purpose;
  - commitment to milestone dates and events. Specifically:
    - to make the proposed eligible investment;
    - to make the eligible investment within the specified dates of the agreement, not exceeding the two year duration of the Work Permit;
    - to create permanent full time jobs, described by job type and time period for creation of the job(s);
    - to establish permanent residence near the business activity;
    - to own a defined percentage of the business that meets or exceeds the minimum ownership;
    - to commence operations within a defined period following the date of issuance of the Work Permit.
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**Subject:**

Alternative Business Proposal

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**Policy:**

When circumstances beyond the Nominee or Nominee Candidate's control arise that would make it impractical to establish or purchase the business described in the application and the *Performance Agreement*, or to fulfil the obligations under the *Performance Agreement*, the Nominee or Nominee Candidate may submit a written proposal, similar in detail to the original application, describing a revised or alternative business.

The BC PNP will consider the proposal in a timely manner and may, in its sole discretion:

- accept the alternative business as presented; **or**,
- accept the alternative business with modifications; **or**,
- not accept the alternative business

as a substitute for the original business proposal.

If an alternative business proposal is accepted, the Program Advisor will provide an addendum to the *Performance Agreement* to the Nominee or Nominee Candidate and this mutually agreed amendment to the *Performance Agreement* will be executed.

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**Subject:**

Extension of the Business Establishment Period

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**Background and Objectives:**

Under the standard terms of the *Performance Agreement* the Nominee Candidate has up to 24 months from the date of issuance of the Work Permit to establish the business and fulfil the terms of the Performance Agreement – the Business Establishment Period.

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**Policy:**

When, for whatever reason, the Applicant is unable to establish or purchase the proposed business within the Business Establishment Period, the Applicant may submit a written request for extension. The request must be received by the BC PNP at least 90 days prior to the expiration of the Business Establishment Period.

The BC PNP, in its sole discretion, may, in consideration of the merits of the request:

- refuse an extension; or
  - grant an extension; and
  - set the length of the extension.
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**Subject:**

Documenting Progress of the Nominee/Nominee Candidate

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**Policy:**

Within six months of the date of the Work Permit, "the Commencement Date", and from time to time thereafter, the BC PNP may monitor the Nominee or Nominee Candidate's progress in meeting the terms and conditions of the *Performance Agreement*.

Documents the BC PNP may request of the Nominee/Nominee Candidate or may acquire directly are as follows.

**Evidence of establishing the business:**

- copies of licenses and permits to establish and operate the business;
- the Business Information Number of the business;
- photographs of the business and key business assets;
- personal and corporate banking information showing that the necessary funds have been transferred to a Canadian bank, and all Canadian bank records and other relevant documentation to demonstrate that the required investment has been undertaken in the eligible business;
- a statement of account issued by a Chartered Accountant, Certified General Accountant, or Certified Management Accountant who Acts for the Nominee or Nominee Candidate showing the sources of the Nominee/Nominee Candidate's funds and the application of these funds in the eligible business (a certificate of the acting accountant verifying the statement will be required);
- if the Nominee/Nominee Candidate purchased shares or assets of an existing business, a copy of the sale/purchase agreement and related documentation.
- copy of the shareholder's agreement or partnership agreement evidencing the Applicant's ownership position in the eligible business.

**Evidence of active role in managing the business:**

- representative samples of documents produced in the day to day operation of the business including correspondence, business contracts, invoices, purchase orders, cheques and internal memos addressed to or signed by the Applicant.

Evidence of number of jobs created:

- relevant payroll documents, for example, copies of the business' Statements of Remuneration Paid submitted to Canada Revenue Agency.
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**Subject:**The Deposit Agreement

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**Policy:**

A Nominee Candidate who elects the **Fast-Track** nomination option must execute a *Performance Agreement* and a *Deposit Agreement* with the Province of British Columbia. The *Performance Agreement* is attached as a schedule to and form part of the *Deposit Agreement*.

The requirements of the *Deposit Agreement* are:

- that the Nominee Candidate deposit \$125,000 with the Province;
- a set of representations, warranties and commitments from the Nominee with respect to meeting the requirements of the relevant business category;
- the terms under which the deposit will be returned;
- a set of terms and conditions which the Nominee must satisfy to avoid an event of default;
- the terms under which the deposit will be forfeit;
- in the event of unresolved default, that the BC PNP may withdraw the nomination certificate;
- the Nominee keep the BC PNP informed and permit access to information about the Nominee's activities to keep itself properly informed on the progress of the Nominee;
- commitment by both parties to refer disputes to the BC International Commercial Arbitration Centre for final, binding resolution; and
- an attached *Performance Agreement (Schedule A)*.

See Appendix A: Deposit Agreement

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**Subject:**When Deposits May Be Refunded

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**Policy:**

The deposit will be returned to the Nominee, without interest, under any of the following conditions:

1. when the Province is satisfied the terms of the *Deposit Agreement* and the *Performance Agreement* have been satisfied; **or**,
  2. when CIC advises in writing that it will not issue a Permanent Resident visa to the Nominee and there are no events of default outstanding; **or**,
  3. when the Province determines, within the Business Establishment Period:
    - the Nominee has made limited progress; and,
    - the Province reasonably anticipates the Nominee will **not** fulfil his/her obligations under the *Deposit Agreement*; but,
    - the existing business is likely to continue; and,
    - no event of default has occurred; and
    - the Nomination Certificate has been withdrawn.
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**Subject:**

When a Deposit May Be Forfeit

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**Policy:**

When an unresolved event of default exists under a *Deposit Agreement* and there is no prospect of resolution of the default, the deposit will be forfeited to the Province as liquidated damages.

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**Subject:**Requirement for a Nomination Certificate

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**Background and Objectives:**

As per the *Canada-British Columbia Immigration Agreement, Annex B: Provincial Nominees, Appendix C:*

C.1 British Columbia will issue a dated nomination certificate, valid in accordance with British Columbia's administrative requirements for each foreign national whom it has nominated. For security reasons, British Columbia will forward a copy of the certificate or other form of confirmation as agreed by both Parties to the Canadian visa office where the applicant will apply for a permanent resident visa. A nomination certificate received directly from the applicant or any other party will not be accepted as evidence pursuant to section C.4 of this Appendix or sections 3.7 and 3.8 of Annex B of this Agreement. A foreign national who has been nominated by British Columbia must file an application for a permanent resident visa within the time limit specified on the nomination certificate.

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**Policy:**

The BC PNP will forward a dated nomination certificate in a form acceptable to CIC to the relevant Visa Office when the BC PNP is satisfied the Nominee has met the BC PNP requirements.

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**Subject:**Nomination – Basic Criteria

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**Background and Objectives:**

As per the *Canada-British Columbia Immigration Agreement, Annex B: Provincial Nominees*:

3.1 British Columbia has the sole and non-transferable responsibility to assess and nominate candidates who, based on British Columbia's determination:

- a. will be of significant benefit to the economic development of British Columbia; and
- b. have a strong likelihood of becoming economically established in British Columbia.

3.2 British Columbia will nominate foreign nationals on the basis of economic benefit to British Columbia. The nomination criteria of the Provincial Nominee Program categories shall demonstrate the economic benefit to the Province. Provincial Nominees may be nominated for purposes that include, but are not limited to, meeting critical skill shortages in British Columbia, the immigration of key individuals of businesses that wish to locate in British Columbia and the establishment or enhancement of new and existing businesses.

3.3 Non-economic factors shall not provide the primary basis upon which a nomination is made.

3.7 Canada will consider a nomination certificate issued by British Columbia as evidence that British Columbia has conducted due diligence in exercising its authority to assess and nominate candidates pursuant to section 3.1, 3.2 and 3.3 of this Annex.

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**Policy:**

The BC PNP nominates for permanent residence in Canada if the Nominee Candidate:

- has the ability to establish him/herself successfully in BC; and
  - establish and actively manage a business that will provide significant economic benefits to the province.
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**Subject:**Pre-conditions to Nomination

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**Policy:**

Before a *Nomination* recommendation is issued several conditions must be satisfied.

The nominee candidate must have:

- a valid Work Permit; and
- fulfilled the Performance Agreement to the satisfaction of the BC PNP.

The ***Fast-Track*** nominee candidate must have:

- received a BC PNP-supported Work Permit;
  - established a permanent residence in British Columbia;
  - opened a bank account in British Columbia with sufficient funds on deposit to enable the Nominee to make the proposed investment;
  - delivered to the Province all prescribed documents and such other documents as the Province may have specified; and,
  - deposited \$125,000 with the Province.
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**Subject:**Pre-conditions to The Initial Work Permit

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**Background and Objectives:**

As per the *Canada-British Columbia Immigration Agreement, Annex B: Provincial Nominees, Appendix D:*

D.2 Where British Columbia is considering an application for nomination under the business category of the Provincial Nominee Program and is of the opinion that the entry of a foreign national under that application:

- i. to carry out business activity; or
- ii. as a key staff member of a foreign company or of another foreign national establishing an eligible business in the province

is of significant benefit to British Columbia, a visa officer may issue a temporary work permit to that foreign national pursuant to paragraph 205(a) of the IRPR, if the work permit application includes a letter from British Columbia that:

- iii. states that the foreign national is being considered for nomination for permanent residence based on their stated intention to either conduct business activity or work as a key staff member of a foreign company or another foreign national establishing an eligible business in the province in British Columbia, as the case may be;
- iv. states that British Columbia is of the opinion that the planned business activity or work of the foreign national will be of significant benefit to the province; and
- v. requests the visa officer to issue a temporary work permit for a specific period, up to a maximum of two (2) years.

The BC PNP letter is referred to as the *Letter of Confirmation of Eligibility*.

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**Policy:**

The Director will issue a *Letter of Confirmation of Eligibility* to CIC for an Applicant who has executed a Performance Agreement.

After the Work Permit is received by the nominee candidate, the candidate should withdraw from all other applications which would lead to permanent or temporary resident status in Canada.

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**Subject:**Pre-conditions to Work Permit Renewal

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**Background and Objectives:**

Every Work Permit issued by CIC to a Nominee Candidate will have a fixed term during which the holder is expected to complete certain performance obligations set out in a Deposit Agreement (Fast Track candidates) or a Performance Agreement.

As per the *Canada-British Columbia Immigration Agreement, Annex B: Provincial Nominees, Appendix D:*

Where a work permit issued under section D.2 a.) of this Appendix has expired and British Columbia has nominated that foreign national, an officer may issue a further temporary work permit pursuant to paragraph 204(c) of the IRPR, if the work permit application includes a letter from British Columbia that:

- i. states that the foreign national has been nominated by British Columbia;
- ii. states that British Columbia has determined that the business activity or work of the foreign national is of significant benefit to the province; and
- iii. requests the visa officer to issue a temporary work permit.

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**Policy:**

When the Program Advisor is satisfied with the progress of a Nominee Candidate, or a Nominee in the case of Fast Track, and a work permit renewal is required, the Program Advisor or the Program Manager will issue a letter to CIC requesting a renewal of the Work Permit for a specified period.

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**Subject:**Nomination Options

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**Policy:**

Approved applicants in the Business Skills and the Regional Business categories have the option of a **Regular** nomination or a **Fast-Track** nomination.

The **Fast-Track** option allows for immediate nomination for permanent residence when a conditionally refundable \$125,000 CAD deposit is paid to the Province of British Columbia. The deposit will be refunded (without interest) when the Applicant has met the terms and conditions of the *Performance Agreement* and the *Deposit Agreement*.

The **Regular** option allows for nomination when the Nominee Candidate has met the terms and conditions of the *Performance Agreement*.

**Regular** nomination is the default option when the Nominee Candidate has not made a choice.

Key Staff are not eligible for the **Fast-Track** option.

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**Subject:**Nomination Extensions

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**Background and Objectives:**

When a nominee candidate is approved by the BC PNP, the nomination certificate submitted to the appropriate CIC Visa Office is valid for 180 days from the date of nomination on that certificate

If the nominee's complete application for Permanent Residence is not received by the appropriate Visa Office within these 180 days, CIC will not consider it for expedited processing in the Provincial Nominee Class.

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**Policy:**

Requests for extensions will be considered on a case-by-case basis.

Where the Program Advisor is satisfied that the circumstances of the file warrant an extension and that an extension would be in the best interests of the BC PNP, an extension may be granted.

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**Subject:**

Withdrawal of Fast-Track Nomination – Default

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**Policy:**

**At its sole discretion**, the BC PNP may withdraw its nomination when an event of default has occurred under the *Deposit Agreement*.

Where an event of default or some other event of no-performance has occurred and the event is correctable, **in the sole opinion of the BC PNP**, the Program Advisor will work with the Nominee in an attempt to reach a satisfactory solution.

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**Subject:**

Withdrawal of Nomination – Fast Track - Poor Performance

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**Policy:**

When the BC PNP determines, within the *Business Establishment Period* (Policy xi defines):

- the Nominee has made limited progress; and,
- the Program Advisor reasonably anticipates the Nominee will **not** fulfil its obligations under the *Deposit Agreement*; then,

the nomination **may** be withdrawn by the BC PNP at its sole discretion.

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**Subject:**

Certificate of Nomination Re-issued after Withdrawal

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**Policy:**

Where a nomination has been withdrawn for poor performance or event of default and the Nominee subsequently establishes the originally proposed business, or a business equivalent in economic benefit, and fulfils all of the other requirements of the BC PNP, the Nomination Certificate may be re-issued at the discretion of the Director.

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Policy Number: 10-0

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**Subject:**Misrepresentation

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**Policy:**

Where a Program Advisor has reasonable grounds to believe that an Applicant, Nominee Candidate, Nominee, or sponsoring company in the case of Strategic Projects applications has misrepresented or withheld material facts relevant to a decision on his/her BC PNP application, and has been given a reasonable opportunity to respond to concerns regarding a potential misrepresentation, the application will be refused, or in the case of a Nominee, the nomination will be withdrawn. Refusal of an application or withdrawal of a nomination for misrepresentation will result in a two-year ban from applying to the BC PNP.

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## **Appendix A – Deposit Agreement**

# BC Provincial Nominee Program

## DEPOSIT AGREEMENT

This Deposit Agreement (the "Agreement") made the \_\_\_\_\_ day of \_\_\_\_\_, 201\_

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,**  
represented by the Ministry of Jobs, Tourism and Innovation

(the "Province")

-and-

(the "Nominee")

1. Definitions:

- (a) **"Application"** means the Nominee's application approved by the Province under the British Columbia Provincial Nominee Program;
- (b) **"Business"** means the business to be established or purchased by the Nominee and operated within British Columbia by the end of the Business Establishment Period and in accordance with the Performance Agreement and the Application, as the same may be amended under section 6;
- (c) **"Business Establishment Period"** means the period which begins on the Commencement Date and ends on the date which is two (2) years following the Commencement Date, or on such later date as is established under section 7;
- (d) **"Certificate of Nomination"** means the certificate issued by the Province to the Government of Canada, which states that the Province has nominated the Nominee and, if applicable, the Nominee's qualified dependents, for Permanent Resident status under the terms and conditions of the BC PNP;
- (e) **"Commencement Date"** means the date appearing under the date signed section of the original work permit issued by an immigration officer that enables the carrying out of activities as described in the Performance Agreement;
- (f) **"Deposit"** means the sum of \$125,000.00 in Canadian funds (\$125,000.00 CAD);
- (g) **"Event of Default"** means one or more of the following events:
  - (i) the Nominee fails to establish or purchase the Business;
  - (ii) the Nominee has made a material representation or warranty to the Province in or related to the Application, Performance Agreement, or this Agreement that remains

untrue or incorrect in the sole opinion of the Province 30 days following the date that written notice to that effect has been given by the Province to the Nominee; and

(iii) the Nominee fails to perform any material obligation under this Agreement or the Performance Agreement, including but not limited to:

- a. failure to meet the key implementation steps described in the Performance Agreement within the prescribed times limits,
- b. failure to make the Investment in the amounts and manner described in the Performance Agreement,
- c. failure to comply with any obligation set out in section 4, and
- d. failure to create the number of new jobs in the Business for Canadian residents or Permanent Residents as specified in the Performance Agreement,

and the failure is not corrected within 30 days of the Nominee receiving written notice from the Province advising of the failure.

- (h) “**Investment**” means the expenditure of capital in British Columbia in accordance with the terms of the Performance Agreement;
- (i) “**Performance Agreement**” means the agreement between the Province and Nominee that is attached as Schedule “A” and forms part of this Agreement;
- (j) “**Permanent Resident**” means a foreign national who has been granted a current permanent resident visa to live in Canada, effective on the date an immigration officer at a Canadian port of entry has confirmed entry;
- (k) “**BC PNP**” means the British Columbia Provincial Nominee Program as established, continued or amended from time to time by the Province.

2. The issuance of the Certificate of Nomination by the Province is subject to:

- (a) issuance to the Nominee of a BC PNP supported work permit;
- (b) establishment by the Nominee of a permanent residence in British Columbia;
- (c) establishment by the Nominee of a bank account in British Columbia with sufficient liquid funds on deposit to enable the Nominee to make the Investment;
- (d) payment by the Nominee to the Province of the Deposit;
- (e) payment by the Nominee of all fees required by the Province; and
- (f) delivery by the Nominee of such other documents as may be specified by the Province.

3. The Province will hold the Deposit and apply it in accordance with the terms of this Agreement. The Province will cause the Deposit to be managed by the British Columbia Investment Management Corporation (“BCIMC”), a non-profit BC Crown Corporation established under the authority of the BC *Public Service Sector Pension Plans Act*, for which further details are published by BCIMC at [www.bcimc.com](http://www.bcimc.com). The Nominee will not be entitled to receive interest on the Deposit.

4. The Nominee:

- (a) represents and warrants to the Province that they intend to reside in British Columbia after the Commencement Date;
- (b) undertakes to notify the Province by post or facsimile within 30 days of the Commencement Date of his or her address and telephone number in British Columbia;
- (c) will establish or purchase the Business within the Business Establishment Period;
- (d) will hold a managerial position in the Business and be in regular attendance at the Business premises to provide ongoing, day-to-day management and direction;
- (e) will comply with all applicable federal, provincial and local government statutes, regulations and bylaws in establishing or purchasing, and maintaining, the Business, including obtaining the necessary licenses and permits from federal, provincial or local government authorities; and
- (f) will keep the Province informed about the status of the Business, and will provide the Province with reasonable access to information concerning the Business to confirm that the terms and conditions of the Performance Agreement have been satisfied.

5. The Nominee is responsible for providing the Province with sufficient documentation to verify that the Nominee has satisfied the obligations imposed by this Agreement. The Nominee agrees to regular monitoring by the Province to review compliance with the Agreement. Within six (6) months of the Commencement Date, and thereafter from time-to-time at the Province's discretion, the Province may conduct an audit of the Nominee's progress. The Province reserves the right to request additional supporting documentation to satisfy itself that the Nominee has fulfilled the obligations imposed by this Agreement including, without limiting the generality of the foregoing, the documentation listed in Schedule "B". If, based on a BC PNP audit, the Province finds that the Nominee has made limited progress in establishing the Business and the Province reasonably anticipates that the Nominee will not fulfill their obligations under this Agreement, then the Province may withdraw the Certificate of Nomination and, if no Default has occurred and the Business is continuing, return the Deposit. The Province has no obligation to conduct a six month review, and failure to conduct the same or anticipate an Event of Default will not affect the obligations of the Nominee under this Agreement.

A Certificate of Nomination may be re-issued to the Nominee if the Nominee subsequently establishes the Business and fulfils all other BC PNP requirements.

6. If circumstances beyond the Nominee's control arise that would make it impractical for the Nominee to establish or purchase the Business described in the initial Application and Performance Agreement, or to fulfill the obligations under the initial Performance Agreement, the Nominee may submit a written proposal to the Province, similar in detail to the initial Application, describing a revised or alternative business. The Province will consider the proposal in a timely manner and may, in its sole discretion, approve the alternative business in substitution for the original Business, provided that the Province is under no obligation to accept any revised or alternative business which, in its sole opinion, does not meet the BC PNP criteria and requirements in effect when the proposal is received.

If the Nominee's alternative business proposal is accepted, the Nominee will be notified in writing by the Province, and this Agreement will be amended accordingly. If the proposal is rejected, the Nominee will be notified in writing by the Province of the reasons for this decision.

7. If the Nominee is unable to establish or purchase the Business within the Business Establishment Period, the Nominee may make a written request to the Province for an extension. This request must be made at

least 90 days before the Business Establishment Period expires. The Province will consider the request and may, in its sole discretion, grant an extension. Any extension of the Business Establishment Period will be effective only if made in writing by Province.

8. If the Nominee is in Default under this Agreement, the Deposit will be forfeited and the Province will be entitled to retain the full amount of the Deposit as liquidated damages. The Nominee acknowledges that a Default, unless corrected, will cause economic losses and other damage and harm to the Province which the parties estimate will equal or exceed the Deposit amount. These losses include, but are not limited to, lost future tax revenues from the Business, employees of the Business, and the Nominee.

The parties also recognize that:

- (a) the Province has an interest in the public good and economic well-being of its citizens;
- (b) the **Ministry of Jobs, Tourism and Innovation** has a specific interest in the economic development of all regions of British Columbia; and
- (c) the Province spends substantial public funds to promote business immigration and investment, business development, and regional economic development in British Columbia.

The parties agree that the Deposit amount represents a sum equal to or less than a reasonable pre-estimate of the amount of the Province's loss and damage resulting from a Default and that forfeiture of the Deposit in the circumstances described here is reasonable in the light of the anticipated loss and damage resulting from such failure, the difficulties of proof of loss, the equities involved and the inconvenience and delay involved in otherwise obtaining an adequate remedy. Forfeiture of the Deposit under this Section 8 will be in full and final satisfaction of any claim that the Province may have against the Nominee under this Agreement and the Performance Agreement.

9. The Nominee acknowledges:

- (a) the Province is relying upon the information contained in the Application, the Performance Agreement and in this Agreement in issuing the Certificate of Nomination, and that any false or misleading information provided by the Nominee may constitute an Event of Default and may result in withdrawal of the Certificate of Nomination;
- (b) the Certificate of Nomination issued by the Province does not constitute any promise or assurance of the Nominee's ability to obtain any licenses and permits necessary to establish or maintain the Business;
- (c) any information offered by the Province has been offered for information purposes only and not as business, legal or other advice;
- (d) the Certificate of Nomination issued by the Province does not constitute any endorsement or sanction of the merits, feasibility, and investment potential or commercial viability of the Business;
- (e) the Certificate of Nomination is only one of a number of requirements for immigration to Canada and that the final decision regarding admission to Canada for permanent residence will be made by the Government of Canada.

10. When the Province is satisfied that the Nominee has established or purchased the Business, and that no Event of Default that has occurred is continuing, the Deposit will be refunded (without interest) to the Nominee within 30 business days.

11. If the Nominee is not granted a Permanent Resident visa by the Government of Canada and no event of Default has occurred and is continuing, the Deposit (without interest) will be refunded to the Nominee within 30 business days of written notice to the Province.
12. All disputes arising under this Agreement will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") under its Rules in Vancouver, British Columbia.

The party initiating arbitration will notify the other party of its intention in writing. This notice will include a demand that the dispute be referred to arbitration, a statement of the matter in controversy, and the name of an arbitrator appointed by the party demanding arbitration.

Within 30 days after receipt of a notice to arbitrate, the receiving party will appoint its own arbitrator. If the receiving party fails or refuses to name its arbitrator within this time period, the party demanding arbitration may request that this second arbitrator be appointed pursuant to the BCICAC Rules.

Within 30 days of the appointment of the second arbitrator, the two arbitrators will mutually select a third arbitrator. If the two arbitrators are unable to agree on a third arbitrator within this time period, either party may apply to have the third arbitrator appointed under the BCICAC Rules. The three arbitrators appointed under this Section 12 will conduct a hearing in the City of Vancouver no later than 60 days following the selection of the last of the arbitrators or 30 days after all pre-hearing discovery has been completed, whichever is later. At the hearing, the parties may present such evidence and witnesses as they choose and have the option of being represented by counsel. The arbitrators will make a decision within 60 days of the conclusion of the hearing. Any decision by a majority of the arbitration panel will be final, binding and non-appealable.

The successful party in any arbitration hearing conducted under this Agreement will be entitled to recover from the other party all costs, fees and expenses, including reasonable lawyers' fees. The arbitrators will include such a costs award in their decision.

13. The failure by Province to require performance of any provision of this Agreement or the Performance Agreement will not affect its right at a later time to enforce performance. No waiver by the Province of any term, agreement, representation or warranty contained in this Agreement or the Performance Agreement will be effective unless in writing. No such waiver in any one instance will be deemed a further or continuing waiver of any such term, agreement, representation or warranty in any other instance.
14. This Agreement will accrue to the benefit of and be binding upon the respective heirs, executors, administrators, legal representatives, successors and permitted assigns of the parties.
15. Any demand, notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

(a) To the Province:

Ministry of Jobs, Tourism and Innovation  
Provincial Nominee Program  
800-360 West Georgia Street  
Vancouver, BC V6B 6B2

Attention: The Director

Facsimile: (1) 604.660.4092

(b) To the Nominee:

Address provided pursuant to Section 4(b), unless an alternative address is affirmatively approved in writing by the Province

If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication will not be mailed but will be given by personal delivery or by electronic communication.

16. This Agreement will be governed by and construed in accordance with the laws of British Columbia and the applicable laws of Canada. The parties agree to submit to the exclusive jurisdiction of the courts of British Columbia and all courts competent to hear the party's appeals.
17. Time will be of the essence of this Agreement.
18. This Agreement may not be assigned by the Nominee.
19. All amendments to this Agreement to be effective must be in writing and signed by the parties.
20. This Agreement may be executed in counterpart and by a scanned, facsimile or other graphically reproduced copy, and each counterpart shall constitute an original and, when taken together, shall constitute one document.

The parties have signed this Deposit Agreement on the dates noted below.

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**

Per:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of the Nominee

# Deductions from Wages

## Deductions

An employer may not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose except as permitted or required by the *Employment Standards Act*, or by another act of either British Columbia or Canada.

## Unauthorized Deductions

Employers cannot require that an employee pay for any portion of an employer's business cost.

This includes expenses arising from theft, damage, breakage, poor quality of work, damage to employer property, or failure to pay by a customer. Some instances where these issues arise include "gas-and-dash", "dine-and-dash", shoplifting, or accidents involving employer vehicles or equipment.

If an employer requires an employee to pay for any business cost whatsoever, in any way, the Employment Standards Branch can recover that money as unpaid wages. This includes money paid out of tips or any other source.

Any agreement by an employee to contribute towards an employer's cost of doing business is a contravention of the Act and is not enforceable.

If the Branch issues a decision finding that an employer has contravened the Act, monetary penalties will be imposed ranging from \$500 to \$10,000.

## Authorized Deductions

Employers are required to deduct for such things as income tax; Employment Insurance premiums; Canada Pension Plan contributions; union dues or other amounts authorized by a collective agreement; or, amounts required as a result of a lawful garnishing order.

## Other Permitted Deductions

An employee may request that certain amounts be paid directly to a third party.

Upon receiving written permission from the employee, an employer must make deductions for medical premiums; extended health or dental coverage; charitable donations or pension plan contributions if the amounts are tax-deductible; and, maintenance payments under the *Family Maintenance Enforcement Act*.

The employer may (but is not required to) deduct from wages to pay a credit obligation, normally for goods or services an employee has received from a third party.

The money must be remitted within one month of being deducted. To cancel permission, the employee must give notice in writing to both the employer and the person or organization being paid.

## Advances / Overpayments

Advances on wages and accidental overpayments cannot be deducted from an employee's paycheck unless the employee has given written permission to the employer authorizing the repayment.

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### Keeping records

An employment agency must keep a record of the following:

- each employer who receives a service;
- each person who is directed to an employer for the purpose of being hired;
- each person who is provided with information about employers seeking employees.

This record must be kept in English at the employment agency's principal place of business in British Columbia for a period of two years.

### Advertising

An employer, an employment agency or a person seeking employment may pay to advertise a job or their services.

An employment agency may not require a person seeking employment to pay for any form of advertising as a condition of assisting them to find a job.



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## Employment Standards Branch FACTSHEET

This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and *Regulation* for purposes of interpretation and application of the law.

May 2011

# Temporary Foreign Workers

Temporary foreign workers are covered by the *Employment Standards Act* and *Regulation*. These provisions include overtime pay, statutory holidays and holiday pay, annual vacations and vacation pay, and minimum wage.

## No charge for hiring

No one can charge a fee to a person to:

- help that person find a job; or
- provide information about prospective jobs.

A temporary foreign worker cannot be required to pay for immigration assistance as a condition of being placed in a job.

A temporary foreign worker cannot be required to post a bond or pay a deposit to ensure they will finish a work term or employment contract, or to pay a penalty if they do not.

A temporary foreign worker cannot be required to pay back any costs the employer paid to an employment agency or anyone else to recruit the worker.

## Deductions from wages

An employer may only deduct wages as required by law (e.g. income tax, Canada Pension Plan contributions, Employment Insurance premiums, union dues).

An employer cannot require an employee to pay any portion of a business cost, including:

- costs of bringing a temporary foreign worker to Canada; or
- costs incurred due to theft, damage, breakage, poor quality of work, failure to pay by a customer, etc.

An employer may deduct advances and overpayments from wages if the employee gives written authorization.

## Payment of wages

Wages must be paid in Canadian currency by cheque, draft, money order or direct deposit to an employee's bank account. An employer cannot provide goods or services in lieu of wages.

Employers must pay the wage rate specified on the Labour Market Opinion. If a lesser rate is paid, the difference is recoverable as wages.

## If employment ends

An employer may terminate an employee upon giving the required notice or pay in lieu of notice.

An employer or an employment agency cannot force a temporary foreign worker to return to his or her country of origin if the employer terminates an employment contract before the work permit expires or if the temporary foreign worker finds a job with another employer. Only the Government of Canada has the legal authority to remove a person from Canada.

An employer may not refuse to continue to employ a person who files an Employment Standards complaint, or otherwise discriminate against a person with respect to their employment.

## Complaints

Temporary foreign workers with language difficulties are not required to use the Self-Help Kit before filing an Employment Standards complaint.



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Ministry of Labour, Citizens' Services  
and Open Government

## For more information:

Phone: 1 800 663-3316 or 250 612-4100 in  
Prince George

Website: [www.labour.gov.bc.ca/esb](http://www.labour.gov.bc.ca/esb)

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## Employment Agencies

In British Columbia, employment agencies must be licensed under the *Employment Standards Act*. A licensed employment agency may receive payment from employers for recruiting employees.

### No charge for hiring

A person seeking employment is not required to pay for help in looking for a job, getting information about a job, being put in contact with an employer, or being hired for a job.

An employer must not request or receive payment from a person in return for hiring them.

An employment agency must not request or receive payment from any person for:

- Submitting their application for a job to an employer;
- Arranging for them to be hired by an employer, or
- Providing them with information about possible jobs.

An employment agency is not permitted to pay any person for help in finding a job for someone else.

### Licensing

An employment agency must be licensed. An agency must submit an application form to the Director, accompanied by a \$100.00 fee. This may be sent to any Branch office.

Before issuing a license, the Director must be satisfied that the agency will operate in the best interests of employers and persons seeking employment. The Director may refuse to issue a licence to an applicant who has had a previous licence cancelled.

The Director may cancel or suspend a licence if the employment agency:

- makes a false or misleading statement in an application for a licence;
- contravenes the Act or the regulation;
- fails to operate the employment agency in the best interests of employers and persons seeking employment; or
- fails to inform an employer with whom the agency has placed a domestic that the employer must register the domestic with the Employment Standards Branch.

### Charging for other services

An employment agency may provide other services to persons seeking employment, such as resume writing or interview preparation. An employment agency must not require a person seeking employment to use or pay for these other services as a condition of being placed in a job. An employment agency cannot require a person seeking employment to pay for immigration assistance as a condition of being placed in a job.

### Recovery of money paid

A payment received from a person seeking employment is deemed to be wages and can be recovered under the Act.



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## Employment Standards Branch FACTSHEET

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November 2007

# Managers

In British Columbia, managers are excluded from Parts 4 and 5 of the *Employment Standards Act*, which covers hours of work, overtime entitlements and statutory holiday pay.

## How is "Manager" defined?

The Employment Standards Regulation defines a "manager" as:

(a) a person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources, or

(b) a person employed in an executive capacity.

To determine if an employee is a manager, the Employment Standards Branch considers:

- How much can the individual, on their own or otherwise, materially and substantially affect the employment conditions of those for whose work they are held responsible by the organization?
- What kind of responsibilities does the employee have with regard to company resources, even if there are certain checks on their authority?

## Duties

Typically, managers have the ability to act independently and make decisions using their own discretion. This may include things such as:

- Ensuring company policies are followed;
- Authorizing overtime, time off or leaves of absence;
- Calling employees in to work;
- Altering work processes;
- Establishing or altering work schedules;
- Training employees;
- Committing or authorizing the use of company resources;
- Managing a budget.

*Example 1:* An individual works for a large retail chain as a Pharmacy Manager. The employees she supervises are hired by the retail chain. This individual is not a pharmacist but is responsible for supervising and directing the day-to-day activities of the department. The individual is in charge of merchandising, advertising and other administrative functions related to the operation of the pharmacy.

This individual is a manager because she supervises human resources and directs other resources for the employer.

*Example 2:* A project manager for a corporation is responsible for overseeing a contract to implement a new computer system. The project manager has no employees reporting to her but is responsible for a large budget. The project manager has a great deal of discretion in running this project but not in running the corporation.

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Ministry of Labour, Citizens' Services  
and Open Government

### For more information:

Phone: 1 800 663-3316 or  
250 612-4100  
in Prince George

Website: [www.labour.ca/bc/esb](http://www.labour.ca/bc/esb)  
JTI-2011-00124

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June 2009

# Employee or Independent Contractor

Section 1 of the *Employment Standards Act* (the Act) defines an employee very broadly as follows:

**Employee** includes:

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer's business,
- (d) a person on leave from an employer, and
- (e) a person who has a right of recall.

The Act applies to those persons who are employees, but not to those who are independent contractors. A person who is an independent contractor is considered to be self-employed.

Persons working in an employment relationship are employees for the purposes of the Act, regardless of whether they are employed on a part-time, full-time, temporary or permanent basis.

In order to be an independent contractor, a person performing services has to be in business for himself. Designating a person as an independent contractor does not decide the issue.

To help decide, various tests have been developed by the courts and applied by the Employment Standards Branch and the Employment Standards Tribunal. Not all elements of the tests apply in all situations.

**Control** – Is the person under the direction and control of another regarding the time, place, and way in which the work is done? Is the person hired, given instruction, supervised, controlled or subject to discipline? Was the person told what to do, how to do it, and when to do it? Did the person have to do the work him or herself, or could that person give the work to someone else to do? Does the person perform work normally or previously performed by an employee?

The greater the degree of control, the greater the likelihood the person will be found to be an employee.

**Ownership of tools** – Does the person use tools, space, supplies and equipment owned by someone else? If so, this would indicate an employment relationship. However, it is recognized that some employers require employees to provide their own tools or vehicles.

**Chance of profit** – Does the person have a chance of profit? If their income is always the difference between the cost of providing the service and the price charged for the service, the worker may be someone other than an employee.

**Risk of loss** – Is the person at risk of losing money if the cost of doing a job is more than the price charged for it? This may indicate a non-employment relationship.

**Payment** – Is the person paid regular amounts at set

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intervals? Does the person get paid regardless of customer satisfaction or customer payment? These factors indicate an employment relationship.

In general, the more the party who pays for the service provided controls the supply of material and tools and retains direction and control of the activities, the more likely it is that the Director will find the relationship to be one of the employer/employee.

#### **Common misunderstandings**

One or more of the following factors is often wrongly believed to establish an independent contractor relationship:

**Agreement:** The act of signing an independent contractor agreement does not necessarily create an independent contractor relationship. The actual work relationship determines if a person is an employee or independent contractor. Any agreement to waive employment standards entitlements is prohibited by the Act.

**Charges GST:** GST filing numbers are provided upon request, and the requester may or may not be in a lawful position to charge GST.

**No Deduction for Income Tax, EI or CPP:** May indicate contraventions of the *Income Tax Act* and *Employment Insurance Act*. Or, if the employer received a ruling from Canada Revenue Agency (CRA) or Human Resource and Social Development Canada (HRSDC) that the employee is a contractor, it does not decide the Employment Standards issue. It may merely reflect the different purposes of those Acts.

**Person sets own hours and is not actively supervised:** The business may provide significant levels of flexibility to its employees.

**Works for several businesses:** Many people work at more than one job.

**Submits a bill for labour provided:** It may be nothing more than a record of hours worked; in effect, a time card.

**Drives his or her own vehicle/provides own tools:** It may be a condition of employment that a person provides a vehicle so as to perform the work. In some sectors employees are expected to provide their own tools.

**Payment by commission** or other forms of incentive pay do not necessarily indicate a chance of profit or risk of loss; these are simply ways of linking pay to productivity.

#### **Example**

A drywall business hires a painter. The company has the worker sign a written agreement in which the worker declares himself to be an independent contractor. The company buys the paint and supplies the brushes, the ladders and other equipment. The company pays the worker an hourly rate. The company tells the worker what to do and when to do it, and decides if it was done satisfactorily. The worker does not have a business licence.

The worker is an employee because:

- He performs work normally done by an employee;
- The work is integrated into the company's business; and
- The company has direction and control over the worker.

The written agreement, being an attempt to waive the requirements of the Act, is not valid and does not change the relationship as determined by these factors.

# Paying Wages

## Paydays

All employees must be paid at least twice a month. All money earned in a pay period, including overtime and statutory holiday pay, must be paid within eight days after the end of the pay period, except annual vacation pay and wages credited to an employee's time bank. A pay period may not exceed 16 days.

## Forms of payment

Wages must be paid in Canadian currency. Wages can be paid in cash, by cheque, bank draft or money order, or by direct deposit to an employee's bank account.

Payment by direct deposit must be authorized in writing by the employee or by a collective agreement.

Farm labour contractors **must** pay wages directly to an employee's bank account.

## Wage statements

On paydays, an employer must give each employee a written wage statement for the pay period, which includes the following information:

- The employer's name and address;
- The hours worked by the employee;
- The employee's wage rate, whether hourly, salary, flat rate, piece rate, commission or other incentive basis;
- The employee's overtime rate(s);
- The hours worked at the overtime rate(s);

- Any money, allowance or other payment the employee is entitled to. (This would include vacation pay or statutory holiday pay);
- The amount and purpose of each deduction;
- If the employee is paid other than by the hour or by salary, how the wages were calculated;
- The employee's gross and net wages;
- Any amounts withdrawn from the employee's time bank and how much time remains;

A wage statement must be a document separate from an employee's pay cheque, so that it can be kept by the employee if desired.

If a wage statement would be the same as one given in a previous pay period, another need not be given until a change occurs.

## Electronic wage statements

Wage statements can be provided electronically as long as the employer provides:

- Confidential access to the electronic wage statement at the workplace; and
- A means of making a paper copy of that wage statement.

## Deductions

An employer can only deduct money required or permitted by the *Employment Standards Act*, or by another Act of either British Columbia or Canada.

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Examples of required deductions include income tax, Canada Pension Plan contributions and Employment Insurance premiums.

Any other deductions, such as union or professional dues, require the employee's written permission.

### Damage, breakage or loss

An employee is not required to pay any of the employer's business costs, including damage, breakage or loss.

### Wage deductions requested by employees

An employee may request in writing that the employer pay part of his or her wages to a third party. This is called an 'assignment' of wages. An employer **must** pay assigned wages to:

- A trade union under the *Labour Relations Code* (union dues);
- A charitable or other organization;
- A pension or superannuation plan;
- An insurance company for medical or dental coverage;
- A person to whom the employee is required to pay maintenance under the *Family Maintenance Enforcement Act*.

An employer **must** recognize an assignment of wages authorized by a collective agreement, and **may** recognize a written assignment by an employee to pay a debt. Assigned wages must be remitted within one month of being deducted.

To cancel an assignment, an employee must give notice in writing to both the employer and the person or organization being paid.

### Employer payments to funds and insurers

An employer who agrees under an employment contract to pay an amount on behalf of an employee to a fund, insurer or other person must pay the amount in accordance with the agreement.

### When employment ends

If an employer terminates the employment of an employee, the employer must pay the employee all outstanding wages within 48 hours.

If an employee quits or retires, the employer must pay all outstanding wages within six calendar days.

If an employee cannot be located, the employer must pay the wages to the Director of Employment Standards within 60 days after the wages become payable. The Director holds these wages in trust for the employee.

# Termination of Employment

The B.C. Employment Standards Act does not remove an employer's right to terminate an employee. The Act requires that employees who are terminated receive written notice or compensation based on length of service.

## Compensation eligibility

An employee who is terminated may be eligible for compensation based on the following formula:

- After three consecutive months of employment – one week's pay;
- After 12 consecutive months of employment – two weeks' pay;
- After three consecutive years – three weeks' pay, plus one week's pay for each additional year of employment to a maximum of eight weeks.

A week's pay is calculated by:

- Totalling the employee's wages, excluding overtime, earned in the last eight weeks in which the employee worked normal or average hours; and
- Dividing the total by eight.

The sale, lease or transfer of a business does not typically interrupt an employee's period of continuous employment unless the employee has been terminated by the vendor employer.

## No compensation required with working notice

No compensation is required if an employee is given advance **written** notice of termination equal to the number of weeks for which the employee is eligible. This notice **must** be in writing.

An employee can also be given a combination of written notice and compensation equal to the number of weeks of pay for which the employee is eligible.

An employee must be able to work during the notice period. If an employee is on vacation, leave, temporary layoff, strike or lockout, or unavailable for work due to medical reasons during the notice period, the employer must either suspend the notice period until the employee returns to work or pay that employee compensation in lieu of notice.

If employment continues after the notice period ends, the notice is of no effect.

Once written notice has been given, the employer may not alter any condition of employment, including the wage rate, without the employee's written consent.

## No notice or compensation required

Notice or compensation is not required if:

- The employee has not completed three consecutive months of employment;
- The employee quits or retires;
- The employee is dismissed for just cause (see "Just Cause" factsheet);
- The employee works on an on-call basis doing temporary assignments, which he or she can accept or reject;
- The employee is employed for a definite term;
- The employee is hired for specific work to be completed in 12 months or less;

*continued...*

- It is impossible to perform the work because of some unforeseeable event or circumstance (other than bankruptcy, receivership or insolvency);
- An employer whose principal business is construction employs the employee at one or more construction sites;
- The employee refuses reasonable alternative employment;
- The employee is a teacher employed by a board of school trustees.

If a definite term or specific work is extended for at least three months past its scheduled completion, the definite term and specific work exceptions described above do not apply.

### Temporary layoff

A fundamental term of an employment contract is that an employee works and is paid for his or her services. Therefore, **any** layoff, including a temporary layoff, constitutes termination of employment **unless** the possibility of temporary layoff:

- is expressly provided for in the contract of employment;
- is implied by well-known industry-wide practice (e.g. logging, where work cannot be performed during "break-up"); or
- is agreed to by the employee.

In the absence of an express or implied provision in an employment agreement that allows temporary layoff, the Act alone does **not** give employers a general right to temporarily lay off employees.

Where temporary layoff is permitted by the terms and conditions of employment, the Act applies to limit it to:

- a layoff of up to 13 weeks in a period of 20 weeks, or
- a period of time in which an employee covered by a collective agreement has the right to be recalled.

If an employee's hours are reduced, a week of layoff is a week in which an employee earns less than 50 percent of his or her weekly wages at the regular rate, averaged over the previous eight weeks.

A temporary layoff becomes a termination when:

- it exceeds 13 weeks in any period of 20 consecutive weeks, or
- the recall period for an employee covered by a collective agreement is exceeded.

When a temporary layoff becomes a termination, the beginning of the layoff is the termination date and the employee's entitlement to compensation for length of service is based on that date.

### Group terminations

Where an employer intends to terminate 50 or more employees at a single location within a two-month period, the employer must give written notice of group termination to each employee affected. The employer must also notify the Minister of Labour and any trade union that represents the employees. The length of notice depends on the number of employees affected.

If the amount of written notice is less than the required termination pay, employees must be paid the difference. Group termination requirements are in addition to individual termination requirements. The individual and group notice periods may not coincide.

### Branch may deem employment terminated

If an employer substantially alters a condition of employment, the Branch may determine that a person's employment has been terminated. In such a case, the termination provisions of the Act apply.

*continued...*

This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and *Regulation* for purposes of interpretation and application of the law.

April 2010

## Truck Drivers

Specific Employment Standards regulations apply to truck drivers in British Columbia who are employees of companies operating within the province. Drivers who haul across provincial boundaries may operate under federal jurisdiction.

### Definitions

*Long-haul truck drivers* usually drive for a distance outside a radius of 160 km from their home terminal.

*Short-haul truck drivers* usually drive for a distance inside a radius of 160 km of their home terminal.

*Usually* means a majority of hours worked.

*160 km radius* means "as the crow flies" in any direction from the home terminal, not distance on a highway.

*Week*: for the purposes of calculating overtime, a "week" runs from Sunday to Saturday.

### Overtime

Short-haul truck drivers are paid time-and-a-half after working nine hours in a day and 45 hours in a week. Only the first nine hours in a day count toward the 45 weekly hours.

	Mon	Tues	Wed	Thurs	Fri	Sat	Total
Hours	11	11	12	9	9	4	56
Regular	9	9	9	9	9		45
1 ½ x	2	2	3			4	11

Long-haul truck drivers are paid time-and-a-half after working 60 hours in a week. They are not entitled to daily overtime.

Truck drivers who are paid on a day rate, trip rate, commission or other incentive basis are also entitled to overtime.

A truck driver does not have to be paid overtime if the truck has a mechanical breakdown, or is immobilized while more than 160 km from home because of road or weather conditions or another cause completely beyond the employer's control, unless:

- The breakdown resulted from the employer's negligence; or
- The truck driver was actively engaged in repairing the truck.

### Calculating overtime when paid other than hourly

In order to calculate overtime it is necessary to convert day or trip rates to an hourly rate as follows:

1. Divide total regular earnings for the week by the total number of hours worked to establish the hourly rate. The resulting hourly rate may change each week.
2. Pay the number of regular hours worked by the hourly rate.
3. Multiply the hourly rate by 1.5 to calculate the overtime rate.
4. Pay the number of overtime hours worked by the overtime rate.
5. Show the regular and overtime rates and the number of hours worked at each rate on the employee's pay stub.

*continued...*

### Example:

A short-haul truck driver is paid by the delivery. One week he works six 10-hour days and is paid \$1,200. Since short-haul truck drivers are entitled to overtime after 45 hours per week, the driver has 15 hours for which he is entitled to be paid at overtime rates. The driver's piece rate must be converted to an hourly rate which can then be used to calculate overtime as follows:

- Divide the \$1,200 earned by the 60 hours worked to get the driver's "regular rate" of \$20 per hour for that week;
- The first 45 hours are calculated at the regular rate of \$20 for a total of \$900;
- The additional 15 hours are calculated at one and a half times the regular rate, or \$30/hour, for a total of \$450;
- Total earnings that week are  $\$900 + \$450 = \$1,350$ .

### Questions & Answers

**Q:** *Each day I report to work at a warehouse in Port Coquitlam. From there I am dispatched throughout the day to make deliveries in New Westminster, Langley and Chilliwack. Some days I cover 250-300 kilometres. What overtime am I entitled to?*

**A:** As you do not normally travel to destinations outside a radius of 160 km from your base you are a short haul truck driver, entitled to overtime after working nine hours in a day or 45 hours in a week.

**Q:** *I drive from Vancouver to Kamloops 3 days per week and drive within the Lower Mainland 2 days a week. The Kamloops return trip takes 10 hours. Am I entitled to overtime?*

**A:** You are considered a long-haul trucker as the majority of your work time is spent driving to destinations outside of a 160 km radius from your home base. You are entitled to time-and-a-half after 60 hours worked in a week.

**Q:** *Four days a week I deliver goods locally around Prince George. Every Thursday I drive to Dawson Creek and back. When am I entitled to overtime?*

**A:** You do not usually drive over 160 km from your base; therefore you are considered a short-haul truck driver and are entitled to overtime after working nine hours in a day or 45 hours in a week.

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### Wrongful dismissal

Some employees who are terminated sue for wrongful dismissal through the courts. That is different than a complaint made to the Employment Standards Branch under the Act. Those who wish to consider an action for wrongful dismissal should seek legal advice. The Employment Standards Branch cannot provide this advice.

### If an employee quits

An employee who voluntarily quits his or her employment is not entitled to written notice of termination or compensation for length of service. Final wages, including any outstanding wages such as annual vacation pay, statutory holiday pay and overtime either worked or in a time bank, must be paid to the employee within six days after the employee's last day of work. The Act does not require the employee to give notice to the employer.

If an employee does give notice, the employer may accept or refuse the notice. If the employer refuses the notice, or terminates the employee during the notice period, the employer must pay compensation equal to the lesser of:

- the remaining amount of notice the employee has given; or
- the employee's statutory entitlement under the Act.

### Collective agreements

If a collective agreement does not contain group termination benefits equal to or greater than those provided in the Act, the Act applies.

Questions about the application of these sections to employees covered by a collective agreement must be addressed through the grievance procedure.