

Labour Market Opinions:

Are We Ready for the Next Wave?

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INTRODUCTORY REMARKS

Suppose that current labour market information and economic reports indicating a labour shortage are true.¹ Suppose that Western Canada is indeed on the verge of another major growth cycle. What have we learned from the last severe labour shortage? What has the Government of Canada done to prepare? Is the temporary foreign worker program ready to meet the demand while improving program integrity? And is it user-friendly? These questions should be kept in mind as we examine the system for obtaining labour market opinions (LMOs) in Canada. Are we ready for the next wave?

Every job offer by a Canadian employer to a foreign national requires an LMO unless a statutory, policy or other exemption applies. Whether the topic of obtaining labour market opinions is new to you or you are seeking updates on this area of immigration law, there are several key changes that affect the way business is done.

This paper discusses the legal requirements and practical procedures to obtain a labour market opinion (LMO) in Canada, with emphasis on recent legislative and policy changes to the temporary foreign worker program. It also provides guidance on obtaining work permits when an LMO is required.

LABOUR MARKET OPINION

(a) Definition

Based on the 2002 enactment of the *Immigration and Refugee Protection Act*² and Regulations, a labour market opinion was an assessment by Human Resources and Skills Development Canada (HRSDC) of whether the job offer is genuine and the employment of the foreign national is likely to have a neutral or positive economic effect on the labour market in Canada.

Amendments to the *Immigration and Refugee Protection Regulations* (the “Regulations”)³ that took on effect on April 1, 2011 have substantially changed that assessment. Service Canada, the service delivery agency for the Government of Canada, including Human Resources and Skills Development Canada (HRSDC), now has the mandate to assess job offers based on additional factors. The first factor - if the job offer is genuine - has been elaborated significantly. In addition, Service Canada will

≈ *Are We Ready for the Next Wave?* seemed appropriate as written on summer vacation in Kailua-Kona, Hawai'i (the “Big Island”).

¹ See for example, Service Canada, “Alberta Labour Market Bulletin”, July 2011, online: http://www.servicecanada.gc.ca/eng/ab-nwt-nu/lmi/reports/ab_bulletin_july2011.shtml (last modified: July 29, 2011).

² S.C. 2001, c.27.

³ SOR/2002-227.

assess whether the employer has complied with the terms of LMOs issued to it in the past two (2) years.

(b) Legislative Mandate

Division 3 of the Regulations - entitled "Issuance of Work Permits" - provides the legal basis for work permits and labour market opinions. Pursuant to Subsection 200(1), an immigration officer shall issue a work permit to a foreign national if it is established, *inter alia*, that the foreign national has been offered employment and a positive determination has been made under Subsections 203(1)(a) to (e).⁴

ASSESSING THE OFFER OF EMPLOYMENT

Subsection 203(1) of the Regulations provides for the assessment of employment offered according to five factors. The amendments effective on April 1, 2011 enable Service Canada to make a detailed assessment of whether the job offer is legitimate and whether the employer has fulfilled the conditions of prior LMOs and applicable laws. If the application meets those criteria, then the focus

⁴ Assessment of employment offered

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if

- (a) the job offer is genuine under subsection 200(5);
- (b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;
- (c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;
- (d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,
 - (i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
 - (ii) the employer will provide adequate furnished and private accommodations in the household, and
 - (iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and
- (e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day on which the application for the work permit is received by the Department,
 - (i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment, or
 - (ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).

becomes whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada.⁵

(a) Genuineness of Job Offer

In assessing the genuineness of the job offer, Service Canada is entitled to consider whether the employer is a going concern, reasonably requires the employee and can fulfill the terms of the offer. In addition, Service Canada can and should be expected to request evidence that the employer and any agent involved have complied with federal and provincial laws.

Genuineness of job offer

(5) A determination of whether an offer of employment is genuine shall be based on the following factors:

(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;

(b) whether the offer is consistent with the reasonable employment needs of the employer;

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.⁶

The Regulatory Impact Analysis Statement released with these amendments states the following rationale and objectives for the amendments:

With this significant reliance on TFWs, the Government of Canada has become increasingly aware of instances where employers, or third-party agents working on their behalf, are failing to abide by commitments made to workers. Prior to these amendments, no provisions existed in the Regulations to hold employers accountable for their actions regarding TFWs. Breaches that could occur include employers paying TFWs less than promised; providing TFWs with poor working conditions or giving them different occupations from those agreed upon in the offer of employment; inadequate accommodations for some TFWs; and third-

⁵ Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers), P.C. 2010-959, August 4, 2010, online: <http://www.gazette.gc.ca/rp-pr/p2/2010/2010-08-18/html/sor-dors172-eng.html> (last modified: August 18, 2010).

⁶ Regulations, subsection 200(5).

party agents charging fees to workers, rather than employers, in contravention of any existing provincial/territorial legislation.⁷

The practical effects of the genuineness assessment are:

- All employers applying for LMOs must use the new application forms specific to the occupation and provide all of the information required thereon;
- New employers must provide information to confirm that their business is a going concern and compliant with applicable regulations;⁸
- Employers seeking an LMOs for Live In Caregivers must provide documentation and meet assessment criteria specific to the occupation;
- Returning employers must declare whether they have complied with prior LMOs and may be required to provide extensive supporting documentation;
- Employers who appear to be non-compliant will have an opportunity to explain and / or take corrective action; and
- Non-compliant employers who refuse to cooperate may have all current LMOs revoked (for which work permits have not been issued) and Citizenship and Immigration Canada may deem the employer ineligible to hire temporary foreign workers for two (2) years, publish the name, address and period of ineligibility on its website, and refuse to issue work permits authorizing employment with such employers.⁹

(i) *CIC's List of Ineligible Employers*

Subsection 200(3) of the Regulations now provides, *inter alia*:

(3) An officer shall not issue a work permit to a foreign national if

(h) the foreign national intends to work for an employer whose name appears on the list referred to in subsection 203(6) and a period of two years has not elapsed since the day on which the determination referred to in subsection 203(5) was made.

There has been a great deal of discussion and even fear-mongering about the April 1 amendments and CIC's List of Ineligible Employers. While some may sensationalize the effect of these amendments in order to drum up business, it remains important

⁷ *Ibid.*

⁸ A list of "any or all" of the documents that could be required is available at HRSDC, "Immigration and Refugee Protection Regulations Amendments – Labour Market Opinion", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmo_irpr.shtml (last modified March 11, 2011).

⁹ *Ibid.* CIC's List of Ineligible Employers currently has no entries and is also available online: <http://www.cic.gc.ca/english/work/list.asp> (last modified: March 22, 2011).

to understand the factors comprising an LMO assessment and the implications of non-compliance.

(b) Neutral or Positive Effect

Assuming the offer of employment is genuine and the employer has complied, the LMO application will be determined according to the effect on the Canadian labour market. To determine whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada, subsection 203(3) of the Regulations stipulates six (6) factors for HRSDC to consider.¹⁰ These factors are described and ordered differently and inconsistently on HRSDC's website, which makes it difficult to confirm the applicable standard. For certainty, we recommend addressing the assessment criteria on every LMO application as follows:

When assessing a job offer, HRSDC/Service Canada considers primarily:

- the [occupation](#) that the foreign worker will be employed in;
- the [wages and working conditions](#) offered;
- the employer's [advertisement and recruitment](#) efforts;
- the [labour market benefits related to the entry](#) of the foreign worker;
- the [consultations](#), if any, with the appropriate union; and
- whether the entry of the foreign worker is likely to affect the settlement of a [labour dispute](#).¹¹

¹⁰ Factors re effect on labour market

(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in paragraph (1)(b) shall be based on the following factors:

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;

(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

(c) whether the employment of the foreign national is likely to fill a labour shortage;

(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;

(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and

(f) 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.

¹¹ HRSDC, "Labour Market Opinion Assessment Criteria", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_assessment.shtml (last modified: August 26, 2011). These criteria are stated differently elsewhere on websites maintained by HRSDC and Citizenship and Immigration Canada for the Temporary Foreign Worker Program. See, for example: HRSDC, "Labour Market Opinion", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/lmi_tfw.shtml (last modified: July 13, 2011).

(i) *Occupation*

The foundation for any LMO application is the occupation: classifying the occupation according to the skill level and duties categorized in the National Occupational Classification (NOC). The NOC is the standardized framework developed by Statistics Canada for categorizing occupations in Canada. It organizes over 30,000 job titles into 520 occupational group descriptions; and is primarily used to collect and organize occupational statistics and to provide labour market information. The structure and content of the NOC is also implemented in a number of major services and products throughout the private and public sectors. Revised every five (5) years according to census cycles, the NOC 2006 is currently in use and to be replaced by the NOC 2011 in January 2012.¹²

At the earliest stage of client consultations regarding a job offer to a foreign worker, it is important to confirm the title, duties and skill requirements of the position. These factors determine the classification of the occupation according to the NOC, which not only indicates whether the job offer could be exempt from the LMO requirement, but if an LMO is required, determines the minimum wage and working conditions, advertising and recruiting efforts, and whether there is a labour shortage in the occupation. Ultimately, the NOC is entered by the Immigration Officer to designate the occupation for which employment is authorized on the work permit.

We recommend obtaining a written job description from your client and comparing it to the NOC. You may also work with your clients to develop job descriptions consistent with the NOC and specifically designed to meet the requirements of LMO and work permit applications. Job descriptions sometimes overlap with one or more occupations in the NOC. To avoid confusion, they can be revised for consistency with the NOC; provided they remain accurate, complete and consistent with the position subject to the job offer.¹³

¹² HRSDC, "About the NOC 2006", online: <http://www5.hrsdc.gc.ca/noc/english/noc/2006/AboutNOC.aspx> (last modified: June 15, 2011). More information about NOC 2011 can be found online: <http://www5.hrsdc.gc.ca/noc/english/noc/2006/html/NOCBulletin.html>

¹³ HRSDC has a publication designed to help small and medium-sized organizations with their human resources management activities. "Job Descriptions: An Employer's Handbook – How to write them – How to use them", online: <http://www5.hrsdc.gc.ca/noc/english/noc/2006/pdf/JobDescriptions.pdf> (HRSDC, 2007).

(1) *Regulated Occupations*

When an LMO application involves an occupation subject to licensure or other regulations, generally HRSDC will issue an LMO and the licensure issue is dealt with by Citizenship and Immigration Canada in processing the work permit application. This is the norm for engineers, nurses, physicians and other regulated occupations. However, for compulsory certification trades, being those trades requiring journeyman certification,¹⁴ HRSDC will typically issue an LMO with a shorter duration of employment, subject to the following:

- the foreign worker must already be a certified journeyman for the trade in another jurisdiction (i.e. positive LMOs will not be issued for foreign apprentices);
- the duration of employment in the LMO will be limited to a period of time considered sufficient (i.e. six months) for the foreign worker to complete journeyman certification in the Canadian province where he or she will be employed;
- prior to obtaining certification in the province of employment, the foreign worker must work under the supervision of a certified journeyman and cannot represent him or herself as a journeyman in the trade; and
- if the foreign worker does not become certified within such period due to failing exams, a second LMO may be issued of a limited duration to facilitate re-examination.

Practitioners dealing with any regulated occupation should become familiar with the licensure procedures and accounting for the processing times and procedures in the LMO and work permit application process. In Alberta, the Alberta Learning Information Service maintains a website dealing with certification requirements for occupations.¹⁵ For occupations across Canada,

¹⁴ A list of compulsory certification trades in Alberta is available online: http://www.tradesecrets.gov.ab.ca/quick_facts/pdf/designated_trades_certification.pdf (last modified: June 8, 2011).

¹⁵ "Certification and Registration Requirements for Employment in Alberta", online: <http://alis.alberta.ca/certinfo/Content/RequestAction.asp?format=html&aspAction=GetCERTHomePage&Page=CERTHome> (last modified: not stated).

a new and useful resource is the “Licence & Certification” icon on the “Working in Canada” website.¹⁶

(ii) *Wages and Working Conditions*

Once the occupation has been confirmed according to the NOC, the next step is to assess the wage and working conditions according to HRSDC requirements. For occupations in NOC skill levels O, A and B, this is almost exclusively about wage – whether the hourly wage or annual salary being offered is equal to or greater than the minimum for the occupation according to the Government of Canada. For occupations requiring lower levels of formal education, there are more stringent requirements related to working conditions, accommodation, travel expenses and other considerations intended to minimize the exploitation of foreign workers.

There are reliable sources of information on wages in Canada based on national, regional, provincial and industry surveys and statistics. In practice, for jobs in Alberta, the Alberta Wage and Salary Survey is very reliable. However, since the Government of Canada’s labour market information is generally the first reference for HRSDC, a comparison should be done and any difference should be addressed.

(1) *National*

Until recently, the leading national source maintained by the Government of Canada was called Labour Market Information.¹⁷ While still temporarily available, that website is being replaced with a better site called Working in Canada.¹⁸ The new website is much more effective and has all sorts of information beyond wages. You can search among 520 occupations and find average wage and job postings, which are usually a good indicator of labour market conditions and affect how readily HRSDC will approve an LMO application. If there is an obvious labour shortage, point it out in your submissions.

¹⁶ Online: <http://www.workingincanada.gc.ca/report-eng.do?area=25348&lang=en&noc=2134&province=48&keyword=welder&action=final&display=regulated>

¹⁷ Online: http://temp.labourmarketinformation.ca/standard.aspx?pcode=lmiv_main&lcode=eng (last modified: October 15, 2010).

¹⁸ Online: http://www.workingincanada.gc.ca/content_pieces-eng.do?lang=eng&cid=1

Other national sources of labour market information include the Government of Canada's National Sector Council Program, The Alliance of Sector Councils¹⁹ and the Labour Force Survey published by Statistics Canada.²⁰

In the event that reliable information is not available to address an occupation or location, Temporary Foreign Worker Program officers may inquire with regional consultants at HRSDC's National Headquarters (NHQ).

(2) *Provincial or Regional*

In Alberta, the Alberta Learning Information Service publishes the Alberta Wage and Salary Survey every two years. The current version is 2009 and the 2011 survey is under way. "The 2009 Alberta Wage and Salary Survey covers over 400 occupations and provides information on wages and salaries for full-time and part-time employees in Alberta by occupation, geographic area and industry group."²¹ To use the survey, enter the NOC Code for the occupation and the economic region where the foreign worker is to be located. Go to the "Overall Results Table" and note the Overall Average Wage (per hour) and the Overall Average Salary (annual). The job offer must meet the applicable average for the occupation and economic region. If the foreign worker will provide services in more than one economic region (e.g. Edmonton and Wood Buffalo), then disclose this in the application and note that HRSDC will generally require the employer to pay the highest overall average wage or salary.

The Government of British Columbia has a provincial wage and salary survey and a wealth of labour market information on its website.²²

The Government of Saskatchewan also has a Saskatchewan 2009 Wage Survey available online and has commissioned a Saskatchewan 2011 Wage Survey.²³

¹⁹ The Alliance of Sector Councils, online: <http://www.councils.org/en/default.aspx?id=132>

²⁰ Statistics Canada, "Labour", online: <http://www5.statcan.gc.ca/subject-sujet/theme-theme.action?pid=2621&lang=eng&more=0> (last modified: September 3, 2011).

²¹ See online: Government of Alberta, <http://alis.alberta.ca/wageinfo/Content/RequestAction.asp?format=html&aspAction=GetWageHomePage&Page=Home>

²² See online: Government of British Columbia, <http://www.bcstats.gov.bc.ca/data/lss/labour/wage/>

In addition to the Wage and Salary Survey, see "Labour Market Information" at: http://www.bcstats.gov.bc.ca/data/lss/lmi_gate.asp

Service Canada produces monthly labour market bulletins on a regional and provincial basis.²⁴ The July 2011 Bulletin for Western Canada and Territories Region includes such headlines as “Strong Labour Market Growth Through 2030”.²⁵

(3) *Industry*

There are a variety of industry salary surveys available. Generally, reference to industry-specific sources is not required unless being used to support submissions that the federal or provincial government surveys are inaccurate (i.e. higher than the wage or salary paid in the industry. For example, the Association of Professional Engineers, Geologists, Geophysicists of Alberta publishes an annual survey that could be used to support the position that the salary for a foreign engineer-in-training is not as high as that of a professional engineer.²⁶ Another useful industry survey is the Canadian Association of Oilwell Drilling Contractors (CAODC) Wage Schedule.²⁷

(iii) *Advertisement and Recruitment Efforts*

The Temporary Foreign Worker Program website is the source for current information on advertising requirements for any LMO application.²⁸

(1) *NOC 0 and A Occupations*

Minimum advertising requirements for NOC 0 (management occupations) and Skill Level A occupations (which usually require university education) include activities consistent within the industry (e.g. advertising on websites, journals, newspapers and with professional associations); or posting the position on the national Job Bank for a minimum of fourteen (14) calendar

²³ See online: Government of Saskatchewan, <http://www.aeei.gov.sk.ca/sk-wage-survey>

²⁴ HRSDC, “Labour Market Bulletins”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/labour_market_information/index.shtml (last modified: August 30, 2011).

²⁵ Online: http://www.servicecanada.gc.ca/eng/ab-nwt-nu/lmi/reports/ab_bulletin_july2011.shtml

²⁶ Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA), “Value of Professional Service 2010 (updated March 2011), online, http://www.apegga.org/pdf/SalarySurvey/SSH_10.pdf. APEGGA also has information for internationally educated graduates online at: <http://www.apegga.org/Applicants/IEG/toc.html>

²⁷ See online: http://www.caodc.ca/wage/wage_drilling.html (last modified: August 11, 2011).

²⁸ HRSDC, Temporary Foreign Worker Program, “Minimum Advertising Requirements”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecruitment.shtml (last modified: February 28, 2011).

days in the three (3) month period prior to submitting the LMO application.²⁹ This is the most permissive category, as only one form of advertising is required.

(2) *NOC B Occupations*

Minimum advertising requirements for NOC Skill Level B occupations (which usually require college education or apprenticeship training) include **both** forms of recruiting for NOC O and A occupations – following industry practices and posting on the Job Bank for fourteen (14) calendar days in the three (3) months prior to filing.

For NOC O, A and B occupations, the advertisement must include:

- name of employer
- detailed job description for each position
- anticipated duration of employment (i.e. permanent, limited term or project-based)
- location(s) of employment
- wage range (must include the prevailing wage for the occupation)³⁰

It is highly recommended that for clients that are not experienced with advertising that meets the technical requirements of LMOs, that legal counsel drafts or reviews the final form of advertisement and confirmation of the date and location of its posting for inclusion with the LMO application. Lawyers can also post job ads on the job bank for their clients to ensure compliance with the LMO requirements.

(3) *NOC C and D Occupations*

For NOC C occupations (which usually require secondary education and occupation specific training) and NOC D occupations (which usually require on the job training), the minimum advertising requirements are most comprehensive and intended to ensure that Canadian citizens and permanent residents are fully canvassed,

²⁹ In Newfoundland, Saskatchewan, Quebec and Northwest Territories, there are job websites maintained by the provincial / territorial governments instead of the Job Bank. Links are available on the Temporary Foreign Worker Program website, supra note 14.

³⁰ See online: HRSDC, Temporary Foreign Worker Program, “Minimum Advertising Requirements”, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecruitment.shtml (last modified: February 28, 2011).

including communities with barriers to employment such as Aboriginal people, immigrants and newcomers, mature workers, people with disabilities and youth.

To comply with the minimum advertising requirements, employers must:

- Post the position on the Job Bank for fourteen (14) calendar days in the three (3) months prior to filing; **and**
- Provide evidence of recruiting consistent within the industry, including advertising for at least fourteen (14) days with one or more of the following methods:
 - weekly or periodic newspapers, journals and newsletters (including national, regional, local and ethnic publications);
 - community sources such as local stores, bulletin boards, churches, resource or employment centres;
 - recognized job websites (including industry and community websites)³¹

In addition to the methods above, employers may be required to demonstrate ongoing recruitment efforts and outreach to communities that face barriers to employment (e.g., Aboriginal people, older workers, immigrants/newcomers, people with disabilities and youth). More information about recruiting from disadvantaged groups in Canada can be found on HRSDC's website.³² These additional requirements are enforced rather inconsistently depending on Service Canada location. To be most effective, advise the employer of the requirements, encourage and document its ongoing efforts wherever possible.

Advertising Wage Rate for NOC B, C and D Occupations

Advertising for NOC B, C and D occupations must reflect the current wage range being offered to Canadians and permanent residents working in the same occupation and geographical area. The wage range must include the prevailing wage for the occupation. For unionized positions, the wage must be consistent with the rates established under the collective bargaining agreement. Advertisements must state whether benefits are provided and foreign workers cannot be excluded from benefits provided to Canadian citizens and permanent residents. HRSDC reserves the right to

³¹ *Ibid.* Advertisement criteria vary slightly in the Province of Quebec. See [Hiring Temporary Foreign Workers in Quebec](#).

³² HRSDC, "Helping employers hire disadvantaged groups", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/whatsnewgroup.shtml (last modified: September 15, 2010).

deal with particular circumstances by setting the prevailing wage rate that an employer must offer, whether or not the position is covered by a collective agreement.³³

(iv) *Labour Market Benefits*

The Application for a Labour Market Opinion - Occupations Requiring Post-Secondary Education / Training³⁴ states the question as follows:

What are the potential benefits to the Canadian labour market for offering this job to a temporary foreign worker(s)?

- Transfer of new skills or knowledge to Canadians/permanent residents
- Filling a labour shortage
- Direct job creation or retention of Canadians/permanent residents
- Other

Provide details:

The website for the Temporary Foreign Worker Program addresses all of the LMO assessment criteria except the factors considered in assessing labour market benefits related to the entry of the foreign worker.

The online manual entitled “Directives for Assessing Labour Market Opinions”³⁵ states:

TFWP officers assess both straightforward, measurable criteria such as wages and working conditions and harder-to-measure benefits such as skills transfer and job retention for Canadians. For example, if an employer can demonstrate that a foreign worker with a particular skill set is integral to the business and that hiring him or her will result in the transfer of skills to the Canadian staff or create jobs, then choosing that individual over a qualified Canadian or permanent resident may be acceptable.

³³ HRSDC, “Minimum Advertising Requirements”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecruitment.shtml (last modified: February 28, 2010).

³⁴ HRSDC, online: <https://catalogue.servicecanada.gc.ca/iforms-iformulaires/> (last modified: June 2011).

³⁵ HRSDC, “Directives for Assessing Labour Market Opinions”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodirtoc.shtml (last modified: February 8, 2011).

Another indication of labour market benefits may be found in the description of “significant benefit to Canadian interests”, which involves a determination by Citizenship and Immigration Canada pursuant to Section 205 of the Regulations whether the job offer is exempt from the requirement to obtain an LMO:

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).³⁶

While there may not be a readily available definition for “labour market benefits” and identifying such benefits may be difficult in some cases, it is important to do client consultations and document the direct, demonstrable benefits of employing the foreign worker, which may include:

- knowledge or skills possessed by the foreign worker based on employment in other jurisdictions, using methods or technology that would be advantageous to the employer, its Canadian personnel, the industry or consumers;
- specific plans to transfer such knowledge to Canadian personnel through job shadowing, mentorship, training and other programs (include training curriculum if the foreign worker possesses unique knowledge or skills and the LMO application may otherwise be weak);
- enabling the employer to operate its business or a function thereof or to meet contractual or other obligations when it would otherwise be unable to do so due to a documented labour shortage in the relevant occupation; or
- enabling the employer to operate its business at normal or increased capacity, thereby retaining Canadian citizens and permanent residents in the same and / or other occupations.

In practice, documenting labour market benefits is an area where the client consultations and drafting skills of legal counsel can add significant value and contribute to the success of an LMO application.

³⁶ Citizenship and Immigration Canada, “Foreign Worker Manual” at Section 5.30, online: <http://www.cic.gc.ca/english/resources/manuals/fw/fw01-eng.pdf> (last modified: January 20, 2011).

(v) *Union Consultations*

All of the LMO applications forms current in use (except for Live-in Caregivers) ask whether the position is part of a union; if so, whether the local union has been consulted about the hiring of a foreign worker; what the position of the union is – confirmed by a letter or other communication from the union; and whether the employer engages in ongoing consultations with the union about employing union members in its organization. If this information is not included in the LMO application, HRSDC will (and may in any event) contact the union directly to confirm its position on the effect of hiring a foreign worker. This can delay the processing of the LMO application.

Employers dealing with unionized job sites are well-advised to establish clear lines of communication with union representatives and to take the long term view of building a cooperative relationship. In instances where this does not occur, the employer should carefully document union consultations in support of its LMO applications.

(vi) *Labour Disputes*

If the offer of employment could affect a labour dispute to which the employer is a party, HRSDC will take the position that the employment of a foreign national will have a negative effect on the Canadian labour market and refuse the LMO application. The policy reason is simply to prevent Canadian employers from hiring foreign workers in situations where labour negotiations are in progress.

(c) Not Inconsistent with Federal-Provincial Agreement

Every LMO should also take into account whether the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals.³⁷ Section 95 of the *Constitution Act, 1867* provides that both the federal and provincial / territorial governments may make laws with respect to immigration. The federal, provincial and territorial governments consult on immigration issues. Some provinces and territories have comprehensive agreements on immigration with the Government of Canada, represented by Citizenship and Immigration Canada, HRSDC and other agencies. In addition, all provinces and territories except Nunavut have agreements for provincial nominee programs, enabling the provincial

³⁷ Regulations, subsection 203(1)(c).

and territorial governments to nominate foreign nationals for permanent residence in their jurisdictions.³⁸

For Alberta, the Agreement for Canada-Alberta Cooperation on Immigration, Annex B: Temporary Foreign Workers, states its purpose to be, *inter alia*, to provide Alberta with mechanisms to facilitate the entry of temporary foreign workers to meet its economic development priorities in a manner that does not negatively affect the normal functioning of the local labour market. To this end, Citizenship and Immigration Canada may issue work permits to temporary foreign workers on an LMO-exempt basis upon written recommendation by Alberta. In addition, the number of work permits issued to temporary foreign workers will be based on a written estimate of the demand issued by Alberta on or before November 15 each year.

Wouldn't it be interesting to know the estimate about to be given for 2012? For a hint, see Temporary Foreign Worker Program: LMO Statistics.³⁹

(d) Live-in Caregivers

Effective April 1, 2010, live-in caregivers working in Canada have up to four years from their date of arrival with a work permit to complete twenty-four (24) months or 3,900 hours of authorized, full time employment to be eligible for permanent residence under the Live-in Caregiver Program.

Recent amendments are clearly designed to improve mechanisms for assessing the genuineness of the offer of employment and for reducing the exploitation of live-in caregivers or at least ensuring that they have proper accommodation, employment contracts, health insurance, travel costs, wages and working conditions.⁴⁰

One issue that frequently arises is the conflict between an employer's form of contract and the form mandated by HRSDC on its website. Some employers have modified their own form of contract to ensure that it includes the terms required under the Live-in Caregiver Program. Others have foregone their own template and simply use the new seven (7) page form on the HRSDC website to avoid potential delays and additional scrutiny of their LMO applications.⁴¹

³⁸ The terms of each federal-provincial/territorial agreement are available online: <http://www.cic.gc.ca/english/departments/laws-policy/agreements/index.asp> (last modified: December 20, 2010).

³⁹ Online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/quarterly/table1q.shtml#AB (last modified: August 26, 2011).

⁴⁰ HRSDC, "Live-in Caregiver Program", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lcpdir/lcpone.shtml (last modified: May 31, 2011).

⁴¹ Service Canada, "Contract Template – Live-in Caregiver Program", online: <https://catalogue.servicecanada.gc.ca/iforms-iformulaires/> (last modified: February 22, 2011).

It should also be noted that all LMO applications across Canada under the Live-in Caregiver Program are processed in Toronto.

(e) Substantially the Same

Recent amendments to Subsection 203(1) of the Regulations have made accuracy and flexibility, where possible, critical elements of an LMO application. Specifically, after April 1, 2011, employers who submit LMO applications to HRSDC will be required to confirm whether in the past two (2) years they provided each foreign national they employed with wages, working conditions and employment in an occupation that were “substantially the same” as the job offer confirmed by the positive LMO, subject only to statutory justifications for failing to do so.⁴²

⁴² Subsection 203(1)(e) of the Regulations, as amended on April 1, 2011, provides:

Assessment of employment offered

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day on which the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer’s offer of employment, or

(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).

Justification

(1.1) A failure referred to in subparagraph (1)(e)(ii) is justified if it resulted from

(a) a change in federal or provincial law;

(b) a change to the provisions of a collective agreement;

(c) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;

(d) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation – or if it was not possible to provide compensation, made sufficient efforts to do so – to all foreign nationals who suffered a disadvantage as a result of the error;

(e) an unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation – or if it was not possible to provide compensation, made sufficient efforts to do so – to all foreign nationals who suffered a disadvantage as a result of the error;
or

(f) circumstances similar to those set out in paragraphs (a) to (e).

In situations where it is foreseeable that an employee could be subject to a promotion or change of job site, for example, it is prudent to disclose such opportunities in the original job offer. By doing so, the LMO confirms the terms of the job offer, including the promotion. When the next LMO application is filed by the employer, it can declare that it has complied with past LMOs and such a declaration would be proven in the event of an audit by Service Canada.

For example, it may be possible to include in a job description duties that are consistent with more than one (1) occupation and a range of wage or salary, thereby providing flexibility for the employer to promote the employee within the same job offer, LMO and work permit. Note, however, that if the duties or qualifications fall under different NOC codes and skill levels, Temporary Foreign Worker Program officers choose the code at the highest skill level.⁴³

Many scenarios have arisen since April 1, 2011 that will test the application of “substantially the same” by Service Canada in assessing future LMO applications. One benefit of the current policy to reduce the duration of employment on LMOs to one (1) year is to shorten the period in which a foreign worker may not be subject to a change that is not “substantially the same”. That is, if the employer is going to promote the foreign worker or change the location of employment, it may be able to wait until the new LMO is issued. Nevertheless, drafting job offers will become even more of an art and an area where legal counsel can add value. In any event, it is imperative that legal advisors make their clients aware of the new assessment criteria, the limited justifications for failure to comply and the consequences of unjustified failure to comply with the terms of an LMO.

PRACTICE TIPS

Based on the above review of the Regulations applicable to LMOs, recent amendments and the assessment criteria, here are some practice tips:

(a) Seven (7) Occupation Categories

In 2011, in anticipation of launching its online application system, HRSDC implemented separate LMO application forms and requirements for seven (7) occupation categories, including:

- Academics
- Agricultural Workers – 4 types with separate forms, contracts and program requirements
- Arranged Employment Opinions (permanent residence for high skilled occupations)

⁴³ HRSDC, “Directives for Assessing Labour Market Opinions”, Section 9.1, online: http://www.hrsc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-9.shtml#a91 (last modified: February 10, 2011).

- Exotic Dancers
- High Skilled Occupations
- Live-in Caregivers
- Low Skilled Occupations

All of the application forms and additional documents are available on the Temporary Foreign Worker Program website.⁴⁴

(b) LMO Specifics

(i) Arranged Employment Opinions

An Arranged Employment Opinion (AEO) may be obtained to support an application for permanent residence in Canada by a skilled worker (i.e. NOC O, A or B occupation). AEOs are not issued for the purpose of obtaining Canadian work permits. AEOs are assessed by Service Canada in a manner similar to LMOs, including the genuineness of the employment offer. In a manner similar to LMOs, AEOs have a new application form and employers are required to provide more documentation that previously to demonstrate that the offer is genuine.

To be eligible for an AEO, the foreign national must have at least one (1) year of work experience in a professional, managerial or technical occupation. Currently, there are twenty-nine (29) occupation categories under which skilled workers are eligible to apply to immigrate to Canada. The benefit of obtaining an AEO is an additional ten (10) points on the system currently requiring at least 67 points to be eligible for permanent residence in Canada under the Skilled Worker Category. AEO applications are currently processed in a Temporary Foreign Worker – Centre of Specialization in St. John, New Brunswick.⁴⁵

(ii) Directives for Assessing Labour Market Opinions

HRSDC maintains guidelines in the form of “Directives for Assessing Labour Market Opinions” on its website.⁴⁶ These directives are generally helpful. However, HRSDC

⁴⁴ HRSDC, “Application Forms and Contracts”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/fwp_forms.shtml#H02 (last modified: July 26, 2011).

⁴⁵ More information on AEOs is available online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/poarrempt.shtml (last modified: July 27, 2011). See also, “Supporting Immigration of Skilled Workers”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/sisw_tfw.shtml (last modified: February 20, 2009).

⁴⁶ *Supra* note 36.

has historically been less than forthcoming with its manuals and bulletins. It is possible that there are more current and detailed manuals being developed or used internally. For example, Temporary Foreign Worker Bulletins are released periodically and marked “*For Internal Distribution Only*”. This contrasts with Citizenship and Immigration Canada’s Temporary Foreign Worker Guidelines which are available on its website with regular updates.⁴⁷

(iii) *Duration of Employment*

HRSDC currently limits the duration of employment on most LMOs to one (1) year. This reflects a policy change within the past year or two, also probably based on the rationale of maintaining tighter control on the Temporary Foreign Worker Program. It also results in work permits being limited to validity of one (1) year. As processing times creep up, employers are well advised to be seeking LMOs at least three (3) months before the expiry of an existing work permit.

(iv) *Excluding Worker Names*

In 2011, citing privacy concerns and the fraudulent use of LMOs, HRSDC discontinued the practice of including the names of foreign workers on LMO confirmation letters and annexes. Instead, the names of foreign workers are transmitted electronically by HRSDC to Citizenship and Immigration Canada and Canada Border Services Agency for the purposes of processing work permit applications. The occupation, wage and working conditions remain on the new form of LMO, along with the file number, which is important to include on any work permit application. Since at least July 2011, HRSDC has been issuing an Annex B intended only for employers listing the names of all foreign workers subject to the LMO.⁴⁸

(v) *Expiry Dates*

Since May 19, 2009, LMO expiry dates have been limited to six (6) months. A foreign national must apply for a work permit during the validity of the LMO; the work permit does not have to be issued before the LMO expiry date. The rationale for reducing

⁴⁷ Citizenship and Immigration Canada, “FW1 Foreign Worker Manual”, online: <http://www.cic.gc.ca/english/resources/manuals/fw/fw01-eng.pdf> (last modified: January 20, 2011).

⁴⁸ HRSDC, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/confirmation.shtml (last modified: July 19, 2011).

LMO expiry dates to six (6) months is to maintain consistency between the Temporary Foreign Worker Program and labour market conditions.⁴⁹

(vi) *Four Year Limit on Temporary Foreign Workers*

Pursuant to subsection 200(3)(g) of the Regulations, a foreign national is not eligible for a work permit if the foreign national has worked for one (1) or more periods totalling four (4) years after April 1, 2011. Foreign workers who accumulate four (4) years as a temporary foreign worker in Canada are ineligible for a period of four (4) years. This restriction is subject to exemptions for work that would constitute a significant benefit to Canadians, pursuant to an international agreement, or by full-time students in Canada. The practical effect of the four year limit is to emphasize the importance for eligible foreign nationals to obtain permanent residence in Canada before their four (4) years as a temporary foreign worker runs out.⁵⁰

(vii) *Online Applications*

HRSDC has been working on an internet-based application system since at least 2007.⁵¹ Unfortunately, it was never a success, particularly since paper documents still had to be filed in support of the electronic application. Many practitioners simply continued to file LMO applications by facsimile to ensure delivery and completeness.

The latest online application system was supposed to be launched in June 2011 and has been pushed back to January 2012. According to its website, “[D]uring this period, Human Resources and Skills Development Canada will be working on improving the system to ensure it is accessible, safe and secure for all users.”⁵² It remains to be seen (and there are serious concerns about) whether the new online system will be reliable and efficient. In addition, there are conflicting reports about whether it will facilitate third party representation. If not, HRSDC will certainly encounter additional challenges, particularly if the failure to include authorized representatives is stated to be a technical oversight.

⁴⁹ See online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/questions-answers/OA6Month.shtml (last modified: September 28, 2009).

⁵⁰ See Citizenship and Immigration Canada, “Backgrounder”, online: <http://www.cic.gc.ca/english/department/media/backgrounders/2011/2011-03-24.asp> (last modified: March 24, 2011).

⁵¹ For a discussion of the announcement about launching an electronic LMO application system on April 1, 2007, see V. Langford, “Servicing Canada: Responding to the Skills and Labour Shortage” (Canadian Bar Association, 2007 National Immigration Law Conference, Victoria, B.C.) at 2.

⁵² See online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/online_system.shtml (last modified: June 2, 2011).

(viii) *Part Time Employment*

Generally, LMOs are not issued for part-time employment. The stated rationale is to ensure the foreign worker receives sufficient income to be self-supporting in Canada. There are limited exceptions for skilled workers living outside Canada or working on a flexible schedule and perhaps even low-skilled workers where two (2) or more employers are offering part-time work for a position that is in demand. Labour shortages and benefits to Canadians should always be highlighted when seeking an LMO for a part-time position, which is generally an uphill battle.

(ix) *Pre-Approvals*

HRSDC will approve an LMO application for multiple workers prior to all of the foreign nationals being recruited. This has been historically referred to an “approval in principle” or a “bulk LMO”. Certain industries have even entered into memoranda of understanding with HRSDC for large projects. Employers in receipt of a pre-approval have six (6) months to recruit the number of foreign workers subject to the approval and to provide the identity information of the foreign workers to HRSDC so they can be included on the LMO and able to proceed to apply for work permits. LMOs involving greater than 50 foreign workers have required concurrence from HRSDC’s National Headquarters in Ottawa.

(x) *Processing Centres*

It is important to note that Service Canada has different LMO processing centres by region and also by type of application. The list of LMO Processing Centres is available online.⁵³ Except for specialized occupations, the majority of LMO processing for Saskatchewan, Alberta, British Columbia and the Northwest Territories is being done in Edmonton and Vancouver.

⁵³ HRSDC, “Temporary Foreign Worker Program, Service Canada Centres”, online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/listhrcc.shtml (last modified: July 29, 2011).

(xi) Provincial Regulations

In addition to the requirements of HRSDC and CIC under the Temporary Foreign Worker Program, always confirm whether there are additional requirements by the province to which the worker is destined. For example:

- Agents and Recruiters must be registered in Alberta under the *Fair Trading Act* (Alberta) and the Employment Agency Business Licensing Regulation;⁵⁴
- Live-in Caregivers in British Columbia must be registered by their employers with the Employment Standards Branch;⁵⁵
- Employers in Manitoba must be registered under the *Worker Recruitment and Protection Act* (Manitoba);⁵⁶
- If the job is located in Quebec, the employer must obtain a Certificate of Acceptance for the job offer from the Ministère de l'Immigration et des Communautés culturelles (MICC) and submit the form of employment agreement required by MICC.⁵⁷

(xii) Regulatory Changes

The most recent regulatory changes affecting the Temporary Foreign Worker Program include:

- amendments to the Regulations effective April 1, 2011 providing for the genuineness assessment, confirmation of retroactive compliance, publication and banning for non-compliant employers;
- amendments to the *Immigration and Refugee Protection Act* restricting who may act as a paid representative in Canadian immigration matters;
- HRSDC requiring representatives to complete and submit an Annex to the Appointment of Representative form in addition to the Appointment of Representative form on an LMO application to confirm whether the

⁵⁴ Service Alberta, online: <http://www.servicealberta.ca/1049.cfm> (last modified:

⁵⁵ Ministry of Labour, Citizens' Services and Open Government, online: <http://www.labour.gov.bc.ca/esb/forms/pdf/domesticworker.pdf>

⁵⁶ See online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/questions-answers/manitoba.shtml (last modified: July 27, 2011).

⁵⁷ MICC, online: <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/obtaining-authorizations/index.html> (last modified: August 9, 2011).

representative is paid or unpaid and that the representative is a licensed member of a group authorized to practice immigration law;⁵⁸

- amendments to the Regulations effective April 1, 2011 restricting temporary foreign workers from working in Canada to a cumulative period of four (4) years, after which they must not work in Canada for four (4) years;

The best way to monitor regulatory changes to the Temporary Foreign Worker Program is on its website and in particular, the Archives section.⁵⁹

(xiii) *Representatives*

HRSDC is extremely inconsistent in dealing with paid representatives, including licensed lawyers. More often than not, Temporary Foreign Worker Program officers will contact the employer directly to engage in questioning about a specific LMO application. The best way to deal with this is to ensure that the employer designates a liaison for LMO applications and that person is available and well-informed about the LMO applications in process and any issues on which HRSDC could be seeking additional information.

(xiv) *Revoking an LMO*

It is also important to note that an LMO may be revoked prior to the issuance of a work permit if:

- the application included false or misleading information;
- new information arises that would have affected the assessment, or
- the positive opinion was based on a mistake of material fact.⁶⁰

When a positive LMO decision is replaced with a negative decision, employers have to submit a new LMO application before they can hire temporary foreign workers.

(i) *Self Employment*

Service Canada generally requires there to be an employment relationship between a Canadian employer and a foreign national to issue a positive LMO. However, it may recognize other arrangements, including self-employed individuals. Examples include

⁵⁸ The HRSDC website also states that a representative needs to be authorized before it can even advertise, represent, provide guidance or advice. For licensed lawyers, this is the jurisdiction of the Law Society.

⁵⁹ HRSDC, "Temporary Foreign Worker Program: Archives", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/Archives.shtml (last modified: June 3, 2011).

the entertainment industry, medical practitioners and foreign nationals with an interest in the business to which they are providing services.⁶¹

PUTTING IT ALL TOGETHER: BEST PRACTICES FOR LMO APPLICATIONS

(a) Best Practices for LMO Applications

Best practices for obtaining LMOs based on the current regulatory framework include:

- Determining the occupation according to the NOC based on the job description provided by the employer and detailed client consultations where necessary;
- Assessing the wages and working conditions applicable to the occupation in the location(s) of employment and ensuring the job offer meets the minimum requirements;
- Determining minimum advertising requirements and ensuring they are fulfilled before the application is filed;
- Using the correct application form for the occupation and providing all of the supporting documentation required for a new employer or returning employer, as the case may be;
- Ensuring that the Appointment of Representative form and the Annex are completed and signed;
- Drafting submissions of counsel that address all of the assessment criteria accurately and effectively;
- Counselling the employer on the application and any issues with respect to the job offer and the assessment criteria;
- Monitoring the LMO application according to current processing times;
- Reviewing the LMO Confirmation and Annexes to ensure that all of the information is correct and meets the employer requirements;
- Including the LMO in the applicable work permit application;
- Reviewing the work permit to confirm that it is accurate and consistent with the LMO;
- Advising the employer and the foreign worker on the terms of the LMO, the importance of compliance and the potential consequences of non-compliance.

⁶¹ HRSDC, "LMO Directives: Part II - Labour Market Opinion Analysis", online: http://www.hrsc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-10.shtml#a10313 (last modified: June 27, 2011).

(b) Document Checklist

A complete LMO application will include the documents specified for the occupation on HRSDC's website. We typically include:

- Submissions of legal counsel addressing all of the LMO assessment criteria
- Applicable LMO Application form, completed and signed by the employer and representative
- Appointment of Representative and Annex, completed and signed
- Job offer letter or employment contract for the occupation stream
- Proof of advertising and recruiting efforts
- Additional supporting materials meeting all requirements for the particular occupation

WORK PERMIT APPLICATIONS

Once an LMO is issued, the foreign national should apply for a Canadian work permit at a visa office, port of entry or from within Canada, depending on physical presence and whether the applicant is eligible to apply at a port of entry or inland office.⁶²

[SEE NEXT PAGE FOR CONCLUSION]

⁶² For a detailed discussion of work permit applications, see V. Langford and Karen Swartzenberger, "Obtaining Labour Market Opinions in Western Canada: Skilled Workers, Low-Skilled Workers and Special Programs" (The Canadian Institute, September 18, 2006) at 12-15.

CONCLUSION: RIDING THE NEXT WAVE

There are uncertainties with respect to the current economic recovery and the global economy. Nevertheless, many businesses in Western Canada are already experiencing a shortage of qualified talent. Canadian businesses are not alone in the hunt for skilled personnel.

According to the 2011 Talent Shortage Survey published by Manpower Group:

As talent becomes increasingly difficult to find, we are heading toward a global employability crisis. Employers must reconsider their work models and people practices, and develop a robust workforce strategy that in a sense “manufactures” the talent they need to execute their long-term business strategy. Sticking to old assumptions on how to structure and organize work, how to develop and incent talent, and where to source it, will leave businesses in peril.⁶³

Regardless of whether Western Canada is on the verge of another major growth cycle, it is apparent that business have become more sophisticated in approaches to attracting, recruiting and retaining people with the necessary skills and experience. The Temporary Foreign Worker Program has undergone significant changes, enabling robust assessments of job offers and restrictions on employers who do not comply. It remains to be seen whether the electronic LMO application system will be user-friendly and efficient, and whether legal counsel and other representatives will be disadvantaged, particularly if processing times with the electronic system are faster than paper applications. It also remains to be seen whether structural changes to promote regionalization within HRSDC, specialized processing centre and application streams based on new forms and documentation requirements will result in effective service delivery and program integrity. One good indicator of overall performance is application processing times. Let us hope they never return to those experienced in 2007. To be successful in participating in the Temporary Foreign Worker Program, employers and their legal counsel are well advised to establish and maintain effective human resource plans and compliance strategies and to stay well-informed as Temporary Foreign Worker Program policies, procedures and service delivery methods continue to evolve.

⁶³ ManpowerGroup, “‘Manufacturing’ Talent for the Human Age”, online: <http://www.manpowergroup.com/research/research.cfm>