



September 3, 2008

The Honourable Nancy Allan, M.L.A.
Minister of Labour and Immigration
317 - 450 Broadway,
Winnipeg, MB R3C 0V8

Dear Minister:

Re: Regulations for the Worker Recruitment and Protection Act

On behalf of the Manitoba Bar Association's Immigration Section, we would like to commend the Government of Manitoba on the passage of the Worker Recruitment and Protection Act ("WRPA"). The intention of WRPA, to protect foreign workers from unscrupulous recruiters, is a laudable goal that we support.

As WRPA is now law, the Lieutenant Governor in Council will no doubt make regulations pursuant to section 29 of WRPA. In this connection, the Immigration Section of the Manitoba Bar Association would like to suggest areas which we believe should be considered in the regulations. We believe that by addressing some key issues, WRPA can be strengthened in a manner that also allows for its processes to be streamlined.

While WRPA gives the Lieutenant Governor in Council the ability to make a wide range of regulations, our comments are with respect to the following Sections of WRPA:

1. Regulation 29(b) - Prescribing classes of individuals for the purpose of clause (d) of the definition "family member" in section 1
2. Regulation 29(c) - Exempting foreign nationals or classes of foreign nationals from the definition "foreign worker" in section 1, namely:
 - a. Certain non-Canadians who are authorized to work in Canada without a work permit pursuant to regulation 186 of the Immigration and Refugee Protection Regulations (the "Immigration Regulations")
 - b. Certain non-Canadians who do not require a Labour Market Opinion but require a work permit pursuant to regulations 204 to 208 of the Immigration Regulations
 - c. Certain non-Canadians who require both a Labour Market Opinion and work permit pursuant to regulation 203 of the Immigration Regulations AND Non-Canadian permanent residents of Canada who are granted points for "arranged employment" pursuant to regulation 82(2)(c) of the Immigration Regulations
 - d. Certain non-Canadian permanent residents of Canada granted this status on an assessment that does not include points for "arranged employment" pursuant to regulation 82(2)(c) of the Immigration Regulations
3. Section 29(d)(ii) - Respecting the issuance of licenses under this Act, including prescribing qualifications that a person must have to become a licensee.

4. Section 29(g) exempting persons or classes of persons from the requirement to hold a license under this Act
5. Regulation 29(j) - Respecting the registration of employers who wish to recruit foreign workers, including establishing the term of such a registration

Regulation 29(b) - Prescribing classes of individuals for the purpose of clause (d) of the definition "family member" in section 1

Pursuant to section 1 of WRPA, spouses, common-law partners, children, and parents are "family members". In order for any other classes of individuals to be considered a "family member", that class of individuals must be recognized as such under the regulations.

The definition of "family member" is important when read in conjunction with paragraph 2(5)(b) of WRPA. Under paragraph 2(5)(b), a "family member" may engage in activities to find employment for a foreign worker who is his or her "family member" without having to hold a license under WRPA. This exemption to holding a license only applies to a "family member" who does not charge a fee for finding employment.

Conspicuous by their absence in statutory definition of "family member" are first cousins, aunts, uncles, nieces, nephews, sisters, brothers, and grandparents. In our view, we strongly believe that the definition of "family member" be extended to include these relatives.

In support of this, we note that your department, pursuant to the Manitoba Provincial Nominee Program's Family Support Stream, recognizes that first cousins, aunts, uncles, nieces, nephews, sisters, brothers, and grandparents are key individuals in assisting in the settlement of permanent residents to Manitoba. As a result, since these relatives are already recognized by your department in this immigration capacity, we believe that they should also be recognized as "family members" under WRPA.

Regulation 29(c) - Exempting foreign nationals or classes of foreign nationals from the definition "foreign worker" in section 1

The definition of "foreign worker" in section 1 incorporates all individuals who would be recruited to work in Manitoba "pursuant to an immigration or foreign temporary worker program". In this connection, we note that WRPA does not define the terms "immigration or foreign temporary worker program". As a result, WRPA seems to indicate that any non-Canadian (who is not a permanent resident of Canada) would be covered by the WRPA if their recruitment is in connection with an immigrant or nonimmigrant program.

When the definition of "foreign worker" is read in conjunction with the definition of "foreign worker recruitment" in section 1 (which indicates that even individuals who do not charge a fee are involved in "foreign worker recruitment"), the question of who to exempt from the definition of "foreign worker" becomes important. Some questions that these definitions raise are as follows:

1. Should individuals coming to Manitoba as intra-company transfers recruited by a foreign subsidiary to work for a Canadian parent company be exempt from the definition of "foreign worker"?
2. Should clergy identified for Canadian assignment by a foreign diocese as opposed to a Manitoba diocese be exempt from the definition of "foreign worker"?

3. Should foreign students with off campus or post-graduation Work Permits who are assisted by campus job placement offices be exempt from the definition of “foreign worker”?

For the purposes of analyzing possible exemptions under section 29(c) of WRPA, it is necessary to view non-Canadians who are entitled to work in Manitoba in terms of five categories. These categories are:

1. Non-Canadians who are authorized to work in Canada without a work permit pursuant to regulation 186 of the Immigration Regulations;
2. Non-Canadians who do not require a Labour Market Opinion but require a work permit pursuant to regulations 204 to 208 of the Immigration Regulations;
3. Non-Canadians who require both a Labour Market Opinion and work permit pursuant to regulation 203 of the Immigration Regulations;
4. Non-Canadian permanent residents of Canada who are granted points for “arranged employment” pursuant to regulation 82(2)(c) of the Immigration Regulations; and
5. Non-Canadian permanent residents of Canada granted this status on an assessment that does not include points for “arranged employment” pursuant to regulation 82(2)(c) of the Immigration Regulations

We believe that the intention of WRPA can be carried out if, under the section 29(c), certain non-Canadians in these categories are exempt from the definition of “foreign worker”.

Certain non-Canadians who are authorized to work in Canada without a work permit pursuant to regulation 186 of the Immigration Regulations

Under regulation 186 of the Immigration Regulations, the following non-Canadians (amongst others) are exempt from the requirement to obtain a Work Permit before working in Canada: business visitors, foreign representatives (diplomats), family members of foreign representatives, military personnel under the Visiting Forces Act, foreign government officers, foreign students carrying out on-campus employment, performing artists, athletes and coaches, news reporters, public speakers, convention organizers, clergy, judges and referees, examiners and evaluators, expert witnesses or investigators, health care students, civil aviation inspectors, aviation accident or incident inspectors, crew members working on vehicles of foreign ownership and registry engaged primarily in the international transport of cargo and passengers, and emergency service providers.

Upon a full review of regulation 186, we believe that you will come to the conclusion that the risk of exploitation that these individuals may face at the hands of a Canadian employer is small or even non-existent. As a result, we believe that many, if not all of these individuals, do not require the protection of WRPA.

Certain Non-Canadians who do not require a Labour Market Opinion but require a work permit pursuant to regulations 204 to 208 of the Immigration Regulations

For the same reasons that we believe that non-Canadians who are allowed to work in Canada pursuant to regulation 186 should be exempt from the definition of “foreign worker”, we believe that virtually all non-Canadians who do not require a Labour Market Opinion but require a work permit pursuant to regulations 204 to 208 of the Immigration Regulations should also be exempt.

Non-Canadians who fall into this category include: North American Free Trade Agreement (“NAFTA”) and Canada Chile Free Trade Agreement (“CCFTA”) Traders, NAFTA/CCFTA Investors, NAFTA/CCFTA Professionals, NAFTA/CCFTA intra-company transferees, General Agreement in Trade and Services Professionals, significant benefit entrepreneurs, other intra-company transferees, emergency repairers, individuals coming under reciprocal agreements (i.e. Youth Exchange Programs), exchange professors, visiting lecturers, persons coming under research, educational or training programs designated by the Minister of Citizenship and Immigration, spouses of skilled workers on work permits, spouses of students, students with post-grad employment, post-doctoral fellows and award recipients, students with off-campus work permits, charitable or religious workers, and refugee claimants.

One possible exception to exempting all non-Canadians in this category from the “foreign worker” definition are those who fall within regulation 204(c). As you know, a non-Canadian can be issued a Work Permit under regulation 204(c) if he or she is a Provincial Nominee and the Province supports their early entry under a Work Permit. Given that the province controls this program, we do not object to the province requiring registration under WRPA pursuant to Work Permits issued under 204(c).

Certain Non-Canadians who require both a Labour Market Opinion and work permit pursuant to regulation 203 of the Immigration Regulations

AND

Certain Non-Canadian permanent residents of Canada who are granted points for “arranged employment” pursuant to regulation 82(2)(c) of the Immigration Regulations

Generally, we believe that WRPA will be most applicable to non-Canadians entering Canada under these two categories. However, this being said, we note that there may be certain types of applicants who may not need the protection of WRPA and, as a result, may need to be considered for an exemption.

For instance, if the Winnipeg Regional Health Authority recruits a new Chief Executive Officer who is not a Canadian or Canadian permanent resident, does the Winnipeg Regional Health Authority need to register under WRPA?

Clearly, the intention of WRPA is to protect vulnerable employees. As a result, one of the things we would ask you to consider is whether the intention of WRPA can be maintained by exempting from WRPA specific National Occupational Classification (“NOC”) groupings. For the most part, we submit that the majority of occupations under Skill Type 0 (Management Occupations) and Skill Levels A (Occupations Usually Requiring University Education) and B (Occupations Usually Requiring College Education or Apprenticeship Training) of the NOC should be exempt.

If you do not feel that there should be a blanket exemption of Skill Type O and Skill Level A and B occupations, it is within your power to exempt certain specific occupations by exempting specific NOC codes. Since your department, through the Manitoba Provincial Nominee Program, does create different procedures for persons with certain NOC codes through the implementation of the Occupational Requirement List, we would submit that your department could create a tailored system to focus only on occupations that are truly at risk.

Certain Non-Canadian permanent residents of Canada granted this status on an assessment that does not include points for “arranged employment” pursuant to regulation 82(2)(c) of the Immigration Regulations

Under the Immigration and Refugee Protection Act, the only instance where an application by a prospective permanent resident who is destined to Manitoba is enhanced is by an offer of employment in the Skilled Worker category. The other permanent resident categories, (i.e. Family Class, Refugees, Protected Persons, Business Class, Humanitarian and Compassionate Cases) do not require a person to have a job offer in order to qualify for permanent residency.

Within the Skilled Worker Class, individuals can qualify for permanent residency without the need of an offer of employment. In addition, persons with current Work Permits can also qualify. As a result, we believe that the only category that WRPA may be applicable to are individuals granted “arranged employment” points under Immigration Regulation 82(2)(c). Again, if you choose to go this route, we would encourage you to also consider NOC coding.

Section 29(d)(ii) - Respecting the issuance of licenses under this Act, including prescribing qualifications that a person must have to become a licensee,

While the Act does not specifically indicate the types of individuals who would be qualified to act as recruiters, we note that your press release of April 17, 2008 indicates that the intention is that all recruiters be licensed by either the Canadian Society of Immigration Consultants or a Law Society (presumably a Law Society in Canada).

We understand that the intention of this restriction is to provide some level of professionalism to the foreign recruitment process. However, we are concerned that by restricting foreign recruitment to consultants and lawyers, that this may unfairly restrict other professionals who may be adequately qualified to do human resource recruitment for businesses in Manitoba.

For instance, if the intention of the press release is reflected in the regulations, executive recruiting firms who recruit for senior Canadian positions would not be able to recruit non-Canadians unless these firms have a consultant or lawyer on staff. Some of the major HR consulting firms are more than adequately equipped to provide HR recruitment services and we do not believe that excluding these individuals from this line of business serves Manitoba businesses well.

In addition, we do not believe that by restricting recruitment to immigration consultants and lawyers protects the public in any way. For example, a lawyer who acts as a recruiter would not be practicing law when he or she performs the recruitment function. As a result, there is a question as to whether the lawyer, acting in a recruiting capacity, would be subject to the jurisdiction of the Law Society of Manitoba. Also, there would be a question as to whether any damages suffered by anyone because of a lawyer's misconduct in recruitment would be covered by insurance generally available to lawyers for the practice of law. As a result, we do not believe that the intention to restrict recruiters to immigration consultants and lawyers is sound.

Assuming, for the moment, that the regulations restrict recruiters to CSIC members or members of a law society, we believe that it is not fair to only allow Canadian lawyers outside of Quebec to act as recruiters. We believe that it is only fair that our Quebec colleagues be given the same rights to act as recruiters as lawyers of other provinces. As a result, if you will be proceeding

with the more restrictive interpretation, we would encourage you to expand the regulations to include notaries who are members in good standing of the Chambre des Notaries du Quebec. Also, we believe that the regulation should also include students-at-law under the supervision of a member of a law society or the Chambre des Notaries du Quebec.

Section 29(g) exempting persons or classes of persons from the requirement to hold a license under this Act

In discussing section 29(b) of WRPA, we made a number of suggestions that would, in effect, exempt a number of individuals from the licensing requirement under the Act. This being said, we believe that an even broader group of individuals (beyond “family members”) should be exempt. In short, we believe that any individual or entity who does not charge a fee to a prospective employee should be exempt.

In support of this position, we draw your attention to criteria in the Manitoba Provincial Nominee Program’s General Stream which places a value on the support of “distant relatives” and “friends”. Presumably, the Manitoba Provincial Nominee Program values the support of “distant relatives” and “friends” because the program recognizes that these individuals assist in a foreign national’s settlement in Manitoba. As a result, there would seem to be no good reason for requiring these individuals to be licensed if they do not charge fees for helping a distant relative or friend obtain employment in Manitoba.

In addition, Citizenship and Immigration Canada permits any person to represent an individual as long as that person does not charge a fee to the prospective immigrant. If the person does charge a fee, he or she must be an immigration consultant, lawyer, Quebec notary or student-at-law.

As a result, Citizenship and Immigration Canada has recognized that family members, friends, charitable and non-profit organizations should be allowed to assist prospective immigrants without having to register. We see no reason why the same criteria should not be applied to the WRPA.

Regulation 29(j) - Respecting the registration of employers who wish to recruit foreign workers, including establishing the term of such a registration

Under Section 11(1) of WRPA, employers must register before recruiting a foreign worker. The issue that this raises is what exactly must be done to register.

Our main concern is that the process of registration not be overly bureaucratic. If you accept our recommendations of who should be exempt from the definition of “foreign worker”, registration would only be needed in select cases where employers need to first obtain a Labour Market Opinion from Service Canada or a Nominee Certificate from the Manitoba Provincial Nominee Program before a Work Permit can be issued.

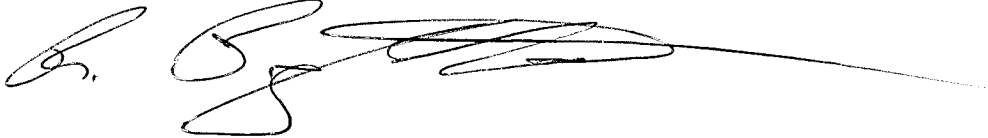
In these instances, we would recommend that the form needed for registration be appended to the forms the employer would have to fill out for these purposes. If an employer can fill out and provide all of the necessary information to register under WRPA at the same time as she fills out a Labour Market Opinion or Employer Direct application, the process may be sufficiently streamlined.

Thank you for giving us this opportunity to present our issues to you. Should you have any questions, please do not hesitate to contact us.

Yours truly,

MANITOBA BAR ASSOCIATION, IMMIGRATION SECTION

Per:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Reis Pagtakhan
Committee Chair