

ITAC

INFORMATION TECHNOLOGY
ASSOCIATION OF CANADA

5090 Explorer Drive
Suite 801
Mississauga, Ontario L4W 4T9
Tel: 905-602-8345
Fax: 905-602-8346
www.itac.ca

ACTI

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October 16, 2014

The Honourable Jason Kenney
Minister of Employment and Social Development
Employment and Social Development Canada
Office of the Minister of ESDC
140 Promenade du Portage
Gatineau, QC K1A 0J9

The Honourable Chris Alexander
Minister of Citizenship and Immigration
Citizenship and Immigration Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ministers,

On behalf of the members of the Information Technology Association of Canada (ITAC), I am writing to you to provide comments on the *Discussion Paper: Regulatory Proposals to Enhance the Temporary Foreign Worker Program and International Mobility Program Compliance Framework*. I am also taking this occasion to bring to your attention several other issues of growing concern to our members--issues which we feel must be addressed if we are to design an appropriate compliance framework for the programs providing access to temporary workers.

ITAC represents the Canadian information and communications technology (ICT) industry. The industry accounts for more than one million jobs in Canada through direct employment in our sector and indirectly throughout virtually every other sector in the economy. Our workforce is highly skilled (45 per cent of employees possess a university degree) and well paid. With sectoral unemployment hovering between 2 and 3 per cent, we also face chronic shortages of the skilled men and women necessary to ensure the growth and competitiveness of our industry.

ITAC represents companies in all aspects of ICT, including telecommunications, microelectronics and microsystems, software and digital commerce. But the largest and fastest growing segment of the industry is the provision of ICT services for third parties, including financial institutions, transportation companies, energy and utility companies, the public sector and many others.

Work in ICT services is project-based. Our members compete for contracts that may be of short or long duration. Many projects and assignments are of limited duration. Building teams to complete customized solutions for short- or long-term projects frequently requires recourse to global workers found in markets outside Canada. Many of our larger global companies derive competitive benefit from being able to draw from their workforces deployed around the globe, using mechanisms such as inter-company transfers to complete project team recruitment. Temporary ICT workers used for projects of longer duration typically possess leadership skills or technical and client knowledge that is transferable, and enriching, to the Canadian labour pool. Workers coming to Canada on assignments of this nature may be in pursuit of global experience to build their career with a company but not necessarily in Canada. Finally, there are skilled workers who may come to Canada specifically to help grow a Canadian venture. After a period of contributing in this way, they may indeed elect to pursue a path to permanent residence. These varieties of projects and placements in ICT call for an array of programs for short-, medium- and long-term assignments that may or may not lead the worker to seek permanent residence in Canada. Our industry depends on an array of programs to address this variety of needs. And we need the programs to work predictably, efficiently, and transparently.

In spite of our optimism following the reforms to the Temporary Foreign Worker Program (TFWP) that were announced in June, we have growing concerns that an emerging policy orientation promoting permanent residence fails to recognize that our sector needs to access workers who truly are temporary in order to grow Canadian ICT jobs for Canadians.

Another characteristic of jobs in the ICT sector that is worth restating is that they frequently occur at third-party (i.e. client) premises. This makes many of the proposed measures, such as the increased attestation asking clients to state whether the use of foreign workers will result in negative impacts on the Canadian labour market, problematic. This has caused many employers to use alternative programs to LMIA for accessing foreign workers.

But since the release in early June of new guidelines covering the definition of “specialized knowledge” in International Mobility Program (IMP) visa applications, even these formerly predictable and less client-intrusive programs more problematic. We have witnessed an unprecedented increase in requests for information and denials of applications. There is little guidance forthcoming to employers on why some applications are successful and others are denied. This creates a disturbing climate of ambiguity in the use of programs to access global workers. The fact that such uncertainty, unpredictability and confusion is allowed to pervade while the Government is considering a compliance framework that is in our view unreasonably severe and burdensome is of serious concern to the ICT industry.

We have, throughout all the consultations leading up to the TFWP reforms, made it clear that our members believe that the programs providing access to global workers are so important to competitiveness and fair trade in our industry, that they believe that abusers should be punished. They should be punished for the harm they do to the Canadian labour market, but also for the distortions they impose on the competitive marketplace. That said, we have a number of recommendations and concerns about the proposals outlined in the draft framework that can make the guidelines more predictable and transparent.

Recommendation 1: Reduce the margin for error in the use of LMIA and IMP programs by giving employers better guidance on why applications fail before introducing a new compliance framework.

Three months after the introduction of major changes in program design and guidelines, even seasoned users of LMIA and IMP are experiencing perplexing difficulties accessing workers. Better communication, education or consultation would remedy this and ensure that employers fully understand what the standards of performance and conduct are before being subject to the possibility of Administrative Monetary Penalties (AMPs) and bans. We also suggest that the compliance framework introduction should take place with an adequate time frame allowed for employers to study the rules, clarify and ensure that their staffs fully comprehend the regulations and penalties.

Recommendation 2: Fully clarify the application of the compliance framework for IMP as well as LMIA.

The paper aims to set out a framework for both LMIA and IMP. Yet the illustrations laid out address only LMIA. With the IMP program currently creating such confusion and ambiguity for employers, we believe a fuller clarification of what will constitute abuse under IMP is warranted.

Recommendation 3: AMPs, bans and publication of names should be used only in cases of systematic and intentional abuse and should not apply to unintentional errors.

With such ambiguity pervading both the LMIA and IMP programs at the moment, the proposed measure to impose AMPs, bans and publications of names not only on clear cases of intentional abuse, but also upon good faith errors, subsequently remedied is unfair and detrimental to reputable employers with strong track records of growing their Canadian workforce. In business, credibility and reputation is critical to obtaining and maintaining clients and business. Publishing the name of a punitive “abuser” who may have committed no more than an accounting error would have profound consequences on that company as an employer and as a competitor that is out of proportion to the error.

Recommendation 4: Establish an appeal process to ensure absolute integrity of Government data.

Recently many Canadian companies were surprised to find themselves on a list of companies the Government identified as using temporary foreign workers to fill at least one third of their labour force. Some companies publicly challenged the Government’s data and the Government is now reviewing the data. The response from the companies underlines that harm is done to companies when their names appear on lists of this nature and that will certainly be the case for companies who are named on a list of “abusers”. Recent experience has illustrated that errors can occur on both sides of a compliance regime. Natural justice recognizes and permits processes for the examination of data and appeals of the conclusions drawn from the data. This compliance framework would benefit from the creation of such a process.

Recommendation 5: Create a Trusted Employer program in parallel with the compliance framework.

Recent changes to TFWP and IMP have increased the costs to employers of using these programs to access global workers. And the proposed compliance framework certainly increases an employer’s risks in using these programs. As outlined above, access to global workers is vitally important to ICT companies. Rather than simply imposing increasingly more stringent conditions on employers, the Government should give serious consideration to mechanisms to recognize and reward employers that achieve records of clear compliance.

As you know, human brainpower is the primary input in the production of ICT goods and services. Access to talent is the most persistent concern of our industry. I would welcome an opportunity to introduce you to some of the members of ITAC so that they can express their views to you directly. I would like to propose the following dates for a meeting: November 18, 19, 21, 24, 25 or 26. I believe our members' perspectives and experiences would provide meaningful guidance as we develop national talent strategies for Canada's knowledge-based digital economy.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Karna Gupta', with a horizontal line underneath.

Karna Gupta
President and CEO