Standing Committee on Justice Policy Appearance

ITAC Recommendations Regarding Bill 49

April 16, 2015

Presented by Lynda Leonard, Senior Vice-President, ITAC

Good morning, Mr. Qaadri, and my thanks to you for the opportunity to represent ITAC (the Information Technology Association of Canada) and share our views on Bill 49, Ontario’s Immigration Act.

ITAC is the voice of Canada’s information and technology industry.  We represent one of the fastest growing sectors in the economy.  We are an important enable of competitiveness and productivity across the whole economy, but in Ontario, our direct economic impact is particularly important.  We are the third largest industrial sector in the province, contributing nearly 6 per cent of GDP and directly employing 250,000 Ontarians.

A couple of other metrics about our industry will help the committee to understand why we view immigration policy as critical to our success.  ICT’s unemployment rate currently hovers between two and three per cent which economists consider to be full employment.  And our work force is well paid with an average wage 52% higher than the Canadian average.  And our employees are well educated and highly skilled – 44% of them have a university degree (compared with the national average of 25%.

Domestic supply of ICT workers is not robust.  Like the rest of the economy, our workforce is aging and approaching retirement.  It’s clear that we cannot fully replace retirees with new graduates in the coming years.  We have witnessed troubling declines in enrollment in computer science and other disciplines.  The Information and Communications Technology Council, which tracks the health of our labour market, forecasts that cumulative hiring requirements between now and 2019 will reach 182,000 positions.

So in order to address the gaps in our labour market, ICT employers have relied heavily upon programs for permanent and temporary foreign workers.  We’ve followed the reforms introduced by Employment Services and Development Canada and Citizenship and Immigration Canada with keen interest and are pleased to share our views with you today.

Generally speaking, we share the underlying belief that frames this Bill.  Immigrants play an important role in the economic growth of our province.  And they have made a huge contribution to our technology industry.  Simply put we believe that ready access to the global information and communications technology workforce is vital to our ambition to continue to build a robustly competitive ICT industry in Canada.  As a global knowledge based industry, technology also depends upon its ability to draw from the best talent from all around the world for assignments of shorter term duration as well.  Getting the policy framework right for the free flow of global ICT workers who may or may not be seeking permanent residence is important to us.  We are doing our utmost, in collaboration with all levels of Government to adapt to changes in program rules and seize the opportunities offered by new programs like Express Entry.  And at this point I should underscore how important this Government’s stewardship of the Provincial Nominee Program is to our industry.  We are avid users of PNP and are pleased to see the allocation of 5,200 places for Ontario PNP and Express Entry, though we are conscious that we compete we other sector for access to this rich pool.

We believe it is important for legislators to understand the cumulative compliance burdens employers bear as we reform old programs and introduce new ones.  Employers seeking to access foreign workers must first of all have a profound understanding of all the rules governing TFW and IMP introduced since last June.  They must also be able to discern which programs are best suited to a particular engagement.  For example, the ICT services segment of our industry (which is incidentally its fastest growing component) is a classic outsourcing business model.  The requirement imposed by the new TFW rules requiring client attestation that the use of foreign workers will not result in negative impacts on the Canadian labour market is problematic in this model.  Companies that are in a positon to do so are inclined to use LMIA exempt models such IMP and PNP to fulfil their mandate.  And even with these programs there is considerable discretion and ambiguity in the new rules and processes to impair any predictability of success.  Unpredictability is the enemy of good business.

This ambiguous climate, combined with the possibility of severe penalties has made the recruiting of foreign workers a risky business.  In fact we are beginning to see the emergence of a new category of ICT employee – the immigration compliance manager.  The irony of the need to create a new employment category in order to address shortages in our labour market is not lost on us.  But it isn’t funny, it’s alarming.  Companies large enough to justify this kind of investment may adopt this approach.  Smaller, faster companies have no choice but to confront the risks or forego the process altogether.  Neither strategy is going to help build the next great Ontario technology company.

So while we do support the overall intent of Bill 49, we must record our key concerns about various aspects of the legislation before you.

1. First of all we are unclear about why there is a need for a registry for employers in the first place.  Participating in all existing programs for the recruitment of foreign workers requires full disclosure of all pertinent information from the employer.  Why does this need to be replicated in a provincial registry?  It is yet one more additional step in the compliance process that will keep the corporate immigration compliance officers I mentioned earlier busy.
2. We are opposed to some of the provisions of this bill that provide to the inspection of workplace premises without warrant.  Warrants for an employer’s premises can be easily obtained in Ontario and they should be used judiciously when there are reasons to suspect an employer is not in compliance.
3. The financial penalties under consideration for employers in breach of compliance are unreasonably onerous and there is no cap.  There is also no explicit consideration for good faith errors and corrective action on the part of employers.  Given the ambiguities and discretion prevailing in immigration programs at the moment, our concern is that these penalties may serve not merely to deter abuse but use as well.
4. Our members are also concerned the lack of due process for banning applications. I hope I have been able to communicate the importance of access to foreign worker programs to technology employers.  Banning employers from making application under the program for a period of two years is a severe penalty and the provision for the public naming of a banned employer throws salt in the wound.  But the most troubling aspect is the lack of access to appeal or a mechanism to challenge the ruling.  Surely natural justice alone indicates the need for a clear appeal process.
5. Finally, the provision for offence other parties is unclear about the employer’s limitation of liability for information about applications supplied by third parties.  This lack of clarity, accompanied by $250,000 fines and the possibility of imprisonment will serve as further deterrents for use of immigration programs in Ontario.

We believe these are significant enough concerns to warrant very careful consideration of the legislation before you and perhaps even a broader consultation on Bill 49.  Immigration policy is a vital component of a modern knowledge-based economy where the chief input pf production is the brainpower of the domestic global labour pool.   We simply have to get it right.