

Institute an Appeal Process for Labour Market Opinions

Background

Labour shortage, skilled and otherwise, continues to be a significant challenge to Canadian businesses. For the 2nd year in a row, the Canadian Chamber of Commerce has listed skills shortage as a top 10 barrier to competitiveness for 2014. While attempts to remedy the shortage through skills training programs and immigration programs such as the Expression of Interest system are steps in the right direction, these are far from being overnight fixes. Thousands of jobs continue to go unfilled as Canadians are either unwilling or unable to fill these in demand jobs. As a result, Canadian productivity continues to languish far below its potential. The Temporary Foreign Workers Program (TFWP) is the short-term solution businesses need, but suffers from poor administrative standards.

Having a smooth-functioning administrative process with clearly defined rules and regulations, along with predictable outcomes, are key components to the success and ongoing viability of government programs. It ensures applicants to the program receive the desired and deserved outcome and prevents potential abuses that could be made by administrators and applicants. This is especially important for the TFWP now that businesses are paying \$275 per LMO application; a fee that is costing businesses thousands of dollars. Unfortunately, when reviewing Labour Market Opinion (LMO) applications, it is necessary for the administrative decision-makers (ADM) to utilize some level of discretion. Subject to numerous rulings under Canadian administrative body of law, discretionary decisions must be exercised via a standard of reasonableness and subject to procedural fairness.

*“The Supreme Court of Canada in Southam [1997] considered the standard of reasonableness applies where a decision is a matter of law, a mix of fact and law or a **discretionary decision**, it is said that the decision is unreasonable where the decision is ‘not supported by any reasons that can stand up to a somewhat probing examination.’”¹*

Discretionary decisions made by the administration should be relevant, reasonable, and consistent, with the process free of any abuse. Unfortunately, this has not been the case. It is imperative to the overall success and economic well-being of Canadian businesses, that the ADMs of the TFWP be subject to the standards outlined under Canadian administrative law, and that decisions made be subject to review and appeal when necessary.

The Alberta Chambers of Commerce recommends that the Government of Canada:

1. Institute an appeal process for denied Labour Market Opinion applications.

¹ *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748