Canadian Employee Relocation Council
180 Dundas St. W., Suite 1506
Toronto, ON M5G 1Z8
Tel: 416- 593-9812 Fax: 416-593-1139
Toll-free: 1-866-357-CERC (2372)
E-mail: info@cerc.ca www.cerc.ca

Shafiq Qaadri, MPP
Chair
Standing Committee on Justice Policy
Room 1405, Whitney Block/
Queen's Park, Toronto, ON M7A 1A2

April 16, 2015

Dear Dr. Qaadri,

The Canadian Employee Relocation Council (CERC) welcomes this opportunity to comment on Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991. Our comments will be confined to the provisions of the bill that impact immigration.

We are pleased that the Government of Ontario has a vision for immigration, and has a goal to collaborate with employers to address the short-term and long-term labour market needs of Ontario.

Our Council represents many of Ontario's leading businesses. Many of those companies access Ontario's immigration programs. In doing so they do their utmost to comply with all provincial and federal regulations that govern those programs. We seek to ensure continued access to internationally trained skilled workers for Canada's employers that will deliver great benefits to the economies of Canada and Ontario.

It is not clear from a review of the proposed Bill as to what companies would qualify for the Employer Register, nor the process of selection.

From consultations with our members, we are concerned that the proposed measures are excessively punitive, administratively complex, vague and, in certain circumstances, unfair to employers who are making best efforts to comply with their obligations under the Immigration Act. Several of our members have described the provisions of Bill 49 as being "overly punitive and draconian."

In our respectful submission, the proposals appear to be based on the premise that employers are generally non-compliant with their obligations under the new regulations. There is scant evidence of such lack of compliance on the part of employers, at either a federal or provincial level.

We are deeply concerned that as written the provisions of S 26(8) (a) and (b) that impose an administrative penalty even in circumstances where the contravention results from acts of good faith and decisions taken "with an honest and reasonable belief in a mistaken set of facts", go well beyond an administrative type of penalty that seeks to promote compliance

We urge the Committee on Justice Policy to engage in further consultations and fact finding with Ontario's employers, representatives of the legal profession and other stakeholders, to ensure Ontario has an immigration act that is responsive to the needs of employers, who will increasingly rely upon

immigration to meet skills and staffing needs well into the future, without imposing harsh penalties and denying employers access to due process, while still ensuring a fair system to promote compliance.

Outlined below are our detailed comments and concerns with several sections of Bill 49.

S.19 Banning Applications

No hearing required

> (2) Subject to the regulations made by the Minister, the director is not required to hold a hearing or to afford the person or body mentioned in subsection (1) an opportunity for a hearing before making an order under subsection (1).

Banning employers from making application under the program for a period of two years, without affording the employer an opportunity to appeal or challenge the ruling is grossly unfair to employers and a denial of their legal right to due process.

Such decisions may have significant implications and cause irreparable damage to the ongoing viability of the business, which in turn may result in a loss of jobs for Canadians and foreign workers alike.

Employers must have the right to an independent avenue of appeal to present their case and defend their position.

It is well known that the infallibility of court and administrative body judgments cannot be guaranteed. The guaranty of due process means no accused is punished without an orderly and adequate procedure that is applicable uniformly in all cases. In a system of due process, every accused gets an advance notice of trial, and an opportunity to be present, to be heard, and to defend himself or herself.

This same principal of due process should be extended to employers, by requiring a hearing be held before imposing any ban or other penalty contained in Bill 49.

S.23 Inspections without warrant

Power to enter premises

> (2) As part of an inspection, an inspector may, without a warrant or court order but subject to subsection 22 (4), enter and inspect, at any reasonable time, the premises of any of the following persons or bodies for the purpose described in subsection (1), except any premises or part of any premises that is used as a dwelling:

We are opposed to the provisions of S.23 which provide for the inspection of workplace premises without warrant, or valid reason for such inspection. Warrants for the inspection of an employer's premises can be easily obtained in Ontario from a justice of the peace. Inspections with warrant should only be carried out where:

1. There are reasons to suspect that the employer is not complying or has not complied with any conditions imposed; (such as complaints from employees) and / or

2. The employer has not complied with the conditions in the past

S. 26 Administrative Penalties

We are in agreement with subsection (2) “The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations.”

The introduction of the AMPs to promote appropriate program compliance has some merit, however the upper limits as proposed, $150,000 for each contravention (s5), are unreasonable and overly punitive.

We are concerned with the provisions of the Bill that impose penalties for errors made in good faith, or administrative errors where employers have relied upon information provided by third parties, and where it is clear there is no intention on the part of the employer to ignore or circumvent their obligations under the Act.

CERC also has serious concerns regarding the "absolute liability" provisions of s.26 (8).

> (8) An order made under subsection (1) imposing an administrative penalty against a person or body applies even if,
> (a) the person or body took all reasonable steps to prevent the contravention on which the order is based; or
> (b) at the time of the contravention, the person or body had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

CERC is equally of the view that a finding of non-compliance in those situations where corrective action has been taken, or where a finding of non-compliance resulting from good faith errors and unintentional accounting or administrative errors, should not be subject to AMPs, a program ban, or publishing the name of the employer on the government website. Such measures are grossly unfair to the vast majority of employers who wish to comply with the program requirements.

There is simply no basis to inflict such harsh measures on employers where errors have been made in good faith and corrective measures have been taken. A more flexible approach should be taken to recognize the efforts of employers who take steps to address and rectify their errors. For example, in the U.K. the civil penalty calculator includes a penalty reduction factor where mitigating circumstances are present, or there is evidence of active co-operation on the part of the employer. Such an approach should be considered in Ontario.

Where there is evidence of cooperation and the employer has taken measures to remedy the factors leading to a finding of non-compliance, we propose the AMP limits be capped at $5,000 for a small employer, and $10,000 for a large employer.

Of further concern is that there is no detail about what infractions would constitute imposing an AMP against an employer, nor is there any information as to how the amount of any AMP is calculated.

Section 26 provides broad powers to ‘the director’ that are, in our view, unfair to employers. “the director is not required to hold a hearing or to afford the person or body an opportunity for a hearing before making an order under subsection (1).” As noted in our comments under S.19 this lack of requirement to conduct a hearing is unfair to employers and denial of their legal right to due process.

Imposing absolute liability, when reasonable care has been taken to prevent the infraction and without specifying the actual infractions in the regulations that would trigger absolute liability is inappropriate, unduly harsh and is inconsistent with the principles of fundamental justice

S. 30 Offence by other parties

> **30.** (1) If a corporation commits an offence under this Act, every director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence or who failed to take reasonable care to prevent the corporation from committing the offence is guilty of an offence, whether or not the corporation has been prosecuted or convicted.

Employers rely on information supplied by applicants, counsel and other third parties when accessing the immigration program. This provision and the attendant fine of up to $250,000 and possible imprisonment of not more than two years less a day, will deter legitimate employers from accessing the programs. Employers will look to other ways of completing projects and conducting business, which may include declining contracts or moving the work outside of Ontario, rather than being subject to these potentially harsh measures, which may be imposed in circumstances even where the infraction resulted from an honest and reasonable belief in a mistaken set of facts.

Conclusion

We thank you for this opportunity to comment on the provisions of Bill 49. I believe we have identified substantive issues about the fairness of many of those provisions, the absence of fundamental justice, the harshness of the penalties proposed, even in circumstances of honest mistakes, and the broad sweeping powers afforded to inspectors and the director.

CERC recommends further consultations with employers, the legal community and other stakeholders, before any further changes are considered to Ontario's Immigration Act. We would be pleased to work with your government in that regard.

About the Canadian Employee Relocation Council

The Canadian Employee Relocation Council (CERC) is a not-for-profit organization dedicated to removing barriers that restrict mobility and deployment of human capital, which are vitally important to Canada's future prosperity. Established in 1982, the Council represents the interests of its members on workforce mobility matters. Many of the Council's members are listed in Canada's Financial Post Top 500.

Sincerely,

Stephen Cryne

President and CEO, Canadian Employee Relocation Council

cc: Tamara Pomanski, Clerk of the Committee