

# Canadian Employee Relocation Council: Recommendations to Improve Canada's Economic Immigration System



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# Introduction

Immigration plays a vital role in Canada's future. From a level of 400,000 in 1913 to approximately 285,000 today, immigrants shape our society, they define our demographic makeup and contribute to our economic prosperity. It is important therefore that the goals of Canada's immigration program be clearly targeted towards supporting that future.

Not unlike many developed nations, Canada's birthrate is in decline and the workforce is marching towards retirement. According to Statistics Canada the number of people aged 65 years or over now surpasses the number of children aged 14 years or under. This shift, a first in the history of the Canadian population, will have significant impact on Canada's economy and its labour force and social security systems. It is estimated that by 2031 there will be just 2.16 Canadian workers supporting one retiree, by comparison there were 3.96 workers supporting one retiree in 2010. To continue to grow as a global leader the Canadian population must grow to about 43 million people over the next two decades<sup>i</sup>.

In considering the goals of our immigration policy, Canada must have programs in place that ensure businesses have access to skills available at a global level. That can be achieved through permanent residency streams, and through temporary worker programs.

The long-term needs for talent are not disappearing and there are concerns among business leaders about labour market shortages within Canada in the very near future. Over the next decade Canada is expected to experience severe shortages in its talent pool.

The anticipated shortages will be especially acute among the ranks of senior management, skilled workers, healthcare professionals and managers in public administration. In a report issued by the government of British Columbia it is projected that by 2019, the province will have over a million job openings, and over three-quarters of those will require a college diploma, trade certificate, university degree or higher<sup>ii</sup>.

Against this backdrop, Canada's economy is rapidly transforming into one that is knowledge-based, requiring greater skills and training. There are fewer Canadians with university degrees than in many of the nations Canada trades and competes with and, there are fewer still in the scientific and technology disciplines. While immigration is the main avenue through which we can offset our demographic trends and skills shortage in the short to medium term, its effectiveness depends on the extent to which we can attract well educated, trained immigrants of working age with the skill sets needed.

In the past several years there have been significant changes to Canada's economic immigration system, and while some of those changes are moving the system in the right direction, the

system continues to be plagued with inconsistencies, unnecessary inefficiencies and red tape that negatively impact Canada's ability to compete.

In a recent survey<sup>iii</sup> of major Canadian businesses that access the economic immigration system, conducted by the Canadian Employee Relocation Council (whether that be through the Express Entry application system or through the International Mobility Program) 60% of respondents said the changes to the system over the past few years have had a negative impact on business planning strategies.

In 16 per cent of the companies surveyed, work has been moved outside of Canada as a consequence of the changes. Several of the companies also note that hiring strategies have been changed and positions are instead being moved to other countries with less immigration lead times (Germany, Ireland, UK, and India).

Over two thirds of the companies surveyed (70%) report that the changes to the Labour Market Impact Assessment (LMIA) process have had a negative impact on the organization's business planning, and their ability to recruit skilled workers. Ambiguous and ongoing changes to immigration rules (66%) and access to accurate and reliable information from government sources (56%), are cited as the top challenges when transferring employees into Canada.

Clearly there are unnecessary barriers in Canada's economic immigration programs which have resulted in lost business opportunities, and are having an adverse impact on economic growth and job creation.

The following paper outlines a series of constructive recommendations to Canada's economic immigration programs that we believe will address many of these issues. The proposed changes can be implemented using administrative processes, without legislative amendments to the Immigration and Refugee Protection Act.

### **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.

## 1. Trusted Employer Program:

**Issue:** Companies are experiencing delays, inconsistencies and unpredictability with applications in all facets of Canada's economic immigration programs. In many cases these companies are filing multiple applications for in demand occupations and skills that cannot be sourced from within the Canadian workforce. In the recent CERC immigration survey 75 per cent of employers said they experience inconsistencies in decisions from Citizenship and Immigration Canada

**Solution:** Implement a Trusted Employer Program (TEP) modelled after successful programs currently in use in Ireland, the U.K. and Australia.

Firms designated as TEP would have access to accelerated labour market test opinions from government agencies. The occupations contained in the program would be geared to high skilled / high wage in demand positions.

**Benefits:** For government – improved efficiency, reduced costs and ability to redirect resources towards safety and security: For business - ease of entry of key personnel, greater level of predictability leading to improved business productivity. Outlined below are detailed benefits for such a program.

1. One consolidated application for sponsorship status to confirm that:
  - i. local recruitment benchmarks are met
  - ii. correct pay rates for occupations are being paid
  - iii. training of Canadian (not foreign) staff meets specified benchmarks (or contributions to training levies in the absence of sufficient training programs)
  - iv. all documentary, notification and related obligations are being met
2. Facilitates faster processing and less documentation of applications (because some criteria currently attached to an application are addressed in the sponsorship application)
3. No need for officials to revisit all details in each application (thus saving government resources), with a blanket approval for certain applications.

## 2. Immigration Advisory Committee:

**Issue:** No formal outreach or consultation process currently exists between the Ministry of Employment, Workforce Development and Labour, (formerly Employment and Skills Development Canada, ESDC) the Ministry of Immigration, Refugees and Citizenship (formerly Citizenship and Immigration Canada, CIC), and the business community focused on the business and financial impact of economic immigration. This often leads to miscommunication and frustration on the part of stakeholders.

**Solution:** An Advisory Committee on Economic Immigration should be enlisted to offer advice and input to the Minister(s) and government officials in a formal and structured manner. The committee, representing business and other stakeholders / academia could offer advice and input on immigration planning and more closely aligning economic class

immigration targets over the medium and long term with the needs of Canada's transitioning economy. We believe that such an advisory body would be a valuable resource to government in determining levels of immigration to meet future labour market needs.

**Benefits:** An immigration system that responds to the changing needs of business and Canada's changing economy.

### 3. Industries experiencing rapid growth and high demand for skilled workers:

**Issue:** Some industries require immediate access to highly skilled talent today, but it would take years to train enough Canadians to fill this demand. These opportunities would be lost to other global players thereby reducing Canada's ability to establish a global presence.

**Solution:** Create industry or sector based immigration pathways or programs. This can be done quickly and easily adjusted as necessary using CIC's authority to create special economic programs using ministerial instructions. In addition we should assess re-implementing the Facilitated Program for IT Workers (FPITW) which will enable growth across all sectors of the economy given IT is a pervasive enabler for economic growth and global competitiveness. (See section 14.1 of the Immigration and Refugee Protection Act)

### 4. Labour Market Impact Assessments (LMIA)

**Issue:** Current rules surrounding the LMIA application process, audits, and requiring employers to advertise high-wage or high-level positions, are a deterrent for many companies in recruiting skilled workers. At the same time many companies experience frustration in obtaining clear rules and accurate information in securing a positive LMIA.

Illustrative of the challenges faced by companies in the LMIA process are comments from the CERC immigration survey:

*As one company noted "We were looking at the possibility of foreign trained professionals to fill some of the pending skills shortage but have had to put that plan aside because of the sheer difficulty of the program now."*

*"Acceptable recruiting methods needs to be more clearly identified. We are unable to use our Company website to advertise for positions even though we put a strong case together for Service Canada showing our company is Internationally known (15,000 employees Internationally, 250 offices), and we get more candidates reviewing it directly for job opportunities rather than monster, and other big recruiting sites."*

*While another notes "An applicant should not be disadvantaged simply because he or she entered by way of the NAFTA or the Intra-Company Transfer stream. To ask an employer to obtain a LMIA for an employee who already has a valid work permit is both only inefficient and costly."*

Current rules also require employees to remain at the work location specified on the work permit. Highly skilled workers and executives are frequently required to visit numerous work locations across Canada to fulfill their job duties. Employers need to have greater flexibility on work location limitations.

According to the results of the CERC survey, 69 per cent of respondents say the changes in the LMIA process have impacted their business planning, and 70 per cent say that the changes have had a negative impact on their ability to hire highly skilled workers.

**Solution:**

1. Provide an expedited process for employers to obtain a LMIA without the requirement to advertise positions for high skilled, highly paid positions. Senior executives should be exempt from labour market testing. Canada could draw upon the U.K. approach, which is that no labour market testing is required for those earning an annual salary of £155,300 or more.  
(see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/439018/Tier\\_2\\_v22.0\\_EXT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/439018/Tier_2_v22.0_EXT.pdf))
2. Allow executives at or above a financial threshold (for example as noted above) to be able to work in different locations.
3. LMIA-exempt employees receive the 600 points if they have been continually employed in Canada for two years, and have a standing indeterminate job offer.

**Benefits:** Provides a higher level of predictability to businesses seeking high skilled in-demand workers. High skilled workers are more likely to consider Canada as a destination knowing the application will not be subject to the delays of labour market testing.

Allowing highly skilled workers to move between job locations responds to realities of modern business practices and provides employers with more flexibility in the deployment of scarce resources.

An expedited LMIA process for highly skilled workers also frees up government resources.

**5. Express Entry: Bridge work permits; Age restrictions and points for valid job offers:**

**Issue:** Current programs include time limits on the length of various work permit categories. As a consequence many highly skilled workers face the risk of their work permit expiring before their application under the Express Entry system is processed. To illustrate the point, in the CERC immigration survey<sup>iv</sup>, one company noted the situation with a senior executive (CFO) who has an application pending and there has been no information in over six months, *“which creates an incredible risk to the company.”*

In addition to these issues, under current rules workers aged 45 years or older, with extensive international work experience have a limited chance of being selected under the Express Entry system. In the great majority of cases, senior managers and executives are typically above age 40 or 45 and may not accumulate sufficient points to qualify. These are

the very people in senior management positions leading many of Canada's most successful companies. Canada must find ways to facilitate an efficient pathway to permanent residence for these executives who are in high demand as baby boomers retire.

The allocation of 600 additional points for an LMIA disadvantages many non-LMIA based employees who are already working and significantly contributing to the economy. In many cases they are more senior and more highly skilled than those on LMIA's. In essence, the definition of a "valid job offer" should be expanded.

For the purposes of Permanent Resident selection, the LMIA is not the best tool to determine which applicant receives 600 points for a job offer, or to measure genuineness or long-term employment demand.

LMIA's were created for temporary foreign workers and are no better at predicting whether a job offer is genuine or a worker is truly in demand than (for instance) an ICT work permit.

The contribution of someone working on an LMIA-exempt work permit can be just as great or often greater, and there are any number of arguments, including talent retention, for allocating points for a job offer.

**Solutions:**

1. Provide a bridge work permit for up to 12 months, restricted to highly skilled workers, (NOCs A, B, O) ICTs, exempt and NAFTA employees, as well as employees facing the cumulative duration limit under LMIA's, and who are waiting to be invited to apply for permanent residence under the Express Entry system. For employees in the Express Entry pool who are eligible for Canadian Experience Class and the Federal Skilled Worker programs etc., issue a 12 month bridge work permit (at least once) if the current work permit is expiring even if no "Acknowledgement of Receipt" has been sent.
2. Age factors should be excluded or relaxed for senior executives over age 40 who possess extensive international experience. Alternatively, redistribute the age points to lessen the penalty for age.
3. In those cases where the applicant has been employed for a minimum of one year, with a standing indeterminate job offer from the Canadian employer, allocate additional points for arranged employment.

**Benefits:** Provides a transition period to those highly skilled workers who wish to settle permanently in Canada while the new Express Entry system comes fully on stream. It removes uncertainty and eliminates an unnecessary administrative barrier to remaining in Canada from the process. For employees it provides employment continuity. For employers the bridge permit will provide ongoing access to highly skilled workers that the organization has invested in, during the permanent residency application process.

## 6. Expedited processing stream to PR for graduate students.

**Issue:** The Canadian government actively promotes educational opportunities for international students to study at Canadian institutions. Although these students pay significantly higher tuition fees than Canadians, in many instances they do not have the opportunity to transition to permanent residency upon graduation.

This is an increasingly important issue as Canada seeks to firm up significant trade agreements (such as the Trans-Pacific Partnership and with countries such as India) and is facing stiff international competition to attract students in key fields of study, including science, technology, engineering and mathematics.

**Solution:** Provide more flexible pathways to permanent residency for international students studying full time in Canada (perhaps with a three year minimum requirement) that are in key fields of study that will fill in-demand occupations and contribute to the country's economic growth.

**Benefits:** Canada will be considered a more attractive destination and competitive in attracting international students, while developing a highly skilled workforce.

## 7. Clarify rules around the International Mobility Program for Significant Benefit

**Issue:** Current rules governing the International Mobility Program: Canadian interests – Significant benefit general guidelines [R205(a) – C10] are subject to interpretation. Faced with similar facts and circumstances provided by the employer, and or applicant, decisions on the part of the adjudicator often differ.

**Solution:** Develop clearer guidelines that expand and clarify the rules for significant cultural or social benefit to Canada. Or in the alternative consider development of a separate stream of an “exceptional individual” program. Highly-skilled / highly-paid professionals who are leaders in their field and want to work in Canada could be exempted from LMIA requirements and be granted open work permits on their own merits. This latter provision would be reserved for NOC O & A categories only.

**Benefits:** Higher levels of predictability for employers and highly-skilled / highly-paid employees. These specialists are in great demand around the globe and our programs should be designed to provide efficiency and predictability in the decision making process.

## 8. International Mobility Program: Clarification regarding who is the “employer”?

**Issue:** There are many situations in which a foreign company must send its employees to work at client sites in Canada. In these situations, the employee continues to be paid by and is fully employed by the foreign employer. However, there is a lack of clarity regarding who the “employer” is in this scenario for the purpose of entering the employer information in the employer portal. Is it the foreign entity who is truly continuing to employ the foreign national? Or is it the client company in Canada where the employee will physically be performing work? If it is the client company in Canada, how will the information entered

into the employer portal later be used, for example, in a compliance review, given that the client company has no control over the employee's salary, benefits, and other elements of the position?

**Solution:** Provide greater clarity regarding who the "employer" is in the above scenario, as well as what information must be submitted through the employer portal when dealing with a foreign employer that requires an employee to work in Canada.

**Benefits:** Higher levels of predictability for foreign and Canadian companies requiring foreign employees in Canada, which will in turn facilitate international trade.

## 9. International Mobility Program: Employer Portal

**Issue:** On October 26, 2015, a new online employer portal replaced the IMM 5802 form, requiring employers to submit LMIA-exempt offers of employment and pay the employer compliance fee through the portal before a work permit application can be made under the International Mobility Program. Once the employer has entered the necessary information into the portal, visa exempt foreign hires can then make their work permit applications at the border upon entry to Canada.

However, since its launch, there have been many occasions on which the portal is unavailable due to technology issues, and there is no alternative method for employers to submit the offer of employment and compliance fee in this situation. The resulting delay in foreign employees being able to enter Canada causes significant disruption to employers.

**Solution:** Create a manual way for employers to submit the offer of employment and employer compliance fee when the employer portal is down and foreign employees are required to start in Canada urgently.

**Benefits:** Facilitates the entry of foreign workers under the International Mobility Program when the employer portal is experiencing technology disruptions. Ensures that companies do not experience disruption to workflow due to the inability of key personnel to enter Canada.

## 10. Compliance reviews:

**Issue:** the current process, which triggers random substantially the same (or STS) employment assessments at the time of a new application, is unworkable for the following reasons:

- a) The employer cannot get their new LMIA case adjudicated while the audit is in process;
- b) Audits can take 4 to 12 months;
- c) The foreign worker sometimes must return to their original country to await the audit results and the LMIA renewal application assessment;
- d) This penalizes both the employer and the employee but most importantly cripples the Canadian business and can also result in layoffs, terminations, etc. of Canadian employees;

- e) ESDC, being advised of the disruption of the current Canadian business and the potential for layoffs of Canadians, insists on receiving their correspondence by Canada Post Mail, rather than email (there is no good legal or practical reason for this requirement);
- f) The process is further delayed through a number of additional documentary requests by ESDC auditors/compliance review officers;
- g) Ongoing documentary requests, sometimes repeating previous documentary requests, wherein the documents were provided by the employer, can take a month or two before each additional request is resolved, due to the insistence on Canada Postal mail and officer workload;
- h) During the 4 to 12 month audit process, the company must continue to advertise the original position and pay extensive job advertising fees to continue to meet the LMIA requirements for the renewal application.

**Solution:** These random STS compliance reviews should not be triggered at the time of re-application for an LMIA. It penalizes the employer and foreign worker at a critical time for job continuity. STS compliance reviews should be triggered after the new LMIA is issued, not before.

## 11. Compliance and Administrative Monetary Penalties (AMP)

**Issue:** The new compliance regulations and Administrative Monetary Penalties (AMP) implemented on December 1, 2015 are challenging to employers. There is no comprehensive manual that outlines details of the compliance requirements and accompanying AMPs. Employers must have full access to information in order to take the appropriate measures and understand the rules and processes in order to ensure compliance.

The regulations are not as clear and transparent as they could otherwise be. For example, there is a “same occupation” requirement in the regulations imposed on employers that hire workers, however, there is no definition of what constitutes the same occupation or a deviation. Is it limited to a change in the National Occupational Classification (NOC) or something less apparent like a significant shift of duties in a particular NOC? Financial liabilities, barring of employers and reputational risks should not be imposed in a system until employers have a reasonable opportunity to review clear and transparent rules.

There is no independent body to which employers can appeal findings of non-compliance under the AMP.

### **Solutions:**

1. A process is needed to review and refine the management of the AMP to ensure the program is meeting its objectives in areas of education, and fair and equitable enforcement.

2. An impartial appeals review body, separate and apart from CIC and ESDC overview, is necessary. Such a body must be fully resourced, with staff adequately trained in administrative law and operate at arm's length from CIC and ESDC.

**Benefits:** Overall improvements in client service. More efficient deployment of resources for both government and business. A more open and transparent administrative process, with avenues for appeal.

## 12. Address inconsistent decision making within Ministry of Employment, Workforce Development and Labour, (formerly ESDC) the Ministry of Immigration, Refugees and Citizenship (formerly CIC) and Canada Border Services Agency

**Issue:** Employers continue to express concern and frustration with levels of service and consistency in decisions and information received from both CIC and ESDC. In the recent CERC survey 78 per cent of employers say they experience inconsistencies between adjudicators and operating regions of CIC.

As one participant noted, *“I get the feeling we are not the only ones confused. Those on the front lines honestly do not seem to know the answers any better than we do. Not just differences in different regions but within the same region...”*

In the same survey, just 26 per cent of employers find the National Occupation Codes (NOC) for determining comparable positions and wages as being generally reliable. In many instances the information in the NOCs is woefully outdated and does not reflect modern occupations.

### **Solutions:**

1. There should be a “case review process”, where ESDC creates a team to review cases that raise an interpretation of policy. This can occur with respect to exemptions from recruitment standards, wage variation, exemptions to transition plans to name only a few. CIC has a similar process that works well. The case review team can be the “bridge” between senior policy makers and processing officers – this is badly needed in the system for consistency and adequacy of decision making.
2. Improve training of adjudicators and establish industry experts that can provide expert advice to decision makers. Facilitate regional roundtable meetings with industry / business / CIC and ESDC staff to exchange information and improve knowledge of all parties.
3. A process is needed to regularly review and improve the NOC to ensure it reflects the changing workplace and occupations. Many classifications are decades out of date. Feedback from employers should be given greater weight in the NOC code review process as they are more directly involved with the evolution of skills development in today's global landscape.

**Benefits:** Overall improvements in client service and better case outcomes.

### 13. Access to training manuals and open publication of program changes / policy updates

**Issue:** Employers are of the view that the rules of the various immigration programs are unclear and there is limited access to timely and accurate information. In the recent CERC survey, just 9% of employers stated that they always have access to timely and accurate information. By comparison as one respondent noted *“The US is always sending out updates, sending out notifications for webinars to understand their process and provide feedback.”*

In addition, system changes and processes are often implemented without adequate advance notice to employers and little or no consultation with the business community.

**Solutions:**

1. Emulate the practices of other international jurisdictions that have developed effective outreach and communication programs.
2. Provide more open access to documentation on both the ESDC and CIC websites.
3. Establish employer portals that can provide online access to common questions and provide regular electronic updates to employers (perhaps through a sign up process) of system changes, new rules, filing requirements and documentation.

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<sup>i</sup> Statistics Canada Population Projections for Canada, Provinces and Territories 2009 to 2036

<sup>ii</sup> Ministry of Regional Economic and Skills Development, Government of British Columbia

<sup>iii</sup> Canadian Employee Relocation Council, Economic Immigration Program Survey, November 2015

<sup>iv</sup> Canadian Employee Relocation Council, Economic Immigration Program Survey, November 2015