



OBA Submission on the Proposed Amendment to Ontario Regulation 422/17 (General), a Minister's Regulation made under the *Ontario Immigration Act, 2015* relating to the Ontario Immigrant Nominee Program (OINP)

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Immigration, Training and
Skills Development

Submitted by: Ontario Bar Association



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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide this submission on the proposed changes to the Employer Job Offer category that have recently been announced by the Ontario Immigrant Nominee Program (“OINP”). We are writing to express concerns with respect to the Ministry of Labour, Immigration, Training and Skills Development’s (“Ministry”) three proposed changes under the Employer Job Offer category.

The Ontario Bar Association (OBA)

The OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and delivers over 325 in-person and online professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission was prepared by members of the OBA Citizenship and Immigration Law Section (“Section”), which has approximately 200 lawyers who are leading experts in citizenship and immigration law and who represent virtually every stakeholder in the immigration system. These include those applying for skilled worker, permanent residence, refugee and citizenship status; spouses of Canadian citizens; corporations and other Canadian employers who participate in skilled and temporary worker programs.

Members of the Section often advocate before the Supreme Court of Canada, the Federal Court of Canada, the Immigration and Refugee Board including the Immigration Appeal Division, the Immigration Division and the Refugee Appeal Division as well as all levels of court in the province of Ontario.



Overview

OINP offers a pathway towards permanent residence for foreign workers that have the professional and/or educational skills needed to succeed in, and contribute to, Ontario's labour market. We offer the following comments based on our members' knowledge of the applicable legal principles and practical experience. These comments are intended to improve fairness in the program, add clarity and consistency, as well as ensure that the program can be implemented in a manner that minimizes uncertainty.

Ministry's Three Proposed Changes under the Employer Job Offer Category

1. Employer Job Offer International Student Stream - Require Individuals Applying with a Certificate of at least One Year to meet the Criteria of the Ontario College Graduate Certificate

First, the Ministry is proposing the following change to offer clarity and reduce burdens for streams under the Employer Job Offer International Student stream:

Under the Employer Job Offer International Student stream, require individuals applying with a certificate of at least one year to meet the criteria of the Ontario College Graduate Certificate as defined under the Ontario Qualifications Framework. This amendment is expected to offer clarity and reduce burdens for International Student stream applicants applying with one year certificates.¹

The Ministry's proposed change requires clarification. Currently, subsection 6(3)(i)(B) of O. Reg. 422/17 provides that an applicant may submit proof that they have obtained "a degree, diploma or certificate from an eligible Canadian institution that takes at least one year to complete if pursued on a full-time basis and that requires the completion of a degree as an admission requirement."² Does

¹ Ministry of Labour, Immigration, Training and Skills Development, *Proposed amendment to Ontario Regulation 422/17 (General), a Minister's regulation made under the Ontario Immigration Act, 2015 relating to the Ontario Immigrant Nominee Program (OINP)*, Ontario's Regulatory Registry, online: <https://www.ontariocanada.com/registry/view.do?postingId=42427&language=en>.

² O. Reg. 422/17: GENERAL, s. 6(3)(i)(B).



the proposed change replace this requirement or is it an additional requirement? If the proposed change is replacing this requirement, then we are in full support.

Two other clarification points include:

- Who determines whether individuals applying with a certificate of at least one year meet the criteria of the Ontario College Graduate Certificate under the Ontario Qualifications Framework? The Ministry or the intended educational institution? If it is the Ministry that makes the determination, what is the individual required to provide to the Ministry to show that they meet these criteria?
- Considering the current wording of subsection 6(3)(i)(B) of O. Reg. 422/17, does the proposed change extend to degrees and diplomas as well or is it only applicable to certificates?

2. Employer Job Offer Foreign Worker Stream - Require Applicants to Demonstrate Competency at the CLB 5 Level or Above

Second, the Ministry is proposing the following change to the Foreign Worker stream:

Under the Employer Job Offer Foreign Worker stream, require applicants to demonstrate competency at the Canadian Language Benchmark (CLB) 5 Level or above. This amendment aligns with the program's interest in promoting employees' successful integration and is expected to better protect applicants and the OINP against misrepresentation and other program integrity concerns.³

We are in full support of addressing program integrity issues and misrepresentation. However, our concern is that the proposed change of requiring language as a mandatory minimum would result in unfair disqualification of many employers and workers that rely on this program to obtain permanent residence in Canada. We submit that a person's language ability does not correlate with their integrity or their ability to be successfully integrated.

There are numerous workers throughout Ontario who are not able to meet the CLB 5 but are valuable employees in Ontario. Some examples of these workers include construction workers, artists,

³ *Supra*, note 1 at 3.



technicians, cooks, some business executives, among others. There are recognized labour shortages for these workers and since they are already working in Ontario, they have demonstrated that they can successfully integrate in Ontario society irrespective of language ability. The OINP is often the only permanent option that is available to these candidates.

The introduction of a mandatory minimum language ability would essentially prevent these individuals from ever obtaining permanent residence. As a result, the province of Ontario would lose a crucial labour force at a time when we are experiencing labour shortages of skilled workers throughout our industries.

We recommend that the Ministry undergo a consultation to advance solutions to misrepresentation and provide further clarification on how introducing minimum language requirements will better protect against misrepresentation. Further clarification is also needed on whether the proposals will change the points system for the foreign workers stream and if so, the points that will be awarded for language ability.

We submit that the Foreign Worker stream has provided a valuable pathway for permanent residence for many essential workers in Ontario because it did not require minimum language ability. The adage that if a worker is good enough to work, they are good enough to stay has proven to be true since the program's inception well over a decade ago.

In the alternative, if a minimum language ability is necessary, we recommend that it be structured to allow as many workers who would be successfully integrated into Ontario as possible to qualify. For example, limiting the language requirement to CLB 4 on speaking and listening and no language minimum for reading and writing, or allowing those who have already worked in their current positions for a year to be exempt from the language requirements. Furthermore, we recommend not incorporating language proficiency into the points system for the Foreign Worker stream.

We submit that given the significant impact the mandatory language requirement will have on businesses in Ontario to retain essential employees and for numerous workers to have a path to permanent residence, that this provision requires further consultation with stakeholders to identify the best solution.



3. Increase Minimum Administrative Monetary Penalty to \$10,000

Third, the Ministry is proposing an amendment to Section 20 of O. Reg. 422/1 General which would increase the minimum administrative monetary penalty amount to \$10,000.⁴ The Ministry's position is that this change would help to further protect the program from misrepresentation and fraud.

Protecting the program's integrity is an objective we fully support. However, a minimum of \$10,000 for a penalty amount is excessive if it would not take into consideration the differing levels of severity in an alleged breach and whether that breach was intentional or unintentional. The amount of \$10,000 as a minimum penalty is extraordinary throughout both criminal and regulatory law in Canada.

We submit that a more structured approach as to the penalties imposed is needed which would match the penalty to the level of severity and intention of the breach. For example, the Immigration, Refugees and Citizenship Canada ("IRCC") program has a detailed employer compliance program which allows for penalties of up to \$100,000 per violation to a maximum of \$1 million a year but also allows for employers to mitigate their breaches with voluntary disclosure.

We reiterate our above recommendation for the Ministry to undertake further consultations with stakeholders to discuss how to effectively protect the program from misrepresentation and fraud.

Conclusion

Once again, the OBA appreciates the opportunity to comment on the program and provide input that reflects our legal experience working with employers and candidates who use the OINP and other immigration programs. We would be pleased to discuss our comments further and look forward to continuing to work with the government to prevent misrepresentation and fraud, and to strengthen the OINP programs.

⁴ *Supra*, note 1 at 3.