

Submission: Increasing Employer Participation in the Ontario Immigrant Nominee Program

Date: February 23, 2024

Submitted to: Ministry of Labour,
Immigration, Training and Skills
Development

Submitted by: Ontario Bar Association



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Contents

Summary	3
The Ontario Bar Association.....	3
Comments	4
Employer Requirements	4
Documentation	7
Other Considerations.....	9
Your Experience	11
Other	12



Summary

The Ontario Immigrant Nominee Program (“**OINP**”) is a program through which the province helps support newcomers and employers. To ensure that an employer is in a position to take on and support a foreign worker, the Ministry of Labour, Immigration, Training and Skills Development (“**Ministry**”) sets eligibility requirements for employer businesses. Overall, the OBA believes that the eligibility requirements for employer businesses, as currently written, are too restrictive. Our recommendations for providing businesses more flexibility in the OINP’s employer requirements include but are not limited to:

- Allowing business that have existed or been active for at least one year before that date of registration or application, as applicable.
- Eliminating the current revenue requirements.
- Considering two part-time positions equivalent to one full-time equivalent position, if the total hours add up to at least an average of 30 hours per week.

The Ontario Bar Association

The OBA is the largest volunteer lawyer association in Ontario, with approximately 16,000 members, practicing in every area of law in every region of the province. We provide updates and education on every area of the law to combined audiences of 20,000 lawyers annually. The members of our 40 practice sections include leading experts in their field who provide practical advice to government and other decisionmakers to ensure the economy and the justice sector work effectively and efficiently to support access to high-quality justice for Ontarians.

This submission has been prepared by 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.



Comments

Employer Requirements

To ensure that an employer is in a position to take on and support a foreign worker, the Ministry sets eligibility requirements for employer businesses. In order to qualify as an employer, a business must:

- a. Have been active for the last 3 years.
- b. Have a location in Ontario.
- c. Have made a minimum gross revenue the prior year (\$1M in the GTA, \$0.5M outside the GTA).
- d. Have a minimum number of employees who are citizens or permanent residents at the location where the employee will work or report to work (5 in the GTA, 3 outside the GTA).
- e. Show that they have taken reasonable efforts to recruit a Canadian citizen or permanent resident or submit a Labour Market Impact Assessment (“**LMIA**”).

1. **Do you think these requirements are too restrictive, not restrictive enough or do you agree with the requirements as they are currently written? Please be specific. Which requirement(s) do you feel are too restrictive, not restrictive enough or are currently reasonable?**

Overall, the OBA believes that these requirements as currently written are too restrictive.

a. **Active Business Requirement**

We recommend amending this requirement to at least **one year** before the date of registration or application, as applicable. The British Columbia’s Provincial Nominee Program (“**PNP**”) also requires businesses employing skilled workers to have been established in British Columbia for at least **one year** before the date of an application.¹ Small businesses’ survival rates increase when they have a larger number of employees. However, businesses operating in critical industries across Ontario are

¹ British Columbia, Provincial Nominee Program Skills Immigration Program Guide, online: <<https://www.welcomebc.ca/Immigrate-to-B-C/documents/BC-PNP-SI-EEBC-Program-Guide.aspx>>, at 43.



currently contending with job shortages and many will struggle to scale up so they can survive in the long term.

b. Location in Ontario

We have no comments on this requirement at the time.

c. Annual Revenue Requirement

The OBA recommends **eliminating the current revenue requirements**. The BC PNP also does not have a revenue requirement for its employers.² These revenue requirements exceed the average revenue reported by small businesses across Canada. In 2020, rural businesses reported annual revenues of \$462,000 and urban businesses reported \$400,000.³ Continuing to maintain this financial requirement will effectively bar many small businesses (including those operating in the construction, trades, and technology sectors) from accessing the OINP and retaining staff crucial to their operations.

d. Employee Requirements

The OBA believes that the OINP should consider **two part-time positions equivalent to one full-time equivalent position** if the **total hours add up to at least an average of 30 hours per week**. Given that Ontario businesses must rely on a combination of part-time and full-time employees to operate their businesses, the OINP currently allows applicants to count full-time or full-time equivalent work experience towards the minimum work experience for many of the streams. However, Statistics Canada has confirmed that that part-time work outpaced growth in full-time work in 2023.⁴ To support business operating in this new reality, the BC PNP program has allowed businesses to count two part-time employees as one full-time if the hours total an average of 30 hours per week and does not require the employees to be Canadian citizens or permanent residents.⁵ We recommend that Ontario should do the same. Contract workers should also be included in this factor as it is normal business practice in many areas to have contractors rather than full-time employees. For example, subcontractors are the norm in the construction industry.

² *Supra*, note 1.

³ Statistics Canada, "A profile of businesses in rural Canada, 2020", online: <<https://www150.statcan.gc.ca/n1/pub/21-006-x/21-006-x2023001-eng.htm>>.

⁴ Statistics Canada, "Labour Force Survey, September 2023", online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/231006/dq231006a-eng.htm>>.

⁵ *Supra*, note 1 at 44.



Temporary foreign workers have rapidly and increasingly become a critical source of labour supply across industries due to Canada's declining birth rate, aging population, and the need for employers to hire global talent. Specifically, the share of employed temporary residents grew 149% from 2010 to 2020.⁶ Therefore, the requirement that eligible employers have at least three or five permanent resident employees/Canadian citizen employees is inconsistent with the labour market conditions in which they operate.

Furthermore, recent developments in Ontario's Employment and Human Rights Law will likely impact how businesses record and track the status of their employees. In *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364, the Ontario Court of Appeal found that the employer discriminated against the candidate by making the job offer conditional on the candidate providing proof of Canadian citizenship or permanent resident status. As Ontario businesses cannot legally require new employees to be permanent residents and/or Canadian citizens, the OINP requirement adds a requirement that is inconsistent with Employment and Human Rights standards in Canada and may inadvertently encourage non-compliance with these standards.

e. Recruitment Requirement

We recommend the continuation of the current exemption from the requirement to take reasonable efforts to recruit a Canadian citizen or permanent resident or submit a LMIA in the following situations:

- The applicant already has a valid work permit to work in Ontario, or
- The employer has a positive LMIA for the position.

2. If you are a business owner, would these requirements discourage or prevent you from participating in the OINP? If so, which requirement(s) do you find prohibitive?

The current employer requirements would discourage businesses, especially small businesses, from participating in the OINP. Please refer to the detailed explanation above in Question #1 outlining why these requirements are restrictive.

⁶ Statistics Canada, "Foreign workers in Canada: Work permit holders versus employment income records, 2010 to 2022", online < <https://www150.statcan.gc.ca/n1/pub/36-28-0001/2023010/article/00003-eng.htm>>.



3. What suggestions would you make to amend, remove, or add to these requirements to encourage participation in the OINP?

Please refer to the detailed explanation above in Question #1 outlining why these requirements are restrictive.

4. Are there alternative requirements that you would suggest which demonstrate an employer's ability provide stable employment for a newcomer?

Please refer to the detailed explanation above in Question #1 outlining why these requirements are restrictive.

Documentation

In order to verify that employers meet the requirements set out in the regulations, the OINP may ask for supporting documentation.

To verify gross annual revenue and that the business has been active for at least 3 years:

- Canada Revenue Agency Schedules 125 (Income Statement Information) and 141 (Accounting Practitioner Information).
- Unaudited financial statement (Notice to Reader), signed by a chartered professional accountant, covering the 3 years prior to the submission date.

To verify the number of full-time employees:

- A full-time employee chart.
- The organizational chart for the business.
- Individual T4s and pay slips.

To verify business premise:

- Produce a Parcel Register for Property Identified (PIN), showing the employer as the property owner, or
- A valid lease, or license (or offer) with the landlord's name, address and phone number.



1. If you are a small business owner, would obtaining any of the currently requested documents be considered a burden or take an unreasonable amount of time to acquire? Which document(s) would be most burdensome?

In some cases, for the employer, it would be burdensome or take an unreasonable amount of time to acquire these documents. Confidentiality is the key issue to be considered with respect to these documents. These are sensitive corporate documents, and the application process can be improved if the OINP developed a process for employers to confidentially share these documents and not be directly uploaded by the applicant.

The OBA believes that there should be some form of exemption from the documentation requirement for larger corporations (i.e. publicly traded companies). These documents should be exempt if they are publicly available (financial statements, annual reports, quarterly reports, etc.). In the case of large private companies, there should be discretion afforded to the OINP's assessing officers to waive these requirements. This can be linked to the number of employees or other indicative factors, to streamline the process and make it less onerous for employers. A glaring example of a burdensome requirement if requested is proof of a company's deed or lease.

2. How could the current requirements be modified to reduce the amount of burden on businesses, while still ensuring the employer's business meets the requirements set out in Section A?

The OINP can adopt a similar verification process utilized by Employment and Social Development Canada ("ESDC"). In order to assess business legitimacy, there are numerous documents that the employer can provide to show that both the business and the job offer are genuine and legitimate. This includes attestations to confirm the employer is providing a good or service and address the employer's ability to fulfill the terms of the job offer. Such attestations can be prepared by either:

- A lawyer or any other member in good standing with a law society (lawyers, notaries in Quebec and independent paralegals in Ontario).
- A Chartered Professional Accountant (CPA) in good standing with the respective professional body.



- An official (account manager, branch manager or above with delegated signing authority) from a federally or provincially regulated financial institution.⁷

3. Are there alternative documents that you would suggest that demonstrate that an employer's business meets the requirements set out in Section A?

Please refer to our response above for Question #2.

Other Considerations

We recognize that the same requirement will not apply to every industry in the province. For example, the OINP currently has special allowances for truck drivers and transit operators to be able to conduct their duties outside of Ontario. In order to support the labour market, and ensure we fill high demand jobs, especially in the skilled trades, sector-specific considerations could include:

- In the construction industry, some businesses chose to engage contractors, or subcontractors rather than keep on many full-time staff.
- In many skilled trades, workers go directly to the jobsite, and the jobsite can change as frequently as a few times a day – to one job for weeks-months.
- Hybrid workers and hotelling, particularly in tech companies but across all sectors, mean offices may not have 5 full-time employees on-site.

1. Should the government investigate considerations for certain industries or jobs, based on the need for workers?

The three specific considerations outlined above are welcome and will allow more employers and applicants to participate in the OINP.

Given that part-time work is outpacing growth in full-time work, the OINP should consider **two part-time positions equivalent to one full-time equivalent position**, if the **total hours add up to at least an average of 30 hours per week**. As stated above, it is a normal business practice in many industries to have contractors rather than full-time employees. For example, subcontractors are the norm in the construction industry. The healthcare industry should also be afforded special allowance. Specifically, there are many placement agencies that place healthcare workers (personal

⁷ Economic and Social Development Canada, "Business legitimacy", online: <<https://www.canada.ca/en/employment-social-development/services/foreign-workers/business-legitimacy.html>>.



support workers, nurses, etc.) in different locations and, as such, exemptions or modifications should be made for this industry.

2. What additional considerations or sectors do you think the government should investigate? Do not limit yourself to the examples above.

In Ontario, 563,750 job vacancies were reported in Q1/Q2 2023:⁸

- Approximately 80% of these jobs require a non-university certificate or diploma or lower (in fact, 50% require high school or less).
- 45.7% of these jobs require less than one year of work experience or less.
 - The average wage offered for these positions ranged from 19.20 (no minimum level of education required) to 27.50 (non-university certificate or diploma)
- The following five industries had the most vacancies:
 - Healthcare and Social assistance
 - Accommodation and food services
 - Retail trade
 - Manufacturing
 - Administrative and support waste management and remediation services

⁸ Statistics Canada, “Job vacancies, proportion of job vacancies and average offered hourly wage by occupation and type of work, quarterly, unadjusted for seasonality”, online
<<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410032802&pickMembers%5B0%5D=1.7&pickMembers%5B1%5D=4.1&cubeTimeFrame.startMonth=01&cubeTimeFrame.startYear=2023&cubeTimeFrame.endMonth=10&cubeTimeFrame.endYear=2023&referencePeriods=20230101%2C20231001>>.

Statistics Canada, “Job vacancies, proportion of job vacancies and average offered hourly wage by selected characteristics, quarterly, unadjusted for seasonality”, online:
<<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410032801&pickMembers%5B0%5D=1.7&pickMembers%5B1%5D=2.1&cubeTimeFrame.startMonth=01&cubeTimeFrame.startYear=2023&cubeTimeFrame.endMonth=07&cubeTimeFrame.endYear=2023&referencePeriods=20230101%2C20230701>>.

Statistics Canada, “Job vacancies, payroll employees, job vacancy rate, and average offered hourly wage by industry sector, quarterly, unadjusted for seasonality”, online:
<<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410032601&pickMembers%5B0%5D=1.7&cubeTimeFrame.startMonth=01&cubeTimeFrame.startYear=2023&cubeTimeFrame.endMonth=07&cubeTimeFrame.endYear=2023&referencePeriods=20230101%2C20230701>>.



Exemptions or modifications to facilitate greater participation of employers and applicants from these industries should be introduced to reflect the reality of the labour market.

3. Is there a need for special considerations for the construction industry to secure the necessary labour to support the provinces goals of fixing our roads, creating more infrastructure, and building 1.5M homes by 2031?

An exemption to allow the construction industry to hire workers who are out of status should be considered. If an employer has identified a skilled worker in the construction industry, provisions should be implemented to make it easier to hire and support the regularization of this individual's status in Canada.

The OINP can mirror elements of the federal government's innovative immigration measures to create pathways for out-of-status persons and include failed refugee claimants, to help Canadian employers address critical labour shortages.⁹

Your Experience

1. If you are an employer, nominee, or prospective nominee, or you have obtained permanent residency through the OINP, what challenges did you encounter while submitting your application and documentation?

A challenge that applicants encounter during the permanent residence processing time is that they must maintain employment with the employer named on the nomination certificate at all times. There is no flexibility or measures to address situations such as a change of employment, bankruptcy, or significant corporate restructuring. Such changes would result in the entire process being nullified. Applicants should be allowed to substitute in a new employer if employment ceases before or during the permanent residence stage. There should be discretion in situations where the applicant is far along in the processing.

⁹ Immigration, Refugees and Citizenship Canada, "Canada doubles immigration program for out-of-status construction workers in the Greater Toronto Area", online: <<https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/01/canada-doubles-immigration-program-for-out-of-status-construction-workers-in-the-greater-toronto-area.html>>.



2. If you chose not to proceed with an OINP application, why did you decide not to proceed? What requirements or other factors were prohibitive to your participation in the program?

A major drawback of the OINP is the long processing time. If an applicant qualifies and garners an invitation to both the OINP and the Federal Government's Express Entry System, the latter is almost always selected due to its quicker processing times. In addition, due to the OINP requiring applicants to be tied to one employer and the risk of that employment ceasing for any given reason, this plays a role in the decision making and makes the OINP less attractive to applicants.

3. Is there anything else you would like to share with the government that is related to the OINP and immigration?

The introduction of premium processing should be considered. This may entail the ability to pay extra fees for expedited processing in particular scenarios, such as the expiration of an applicant's status.

Other

1. What other measures do you suggest the government take to maximize participation in the OINP?

The OBA believes that the 14 calendar days to submit a complete application after receiving an invitation to apply is not enough time. A more reasonable time period is **60 days**, similar to other programs such as the Federal Government's Express Entry System. Even under ideal circumstances where the document gathering has begun in anticipation of a selection, the applicant and employers still do not have enough time. The requirement to have all translations done by a certified translator from the Association of Translators and Interpreters of Ontario ("**ATIO**") also adds to the time.

In addition, we think there should be more transparency and regular bi-weekly draws, whether these are targeted or general draws. A proper review of occupations targeted must also be undertaken. Recently, we have witnessed frequent targeted draws for those in the technology industry when companies have made significant layoffs in the past few months. More transparency regarding the updating of "In-Demand Occupations" is welcome.



With respect to the points selection threshold, the OINP should not be competing for the same applicants as Express Entry. Historically, this Program has been the alternative for those applicants who may not be competitive in the Express Entry pool, serving as a pathway for these workers and their families to become permanent residents of Canada. We encourage the OINP to make more targeted draws for occupations in the trades as there is a significant shortage that is well documented.

The OBA would be pleased to meet and discuss this further and answer any questions that you may have.