



OFFICE OF THE PRESIDENT

Hon. Gordon S. Wyant, Q.C.
Minister of Justice
Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Hon. Bill Boyd
Ministry of Economy
Room 340, Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Eric Johansen
A/Director – Public and International Engagement
Saskatchewan Ministry of the Economy - Labour Market Division
7th Floor – 1945 Hamilton Street
Regina, Saskatchewan, S4P 2C8

Dear Sirs:

Re: The Foreign Worker Recruitment and Immigration Services Act

Please find enclosed a letter from the CBA Immigration Law Section in relation to the proposed Foreign Worker Recruitment and Immigration Services Act.

The concerns that are raised and the position that is put forward by the Immigration Law Sections are supported by CBA Saskatchewan as a whole.

As President of CBA Saskatchewan and on behalf of our members across the province, I urge the government to consider the Section's comments when reviewing the proposed legislation.

Yours truly,

Heather MacMillan-Brown, Q.C.
The Canadian Bar Association, Saskatchewan Branch

cc. Brenda Hesje, Executive Director CBA Saskatchewan

March 21, 2013

VIA EMAIL: Eric.Johansen@gov.sk.ca
Saskatchewan Ministry of the Economy
Labour Market Division
7th Floor - 1945 Hamilton
Regina, Saskatchewan S4P 2C8

Attention: Mr. Eric Johansen, A/Director – Public and International Engagement

RE: The Foreign Worker Recruitment and Immigration Services Act

We are writing on behalf of the Canadian Bar Association Immigration Law Section – Saskatchewan (the “CBA Immigration Section”) in relation to the proposed *Foreign Worker Recruitment and Immigration Services Act* (“Bill No. 83”). The CBA Immigration Section’s comments are limited to the requirement for lawyers to be licensed if they participate in “recruitment services”.

We make no comment regarding the other aspects of Bill No. 83, other than to note that in some respect the provincial regulation appears to be duplicative of existing regulation of immigration consultants.

As stated in earlier consultations, the proposal regarding “recruitment services” is in conflict with the self-regulating nature of the legal profession as outlined in the *Legal Professions Act*, 1990. The CBA views both of these measures as duplicating the responsibilities of the Law Society of Saskatchewan, as the existing Code of Conduct and standards of practice of the Law Society already regulate lawyers in all areas and types of practice.

Pursuant to Section 4 of Bill No. 83, a member in good standing of a provincial or territorial law society in Canada is exempt from the requirement for licensing for immigration services but not for “recruitment services”. Sections 2(k) and 2(q) define “immigration services” and “recruitment services” as follows:

(k) “immigration services” means services that assist a foreign national in immigrating to Saskatchewan, including:

- (i) researching and advising on immigration opportunities, laws or processes;
- (ii) preparing or assisting in the preparation, filing and presentation of applications and documents related to immigration; (iii) representing a foreign national to or before immigration authorities; and
- (iv) providing or procuring settlement services;

(q) “recruitment services” means services that assist a foreign national or an employer to secure employment for a foreign national in Saskatchewan, including:

- (i) finding or attempting to find employment in Saskatchewan for a foreign national;

- (ii) assisting or advising an employer in the hiring of a foreign national;
- (iii) assisting or advising another person in doing the things mentioned in subclauses (i) and (ii);
- (iv) referring a foreign national to another person who does the things mentioned in subclauses (i) and (ii); and
- (v) providing or procuring settlement services.

The CBA Immigration Section respectfully submits that the current definition of “recruitment services” is overly broad. The current definition would cause all immigration lawyers to require licensing as the practice of immigration law almost invariably involves assisting or advising “a foreign national or an employer to secure employment for a foreign national in Saskatchewan.”

Immigration law encompasses a wide range of activities, including each of the items specifically mentioned in the above “recruitment services” definition, although most typically it involves items (ii) and (iii) – particularly advising an employer in the hiring of a foreign national. For example, immigration lawyers will often assist a client with finding proper employment that will enable them to immigrate to Canada, advise employers with the proper steps and procedures to hire a foreign worker, review resumes and/or employment contracts for an employer to ensure a certain candidate would qualify for immigrating to Canada, and/or review recruitment efforts and advertisements for an employer to ensure they meet the requirements to obtain a Labour Market Opinion from Service Canada so they can legally hire a foreign worker.

It will be impossible to restrict the involvement of lawyers in immigration matters without interfering with the public’s entitlement to appropriate legal advice at each stage of the immigration process, including such critical matters as in the first stages of recruitment. Bill No. 83’s definition of recruitment services should exclude the legal profession or be clear enough that it does not prohibit counsel from providing advice or a legal opinion about these issues.

It is worthwhile to mention a comparable proposal to require lawyers to be licensed in order to be involved in making offers and acceptances on the sale of real estate. After consideration, the proposal was rejected. In our view, the regulation of lawyers involved in “recruitment services” as defined by Bill No. 83 is similarly unnecessary and duplicative.

Given the short time frame to respond, we have not had extensive time to research other similar situations. However, lawyers are also exempt from licensing in relation to *Section 22 (1)(a) of the Collection Agents Act*, *Section 10(1)(b) of the Commissioners for Oaths Act, 2012*, and *Section 3(1)(f) of the Real Estate Act*, as stated above, for similar reasons.

In addition to the above issues, the licensing requirement would also lead lawyers to be bound by Sections 36 and 37 of Bill No. 83 which involve inspections, investigations, and warrants to enter, search, or seize evidence from a lawyer’s premises. These provisions are contrary to a lawyer’s obligations for solicitor-client privilege. This is a very significant conflict because if

they comply, they can be disbarred by the law society, and if they do not comply they can be subject to criminal prosecution under section 40 of the Act.

For all of the above reasons, the CBA Immigration Section strongly opposes the requirement to license lawyers and submits that an exemption should be added for lawyers engaged in "recruitment services" that could fall under the umbrella of legal advice. The public interest is best served by ensuring the public has access to lawyers throughout the entire immigration process.

Section 4 of Bill No. 83 should be amended to include an exemption for lawyers as follows:

Licence required

4(1) Subject to subsection (2), no person shall:

(a) act as or hold himself or herself out as a foreign worker recruiter or an immigration consultant or provide immigration services or recruitment services unless that person holds a licence; or

(b) if that person holds a licence, do any of the things mentioned in clause (a) while using a name other than the name that is stated on the licence or approved by the director.

(2) Subsection (1) does not apply to:

(a) in the case of recruitment services:

(i) a person who recruits or engages in activities to find foreign nationals for employment with his or her own business or for employment with his or her employer;

(ii) a person who, without receiving a fee or compensation directly or indirectly, provides recruitment services for a foreign national who is a member of that person's family;

(iii) a person who is acting on behalf of a government or a municipality;

(iv) a person who is acting on behalf of a university, regional college, the Saskatchewan Institute of Applied Science and Technology or any prescribed educational institution;

(v) prescribed classes of persons;

(vi) persons who are exempted by an order of the minister; and

(vii) a member in good standing of a provincial or territorial law society in Canada.

(b) in the case of immigration services:

(i) a member in good standing of a provincial or territorial law society in Canada;

(ii) a person who, without receiving a fee or compensation directly or indirectly, provides immigration services to a member of that person's family;

(iii) a person who is representing a person who is the subject of Immigration and Refugee Board proceedings pursuant to section 167 of the Immigration and Refugee Protection Act (Canada);

(iv) prescribed classes of persons; or

(v) persons who are exempted by an order of the minister.

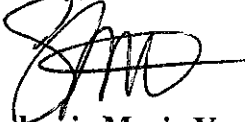
Alternatively, if you are unable to fully exempt lawyers from the requirement for licensing, we suggest that the definition of "recruitment services" be revised. We suggest removing the word "advising" from the definition and clearly stating that recruitment services does not include immigration services and/or advising performed by a member in good standing of a provincial or

territorial law society. You may want to also include more detail in the definition of "recruitment services." For example, the Wikipedia definition of "recruiting" is as follows:

The stages of the recruitment process include: job analysis and developing a person specification; the sourcing of candidates by networking, advertising, or other search methods; matching candidates to job requirements and screening individuals using testing (skills or personality assessment); assessment of candidates' motivations and their fit with organizational requirements by interviewing and other assessment techniques

Thank-you for your time and consideration. We view this as a very important matter and look forward to hearing from you at your earliest convenience. If you have any further questions or concerns please do not hesitate to contact me at #306-791-8944.

Sincerely,



Stephanie Marie Yang
South Saskatchewan Chair
CBA Immigration Law Section

CC: *Ms. Lora Bansley, CBA Saskatchewan Executive Legislative & Law Reform Chair*
Mr. Tom Schonhoffer, Q.C., Executive Director of the Law Society of Saskatchewan