



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration



CANADIAN ASSOCIATION OF PROFESSIONAL IMMIGRATION CONSULTANTS
CAPIC-ACCPI
PRESENTATION TO THE LEGISLATIVE AFFAIRS COMMITTEE ON BILL 210
DECEMBER 2ND, 2009

In cooperation with CARE, a coalition of caregiver recruitment agencies and associations united by the need to protect **CA**regiver's **R**ights and **E**ducation.

The Canadian Association of Professional Immigration Consultants (CAPIC - ACCPI) thanks the Committee for this opportunity to give our input on Bill 210, ***An Act to Protect Foreign Nationals Employed as Live-In Caregivers in Ontario.***

My name is Phil Mooney. I am the President of CAPIC. I am also a member of the Canadian Border Services Advisory Committee, the Citizenship and Immigration Canada, Immigration Practitioner advisory group and the HRSDC Practitioners Advisory Group. I am a Certified Canadian Immigration Practitioner, located in Burlington, Ontario.

First, let me say that we support the intent of this Bill and commend the Ontario government and the Minister of Labour for taking this initiative. As practitioners involved deeply in this program, we have long been aware of the abuses and have a long history of trying to bring this and other immigration issues to light.

CAPIC members, as Certified Canadian Immigration Consultants, assist caregivers by obtaining work permits so they can come to Canada, and by advising them of their rights under IRPA both before and after they arrive. Just like attorneys, we are regulated. We maintain Client accounts for funds

deposited with us, which are audited by the Regulator, carry Errors and Omissions insurance, have a criminal compensation fund, and operate under a Code of Conduct. To illustrate the point, the caregiver who took her agent to small claims court recently would not have had to bother if that agent had been a member of a Provincial Law Society or the Canadian Society of Immigration Consultants. Complaints could have been laid directly with these Societies who would have moved in to insure that the caregiver was properly treated.

Today, we would like to use our deep understanding of the immigration system to help put this whole issue into perspective. It is sometimes useful to look back and see how we arrived at this point. Only then can we understand how best to move forward.

BASIC REQUIREMENTS OF THE LIVE-IN CAREGIVER PROGRAM.

You will hear that the process of bringing a Caregiver to Canada required many, many steps when done right. And many honest employers and agencies must have been doing it right as more than 6,500 caregivers gained Permanent Resident status in the twelve months prior to September 2009. Given processing times these are individuals who first came to Canada in 2005 - 2006. In general, the vast majority of caregivers are chosen carefully by employers who follow the

rules, and who are assisted by agencies who work with the employer to insure that the caregiver meets their needs. This past year, 10,511 live in caregivers entered Canada to work.

But when done by those who exploit the system, only two steps are required to be real. There must be a real LMO and a real Work Permit. The LMO is entered into the HRSDC computer system and accessed by CIC. The bad guys cannot access the computer system. The Work Permit is a government issued document based on a well established process common to all Temporary Foreign

Worker applications. Nothing else has to be real. In the world of those who would abuse the system, there does not have to be a real employer or a real qualified caregiver. Both can be faked. And until the start of 2009 it was very easy to do so.

Before 2009, to get an LMO for a caregiver, no advertising was required, paperwork was limited and easily assembled. Nor was there any follow up to validate that the job was real. Stories abound about individuals being asked to sign a bogus application and supply a few papers, in return for cash.

The Work Permit Application process was somewhat tougher, but in general, the LMO was respected. Until 2005 the process was relatively quick especially since applicants could apply anywhere in the immigration system. Then in the spring of 2005 CIC changed the system by enacting delayed provisions of the IRPA. Applicants were required to file in their home countries or where they were working. A huge backlog developed in the Philippines which created a demand in Canada for those who could supply caregivers quickly. Enter the bad guys!

Soon a pipeline was established that saw the unscrupulous recruiters and agents supplying the employers with caregivers immediately even though the names on the work permit did not match the names on the LMO, and the LMOs were mostly or completely fraudulent. Some of the employers and even some of the caregivers willingly participated in the scheme. For these caregivers and their families, coming to Canada is a life changing event of huge importance.

Those were the "salad days" for the abusers, taking in easy money without any fear of getting caught. There was a never ending stream of caregivers in the pipeline on the way to Canada, and a strong demand for their services, with no monitoring after the fact, and a very vulnerable worker population, motivated to not make waves. Rules about work permit renewals or portability were ignored,

and new LMOs easily obtained.

After many complaints and more and more extreme examples of abuse, things started to change late last year, and continued into 2009. HRSDC required that all employers get a Revenue Canada Tax Number. Then they insisted on an advertising requirement that included the Service Canada Job bank and another source. Finally, employers had to include an Attestation from a recognized professional as to their own identity. Further changes are on the way. Visa Posts

are now calling employers in Canada to insure that the caregiver had shown up and was working there. Most importantly, the CBSA is calling employers when the caregiver gets to Canada, and if there is no confirmation of the employment, are refusing entry and putting caregivers back on the plane.

Even Air Canada is asking for a letter from the employer or they don't let the caregiver on the plane. As a result, from hundreds of caregivers every month being "released upon arrival" with no job and crushed dreams, the numbers have been reduced to a mere handful. Of course, this has now transferred the problem back to their home countries, but at least they are not easy prey for the vultures who circled the airport departure areas.

As a result, in a few short months since this Bill was first proposed, the situation has changed completely. Now, honest recruiters can see hope that they will not be constantly undercut by unethical competitors. In fact, the number of caregivers available for placement who are already in Canada has declined sharply, to such an extent that most agencies are now forced to increase their overseas recruiting efforts. This is all to the dismay of the bad agents in Canada and abroad. Inland, their source of victims is drying up. Overseas, they are facing complaints from caregivers who were forced to return to their home countries, and who are demanding refunds and going after these agencies with the support of their families.

More help is coming with planned changes to Monitoring of LMOs and changes to the overall Temporary Foreign Worker program which have been Gazetted, although some of the changes may in fact cause problems down the road.

Bill 210, by adding employment standards compliance to these efforts will be very helpful. However, the Bill needs a few simple amendments, or the result will be, in effect, to snatch defeat from the jaws of victory.

The Bill seeks to insure that caregivers do not pay for the cost of recruiting. This

is a very good idea, and in line with what other provinces have already implemented. But like the Manitoba legislation, it goes further and states that recruiters cannot also charge for voluntary professional development services, or for immigration services. For many of these honest, ethical businesses, provision of these services is their life blood, as they compete with the bad agents. It differentiates them from the “body shops”. By providing high quality voluntary services to caregivers who wish them, for a fee, they can compete with the bad agents who charge employers nothing for recruiting, and charge extortionate fees to the caregiver.

What are the bad guys going to do after Bill 210 becomes law? I suspect that they will just figure out how to get around it.

If Bill 210 does not change, the costs to employers will double or triple for them to bring in a caregiver. This will make them very easy targets for bad agents offering them caregivers for small or no recruiting fees.

Many will give up altogether, and try to find other, less expensive methods of care.

Bad agents will respond to the possible decline in revenues by marketing

individuals with no skills, who have paid even more extortionate fees to them, including supplying questionable documents such as references and educational backgrounds.

Bad agents will insure that when HRSDC or CBSA or even CIC calls, someone will be there to answer the phone with the right answers.

Bad agents will just pay more to get phony employers to file for LMOs.

As with all such programs, the fight will continue. To win the fight, we must all work together.

If Bill 210 is not amended, the government loses their most important ally in the fight against the bad agents. An ally who not only understands the industry, but who is also prepared to take the fight overseas where governments typically cannot go. These allies offer a direct and ethical alternative to the bad agents, inside Ontario and in all the source countries. These allies are the reputable recruiting agencies and the regulated professionals who work with them or for them.

How difficult are the changes we need to make? Not difficult at all. The

government simply has to issue a list of prescribed voluntary services which recruiters can charge caregivers. If there is not time to do so now, the government can simply delay this section from coming into force while it consults with stakeholders on this issue.

Why have they not already been included? In our opinion, it is because of a fear that ethical caregiver agencies, lawyers and certified Canadian immigration consultants will bundle recruiting fees into their prices for professional development or immigration services. We believe that fear to be unsubstantiated. We can provide appropriate checks and balances that will insure it does not happen.

Things like requiring employers to provide receipts for recruiting services like they now must do for advertising. And having caregivers include such information in their applications for work permits, along with receipts for professional development and a sworn statement from the lawyer or consultant that immigration services billed did not include recruiting costs. Visa officers have unfettered discretion to refuse a work permit if they believe that the applicant is being taken advantage of. Let them make the decision by supplying the relevant

facts. They quickly come to learn which agencies can be trusted.

We also encourage the government to consider the setting up of some sort of recruiter registration and possibly licensing. We understand that there are cost considerations, but we believe this method will yield the same results at a much lower costs than the warrant-less, no cause search and seizures.

In this regard, CAPIC has set up a special program where employers are directed to recruiters who must guarantee that they will not charge applicants recruiting fees, and which links the employer up with Authorized Representatives and other professional groups. All recruiters must agree to use the services of Authorized Representatives only, or to recommend these professionals to their clients, to prevent ghost agents from getting involved.

We would be please to include a requirement that in order for recruiters to join our program, they would first have to be Registered with the Ontario Department of Labour. We can also help to set up such a Registry, which would in the end be self-funding.

Finally, we note that Bill 210 does not forbid caregivers from seeking out and paying for professional development services or immigration services from

providers who are not involved in recruiting. It makes no sense at all to then forbid them from obtaining these voluntary services from the same people that they trusted to find them employment in a good setting far from home, in the first place! In effect, we are throwing them out onto the street to be at the mercy of bad agents again.

Yet our proposals on this subject have not been met with support from the drafters of this Bill. We are determined to keep up our efforts to educate everyone involved in these key issues.

We hope that the committee sees the logic and wisdom of our suggestions and enacts them now, so we can all look forward to a future where abusers are caught and caregivers are protected.

Thank You

MISCELLANEOUS FACTS:

Most employers will not wait 15 - 18 months for a caregiver. This is the current processing time for Work Permits through Manila.

Many caregivers coming through the Manila process are graduates of the six month caregiver courses offered there. Almost all of them are not capable of handling the duties associated with the position.

Clients of lawyers and registered consultants can complain about unethical conduct without cost. These cases will be investigated by internal Complaints and Discipline departments who can facilitate settlement to impose penalties up to and including revocation of licenses (disbarment).

The demand for caregivers is expected to rise as the number of seniors rises over the next 20 years, and homecare is promoted by all governments.

Many caregivers come from Hong Kong, Taiwan, Mexico City and Israel. They are mostly Filipinas who have work experience in these countries, and apply there because Manila's processing times are so long.

Bill 210 does not address the issue of caregivers in Canada who cannot apply for Permanent Residence because their employers do not keep proper employment records or issue T4s. These issues would be dealt with by the Registry.

Since the start of the program in Manitoba last spring, only about seven recruiters have been licensed, some of whom actually do no business in Manitoba, but must register nationally to meet large client's coverage requirements.

There have been many cases of caregivers, who when applying for Permanent Residence, have included Family Members not mentioned on their Work Permit applications, only to then find that these family members are banned for life from being sponsored. They were advised to do so when initially applying for work

permits by bad agents or well meaning family and friends. Good immigration advice at the time of application is very important.