



Comments on Proposed Amendments to Ontario Regulation
422/17 (General), a Minister's Regulation made under the
Ontario Immigration Act, 2015

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Submitted by: Ontario Bar Association



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Table of Contents

Introduction.....	2
The OBA.....	2
Overview.....	2
Overarching Comments.....	3
1. Expansion of National Occupational Classification (NOC) codes outside the GTA.....	3
2. Removal of Settlement Funds.....	3
3. Employer Job Offer.....	4
Additional Considerations.....	4
1. Approval of Employment Position.....	4
2. Sales Threshold for Employers.....	5
3. Change in Employment of Loss of Employment after Nomination by the OINP.....	5
Conclusion.....	5



Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide feedback on the Proposed Amendment to Ontario Regulation 422/17 (General), a Minister’s Regulation made under the *Ontario Immigration Act, 2015* (the “**Proposed Amendment**”).

The OBA

Established in 1907, the OBA is the largest voluntary legal organization in Ontario, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year, both in the interest of the profession and in the interest of the public.

This submission was prepared by members of the OBA Citizenship and Immigration Law Section (the “**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 workers, 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

As indicated in our previous submissions to the Ministry on the *Ontario Immigration Act* regulations, our members are committed to the success of the Ontario Immigrant Nominee Program (“**OINP**”).¹

¹ Comment on Draft Regulations Under the *Ontario Immigration Act, 2015*, October 2017 at <https://www.oba.org/CMSPages/GetFile.aspx?guid=da445f21-531b-408b-810d-80c5fc76dc1a>, Comment on Proposed Amendments to Ontario Regulation 422/17 (General), a Minister’s Regulation made under the *Ontario Immigration Act, 2015*, May 2019 at <https://www.oba.org/CMSPages/GetFile.aspx?guid=328c4be2-502f-4d63-a429-831ab603802f>



We all seek the same efficient, effective, transparent regime, supported by the expeditious processing of applications, to attract new employers and individuals to Ontario.

We appreciate the opportunity to comment on the Proposed Amendment, as posted on the Regulatory Registry. We would like to provide some overarching recommendations to enhance this regulation and the OINP program generally. These comments are intended to improve the responsiveness of the program, add more clarity and consistency and ensure changes can be implemented in a manner that minimizes uncertainty.

Overarching Comments

Our overarching comments to improve the regulation and the OINP program are as follows:

1. Expansion of National Occupational Classification (NOC) codes outside the GTA

We recommend that addition of the 13 new manufacturing related NOC codes for employment positions located outside of the GTA be expanded to include employment positions located within the GTA as well. We have consistently heard from our clients that there is sufficient demand to include the GTA.

2. Removal of Settlement Funds

We support the proposal to remove settlement funds. As noted in the regulatory registry posting settlement funds are often met through annual earnings of an applicant's job offer. Further, removal of this requirement creates consistency between the In-Demand Skills stream and the Employer Job Offer streams, reducing administrative burdens. This proposal recognizes that the job offer is demonstrative that the client will have a cash flow that will cover settlement fund requirements. Moreover, by removing the requirement, it will streamline the process for OINP officials as they will no longer have to verify both the existence of the job offer which meets the program requirements as well as a second verification that the settlement funds requirement is met.



3. Employer Job Offer

The OBA recommends that there not be any limits on the number of applications allowed by employers for the Employer-based streams. When such limits are imposed, causing employers to choose between which employees are going to be sponsored, it causes significant stress and conflict within workplaces in Ontario.

All of the workers who qualify under the Employer-based streams have job offers and significant ties to Ontario. In most cases, the OINP is the only route towards permanent residence. Limiting intake may cause workers to have to leave their workplace in Ontario if they are unable to be nominated. This would cause significant negative impact on the Ontario employer. We recommend that instead of limiting the Employer-based streams where most candidates have proven their importance and ties to Ontario, the Minister should consider limiting programs where the candidates have alternative streams or do not have not demonstrated significant ties to Ontario. In addition, the Government should consider limiting the Masters stream to free up more allocation for the Foreign Worker with job offer category as well as the International Student with job offer category.

We understand that these limitations are due to the low allocation by the Federal Government. We are hopeful that the Ontario Government will receive a higher allocation for 2020, which we understand it has sought.

Additional Considerations

1. Approval of Employment Position

We recommend an additional change be made to the regulation, regarding the requirements for approval of an employment position. Currently, should an employer be approved for an employment position, they must meet a number of prerequisites set out in regulation to ensure among other things, the viability of the employment position. One of the prerequisites that must be met is that an employer's business must have, at least 5 full-time employees if located within the GTA, or at least 3 full-time employees if the work location is outside of the GTA.



The OBA recommends that there be discretion to recognize businesses that are stable and successful, regardless of whether the employer's workforce consists primarily of permanent and full-time employees or makes use of a different workforce model (for example part time and/or contract workers). Many industries do not operate in the same traditional model of full-time employees but are stable and successful and form a key component of Ontario's economy. For example, real estate brokerages and construction companies often employ significant amount of contractors. Restaurants and operators in the service sector regularly hire part-time workers but have demonstrable stability and success.

2. Sales Threshold for Employers

We recommend considering a different sales threshold that takes into account the longer term viability of the employer. For example, rather than \$1 million in sales over the past year there could be a lower amount over a 2 year period and an even lower amount for a 3 year period. This would address the Government's concern regarding the employer's ability to pay the salary and the employer viability.

3. Change in Employment of Loss of Employment after Nomination by the OINP

The OINP should have flexibility to allow an already nominated PNP candidate to continue to be processed when their employment status changes. This change to employment status may be due to an abusive employer situation or other circumstances that are sympathetic. It is not fair to punish the foreign worker in these circumstances. The Ontario Government should have discretion to allow the Federal application to continue and the nomination to stand. This approach is already an approach which is followed by other provinces including Alberta and British Columbia, and could be done on a case by case basis.

Conclusion

The OBA welcomes the changes being put forward and hopes that our suggestions will be incorporated, making the program even more successful and competitive. We thank you for considering our input and look forward to responding to any questions you may have regarding our submission.