

Institute an Appeal Process for Labour Market Impact Assessments (2023)

Issue

Employers are reporting Labour Market Impact Assessments are being denied for unreasonable and inconsistent reasons. The current process lacks transparency and is leaving employers out thousands of dollars for denied applications.

Background

Labour shortage, skilled and otherwise, continues to be a significant challenge to many Canadian businesses. While attempts to remedy the shortage through skills training programs and immigration programs such as the Expression of Interest system are steps in the right direction, they don't address the immediate shortage facing employers. Thousands of jobs continue to go unfilled as Canadians are either unwilling or unable to fill these in demand occupations. As a result, Canadian productivity continues to languish far below its potential.

The Temporary Foreign Workers Program (TFWP) is the short-term solution businesses need but suffers from poor administrative standards. Having a smooth-functioning administrative process with clearly defined rules, regulations, along with predictable outcomes, administrative oversight, and an appeal and/or review process are key components to the success and ongoing viability of government programs. It ensures applicants to the program receive the desired and deserved outcomes and helps to prevent potential abuses that could be made by applicants or administrators. This is especially important for the TFWP now that businesses are paying \$1,000 per LMIA; a fee that is costing businesses thousands of dollars on top of many hours.

When reviewing Labour Market Impact Assessments (LMIA), it is necessary for the administrative decision-makers (ADM) to utilize some level of discretion. Subject to numerous rulings under Canadian administrative body of law, discretionary decisions must be exercised via a standard of reasonableness and subject to procedural fairness.

"The Supreme Court of Canada in Southam [1997] considered the standard of reasonableness applies where a decision is a matter of law, a mix of fact and law or a discretionary decision, it is said that the decision is unreasonable where the decision is 'not supported by any reasons that can stand up to a somewhat probing examination.'

In a more recent ruling on these standards [2019], the Supreme Court of Canada majority stressed:

"It is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies."

Discretionary decisions made by the administration should be relevant, reasonable, and consistent, with the process being free of any abuse. Unfortunately, this has not been the case with LMIA's. It is imperative to the overall success and economic well-being of Canadian businesses, that the ADMs of the TFWP be subject to the standards outlined under Canadian administrative law, and that decisions made be subject to review and appeal when necessary. Decisions subject to review are made with an increased level of consideration.

The Alberta Chambers of Commerce recommends the Government of Canada:

1. Institute an appeal process for denied Labour Market Impact Assessment applications;
2. Give clearly detailed explanations when Labour Market Impact Assessment applications are denied; and
3. Ensure that appeals are heard by independent and unbiased decision makers.