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## **QUEBEC IMMIGRATION: RECENT CHANGES TO THE SKILLED WORKER PROGRAM**

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Two years ago, at the CLE Conference at Niagara-on-the-Lake, Seth Dalfen and I participated in a panel where we discussed with a representative of Québec Immigration the intended amendments to the Québec rules on the selection of foreign workers for the skilled-worker category. At a panel entitled « Québec: Destination of Choice ? » we discussed several problems with the Québec Selection Grid that had the effect of excluding from the possibility of immigrating to Québec certain some types of candidates who, in our view, constituted excellent candidates. We also questioned certain policy considerations underlying both the selection system in place at the time and the changes that the Belle Province intended to introduce.

As announced, Québec changed the rules in 2009. Three different Regulations were passed in the last year:

- On June 23, 2009 the Regulation respecting the selection of foreign nationals was amended; certain of these amendments came into force on July 8<sup>th</sup> and certain others on October 14<sup>th</sup> of the same year;
- On October 14, 2009 the Regulation respecting the weighting applicable to the selection of foreign nationals was amended and a new Selection Grid came into effect;
- On December 16, 2009 the Regulation respecting the selection of foreign nationals was amended again; among other changes, this Regulation introduced the long-awaited Québec

Experience Program, which constitutes the Québec version of the Canadian Experience Class. The same Regulation brought about changes to the provisions regarding the place of filing. With the exception of two amendments unrelated to the selection of skilled workers, the amendments came into force on February 14, 2010.

It was certainly an active year for Québec regulators. The Québec section of the Canadian Bar Association certainly welcomed the Québec Experience Program (hereinafter “PEQ”, for its French acronym), which greatly facilitates the issuance of a Québec Selection Certificate (hereinafter “CSQ” for its French acronym) to those who have been working and to those who have studied in the province. However, this program obviously only applies to candidates meeting a narrow set of criteria and, as it is clear from its name, does not address candidates who are elsewhere in the world and willing to settle in the province of Québec. In short, it is a great program but it has a limited applicability. Apart from this very important change, the other amendments do not revolutionize the selection rules. They are changes within the same framework and pursuing the same goals. As francophones would say, “plus ça change, plus c’est pareil”.

Two systems, then, currently co-exist in Québec under the Skilled Workers Category: the PEQ for those with Québec experience (and who meet the requirements) and the regular Skilled Workers Program, as amended last year.

#### The Quebec Experience Program

The PEQ came into effect, as said, this past Valentine’s day. Following the Canadian Experience Class model, the PEQ does not contain a selection grid. There are no points, no areas of training, no preliminary processing or employability cutoff scores and no interviews. If the candidates meet the requirements, a CSQ is issued. The PEQ applies to foreign workers currently in Québec and to foreign students who have studied in Québec, even if the latter do not reside in Québec any longer.

The program addresses the same kind of concerns that triggered the Canadian Experience Class. It is based on the realization that those who have been living in Québec have already proven that they are able to successfully integrate to Québec society, in particular with respect to

employability. Those who are already employed in Québec and those who have studied in Québec have much better chances of having the market recognize their credentials than those who have not worked or studied in Québec. These candidates are also prioritized for processing (they are first in the list of priorities).

With respect to foreign workers, the program is addressed to those who have been working in Québec for at least one year within the two years preceding the application as long as:

- they are lawfully working at the time of the application;
- their position is at skill level 0, A or B of the National Occupational Classification;
- they have complied with the conditions of stay; and
- they possess an intermediate level of knowledge of the French language.

The regulation expressly states that the PEQ applies to participants in youth exchange programs under an international agreement entered into by Québec or Canada provided they meet the requirements. The *Ministère de l'Immigration et des Communautés Culturelles* (hereinafter “Québec Immigration”) has confirmed that the work experience in Québec does not have to be continuous or with the same employer but that it has to be full time.

With respect to students, are eligible to selection under the PEQ those who have studied in Québec, provided that:

- they have stayed in Québec for at least half the duration of their program (and complied with their conditions of stay);
- they have not started studying in another program after finalizing the qualifying course of studies;
- they have obtained after February 13, 2008, from a Québec educational institution, one of the following diplomas: a university bachelor's degree, a master's degree or a doctorate, a post-secondary three-year technical diploma or a secondary school vocational diploma which attests to 1,800 hours or more of training; (note that the studies must have been pursued in Québec (at

least half of them) and that, for purposes of the PEQ, there is no widened concept of “Québec diploma” as under the regular Grid (see below));

- their program of studies was in French or the candidate has at least an intermediate knowledge of the French language;
- the student was not the recipient of a scholarship that imposed an obligation to return to his home country at the end of the studies (or already complied with this obligation).

A last requirement applicable both to workers and students is to comply with the financial self-sufficiency factor of the Selection Grid (which basically means to sign a “contract” confirming that they have sufficient funds to support themselves and their dependents for a period of three months).

Proof of knowledge of French at an intermediate level (both by foreign workers and employees) can be provided in different ways:

- having completed no less than two years of full-time studies in French either at the secondary or post-secondary level (although not necessarily in Québec); these studies need to have been completed no more than ten years before filing of the application;
- having completed French courses at an intermediate level (level B1 of the Common European Framework of Reference for Languages or its equivalent) at a university or educational institution recognized by the Québec Ministry of Education;
- having met the linguistic requirements of a professional order; or
- having obtained a result corresponding to an intermediate level (level B1) of oral knowledge of French in a standardized French test. The Immigration Procedures Guide published by Québec Immigration contains a list of the tests that are recognized for these purposes: *Test d'évaluation du français adapté pour le Québec*, *Test de connaissance du français pour le Québec*, *Test d'évaluation du français*, *Test de connaissance du français*, *Diplôme d'études en langue française* and *Diplôme approfondi de langue française*.

The PEQ rules do not allow any other kind of proof of knowledge of French. Nothing is said, for example, concerning those who have completed all their studies in French in a French-speaking country, including native speakers, but who completed their studies more than ten years ago. It is too early to find any kind of conclusive trends concerning how liberally Québec Immigration will interpret these rules.

A student can file his application six months before the expected finalization of his studies but the CSQ will not be issued until the student has obtained the diploma or confirmation of successful completion of his study course. All the PEQ applications are submitted in Montreal (to the *Direction de l'Immigration économique – Québec*), even if the candidate is no longer in Québec (the latter only applies to those who have obtained a diploma in Québec since skilled workers must be employed in Québec at the time of filing).

#### The Amended Skilled Worker Program

A new Selection Grid came into effect on October 14, 2009. The selection factors remain exactly the same as in the 2006 Selection Grid. These are:

1. Education level and areas of training
2. Professional experience
3. Age
4. Language proficiency (French and English)
5. Stay and family in Québec
6. Characteristics of the accompanying spouse or de facto spouse, including education level, areas of training, age and French language proficiency
7. Validated employment offer
8. Children
9. Financial self-sufficiency, and

## 10. Adaptability.

As mentioned above, these are exactly the same factors that appeared in the 2006 selection grid, although the weighting of some of them has been modified.

Also, the selection structure remains as before the amendments. It continues to be a three-step process, each having a different pass mark. First, it is necessary to meet the employability cutoff score; a different cutoff score is provided for applicants without a spouse and applicants with a spouse. At this stage of the evaluation, factors 1 to 7 are considered (except, of course, factor 6 for those without a spouse). If the employability cutoff score is not met, the process ends there and the candidate is refused. If the candidate meets this pass mark, he then needs to meet the preliminary processing passing score (second pass mark), where all the other factors except adaptability (factor 10) are considered. Again, if the candidate fails at this stage, he is refused. If the candidate meets the preliminary processing score, he can earn additional adaptability points at the selection interview and meet the selection score (third pass mark). The number of points needed to pass each stage and the number of available points at each stage has been modified but the evaluation continues to be done in the same manner as before.

You will find enclosed a copy of the current selection grid. Those who were familiar with the previous grid may find it interesting to learn what has changed. Some of the changes are:

- The Québec diploma sub-factor has disappeared as such; this does not mean that the province gives less importance to education having been obtained in Québec; this sub-factor has been amalgamated into the “Areas of training” sub-factor. The Areas of Training list now contains two sections, one for diplomas obtained in Québec and one for diplomas obtained out of Québec. The diplomas obtained in Québec carry more points than those obtained out of Québec. The novelty, which came with the June 23 amendments, is that now the concept of Québec diploma has been expanded to include:

- diplomas issued by the Ministry of Education or a university of another Canadian province (or Canadian territory);
- diplomas that lead a Québec regulatory body or a professional order or trade to issue an authorization to practice the profession or trade in Québec (which basically means, for

instance, that once the Québec Bar admits someone to practice law in Québec, the foreign law degree of this person gives the same number of points as a law degree obtained in Québec); and

- diplomas recognized under an agreement on the mutual recognition of professional qualifications between Quebec and a foreign government. So far, there has only been one such agreement signed with France. This is a master agreement and the details for the recognition of each kind of credentials are still being worked out by Québec and France.
- Points are now awarded for undergraduate diplomas attesting to one or two years of full-time studies (the past grid did not mention these diplomas).
- The “second specialty” sub-factor disappeared because, according to Québec Immigration, it was not sufficiently used.
- A new sub-factor was introduced under the Stay and family in Québec factor: the stay in Québec as part of a youth exchange program pursuant to an international agreement to which either Québec or Canada are a party, as long as the candidate has worked (and work was his main activity) for at least three months. In practice, however, this sub-factor changes nothing because the points received are the same as those received for having worked in Québec for the same period of time. In order to obtain the corresponding points, it is possible for the work to have been executed at NOC level D, but this is the case not only for participants to Young Workers programs but for everyone. Note, in contrast, that in order to obtain points in the Experience factor, the employment must be at levels C or higher.
- Factor 7 (validated employment offer) was moved to the first stage (employability). In the past, a candidate could be eliminated before having the chance to demonstrate that he had a validated employment offer. This problem was amended in the new Selection Grid.

Other changes were brought about by the amended Regulation respecting the weighting applicable to the selection of foreign nationals. In the new Grid:

- More weight than in the previous Grid is given, at the Education factor, to secondary vocational training diplomas and post-secondary technical diplomas in certain areas of training (those in

sections A or B of area I or II; see, below, comments on the Areas of Training and, enclosed, the list of Areas of Training); these diplomas give ten points at the Education factor, i.e., as many points as a university bachelor's degree granted after three or more years of studies.

- Slightly less weight than before is given to university diplomas, either bachelors, masters or doctorates; they give ten, twelve and twelve points whereas before they gave eleven, thirteen and thirteen points.

- The relative weight of Areas of Training has increased; i.e., more points can now be obtained because of the Areas of Training (before the maximum was twelve, now the maximum is sixteen, see below).

- More weight is given to short experiences and slightly less to long experiences; for instance, now there are only four points of difference between someone with seven months of experience and someone with fifteen years of experience; the maximum number of points has been reduced from nine to eight.

- "Old" candidates (thirty-seven years old and older) are less penalized than before. More points than before are given to candidates who are thirty-seven to forty years old and some points are now given to candidates who are forty-one and forty-two years old. Under the previous grid, after forty the candidates obtained zero points. Under the new Grid, those forty-three years old and older still get zero points. As participants to this forum are surely aware, under the federal selection grid, the maximum number of points is obtained until forty-nine years old. The perception of when a person becomes old seems to be different in our province (see below).

- The weight provided to education and areas in which the education was received for the accompanying spouse have been modified following the same logic as the one that guided the changes made for the main applicant, although certainly points for the spouse's education are lesser than the points attributed to the main applicant's education.

- No more points are given for the professional experience of the spouse that accompanies the candidate. It is true that in the past Grid, this sub-factor could only contribute one point, but it is still surprising to see it disappear altogether. (Doesn't the spouse's work experience contribute to his employability?).



- The age sub-factor of the accompanying dependant was also modified following the same logic as the one underlying the changes made for the main applicant.

Finally, the transitory measures allow the files that were submitted before October 14, 2009 to be evaluated according to the most favourable of the Grids for the candidate. Note that if a file is evaluated under the 2006 Grid, it is the list of Areas of Training of 2006 that applies; it is not possible to mix a 2009 Grid with a 2006 list of Areas of Training and vice-versa. The applications submitted on or after October 14, 2009 are evaluated under the new Grid and the new list of Areas of Training.

#### Place and Timing of Filing

The December 16<sup>th</sup> Regulation (that came into effect on February 14, 2010) also introduced changes to the provisions regarding the place and timing of filing. Those who are currently in Québec but who do not qualify for the PEQ are certainly most interested in being able to file their applications in Québec, instead of having to file in their home countries where processing delays are much longer.

Those who are working legally in Québec, and have been admitted for a period of at least one year, still continue to be allowed to submit their applications in Québec. There has been an amendment to allow those who have been admitted for consecutive periods totaling at least one year to submit in Québec. This amendment allows those who were originally admitted for less than a year and subsequently obtained an extension of their work permit to submit in Québec. The Immigration Section of the ABC suggested, in its comments to the draft regulations, to allow those who have lost status and obtained restoration of same and those who had a short interruption in their authorization to work (those who have obtained the “extension” of their work permit after leaving the country for two days, for instance) to submit in Québec. This recommendation was obviously not followed and those who had an interruption between their work permits are not allowed to submit in Québec.

Concerning students in Québec, the Regulation provides details on the kind of studies that the foreign student in Québec must be pursuing to give him the right to submit his application in Québec. Whereas before it was necessary to pursue a program of studies of a duration of not less

than 12 months in an educational institution in Québec, now not any program of studies qualifies; it is necessary for it to be either:

- a secondary-level vocational training program of 900 hours or more;
- a post-secondary full-time program;
- a university undergraduate program of 12 months or more;
- a graduate specialization, a master's program or a doctoral program.

The application for CSQ can only be submitted, in the case of those pursuing undergraduate studies or other programs of eighteen months or more, when the student is one year away from completing the program. Those pursuing masters, doctorate or any program of less than eighteen months, can submit their application after having completed half of the studies program.

Practitioners who handle many student files report that foreign students' decisions on what kind of course to take are tainted by Québec Immigration's (excessive) valorization of vocational secondary studies and one-year technical post-secondary studies (see below). Because the possibility of filing in Québec is valued so much by foreign students, they prefer to register first in a short program that allows them to file inland. We are being told that the schools offering this kind of programs certainly publicize the fact that their students are eligible to apply inland after having completed half the duration of the studies. After obtaining a CSQ, their federal applications go to the Canadian Consulate in Buffalo and processed in a relatively short period of time (four to six months). Once they are landed as permanent residents, no one can forbid them from starting longer university studies (and from benefitting from Québec-resident university fees). This is a non-desired effect of believing that foreign students are going to be attracted to Québec to pursue studies in masonry (brick laying) or retail butchery.

The same problem will take place with respect to those who obtain CSQs under the PEQ. Québec Immigration has realized that foreign students will have incentives to register first in a relatively short vocational or technical post-secondary program, and, afterwards pursue their intended studies, most of the time university studies. The Immigration Procedures Guide provides instructions to Québec Immigration officers to cancel the CSQs issued under the PEQ

to those who apply for a Certificate of Acceptance to Québec (CAQ) to pursue other studies (after having invited the applicant to withdraw his CAQ application). However, this power is very limited; it ends at the time the student is landed. Afterwards, Québec Immigration has no means to stop a student from starting other studies. Again, this non-desired effect is brought about by the belief that foreign students will be genuinely attracted to Québec to study automobile mechanics or welding and fitting.

### Areas of Training

It is also apparent from the 2009 amendments that Québec Immigration continues to believe that it needs to attract applicants who have been trained in certain fields for which there is immediate demand in the Québec labour market. This objective is addressed through the list of Areas of Training.

The Areas of Training concept was one of the important novelties of the October 2006 Grid. There is (as there was before) a list for university diplomas, another for college level technical training and a third one for secondary vocational training. The novelty with respect to the 2006 list is that, as said before, the list now incorporates the Québec diploma factor, to which the expanded definition of Québec diploma applies, see above. The list provides information on how long the training should have been for college-level technical training and secondary vocational training in order for the additional points to be awarded. Although there have been some additions and deletions in the list, the concept underlying the list remains the same.

A few examples of university backgrounds obtained out of Québec that give 0 points (2 points if the diploma was obtained in Québec or can be assimilated to a Québec diploma) are: Law, Economics and Philosophy (which is not surprising). There are, however, other educational backgrounds which *a priori* could be considered as being in demand in Québec that also award 0 points (or two points if sanctioned by a Québec or equivalent diploma). Examples of these are: Environment (Environmental Quality and Pollution), Pulp and Paper Engineering, Electrical, Electronic and Communications Engineering, Geological Engineering, Mining Engineering, Biological Sciences and Urban Planning. Again all these professions provide 0 points in the Areas of Training factor but award points elsewhere, in the education level factor.

Some secondary vocational backgrounds that are worth the maximum number of points (16) are: Retail Butchery (vocational diploma of 900 hours/one year, either if it was obtained in Québec or out of Québec, Masonry/Bricklaying (Québec diploma of 900 hours/one year), Automobile Mechanics (Québec diploma of 1,800 hours/two years), Welding and Fitting (Québec diploma of 1,800 hours/two years). Also a technical Québec diploma in Business Management awards the maximum number of points (whereas a Bachelor's degree in Management awards ten points less, i.e. 6 points). Examples of foreign studies that grant twelve points are: Welding and Fitting, Masonry (Bricklaying) and Plumbing and Heating. The following Québec studies also allow earning 12 points: Sale of Fishery Products, Home Care, Carpentry and Woodworking, Cabinetmaking, Installation and Repair of Telecommunications Equipment, Pastry Making and Commercial and Residential Painting. Compare this to the 0 points for diplomas as Biologist or Urban Planner.

We continue to have serious doubts regarding the realism and effectiveness of the Areas of Training list and question the underlying presumption of Québec Immigration: that it is possible to find candidates that received in their countries of origin the kind of secondary vocational training that is given in Québec. Most probably, carpenters coming from South America or North Africa did not obtain their training with a 1,350 hour vocational diploma; they obtained their training by working in a carpentry shop. More importantly, it becomes quite obvious that Québec Immigration has made a very important societal decision. We wonder whether this decision regarding what kind of candidates to attract is not short sighted, taking into account the immediate needs of the labour market instead of taking into consideration the long-run contribution that other candidates and their families would make. Two years ago we raised these same concerns. Not only Québec Immigration has maintained the policy but it has increased the relative weight of the retail-butcher type of background. A last concern to be added is that even assuming that the list of Areas of Training was a realistic way of filling shortages in the labour market (of which we are not convinced), we are afraid that the Areas of Training list is condemned to be permanently outdated. The needs in the labour market evolve much more rapidly than Québec Immigration and Emploi Québec's capacity to respond to them.

### What Else is New?

For the rest, the selection system has remained unchanged and many of the concerns that we raised two years ago remain. It was surprising, first, that the adaptability factor, which in practice unfortunately gives rise to a non-desirable amount of arbitrariness and which was supposed to disappear, as declared many times by Québec Immigration, remains in the new Grid. The maximum number of points that can be obtained for this factor was, nevertheless, reduced from eight to six.

What is not surprising is that the relative weight of knowledge of the French language continues to be very important (awarding a maximum of sixteen points). It is, as before, much more important than knowledge of the English language (which awards a maximum of six points). As before, no points are awarded to the knowledge of English of the accompanying spouse.

Taking into consideration that Québec Immigration wants to encourage immigrants to settle outside of Montréal's metropolitan area, it is not surprising either that more points are still given to the Validated Employment Offers (VEO) that are made by employers located out of the Montreal metropolitan area. Nevertheless, this was not the best way of encouraging settlement out of Québec. It is our understanding that VEOs in general, from employers in Montreal or outside Montreal, are not common. Therefore this is an encouragement put in the wrong place.

Still concerning VEOs, as explained before, Québec Immigration understood that the Selection Grid, as it was before the amendments, did not take into consideration points for VEOs at the Employability and preliminary processing stages. Therefore, this factor was moved to the first stage and is now taken into consideration before eliminating a candidate. Québec immigration has also understood that Québec employers are not willing to wait for years for a prospective employee to arrive and start working and has therefore put those with VEOs second in the list of priorities for processing, immediately after the participants to the PEQ. However, Québec Immigration has not addressed the main problem with VEOs. Obtaining a VEO is not in practice a useful means to facilitate the immigration of skilled workers since the procedure to obtain a VEO is too burdensome. Whereas the federal equivalent, Arranged Employment, only requires the proof of the genuineness of the offer, that the offer is full-time and that the wages offered are consistent with the prevailing wages for the corresponding occupation, Québec's VEOs are only

issued after the prospective employer has satisfied Québec Immigration that, notwithstanding having deployed reasonable efforts to fill the position with a resident of Québec, it was not possible to find such a person. In practical terms, these are permanent Labour Market Opinions and therefore not attractive for employers. The goal of facilitating the immigration of those who already have a job in Québec would have been better attained by simplifying the VEO process.

In addition, as we suggested in this forum two years ago, it would have been advisable to take the approach contained in the federal skilled-workers scheme: to award the number of points of a VEO to employees who are currently working in Québec with a work permit issued under Section 204(a) or 205(a) or subparagraph 205(c)(ii) of the *Immigration and Refugee Protection Regulations*, which includes all those holding work permits as intra-company transferees or under NAFTA, those who provide important benefits to Canada, etc. This is a much more practical solution and attains the same goal (to make sure that the candidate will be employed in Québec after his landing). To obtain the desired result of encouraging settlement out of Montreal, it would be possible to give more points to those working out of the Montreal metropolitan area than to those working in Montreal.

Under the new Grid, as well as under the old Grid, the fact of having young children is not taken into consideration at the first stage of the selection process (employability cutoff), which means that candidates with children can be eliminated before any points can be obtained for them. It is surprising also that this was not “corrected”, in particular taking into consideration that one of the declared purposes of the reform is to facilitate the immigration to Québec of families, more particularly families with young children. Probably this element was not corrected since it was not possible, conceptually, to put children within the “employability” criterion. A more creative solution could have been found, however, to allow children to contribute points before the parents are eliminated (for instance, by eliminating the employability cutoff stage altogether).

Two years ago, we provided the example of an Anglophone Telecommunications Engineer, with basic knowledge of French, 42 years old, possessing a vast work experience and currently working in Québec for an employer who wishes to hire him permanently, and who furthermore has a university-educated spouse with excellent French language knowledge and three young children going to school in French. We explained that under the 2006 Grid this candidate failed

at the very first stage of employability cutoff. Under the new Grid, this candidate continues to fail. (This candidate does not qualify to the PEQ either because, although he has made efforts to learn some French and speaks basic French, his level of knowledge of the French language is not yet at the intermediate level.)

As before, the only chance of having him admitted is to request from the Minister the use of his discretionary powers set out in Section 40 of the *Regulations Respecting the Selection of Foreign Nationals*. Under section 40, it is necessary to submit to Québec Immigration that the result obtained in the assessment made in accordance with the Selection Grid does not reflect the candidate's potential to successfully settle in Québec. For this kind of candidate, the discretionary powers set out in Section 40 are not an exceptional measure, as they should be, but the rule. We believe that the need to use discretionary powers too often reflects an ongoing problem with the Selection Grid.

The telecommunications engineer in our example still fails not only because his French is not strong enough but also because Québec Immigration has insisted in believing that butchers and pastry makers can make a more important contribution to Québec society than telecommunications engineers. Also, because Québec Immigration continues to believe that after forty, the chances of successfully integrating to Québec society are very low. However, the argument that those after forty have difficulty getting a job in the Québec labour market would not apply to our Telecommunications Engineer. He has already joined the Québec labour market and already makes a contribution to the Québec economy. Many of these valuable candidates continue to not qualify and have to look for alternative immigration solutions. We believe that this is a loss for Québec society and continue hoping that corrective measures will be taken.