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November 10, 2011

Via email: [mary-ann.hubers@cic.gc.ca](mailto:mary-ann.hubers@cic.gc.ca)

Ms. Mary-Ann Hubers  
Acting Director, Citizenship Legislation and Program Policy  
Citizenship and Immigration Canada  
6th Floor  
180 Kent Street  
Ottawa, ON K1A 1L1

Dear Ms. Hubers:

**Re: Proposed Amendments to *Citizenship Regulations* (Upfront Evidence of Language Proficiency), *Canada Gazette*, Part I, October 15, 2011**

I write on behalf of the National Immigration Law Section of the Canadian Bar Association (CBA Section) in response to the Notice of Intent to require citizenship applicants to provide up-front evidence of language proficiency to Canadian Language Benchmark proficiency level 4. Thank you for giving us the opportunity to share our comments, and for taking the time to meet with us to answer questions about the proposal.

The *Citizenship Act* currently requires applicants to demonstrate language proficiency when applying for citizenship. The changes proposed in the Notice of Intent would have all applicants provide an up-front, objective assessment at the time of filing an application for Canadian citizenship.

We understand and support the intent of these changes to include listening and speaking skills as part of the language assessments, and most importantly, to introduce efficiencies to speed up processing times for citizenship applicants, now in the range of 19 months from the time an application is filed.

However, the CBA Section does have some concerns and recommendations.

### **Lack of Clearly Identified Problem**

Before undertaking any legislative or regulatory change, governments should determine if there is a need that warrants the cost of implementing the change. We are unaware of any studies which show that the current method of language assessment is a significant problem in determining eligibility for Canadian citizenship, or that an up-front assessment will result in cost or time savings.

The proposed solution should be evaluated to determine whether there is an identified problem of some significance which must be addressed and whether the proposed solution adequately addresses that problem. CIC has been using up-front mandatory language assessments for some categories of permanent residence applicants for some time. It would be useful to determine if this measure has improved speed, cost or predictability in processing those applications. Any data to support this will provide some assurance that the current proposal will improve processing of citizenship applications. However, in the absence of such data, CIC may wish to wait on this proposal until its effectiveness can better be ascertained.

#### **Recommendation #1**

A cost-benefit analysis of the proposed Regulations should be done to show that there will be significant advantages to their introduction, beyond administrative efficiency.

#### **Recommendation #2**

CIC should request objective evidence only in cases where a problem has been identified with language assessment. Applicants should be advised that they may provide such evidence up-front on a voluntary basis to avoid delays.

### **Differential Impact of Changes**

We are concerned about the unequal impact these changes may have on different groups of applicants, for example:

- refugees granted permanent resident status without language testing;
- spouses of principal applicants who were not obliged to undergo language training or testing to obtain permanent residence and who are stay-at-home parents raising children;
- young children in the FC4 class at time of Permanent Residence who did not have language training or testing but who now are adults in a citizenship application; and
- PNP nominees and their dependents, most of whom did not take language training or testing prior to obtaining permanent resident status.

A study commissioned by CIC and published in March, 2010 is most helpful in demonstrating the disparate impacts of certain factors on language ability.<sup>1</sup> This study looked at the Canadian Language Benchmark assessments achieved by immigrants based on factors set out in the report. The report supports our contention that Refugees and Family Class members obtain the lowest scores in language testing as opposed to the independent class (now Skilled Workers). Further, immigrants from Southeast Asia and East Asia, Canada's largest immigrant-producing regions, achieved lower CLB scores than others.

It is important that the differential impact on male and female applicants of this proposal be assessed. The majority of principal applicants in economic classes have until recently been male. Principal applicants are subject to language assessment in the context of their applications for permanent residence, while accompanying spouses and children are not. Under the proposed regulations, principal applicants would be exempt from new language testing or having to provide new alternative evidence of language proficiency. But their spouses would be required to provide new evidence. Accompanying spouses may also be less likely to be participating in the labour market and thereby have less access to opportunities to learn English and French.

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<sup>1</sup> An Examination of the Canadian Language Benchmark data from the Citizenship Language Survey, Tracey Derwent et al., March, 2010

### **Recommendation #3**

Prior to the introduction of new Regulations, a gender analysis should be conducted.

#### **Provision for Alternative Evidence**

Given that a key purpose of the changes is to provide objective evidence of language through “preferred language tests,” we believe that the intention to continue to allow alternative evidence should be broadly interpreted.

At the moment, where there is a concern about language, the primary tool is an interview with the Citizenship Judge, a time-consuming endeavour. However, we believe it is essential that this avenue continue to be available to those who are unable to take the traditional language tests or are unable to obtain pass marks due to other circumstances.

We strongly recommend that the application checklist give clear guidance on what constitutes acceptable alternative evidence of language proficiency. Previous research has shown that the results of those taking the government’s LINC language test programs are lower than the results of those taking IELTS or similar authorized tests. We recommend that the checklist provided to applicants include an option to provide test results, alternative evidence or a request for ministerial discretion pursuant to s.5(3) of the *Citizenship Act*. Applications that request ministerial discretion could immediately be placed into a separate stream.

### **Recommendation #4**

Alternative evidence of language ability should specifically include the opportunity for applicants to have their application reviewed by a Citizenship Judge.

#### **Capacity and Availability of Testing Centres**

CIC may wish to consider the practical challenges for citizenship applicants to provide test results. First, testing agencies may be unable to meet the anticipated demand for testing. This may lead to significant increases in cost and waiting times for applicants to be able to write them.

As with Permanent Resident applicants, there will also be a disproportionate effect on residents of smaller cities and rural areas who do not have easy access to approved testing centres.

#### **Use of Results from Previous Language Testing**

We strongly support the proposal to exempt those who have taken an approved language test for permanent residence from the requirement to provide new evidence for citizenship purposes. We assume that this information will be available in the Global Case Management System and urge CIC to exempt those who took approved tests after the implementation of GCMS from the requirement to provide any further evidence of their test results.

For those with older (pre-GCMS) language test results, we have other concerns. The Notice of Intent suggests that previous language tests results can be used for citizenship applications. However, the requirement to provide original documents may be a problem for some applicants, as original test results are filed with Permanent Resident applications. While some test providers may be able to issue duplicate results, those who have provided original documents as alternative evidence previously may not be able to obtain another original.

Further, it is not clear how long the test results will remain acceptable. Under the operational manual for Permanent Residents, IELTS and other similar tests results are valid for up to two years

only.<sup>2</sup> We believe there should be no “best before” date on test results used by citizenship applicants.

**Recommendation #5**

Certified true copies of language test results and other documents should be accepted as evidence of language ability.

**Recommendation #6**

There should be no expiry date on the validity of formal language test results.

**Conclusion**

We are of the opinion that the evidence does not support immediate implementation of a requirement for up-front evidence of language proficiency. We recommend that providing up-front evidence be optional in order to avoid delays, and that only cases identified as having language proficiency issues be required to provide further evidence. However, if this regulatory proposal is to proceed, we urge CIC to take into account the concerns and recommendations outlined above.

Thank you for your consideration.

Sincerely,

*(original signed by Judy Hunter for Joshua Sohn)*

Joshua Sohn  
Chair, National Immigration Law Section

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<sup>2</sup> CIC Operational Manual, Overseas Processing, Section 12.5