Employment Requirements of the NOC

Dated 18 Dec 2015

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1. The National Occupational Classification (NOC) is a federal classification system of all occupations. In most instances each NOC aligns with one occupation. For example NOC 3112 is a family doctor. In some cases a single NOC can represent a multitude of closely related occupations. For example NOC 3219 includes medical technologists and technicians not elsewhere classified, such as dietary technicians, pharmacy technicians, ocularists, prosthetists, orthotists, prosthetic technicians and orthotic technicians. This NOC system is also used to classify all occupations for immigration purposes.[1]

2. Currently Immigration, Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC) have conflicting policies surrounding the interpretation of the Employment Requirements of the National Occupational Classification (ER-NOC). This has resulted in incongruent decisions being made on immigration applications, some which, in my opinion, raise questions of constitutionality. IRCC refuses to answer or consider constitutional questions related to the ER-NOC. ESDC lacks a clear and comprehensive written policy to provide guidance to officers in making Labour Market Impact Assessment (LMIA) decisions. In turn, IRCC Officers are disregarding the employer's own employment requirements (as dictated by their business needs). The result is a policy lacuna within ESDC and IRCC in which the actual needs of employers are not being met and the varying interpretations of the ER-NOC's are resulting in refusals of LMIAs, thereby preventing immigrants from entering Canada.

3. An analysis of the existing situation with regards to the interpretations of the ER-NOC by both IRCC and ESDC follows, with practical examples to demonstrate the current state of affairs, and concluding with advice to practitioners.

IRCC's Situation

4. At the present time, officers at IRCC are making decisions on work permits based on an incorrect understanding of the role of employers (and their rights) in terms of the ER-NOC. Some visa/immigration officers refuse work permit applications by claiming that the ER-NOC's are not being met by applicants even if:

a. Employers determine the foreign national suitable for the vacancy; [2]

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[1] Citizenship and Immigration Canada. "Unit Group 3219: Other Medical Technologists and Technicians (except dental health)." Available online: http://www5.hrsdc.gc.ca/NOC/English/NOC/2011/QuickSearch.aspx?val65=3219

[2] See *Portillo v Canada (Minister of Citizenship and Immigration),* 2014 CarswellNat 3476, 2014 FC 866

b. Employers do not require the Employment Requirements to be met (in the specific job offer); and,

c. Employers do not require that the NOC requirements be included in approved LMIA.

This approach can be demonstrated through an example. An application for a work permit was submitted to a visa office,[3] where an error was made by Service Canada in the choice of NOC. The Applicant had applied for a work permit as an Underground Production & Development Miner (NOC 8231). The approved LMIA indicated that only *some High School* was required. Service Canada changed the NOC code to Supervisor, Mining & Quarrying (NOC8221). The visa officer refused the case on the basis that the new NOC8221 required ***completion of High School***. Service Canada corrected their error on the information system being shared between the two departments. The visa office subsequently refused to review the decision (albeit being informed of an administrative error by another federal department). Respectfully, this hardline approach is procedurally unfair. This is a good example of how visa officers are using the ER-NOC to refuse work permit applications while ignoring requirements of an approved LMIA, as well as the requirements of employers.

5. *Immigration and Refugee Protection Regulation* (*IRPR*) 80(3) (Federal Skilled Worker Class) stipulates the following:

> ***"(3) For the purposes of subsection (1), a skilled worker is considered to have experience in an occupation, regardless of whether they meet the employment requirements of the occupation as set out in the occupational descriptions of the National Occupational Classification, if they performed***
>
> ***(a) the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification; and***
>
> ***(b) at least a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all the essential duties."***

In contrast, *IRPR* 80(3) does not require that Employment Requirements be met in an application for immigration in the Federal Skilled Worker Class.

6. *IRPR* 87(2) (Federal Skilled Trades Class) stipulates:

> ***"(3) (3) A foreign national is a member of the federal skilled trades class if….***

[3] File number W300399794 refused in May 2013

> ***(c) they have met the relevant employment requirements of the skilled trade occupation specified in the application as set out in the National Occupational Classification, except for the requirement to obtain a certificate of qualification issued by a competent provincial authority; and***

Given IRPR 87(2) specifically requires the ER-NOC be met in an application pursuant to the Federal Skills Trades Class, one can conclude these specific ER-NOC requirements are therefore not requirements that need to be met under both Federal Skilled Worker Program or the Canadian Experience Class. There is no rhyme or reason for this difference in policy.

8. A policy inquiry was sent to IRCC and the question was presented within the following example of a Landscaping Supervisor:

a. Scenario given to IRCC

An employer located in Alberta intends to apply for a LMIA in NOC 8255 (Landscape Supervisor) at Service Canada at the New Brunswick office. The intent is to use the LMIA for an application in the Federal Skilled Worker Class and for a Work Permit. The foreign worker will work in Alberta if the visa or work permit is issued.

NOC 8255 (Landscaping Supervisor) indicates the following under the heading Employment Requirements:

'Experience as a Landscape Supervisor is required
Experience in the type of work supervised is required'

If a person must be licensed to perform work such as a doctor or other regulated trade, then obviously it is a requirement of the province that must be met. In the case of the Landscape Supervisor, there are no provincial rules in any province that regulate this occupation.

In the LMIA application, the section where the required experience is indicated (questions or Block 11 on page 4 of Form EMP5593) it is not mentioned that this experience in the type of work being supervised (operating a lawnmower) is required, but only experience as a landscape supervisor (supervising lawnmower operators) is required.

b. First Question to IRCC:

According to *IRPR* 80(3), the ER-NOC does not apply once the request is made for permanent residence in the Federal Skilled Worker Class.

Therefore the request for ***permanent residence*** can be submitted without demonstrating that the ER-NOC (experience in operating a lawnmower) can be met.

When a ***work permit*** is being requested for a skilled occupation (not a trade) with the same LMIA that will be used to apply for permanent residence in the Federal Skilled Worker Class, must the foreign national be able to demonstrate that s/he meets the ER-NOC, even when it is not mentioned in the LMIA?

My understanding is that if the ER-NOC's are not applicable in the application for permanent residence (based on a positive LMIA) then the employment requirements should also not be applicable when the same LMIA is used to apply for a work permit.

c. Answer by IRCC on the First Question[4]

"Yes. The work permit application assessment is always a separate assessment from the PR application assessment. Therefore, the assessment must be in accordance with R 200(1)."

d. Interpretation of the answer by IRCC

IRPR 200(1) referred to by the officer indicates the following must be established for a work permit to be issued:

- The Minister may provide instructions with respect to all conditions that apply to applications
- The foreign national will leave at the period of their authorized stay
- The job offer is valid
- The employer has not been barred due to not employing the foreign national in the incorrect occupation or the incorrect wage
- A positive LMIA has been issued
- The foreign national is not medically inadmissible.

IRCC did not answer the question as *IRPR* 200(1) does not make any reference to ER-NOC. Thus, the Regulations and the answer by IRCC are silent on whether the ER-NOC must be met during a work permit application.

Given the above, we can try to answer the question by analyzing actions of IRCC officers, which leads to the following observations:

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[4] Response by IRCC provided on 24 Dec 2014, Reference number REP-2014-1315

- When a foreign national applies for permanent residence in the Federal Skilled Worker Class, the foreign national is not required to provide evidence that the ER-NOC can be complied with (i.e. from the lawn supervisor example above, provide evidence that she can operate a lawnmower).

- When the foreign national applies for a work permit based on the same LMIA that was used for the permanent residence application in the Federal Skilled Worker Class application, the ER-NOC must be met, i.e. the foreign national must provide evidence that s/he can operate a lawnmower.

e. Second Question to IRCC

In the matter of "*R v Eastern Terminal Elevator*[5] Duff J. clarified section 91(2) of the *Constitution Act 1867,* stating that Provinces regulate their trade and commerce. This includes the regulation of occupations. **It is the provincial governments that have jurisdiction over occupations; the ER-NOC does not take precedence to dictate the amount or type of experience needed.** My understanding is that if the provincial laws do not require experience in the work being supervised (operating a lawnmower) that provincial policy would take precedence over the ER-NOC. (which is a federal classification system)

According to the guidelines given to visa officers, if a visa officer is provided with evidence that the ER-NOC exceeds provincial requirements and practices for the given occupation, should officers recognize the constitutional right of the employer (in terms of the rules of a specific province) to regulate it's own trades, or refuse work permits based on non-compliance of specific ER-NOC?"

f. Answer by IRCC for the second question

"***We have reviewed your question, and have concluded that Policy officials at Employment and Skills Development Canada (ESDC) for the Temporary Foreign Worker Program would be better positioned to provide you with the information you are seeking. ESDC is better able to provide subject matter expertise for matters concerning the National Occupation List***.

You can contact:
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[5] 1925 CarswellNat 33; [1925] 3 D.L.R. 1 [1925] S.C.R. 434

g. Interpretation of the second answer

IRCC is supposed to provide guidance to officers, but could not answer this question. This is a concern, given that officers are allowed to continue to refuse work permit requests despite a possible constitutional issue.

From analysis of officer's decisions, it appears that if a specific occupation is not a regulated occupation (such as a medical doctor in any province, or certain regulated trades) and the employer decides to determine the actual employment requirements that should be met, officers enforce the ER-NOC and do not appear to consult provincial statutes.

The limit of an Officer's discretion to determine a foreign national's suitability for a position was questioned in *Portillo*[6]. In following *Randhawa*[7], *Gao*[8] and *Chen,*[9] the Honourable Mr. Justice Russell of the Federal Court reasoned, "the Officer was not in a position to assess [the foreign national's] suitability and experience, or unreasonably imported suitability requirements that the employers did not consider necessary […]."[10] It was further said that without a reason for the Officer's decision to take precedence over the employer's satisfaction of the applicant's suitability, a decision to the contrary (on this issue) would be unreasonable.[11]

Service Canada's Situation

9. When an employer submits a request for a LMIA, an officer of Service Canada has a statutory obligation to assess seven factors, as identified in *IRPR* 203(3). One of these seven requirements is "whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so." In terms of the advertising rules (that employers must comply with to demonstrate their "reasonable efforts" to attempt to find a Canadian), employers must list the educational requirements, knowledge requirements and experience requirements of the job vacancy. However, if an employer lists experience requirements, knowledge requirements or education/training requirements that exceed the ER-NOC, based on our experience Service Canada would make a negative LMIA decision (i.e. a refusal) for advertising "excessive" requirements for the position. These refusals are *inter alia* the result of a lack

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[6] Supra note 2.
[7] Randhawa v. Canada (Minister of Citizenship & Immigration) (2006), 2006 CarswellNat 6368, 2006 CF 1294, 2006 FC 1294, 2006 CarswellNat 3481, 57 Imm. L.R. (3d) 99, 302 F.T.R. 123 (Eng.) (F.C.)
[8] *Gao v. Canada (Minister of Citizenship & Immigration)* (2000), 2000 CarswellNat 5263, 2000 CarswellNat 432, 184 F.T.R. 300 (Fed. T.D.)
[9] *Chen v. Canada (Minister of Citizenship & Immigration)* (2000), 7 Imm. L.R. (3d) 206, 2000 CarswellNat 5411, 2000 CarswellNat 825, 190 F.T.R. 260 (Fed. T.D.) — considered
[10] Supra note 2, para. 56
[11] *Ibid.*

of guidance in the clear and well-written LMIA rules regarding the role of the ER-NOC. This specific issue is not addressed in Service Canada's existing Temporary Foreign Worker Manual (which is only accessible with an Access to Information Request). In these LMIA refusal letters an explanation of what is meant by "excessive" is not provided. This "requirement" by officers that the ER-NOC must be complied with when an employer hires Canadians, implies that Service Canada is attempting to force employers **not to** adhere to provincial legislation.

10. *IRPR* 200(5)(d) indicates the following:

> "***the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work***"

This means that if an employer employs a foreign worker and contravenes any relevant legislation regulating trades, it could result in the revocation or suspension of LMIAs. As a result many officers of Service Canada demand advertising requirements that effectively force the employer to contravene provincial laws and federal immigration regulations.

11. This can best be demonstrated by the following practical applications:

a. Electricians, Welders and Mechanics are compulsory regulated trades in Alberta. Foreign workers and Canadians that work in these trades must have their experience assessed by Alberta Advanced Education and Industry Training and be found eligible to challenge the examination within 12 months of starting employment in Alberta. Failure to follow these laws will result in the contravention of *IRPR* 200(5) with dire consequences to the employer.

b. Employers in Alberta may follow three different sets of rules in terms of ER-NOC:

- Provincial statutes (see below): In the case of compulsory regulated trades such as electricians, mechanics and welders.

- Collective Bargaining Agreements (CBA): Certain CBA require that only red seal trades are allowed on the jobs site or that they must pass the exam within certain number of weeks (even though it is not required by provincial law). This implies that an applicant must have the minimum hours needed and then challenge the examination with the deadline given by the Alberta Government.

- Company Policy: Applicants may be required to have or be eligible to challenge the Red Seal (or Provincial Certificate of Qualification).

Even though employers must comply with the two of the three situations mentioned above (Provincial statutes and CBA), some Service Canada officers demand that employment requirements listed in advertisements must only be taken from the ER-NOC. The challenge is employers may provincially have to meet more stringent employment requirements such as Collective Bargaining Agreements and Provincial regulations) which exceed the ER-NOC. If these requirements are advertised, in practice, they may be deemed excessive by Service Canada officers, resulting in LMIA refusals.

The thorny issue is company policy: it is submitted the employers may choose their own ER-NOC in cases where employers are not required to follow provincial statutes or CBAs.

c. The disconnect between the actions of Service Canada officers (when employers advertise experience requirements in excess of the ER-NOC) and the requirements of provincial laws can best be demonstrated with two practical examples from Alberta.

d. The ER-NOC for a heavy duty mechanic (NOC 7312) are as follows:

> ***"Completion of a three- to five-year apprenticeship program***
> ***or***
> ***A combination of over four years of work experience in the trade and some high school, college or industry courses in heavy equipment repair is usually required to be eligible for trade certification***".

In contrast, section 5.1 of Alberta Apprenticeship and Industry Training Act indicates the following:

> "***Requirements to be certified***
>
> ***5(1) A person may be granted a trade certificate in a designated trade if,***
> ***(a) that person has (i) worked in that trade for 1.5 times the total amount of time prescribed by the applicable trade regulation to complete the term of apprenticeship***"

Section 8 of the the Alberta Heavy Duty Equipment Regulation (Regulation 282/2000) requires a heavy duty technician apprentice to complete an apprenticeship in AB of 6000 hours over 4 years.

Section 5.1 of the Alberta Apprenticeship and Industry Training Act requires these hours and years (that are mentioned in the Alberta Heavy Duty Equipment Regulation) be multiplied by 1.5 or 150 % =9000 hours and 6 years.

Therefore, if a Service Canada officer takes a strict read of the ER-NOC for this occupation, an employer may only request 3-5 years of apprenticeship experience for a heavy duty mechanic in Alberta, this requirement by the officer is ultra-vires the provincial legislation.

According to Section 91 (2) Canadian Constitution Act, provincial statutes (Alberta) in the regulation of occupations should takes precedence over the NOC.

e. Similar is the example of a millwright (NOC 7311). The ER-NOC of NOC 7311 are as follows:

*"**Completion of a three- to four-year apprenticeship program***
or
***A combination of over five years of work experience in the trade and some high school, college or industry courses in industrial machinery repair or millwrighting is usually required to be eligible for trade certification**."*

However Section 5.1 of Alberta Apprenticeship and Industry Training Act indicates the following:

*"**Requirements to be certified***
5(1) A person may be granted a trade certificate in a designated trade if,
***(a) that person has (i) worked in that trade for 1.5 times the total amount of time prescribed by the applicable trade regulation to complete the term of apprenticeship**"*

In order for a foreign trained millwright to be eligible to challenge the Red Seal, the foreign national must have 6 years or 72 months of working experience (as supported by section 5.1 of the Alberta Apprenticeship and Industry Training Act).

For individual's in Canada, the Alberta Millwright Trade Regulation requires an apprentice to complete a 4 years apprenticeship as a millwright. Each year must have 1560 hours. 1560 hours X 4= 6240 hours. 6240 hours X 150 % = 9360 hours based on experience for uncertified applicants within or outside Canada.

In these two examples provincial legislative requirements exceed the requirements of the NOC.

f. Interestingly, Service Canada officers seem to accept the requirement of CBA in LMIA requests. For example, in British Columbia (BC) all trades certification are voluntary. Therefore if an employer demands a Red Seal in a LMIA application some officers would refuse the LMIA, as Red Seals are not compulsory in the ER-NOC and BC law also does not require Red Seals for journeymen. Such an employment requirement is deemed to be excessive in

some cases. However if a Red Seal is required in the terms of a CBA, officers tend to shy away from refusals based on "excessive employment requirements," respecting the CBA requirements.

Some employers require a Red Seal in such an environment (in BC where no trade is compulsory or in a province where a specific trade is not compulsory) due to company policy, or an employer's need for an employee to demonstrate competence. In these cases some Service Canada officers easily refuse applications, claiming that the employment requirements exceed the ER-NOC.

Therefore when the Employment Requirements in advertising (for the purpose of a LMIA application) exceeds the ER-NOC (based on a Collective Bargaining Agreement with a Union), the situation is acceptable to Service Canada. However when the Employment Requirements of a LMIA application exceeds the ER-NOC (based on a Company policy) employers face a LMIA refusal for the reason that the Employment Requirements in the advertising are excessive. There is no logic to allow Employment Requirements to be ignored in the case of Collective Bargaining Agreement with a union, but not in the case of company policy. Is this bias?

g. Certain other requirements exist where the provincially required wage exceeds the median wage (according to the definition of median wage by Service Canada, which is to follow the wage on www.jobbank.gc.ca). It is possible that a minimum provincial wage for a specific NOC code (in skill level B) is higher than the median wage provided on www.workingincanada.gc.ca. For example, according to www.jobbank.gc.ca, the median wage for an electrician for the northern part of Manitoba is CAD 25.64. However, the Manitoba Construction Industry Wages Act and the Employment Standards Code require that a construction electrician be paid CAD 33.90 after 1 January 2013. This is just one example of the unique circumstances that require an employer to pay more than the median wage. In this case, provincial law trumps federal rules. Service Canada seems to have a double standard in applying the law when decisions are made:

- When the Employment Requirements of the employer as mentioned in advertisements exceed the ER-NOC based on a company policy, A provincial legislative requirement, a refusal may be issued.

- When the actual wage in an advertisement exceeds the prevailing wage (as mentioned on www.jobbank.gc.ca) as required by Provincial statutes, an employer would not face a refusal.

Therefore sometimes the validity and the authority of provincial statutes are not recognized and in other cases it is recognized by Service Canada. This is the result of a policy lacuna and lack of direction given to officers.

h. In the case of Bookkeepers (NOC 1311) the ER-NOC does not indicate any experience and only requires a College Diploma. If an employer requires a degree and 5 years of experience, Service Canada could refuse the LMIA; the claim being that such requirements are excessive (compared with the NOC). Once again employers should have the right to set their own employment requirements

The ER-NOC of NOC 1311 indicates the following:

"***Completion of secondary school is required.***
Completion of a college program in accounting, bookkeeping or a related field
or
Completion of two years (first level) of a recognized professional accounting program (e.g., Chartered Accounting, Certified General Accounting)
or
Courses in accounting or bookkeeping combined with several years of experience as a financial or accounting clerk are required."

In contrast, the Alberta government's website ALIS (see http://alis.alberta.ca/index.html) indicates the following:

"***Personal Characteristics***

Accounting technicians must be able to:

communicate effectively in person and on paper
work with numbers quickly and accurately
concentrate for extended periods of time and pay close attention to detail but also switch back and forth between tasks
follow verbal and written instructions
analyze and proofread data
keep employer information confidential
work independently on routine tasks.
They should enjoy having clear rules and organized methods for their work, balancing financial records and business transactions, and operating computerized systems and office equipment.

Educational Requirements

Accounting technicians need an understanding of business documents such as receipts, till tapes, purchase orders, credit slips, sales slips, banking statements, financial statements and invoices.

Educational requirements for accounting and bookkeeping positions vary greatly from one employer to another depending on the scope and responsibility of the position.

Most companies use electronic bookkeeping operations and require their employees to have related training or experience.

Up to two years of on-the-job training or a related post-secondary certificate or diploma may be required.

Employers may prefer to hire job candidates who are working toward a professional accounting designation (see the Accountant occupational profile).

Most employers prefer to hire job candidates who have taken related courses and programs from colleges, technical institutes or private vocational schools."

It is interesting to note that the requirements in Alberta for accountants include the following and it therefore different from the Federal NOC system:

- Personal characteristics are mentioned in the Alberta requirements.
- Employment requirements might vary greatly between different employers
- There is no legislation in Alberta that prevents an employer for requiring an accounting degree instead of a college diploma.

i. The Temporary Foreign Worker Program Manual (Version 2011-04-14) stipulates:

"***Section 3.2.6.5.1 – Determination of Occupation***

In assessing the job requirements, TFWP Officers must contact employers to understand their needs. In addition to assisting in identifying the appropriate NOC code, this information will serve IRCC in assessing the foreign national's ability to perform the job. The employer has a right to provide services that respond to the expectations of his/her target clientele.

For example:
Although the NOC description may cite a Bachelor's degree as the usual requirement for a management position, the duties of a particular organization may require someone with a doctorate in a scientific discipline in order to effectively deal with matters of scientific policy."

This manual is meant to provide some guidance on the issue of ER-NOC, it however fails to provide clear rules on this issue. .

Conclusion

12. In certain regulated occupations (for example medical doctors), officers at IRCC follow ER-NOC as indicated in provincial statutes that regulate these occupations.

13. However, in situations where the occupations are not regulated or governed by a CBA, certain officers demand the ER-NOC need to be strictly followed. In these cases

the Federal Government (ESDC and IRCC) seemingly ignores the requirements as mentioned in LMIAs and also ignore the rights of employers to determine their own specific employment requirements for their vacancies (based on their business needs an company policy).

14. To complicate matters further, ER-NOC is not a legal requirement in the Federal Skilled Worker Class, but the ER-NOC must be followed in the Federal Skills Trades Class. This may result in possible unconstitutional decisions being made by officers.

15. The lack of coordination between ESDC and IRCC on the issue of employment requirements is best described in the following situation in the Federal Skilled Worker Class:

ESDC typically requires the ER-NOC be followed in LMIA applications for occupations in the Federal Skilled Worker Class.

a. ***IRCC*** generally require the foreign national must demonstrate that the ER-NOC is complied with at the time of a request for a ***work permit.*** This is not a requirement written in the Regulations or internal rules, but is from our experience a requirement that is enforced by certain ***IRCC*** officers in decisions made on work permit requests. Again these decisions could be unconstitutional depending on a specific NOC.

b. However, when an application for ***permanent residence*** is submitted in the Federal Skilled Worker Class , ***IRCC*** does not require the ER-NOC to be met.

Due to the lack of coordination between federal departments, foreign nationals are expected to act like chameleons and change their colour depending on where they are in the immigration process.

16. Certain officers of Service Canada have little regard for provincial statutes and effectively may require employers to contravene provincial statutes when employers advertise to find Canadians. At the same time, the Constitutional rights of employers to determine their own employment requirements for their own vacancies are being infringed by many Service Canada officers when they make LMIA decisions.

Advice to Practitioners

17. In the case of submissions to ESDC/Service Canada and IRCC, detailed research should be provided regarding provincial statutes that regulate a specific NOC, as well as the relevant constitutional principles.

18. Counsel should also include references to provincial job descriptions where it has relevance and where it is different from ER-NOC in the federal system. In these types of

cases motivations about the relevance to provincial job descriptions should be provided to decision makers.

18. Immigration practitioners should lobby for policy improvements on the issues outlined above. Specifically it should be requested that:

a. Chapter FW1 of the Immigration Manual should again be published after it was abolished by IRCC. For many years IRCC set clear rules that contributed to transparency and predictability immigration decisions. If Chapter FW1 is re-instated, it would be a suitable location for providing guidance to officers on issues related to the ER-NOC.

b. Visa Officers of Immigration Refugees and Citizenship Canada should be trained in the importance of the requirements of employers. *IRPR* 87 (3) does not have to be changed but officers should understand that employers has the right to determine their own employment requirements.

c. Officers, team leaders and managers at Service Canada should be reminded of the importance of provincial statutes and the right of employers to determine the actual employment requirements in cases where occupations are not regulated by provincial statutes or where CBA's are silent on employment requirements.

19. Counsel should consider litigation to establish case law regarding the role of ER-NOC in the area of LMIA decisions by Service Canada and visa decisions by Officers.