

IMMIGRATION

Has much changed in immigration law under the Tory government?

By David Garson

When I last wrote an article for this paper, I was trying to determine the present and future of immigration in a political era. At that time, the Liberal party maintained a minority government.

Now, we have a minority government that is led by the Conservative party.

Has much changed?

The previous government and then Minister Volpe were extremely cognizant of the immigrant population and tried very hard to appease them.

The current government has not



Monte Solberg, photo courtesy of Citizenship and Immigration Canada.

made immigration a priority and has in fact not necessarily spent a great deal of time addressing immigration related issues.

I dare say that if you queried individuals on the street, they most likely would not even know who the minister of citizenship and immigration is (for those who want to know, it is the Honourable Monte Solberg, MP for Medicine Hat, Alberta, pictured below).

This may very well be for a reason. The government, most likely does not want to create any kind of controversy that would impede its agenda while still trying to govern with minority status.

This minister has not, at this time attempted to make great changes in the system. We are at a stage, as we were when I last wrote an article, where immigration processing overseas is extremely lengthy. For instance, current processing for permanent residence under the skilled worker category in Beijing is 57-63 months; in New Delhi is 63-69 months; and, Moscow is 52-70 months.

As well, it is apparent that those that are able to obtain temporary work permits in Canada have an advantage. In many situations they can apply for permanent residence through the Regional Pro-

cessing Centre in the United States which processes applications much faster than many consulates outside of North America. These individuals are in a better position just by being here.

Most provinces at this writing maintain provincial nominee programs. These programs allow provinces to "nominate" individuals who they would consider to be essential to the province's growth and well-being. Individuals who are nominated by a province can obtain permanent residence in a faster fashion than if they were to apply as skilled workers under the federal system. The nominee programs were created primarily as most immigrants were coming to Ontario and were not disbursing, among the various other provinces.

The purpose of these programs is to assist in "expediting" applications for permanent residence status. A person may be nominated by a province and therefore that person can ostensibly gain their permanent residence quickly, so they can begin their life in the province.

These programs are usually employer driven, in that, an employer must offer an applicant a position and the applicant therefore can apply for permanent residence based on this offer of employment.

Some provinces as well maintain investor nominee programs. If an applicant wishes to invest a substantial amount of funds, that province can make a nomination on their behalf, and the individual may be able to gain permanent residency based on this passive investment.

It appears then, that there is somewhat of a two-tiered system. We still maintain our federal system, which, unfortunately is beset with a large backlog of individuals we "supposedly" require. We do not even know if applicants who are in this lengthy backlog are still interested in coming to Canada. It could be that we do not maintain much of a backlog, as potential immigrants, tired of waiting have given up or moved on to other countries, however, we have not endeavored to find out.

Recently, the federal government has moved to a new type of processing to try to alleviate future backlogs. Under this simplified application process, an individual submits only a basic application form and fee. This guarantees their place in the processing queue, meaning that the regulations in effect on that date will apply to the individual's application. When the visa office is ready to assess the applicant's application, he/she will be asked to send the required supporting documentation. This allows applicants not to waste time and energy in processing an entire application that may have to be updated by the time the application is examined by an officer.

It is somewhat ironic that even though the *Immigration and*



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Refugee Protection Act is a federal statute, in order to obtain processing within a practical time frame, provincial governments are taking an increasingly expanded role in the system.

It would seem that the current government is content with this type of evolution of immigration processing. There may even come a day when the federal government does not involve itself with immigration at all, but leaves decisions of this sort to each provincial government.

The last time I wrote for this paper, I ended my article with a query: "Can we move everyone to the front of the line, and more importantly, will we, even after the next election?"

That election has occurred and it is apparent that the largest line has not moved but we seem to have created several smaller ones.

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Canadian Judicial Council, CBA and Federation of Law Societies weigh in

JACS

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-nism that we can put in place to ensure that the judiciary and judicial appointment process are independent from the state and particular agendas and special interest groups, is healthy for democracy, and the initiative by the Minister is a move against that direction."

Liberal justice critic Sue Barnes, a London, Ont., lawyer told *The Lawyers Weekly* the Harper government's initiative reflects a negative attitude toward the judiciary that is evident in other contexts, such as its creation of more mandatory minimum prison sentences and its rejection of pay increases recommended by an independent judicial salary commission.

Ultimately, the legal profession would reluctantly withdraw its participation in the JACs if the government relegates them to mere window-dressing for objectionable appointments, Justice McKinnon believes. "If that were to prove to be the case, then I think obviously the judges and the lawyers would

resign," he opined. "But in the final analysis, it's better to be in the room than outside the room, even if the structure is imperfect, that would be my view."

To add insult to injury from the legal profession's perspective, the government's surprise move came without prior consultation with the federal judiciary, provincial law societies or Canadian Bar Association (CBA), each of which sends one representative to the 16, seven-person JACS across the land.

That prompted a swift and unprecedented public rebuke from the highest judicial leadership Nov. 9, two days after word of the impending changes leaked out in remarks Toews made to the *Winnipeg Free Press*.

"The Canadian Judicial Council is concerned that these changes, if made, will compromise the independence of the advisory committees," admonished the council of 39 chief and associate chief justices in a hastily released press release. "The Council urges the government to maintain the status quo and refrain from implementing the changes in order to

allow meaningful consultation to take place."

Added the Council's chair, Supreme Court of Canada Chief Justice Beverley McLachlin, "we call upon the Minister [of Justice] to initiate an immediate process of consultation on the proposed changes with the judiciary, CBA, the law societies and other interested parties."

The Federation of Law Societies and the CBA echoed the top judges' complaint.

The two-year terms of the 16 JACs across Canada expired Oct. 31. Under their structure, four of the seven members were independent of the justice minister: one judge (who chairs) chosen by the provincial chief justice, and one representative each from the provincial or territorial law society, the provincial or territorial attorney general and the CBA.

The three remaining lay members, who are supposed to bring the wider community's perspectives to bear in rating applicants for the Bench, are chosen by the justice minister.

The newly announced structure

would expand the JACs' membership to eight, with the three at-large members to be chosen by the justice minister, and a new fourth spot to be reserved for an unspecified "representative of the law enforcement community" appointed by the minister.

That would effectively allow the government, and a swing vote belonging to police, to control the committee, since under Toews's plan the judicial chair would no longer be allowed to vote if the members disagreed over whether an applicant was "recommended" or not recommended for the Bench.

"The CBA believes that the decision of these committees should continue to be reached by consensus," CBA president J. Parker MacCarthy of Duncan, B.C., said. "But if a vote is required, these changes would potentially 'stack the deck' in favour of the minister's at-large appointees. These changes could give the at-large appointments virtual veto power."

The government has indicated to law groups that it wants to

implement the changes by the end of the year. They can be effected by administrative fiat since the JACS have no independent statutory basis and are purely creatures of the justice minister.

"What is objectionable is not that the views of law enforcement officials are being canvassed, since those views could come from one or more of the Minister's three at-large appointments, but that any specific community or special interest should hold the potentially deciding vote in determining who is or is not qualified to be a federal judge," Goodridge wrote Toews Nov. 13 on behalf of the umbrella body for the country's 14 legal regulators.

"That a specific community or special interest should be represented on the JACs leads one to believe that candidates for the judiciary are being evaluated for reasons other than merit — reason which speak more to the likelihood or not of a candidate's judicial decisions corresponding to the general views or desired outcomes of the community or group in question," Goodridge wrote.