

Immigration reform a difficult task in a minority government

By David Garson

One of the more interesting aspects of maintaining a minority federal government is the important role that the immigration portfolio can play.

I have been practising immigration law for over 15 years. During this period of time and until the last federal election there has never been a minority government in Ottawa.

It has been striking, in my opinion, the difference in tone that has been encountered since the last federal election. This difference of tone is readily apparent in matters pertaining to immigration.

Immigration can most certainly be a divisive issue. There can be well-intentioned people who will have legitimate differences of opinion on what Canada's immigration policy ought to be. But for a variety of reasons there is a general feeling among many Canadians that increased immigration can be a good thing. Some commentators have made the interesting point that whereas in other countries politicians can sometimes exploit an anti-immigrant sentiment to political advantage, in Canada many politicians who wish to gain favour with electors will endorse policies that facilitate immigration to Canada.

In any event immigration is a fundamental part of Canadian political life. We have the *Immigration and Refugee Protection Act*; a federal minister of citizenship and immigration; a large bureaucracy to apply the legislation, regulations, and policies dealing with immigration; and consulates and offices that are processing applications for potential qualified immigrants.

On the same day that the minister was announcing that Canada would increase its intake of new

Canadians and increase temporary workers as well as tackling the 700,000 odd strong backlog, a national poll was released and announced in the *National Post* indicating that 63 per cent of the Canadian public fear immigrants bringing conflict to Canada and 83 per cent want stricter controls to battle known terrorists. That poll, according to the *National Post*, indicates that an increased level of immigration represents a security risk. Furthermore, the *National Post* article refers to University of Calgary historian David Bercuson's view that "with ethnic voters gaining ever greater influence, ... political parties will be reluctant to act ... politicians will walk there only with great trepidation".

In the meantime, the minister was stating: "We have to start thinking about the immigration department as a recruiting vehicle for Canada's demographic and labour market needs ... we are the lungs of the country ... we are desperate for immigration ..."

Obviously, this minister is involved and pro-immigrant. He seems to grasp the issues that surround the portfolio and tries to address them. It is easier to say that with this minister than with some of his predecessors.

During the course of the past year, several positive announcements have been released by the Department indicating its intention to increase levels of immigration and assist those in need. For example, in January, then minister Judy Sgro responded to the crisis in South and Southeast Asia due to the terrible tsunami by announcing programmes and policies that were meant to have immigration pro-

cessing operate in such a way so as to assist some victims of the tsunami.

Since that time, the minister has made several other announcements.

In February, there was an announcement assisting those who wish to sponsor out of status spouses and common law partners.

In April, the honourable minister announced measures to speed up the processing of sponsorship

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applications for parents and grandparents to come to Canada as Family Class immigrants. The minister tripled the target originally set for 2005, which was 6,000. The minister was responding to intense pressure from individuals who had sponsored their parents/grandparents and were told it would be literally years before the parents and grandparents could arrive in Canada.

In April, the minister also made an announcement improving the situation of foreign students in Canada. As well, the minister has indicated that he would like to increase immigration to Canada to one per cent of the Canadian population.

In June, the Ministry announced that Citizenship and Immigration Canada's response to the tsunami disaster helped bring more than 350 people to Canada, and recently, the minister has announced that there will be special processing for the unfortunate victims of the earthquake in Pakistan. No details have been

announced as of the time I am writing this.

The minister, to his credit, has tried to expedite the processing of several groups within the immigration area and, according to the announcement that he has made to Parliament, the minister maintains aggressive plans in dealing with the huge backlogs of individuals waiting to be landed in Canada and the shortage of certain temporary workers to fill positions in the trades. The department also plans to hire more staff in either missions overseas or in a centralized processing centre in Canada.

Certainly, this is important news. However, there is the attendant question of how are we going to pay for all of this. There is also the notion that if we move everyone to the front of the line, the line does not move.

The reader will recall that during the year, Stephen Harper, the leader

of the Conservative party, was attempting to make inroads with the ethnic communities by strongly stating his opposition to same-sex marriage. The Conservative party, according to some, could finally find common ground with immigrant communities many of whose members have what can be described as conservative views on this matter. Of course, during the same period, Minister Volpe has been making his announcements regarding various measures to increase the immigration flow.

As the minister understands and points out, Canada maintains an extraordinarily backlogged immigration process. It is not uncommon for potential immigrants to wait up to five years for their applications to be processed. However, without a much needed influx of cash into the system, there is only a certain amount of money that can be spent; only a certain number of visas that can be issued and only a certain number of individuals who can issue them.

It may be no one's fault, but a



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potential immigrant to Canada pays filing fees and a right of landing levy of \$1,525 — a hefty amount. The question remains: Is this person receiving proper service for the amount of money expended? I do not think anyone would believe this is the case. Indeed it has been pointed out that the government takes in more in fees for processing applications for immigrants than it spends in processing those applications.

The *National Post* indicates that the immigrant community, especially in a minority government, plays an increasingly influential role. At the time of writing we have not heard any criticism from the Conservative party regarding Minister Volpe's recommendations nor have we heard any questions as to how the department intends to pay for them.

It would seem that we are attempting to address the tremendous shortcomings in the immigration system. At the same time, we are heading for an early election.

Perhaps Minister Volpe's recommendations and the new procedures that may result from them would have been announced and implemented even with a majority government. The very real question remains: Can we move everyone to the front of the line, and more importantly, will we, even after the next election?

David Garson is a partner at Guberman Garson Bush, a Toronto-based immigration law firm.

Should orders be granted at all?

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to the "plaintiff's confidential information" and concluded that the court does not have the jurisdiction to hear and determine that issue as pleaded.

As to the second condition, very serious damage, the court questioned why it was necessary to have an Anton Piller order when what is really sought is an injunction, noting that the alleged damage in this case relates more to continuing business activity (e.g. continued operation of the web-

site) than destruction of documents.

In regards to the third requirement, the real possibility that evidence may be destroyed, the court noted that much of the evidence that the order was directed at was publicly available, including the meta tags which are visible by "right-clicking" on the site. While the court concluded that defendant computer programmer likely cannot be trusted to preserve evidence, it also noted that the plaintiff's case essentially relies on what the public can see and access.

The court then went on to con-

sider a fourth factor usually not considered in Anton Piller cases which arises from comments from Lord Denning in the original English decision: whether an inspection would do real harm to the defendants. With great concern the court noted the attempted execution of the order at a private residence "where a fifteen year old girl was confronted, probably for the first time, with how the might of the law operates in Canada" and concluded that there is real harm as a result of this.

The court finally considered the duty of candour on *ex parte* applications for Anton Piller orders. After noting the failure to

disclose that one of the premises where the order was to be executed was at a defendant's girlfriend's apartment where teenagers might be present and more significantly, the failure to disclose the litigation between the parties in the Ontario courts, Justice Hughes concluded that had there been the requisite candour, the judge hearing the application for the Anton Piller order likely would have concluded that the application "was intended as forum shopping and the creation of a second battlefield in the warfare between the parties rather than a genuine and urgent attempt to locate and retain perishable material" and vacated the order.

While the facts of this case certainly drive the conclusions that were reached, it is also apparent that at least for some members of the Bench, it also leads to the more fundamental question of whether Anton Piller orders should be granted at all. At a minimum, it appears that requests for Anton Piller orders are likely to be more carefully scrutinized and it will be necessary to demonstrate that "the most exceptional circumstances" exist.

John Cotter and Tara James are IP litigators in the IP Department of the Toronto office of Osler, Hoskin & Harcourt LLP.