

Bill 79 – Amendments to the Civil Service Act

April 13, 2015 – Law Amendments Committee

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Overview

Although the intent of the bill is worthwhile, I believe it will have negative unintended consequences if it is enacted in its current form. Particularly, I believe the amendments:

- could cause the Province to have a hiring preference, in many cases, for persons who are neither citizens nor residents of Canada;
- undermine inter-provincial migration efforts, contrary to Goal #1 of the Ivany Report;
- undermine the principal goal of employment equity; the redress of historic discrimination faced by groups in Canada;
- are inconsistent with citizens' expectations of public service employment practices.

Issue #1 - As introduced, the amendments could cause the Province to have a hiring preference, in many cases, for persons who are neither citizens nor residents of Canada.

- Clause 9 of bill repeals Section 22. This eliminates the hiring preference for residents of Canada when two candidates are equally qualified.
- Clause 9 repeals Section 23. This eliminates the requirement for civil servants to be Canadian citizens or permanent residents, unless specialized skills are required for the job.
- Currently, the Public Service Commission's Fair Hiring and Employment Equity allow managers to engage in positive discrimination of up to 10% for non-union competitions and up to 5% for union positions (see Fair Hiring Guidelines, p. 12). A candidate who scores 70% on a competition can be hired over a candidate who scores 80%, if the first candidate is a member of an employment equity group and the department has an employment equity goal.
- With repeal of Sections 22 and 23, Civil Service policies will apply to all applicants. Out of country candidates who belong to employment equity groups could be hired when there are Canadian citizens or permanent residents who are **equally or more** qualified for the job.

Issue #2 - As introduced, the amendments undermine inter-provincial migration efforts, contrary to Goal #1 of the Ivany Report.

- Goal #1 of the Ivany report is an increase in net Canadian migration to Nova Scotia by 1,000 persons per year.
- Hiring preferences for citizens or permanent residents help achieve this goal. Similar preferences exist in the federal civil service, universities, and other public institutions.
- Hiring preferences are justified given the significant support taxpayers provide to students. Since the 1960s, this has been seen as a positive way to counter 'brain drain' and retain the public's investment in education.
- Support for immigration (Goal #2 of the Ivany Report) is undermined if Nova Scotian graduates and former residents are seen to be disadvantaged in obtaining employment with the Province. One of the strongest indicators of a long term commitment to living in Nova Scotia is substantial connection to the province.

Issue #3 - As introduced, the amendments undermine the principal goal of employment equity; the redress of historic discrimination faced by groups in Canada.

- Creating a diverse civil service is a critically important objective. Employment equity in the civil service is premised on the idea of redressing historical discrimination face by groups such as African Nova Scotians, racially visible persons, aboriginal persons, and Nova Scotians with disabilities.
- Persons from outside Canada have not faced discrimination in Canada.
- By expanding employment equity considerations to non-residents, these changes will reduce the net benefit to groups who have suffered historical discrimination in Canada.

Issue #4 - As introduced, these amendments are inconsistent with citizens' expectations of public service employment practices.

- I believe citizens have an expectation that persons who serve the public should be either citizens or actively pursuing citizenship.
- These changes would, for example, permit the Province to hire temporary foreign workers, something it cannot presently do.

- Amendments can be made that would not prohibit the Province from hiring international graduates, but preserve basic expectations of public sector employment.

Recommendation

To address the concerns outlined above, I suggest amending Bill 79 to retain the hiring preference for residents in Section 22. It applies equally to citizens and non-citizens, and only applies in cases where candidates' qualifications are equal. I would also recommend amending Section 23 to make clear that a candidate must be in pursuit of permanent residence in Canada. This would ensure public service employment aids in achieving the Ivany Report objectives.

Bill 79

Civil Service Act (amended)

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE

1. Replace clause 9 with the following:

9 Section 23 of Chapter 70, as amended by Chapter 38 of the Acts of 1993, is repealed and the following section substituted:

23 No person shall be eligible to be appointed to the Civil Service unless the person

- (i) is a Canadian citizen,
- (ii) is a permanent resident of Canada, or
- (iii) is lawfully seeking to establish permanent residence in Canada and is entitled to reside and work in Canada.