




'Not Just Numbers: A Canadian Framework for Future Immigration'

**A Sectoral Response by AMSSA's
Immigrant Integration
Coordinating Committee**

March 9, 1998



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About AMSSA

AMSSA is a province wide coalition of 75 agencies and associations providing multicultural and immigrant settlement services in British Columbia. Our mission is to promote a harmonious, just, and equitable society that values the diverse mix of the many cultures and peoples calling Canada their home. A list of AMSSA member agencies is attached as Appendix A.

AMSSA's *Immigrant Integration Coordinating Committee (IICC)* is comprised of senior management staff of agencies delivering settlement and integration services to new immigrants. As a standing committee within AMSSA, the *IICC* provides an effective medium to share information, act on issues that impact the settlement sector, and act as a resource to member agencies, AMSSA's Board of Directors, various levels of government, and the community at large.

The *IICC* is committed to improving immigrant integration services; ensuring community-based and client-centred policy; ongoing collaboration and communication; supporting research and information sharing; advocating for improved funding and programs; strengthening regional voices through consultation; and developing professional standards in service delivery.

Methodology in Developing a Response

On January 22, 1998, the IICC Steering Committee decided to respond to the federal government report entitled '*Not Just Numbers: A Canadian Framework for Future Immigration*' in three ways: (1) we would seek opportunity to present directly to the Minister of Immigration in the planned public hearings; (2) we would coordinate a community forum to provide opportunity for community groups and individuals to discuss the recommendations and consider the potential impact, and (3) we would develop a more detailed written response to be submitted to the Minister on or before March 9th. This response paper addresses the latter requirement.

An initial focus group was held on February 9, 1998 to identify key issues and assist AMSSA's Program Director in drafting a response. A Community Forum, sponsored by AMSSA, the Social Planning & Research Council of BC, and the Vancouver Refugee Council, was held on February 26th that provided further opportunity to articulate issues of concern with respect to the report. This position paper reflects those identified issues and concerns that achieved sectoral consensus.

Introduction

The stated intention of the committee that prepared the report, *'Not Just Numbers: A Canadian Framework for Future Immigration'* was to ensure that core Canadian values & principles, public accountability, overall efficiency, transparency, and clarity were respected in addressing any proposed changes to the current legislation. Members of the ICC support this intended objective.

However, there are global concerns that we have rising from recommendations that seem to violate this intention. These include: (1) a lack of consideration with respect to implementation difficulties in some of the recommendations (it sounds good on paper but...); (2) an inconsistency between the articulated core values and the actual outcomes that would be achieved if certain recommendations were implemented; (3) some recommendations that seem to be driven by a backlash towards self-supporting class immigrants accessing 'free' services; and (4) an inconsistency with the process of consultation referred to in the report and what actual occurred in the development and now in the delivery of the report.

Also, the report pays very little attention to gender. Hidden away in Chapter 9 is an acknowledgement of this deficiency. *'...In the time available, we were unfortunately unable systemically to check the effect of our recommendations on equality between the sexes. Citizenship and Immigration Canada should undertake such an analysis before formulating its policy, revising the Act and Regulations and establishing its programs'* (Page 126).

In 1995 the Federal Government adopted a policy requiring gender-based analysis of future policies and legislation. It will be important to follow closely (and participate in) the process of developing this analysis.

These concerns notwithstanding, effort will be taken to address specific issues within each chapter of the report.

Chapter 1 Concepts, Values and Trends: Starting Points for Review

The stated values outlined on page 6 of the report are supported without reservation. These include: self-reliance, compassion leading to collective responsibility, investment (particularly in children as the future generation), democracy, freedom, equality, and fiscal responsibility.

We also support the seven value-based principles for program design and operation that were adapted from the Peters study (page 7). These include: integration, accessibility, comprehensiveness, fairness and consistency, responsiveness, accountability, and democratization.

We are concerned, however, with a lack of reference to another fundamental value evident within Canada, namely *'multiculturalism'*. When considering any substantial changes to Canada's Immigration Act, we should seek to recognize the importance and benefits of our

culturally diverse population. The absence of this reference is of particular concern to our agencies.

We agree that ‘...*These values and principles should guide both the development of new legislation and the design of the systems that will provide the programs and services to Canadians. One immediate impact would be a concentration on people rather than numbers.*’ (page 7-8)

Our concern, however, is whether the recommendations that follow can be authenticated by strict adherence to these stated values, principles and goals. We don’t believe this was achieved.

Finally, we support any effort to challenge assumptions and dispel myths relating to immigration in Canada (page 9-10) and the suggestion that ‘...*Such assumptions call for the development of much better information on the effects of newcomers on Canada. In turn, there is a need for better communication of this information to the general population, so that there will be a strengthening sense of accountability between citizens and government*’ (Page 10).

We support the assertion that ‘...*legislative change...must be predicated on the active support of groups and institutions which have a direct interest in immigration and the protection of those seeking asylum*’ (Page 26).

We also agree that ‘...*Consultation assumes a high degree of mutual trust, a common set of data and adequate time to consider them, a willingness to listen, and outcomes that are not pre-determined*’ (Page 27).

Chapter 2 A New Legislative and Accountability Framework

Recommendation #1

To recognize and promote the continuum from landing to citizenship, the Immigration Act and the Citizenship Act should be combined into a single piece of legislation that includes explicit recognition of active participation in Canadian society as a requisite for citizenship.

We view the concept of a continuum as positive. Although we support combining the Immigration Act and Citizenship Act, it is apparent that the culture of the two divisions (Immigration and Citizenship) is very different. Immigration tends to be characterized by an enforcement culture whereas Citizenship is much more nurturing and supportive. We also believe there may be a danger in diminishing the overall value of either Canada’s Immigration or Citizenship legislation if these two Acts are combined into one piece of legislation.

Recommendation #2

Separate protection and immigration legislation should be created to emphasize the different goals of Canada’s humanitarian commitment and its immigration program. The Immigration and Citizenship Act would apply to the selection and integration of immigrants and the admission of visitors, students and temporary workers. The Protection Act would focus only on those seeking protection.

We support the concept of a separate Protection Act as it allows for an emphasis on humanitarian grounds and recognizes the uniqueness of refugees in Canada and around the

world. However, refugees become landed immigrants and eventual citizens and this continuity must be recognized and accounted for.

Recommendation #4

The objectives of the Immigration and Citizenship legislation should be to:

- (a) Facilitate the entry, whether temporary or permanent, of those persons who will contribute to Canada's prosperity and to the economic well-being of Canadians;*
- (b) Create and maintain those conditions necessary to ensure that persons here on a permanent basis become full participants in Canadian society in exercising both their rights and responsibilities;*
- (c) Promote self-sufficiency and security in social and economic terms by recognizing the integrity of the family in its many forms;*
- (d) Enrich the culture of Canadians; and*
- (e) Create and maintain those conditions necessary to protect the health and safety of Canadian society and deny the use of Canadian territory to persons likely to engage in criminal activities, whether defined nationally or internationally.*

The means for achieving these Objectives should be:

- (a) Providing full information to allow for public education;*
- (b) Ensuring that the immigration program reflects the input and analysis resulting from research and consultants*
- (c) Ensuring that the immigration program meets its stated goals through accountability measures and due process; and*
- (d) Ensuring appropriate communication and coordination with the protection agency, other government departments, and other orders of government.*

We support these objectives and the outlined means for achieving the objectives. Unfortunately the existing organizational framework and service delivery practices are contrary to what is proposed. As earlier indicated it is our perception that the Immigration division does not function under the objectives and means proposed in this recommendation. We question whether it is possible to transform a bureaucracy based on enforcement to one that provides full information for public education, is accountable and communications appropriately with relevant bodies.

Recommendation #10

Officers rendering decisions should be provided with the training and support necessary to ensure that they are current with the Objectives of the legislation. Employees should be made aware of the operational impact of key court decisions through a report within 30 days of the court decision.

We are in agreement with training and supports for departmental staff to ensure that they are working consistently with the Objectives of the Act. We support quality control measures and reviews. Also, we believe the community should be involved in determining criteria for evaluating staff performance of government employees.

Recommendation #11

The Immigration and Citizenship Act and the Protection Act should direct the Minister responsible to submit to Parliament an annual report, including comments on the general administration and management of the respective Acts from such bodies as the Office of the Auditor General, the standing committees of Parliament, and the proposed Federal-Provincial Council, as well as key indicators of performance over the previous year. The annual reports to Parliament should be written in plain language, published, and made widely available.

Performance indicators and annual reporting would provide excellent measures to determine the overall effectiveness and efficiency of the departments. However, performance indicators must be based on more than economics. Social, cultural and humanitarian factors need to also be considered in this regard.

Recommendation #12

The Immigration and Citizenship Act should outline the broad categories of immigration performance indicators to be included in the annual report to Parliament. Within these categories, the particular indicators to be included should be outlined in the Regulations so that they might be revised from time to time to reflect that the Act is meeting its Objectives.

The broad categories of indicators outlined in the Immigration and Citizenship Act should be:

- *Number of immigrants and temporary entries;*
- *Case-processing times;*
- *Indicators of integration; and*
- *System integrity indicators.*

Recommendation #13

The Protection Act should outline broad categories of protection performance indicators to be included in the annual report to Parliament. Within these categories, the particular indicators should be outlined in the Regulations so that they might be revised from time to time to reflect that the Protection Act is meeting its Objectives.

The broad categories of indicators outlined in the Protection Act should be:

- *Number of persons granted protection abroad and in Canada, by relevant convention;*
- *Processing times for protection claims;*
- *Indicators of integration for protected persons; and*
- *System integrity indicators.*

While we support recommendations #12 & #13, *performance indicators and indicators of integration* must go beyond only *economically defined* descriptions. The federal government released a report in 1997 entitled 'Strategies and Tools to Support Best Practice in Settlement and Language Services' which was prepared by Valerie Gruno and Susan Stovel. We support the *Settlement Indicator Tool* proposed within the Gruno/Stovel report and have included a copy of the tool in Appendix B.

Recommendation #17

The Minister should establish a working group with organizations representing the interests of clients to examine the rationale for the right of landing fee and to develop application fees that reflect the costs of services provided.

There appears to be no clear indication as to the purpose of the right of landing fees since their inception. We support the recommendation to establish a working group to examine the rationale and to consider some cost recovery for certain services provided. We feel, however, that not all costs for services provided can be collected prior to entry into Canada. This policy would seriously limit the ability of families in Canada to be re-united with family members currently abroad and would restrict the numbers of self-supporting immigrants to Canada. It is our belief that the concept of total cost-recovery is unreasonable and that it does not take into account the long-term economic benefits of immigrants to Canada. Studies demonstrate that over a ten year period immigrants consistently have higher earnings than non-immigrants do in Canada and, as a result, pay substantially more in taxes. These tax revenues would be lost if a more restrictive policy such as proposed is introduced.

Chapter 3 Sharing Responsibilities: Innovative Approaches to Partnership and Cooperation

Recommendation #23

The Immigration and Citizenship Act should include provisions for formal, structured consultations on significant policy developments at the regional and national levels with non-government organizations, municipalities, business and other interested groups. Citizenship and Immigration should develop and institute mechanisms that allow for structured consultations and proper research as part of the policy process.

We support the implication that a consultation with non-government organizations is embedded into the policy. However, while the report correctly suggests that ‘...NGOs...find fault with the department’s pattern of consultation. Primarily, they object to the style of consultations, which is sporadic and initiated by the department, often without follow-up or with results shrouded in secrecy.’, the very process initiated in developing and now analysing this report are suspect.

Such significant changes are worthy of informed debate and active consultation. The mandate of the Legislative Review Advisory Group (LRAG) was monumental and the nature of their recommendations, if implemented, is likely to affect immigration, citizenship and protection for decades.

We are concerned that only select organizations/individuals in select cities were invited to consultations with the LRAG. These consultations focused on specific issues that participants were invited to address. There was no opportunity to address issues outside of that chosen by the LRAG. Although anyone could write to the committee, there was no frame of reference, so it made it difficult, unless a group had particular issues to address.

Again with the release of the report, only select groups are invited to present before the Minister. Others can forward their written comments, but the timeframe to digest the report and its implications is very tight considering the nature of the recommendations. We believe true consultations are critical to discover unintended impacts of certain recommendations and to gauge informed opinion and support for any changes.

One possible model for the Minister to consider that gained community support was that

introduced through the *Settlement Renewal Consultation* process. In these consultations community groups and various municipal & provincial government staff, together with staff from Citizenship and Immigration Canada, met together for open, facilitated discussions where any issue could be raised. The outcome of this style of consultation was a feeling of ‘truly being heard’ and some indication as to what the next steps would be. It is critical to recognize that the Province of British Columbia was equally involved in this process here in BC. Following these consultations the Province released a number of ‘working documents’ that enabled the community to further comment on outstanding issues. We would recommend to the Minister that this open model be considered for this initiative as well.

Chapter 4 Community Participation: Active Integration

Recommendation #24

The federal government should acknowledge its enduring role in settlement and integration services; establish clear accountability guidelines; and provide adequate funding for settlement and integration services.

As specified in the federal report entitled ‘Round II - Consultations on Settlement Renewal: Finding a New Direction for Newcomer Integration’ the participants in the consultation process concluded that the federal government must have an enduring role in: (1) providing funding for newcomer settlement and integration; (2) providing information abroad on Canada, and (3) providing information in Canada through research and serving as an information ‘clearinghouse’ However, we also acknowledge that federal funding for settlement and integration has never been entirely adequate and the impact of settlement dollars spent has been significantly reduced due to an increase in immigration to British Columbia. Our agencies have reported reductions in their ISAP funding over the last four years. This leads us to question the intent of the federal government in this regard.

Recommendation #25

The design of future selection criteria should be founded on adequate data-based research that analyses the integration patterns of various categories of immigrants.

It is generally agreed that research to analyse integration patterns is useful. However, there is real concern about any attempt to solicit confidential data that would violate the relationship that exists between a client and a service providing organization. SMIS is an example of over-zealous attempt to obtain more information than is reasonably required to provide the type of analysis necessary.

Recommendation # 26

The Immigration and Citizenship legislation should require formal standardized language testing to determine knowledge of French and English

It is not generally appreciated that language testing is inexact. There is also a potential

danger in applying core standards out of their sociocultural context, be they for education, age, self-sufficiency, language ability or whatever. It is enormously difficult to set core standards for language ability, or particularly, to create language tests that are equivalent, fair and valid for all ages of people. We support the use of *Canadian Language Benchmarks*, developed for Citizenship and Immigration Canada, as a basis for describing the language skills of adult clients. However, it would not likely be suitable for children and/or youths.

Recommendation # 27

The proposed Federal-Provincial Council on Immigration and Protection should establish access to trades and professions and foreign credential recognition as priorities and work with other relevant groups, such as the existing Forum on Labour Market Ministers, to resolve issues of restrictive access.

Recommendation #28

The Federal-Provincial Council on Immigration and Protection should take measures with existing assessment authorities, to develop national standards and a shared database with the longer-term objective of providing a Canada-wide equivalency assessment of professional qualifications which would be accepted in each province and territory.

We heartily endorse recommendations #27 & #28 as the inability of immigrants to access trades and professions has long been a concern of our member agencies. As well, the ability of Canadian businesses and educational institutions to recognize foreign credentials is critical. We continue to support the efforts of the International Credential Evaluation Services (ICES) within BC's Open Learning Agency to assist in foreign credential recognition. We also believe it to be in Canada's interest to ensure labour mobility across provinces.

Recommendation # 30

The criteria for the maintenance of landed immigrant status should include (1) the demonstration of physical residency in Canada equivalent to at least one year during the initial three-year period following landing; and (2) the filing of Canadian income tax returns for each of the three years following landing. All immigrants should be advised in writing of this renewal requirement upon initial landing. Following the initial period, the requirement should be the need to demonstrate physical residency in Canada for at least two of the preceding three years and the filing of income tax returns for each of the three years. Immigrants not able to prove their residency would be deemed to have lost their status.

This recommendation is supported in that we believe it will promote the integration process, it supports Canada's taxation requirements, and that it recognizes the realities of business people with interests abroad.

Recommendation #31

The Immigration and Citizenship Act should include criteria for granting citizenship which demonstrate both personal suitability and active participation in Canadian society, including:

- *Physical residence (three years' residence);*
- *Fiscal responsibility (conformance with Income Tax Act);*
- *Knowledge of Canada and of an official language;*
- *Minimum age (18 and over);*
- *No serious criminality (including violations of Immigration Act); and*

- *Active participation (at least two of the following: employment, study, volunteer/community service, and family care).*

We are concerned that with the minimum age restriction of 18 years, children will be prohibited from becoming citizens at the same time as their parents. This would create family instability. We can't understand the logic behind this requirement. Surely it would place youth in a position of being second class participants within our society, as they would not be afforded the same privileges as their peers.

We also believe that the definitions of 'active participation' need to be expanded and there is concern with the suggestion that an individual must demonstrate a minimum of two of these descriptors. This could easily lead to many women being refused citizenship. Family caregivers (usually women) are often fully occupied in the home and do not have the opportunity to qualify for one of the other 3 categories. Once again we would support the use of the 'Indicators of Settlement Tool' referred to previously to describe active participation.

Chapter 5 The Family: Essential for Success

Recommendation #32

For the purposes of the Immigration and Citizenship Act, 'spouse' should be defined as (1) a partner through a marriage legal in the jurisdiction in which it occurred, or, (2) a partner in an intimate relationship, including cohabitation of at least one year in duration, with the burden of proof resting on the applicant in either case.

We support the proposed definition of a spouse as presented within the report. However, there is a lack of clarity with respect to sponsorship and the ability of same sex couples to do this. For example, does the term 'fiancé' reflect an expanded definition to include same sex couples as well?

Recommendation #33

The definition of a dependent child in the Immigration and Citizenship Act should be that the child has never married and is under 22 years of age, unless dependent for reasons of physical or mental disability.

We support the simplification of the definition of a dependent child rather than a requirement to define based on age, mental and physical disability, educational status, financial dependency, and the duration of any interruption in education.

Recommendation #34

The requirements of the new Family Class should reflect the principles that (1) the definition of family is evolving over time and differs among cultural and ethnic communities; and that (2) responsibility for the support and integration of each immigrant in this class should rest primarily with the Canadian citizen or landed immigrant undertaking the sponsorship. The legislation should, to the extent possible, permit sponsors to define family.

This recommendation recognizes the evolving nature of the family and respects cultural differences that we support.

Recommendation #35

A tuition fee reflecting the cost of basic language training in Canada should be required of all sponsored Family Class immigrants who are six years of age or older and have not achieved a basic knowledge of English or French as measured by standardized tests.

The recognition of language ability in an official language as essential to integration, self-sufficiency, and active participation in Canadian society is supported. The question of newcomers paying the full cost of language training if they do not meet a set level of proficiency, is more problematic.

The first issue is the cost of the language training. If newcomers are to pay for the cost of language training how will this cost be determined? Will it be the cost of training at a public, private, or not-for-profit institution? Will it be the cost of training in Vancouver or in Halifax? Will there be national standards for training? Or will there be one low, standard fee set that would be based on the cheapest cost anywhere in Canada for the training, and if so, who will pay the difference for the actual cost?

Further, while this recommendations acknowledges the costs associated with English as a Second Language training within the K through twelve system of which we can conclude there is currently no federal obligation, we believe it is problematic to ask for families to pay for ESL for children in school. We believe that we must separate the potential costs associated with adult learners from costs associated with teaching children. We are strongly opposed to a ‘user pay’ system for children in the K through twelve system. We believe this would erode the universality of education, something that as Canadians we see as a fundamental value.

While language is important for integration, it is not possible for all immigrants to learn English/French before coming to Canada. We believe this policy would create barriers for potential immigrants from certain countries and we are also concerned that ultimately women would be the losers. Currently there are already cost-recovery English classes, nominal fee classes and free classes for adults. These allow adults to chose classes based upon their needs and circumstances. For example, those who are wealthy can afford to pay for their classes. We are concerned that a universally-applied ‘tuition fee reflecting the cost of basic language training’ would be prohibitive for some people and is likely to have the unintended effect of promoting isolation of family class immigrants rather than integration.

Recommendation #37

Sponsors of spouses and dependent children should be required to commit to a three-year undertaking and should not have been on welfare during the preceding 12 months. Sponsors of other members of the Family Class should be required to commit to a 10 year undertaking and to have declared income, during the preceding tax year, equivalent to the applicable Statistics Canada low-income cut-off figure, or other appropriate cost-of-living measure, for themselves, their current dependants, and the number of persons they wish to sponsor. the sponsorship obligation for a fiancé(e) should be reduced to three years following marriage.

With respect to this recommendation, there was not a clear consensus among our member agencies as to support or opposition to the principles contained therein. We are concerned, however, that a required 10-year commitment for sponsorship is a long time. We are unclear why there is such a significant discrepancy between sponsoring spouses, children and fiancées (three years) and the family class members (ten years). There is a difference between those that

are unwilling to continue support versus those who are unable to continue support due to circumstances beyond reasonable control. It was agreed, however, that more research must be conducted into determining why sponsors default.

The bar on family sponsorship for anyone on welfare during the last 12 months will have a very negative impact on single mothers. For example, a woman separated from her husband during a war who comes to Canada with their young children may have no choice but to rely on welfare, but having found her husband again she will be unable to sponsor him (even though with him in Canada the family would be able to be self-sufficient).

Recommendation #45

The Immigration and Citizenship Act should exempt sponsored spouses and dependent children from the excessive cost component of the medical inadmissibility provisions.

We support this recommendation to exempt sponsored spouses and dependent children from the excessive costs associated with the medical inadmissibility provisions. We agree that ‘...*the excessive cost provision applied to spouses and dependent children is, in our view, inhumane, slow and expensive to administer, and has little practical result.*’

Chapter 6 Broadening Canada’s Economic Base: Self-supporting Immigrants

AMSSA supports the views put forward by SUCCESS’s Board of Directors regarding Chapter 6 of the report. These include:

Recommendation #48

The core standard for education should be an academic, technical or trade qualification equivalent to at least two years of full-time post-secondary study in Canada.

This recommendation fails to accommodate the differences in compatibility/equivalency of training institutions across different source countries and does not adequately account for other means of achieving expertise and experience that is equal to or exceeds that of formal education. Further more, this educational requirement, should it be implemented, would effectively disqualify 58% of entrepreneurs and 61% of investors entering Canada who have 12 years of education or less.

This education requirement would also adversely affect the ability of artists, musicians and experts in non-traditional and cultural sectors to be eligible for immigrant status.

Recommendation #51

The core standard for age should not be less than 21 years of age or more than 45 years of age at the time of application.

We are opposed to this rigid criteria. It reflects neither the experience of entrepreneurs, nor the economic contributions of those over 45, or the trend for people over 65, particularly entrepreneurs and business owners, to continue working beyond retirement age. Based on figures for 1996, the age requirement would effect 46% of entrepreneurs seeking landing status in Canada.

Furthermore, the age limit seems inconsistent with the spirit of human rights codes across the country that prohibits discrimination in employment on the grounds of age.

Recommendation #52

The Immigration and Citizenship legislation should require that Self-Supporting Class immigrants be willing and able to meet the costs of establishing themselves and their families during their first six months in Canada. The issue of restricting access to provincially managed social welfare programs by persons who have immigrated under the Self-Supporting Class should be an item for discussion at the proposed Federal-Provincial Council on Immigration and Protection.

We feel this recommendation lends itself to the dismantling of the universality of Canadian social programs and fails to take into account the possibility of extreme and unfortunate personal circumstances that may affect families from time to time. Having one class of people in Canadian society restricted from accessing social programs is the creation of two-tiered citizenship in Canada.

Recommendation #53

Skilled workers should have to meet each of the five core standards of the Self-Supporting Class: education, official language ability, skilled work experience, age and self-sufficiency.

Recommendation #58

Entrepreneurs should be required to meet the core standards for education, official language ability and age. They should also have at least two years experience operating a successful business and sufficient capital both to start a business in Canada and to meet all initial settlement costs.

Recommendation #59

As well as making a specified financial commitment, investor immigrants should have to meet three of the five core standards of the Self-Supporting Class: education, official language ability and self-sufficiency. There would be no core standards for skilled work experience or age for applicants in this tier.

The requirement for official language ability for all categories of self-sufficient immigrants is one of our biggest concerns. In effect, this requires all applicants under these classes to seek English or French language training in their countries of origin before immigrating to Canada. This requirement does not recognize that developing language proficiency requires opportunities to use the newly attained language skills outside the formal learning centre. This requirement makes it difficult for potential immigrants from countries where French or English is not the primary language to attain these skills and would therefore, prevent these immigrants from attaining landed status in Canada. Based on the 1996 figures cited in the report, this would effectively disqualify 50% of entrepreneurs and 66% of investors. The impact, beyond that of the individual applicant, will have far-reaching economic consequences for Canada and, especially, British Columbia.

Recommendation #65

The Immigration and Citizenship legislation should exempt companies operating in Canada with 20 or more employees from the requirement to obtain a validation from the National Employment Service in order to sponsor a foreign worker. Foreign workers sponsored by such companies should be able to apply for an employment authorization directly to a Canadian mission abroad.

While we support a simplified and expedited process for employers to bring in foreign workers, it is our opinion that priority should be given to first protecting Canadian workers.

Recommendation #75

The Live-In Caregiver Program should be eliminated as a separate visa class and made, both in theory and in practice, entirely consistent with the Foreign worker Program. The Immigration and Citizenship legislation should allow caregivers with a valid, permanent job offer to apply for landed immigrant status in the Self-supporting Class.

This recommendation would make it impossible for live-in caregivers to remain in Canada. Since skilled workers in the Self-supporting Class would need to meet the five core standards of education, official language ability, skilled work experience, age and self-sufficiency, most potential domestic workers would be disqualified. It is unreasonable to expect domestic workers to have two years post secondary education, official language proficiency and enough funds to support themselves for six months.

As well, most jobs for caregivers are contractual and not "permanent". In fact, permanent jobs are becoming more and more scarce in the Canadian economy.

Chapter 7	Offering Canada’s Protection
Chapter 8	Compliance: Building Confidence in the System
Chapter 9	Reviews: Simple, Fair and Timely
Chapter 10	Rethinking Discretion: Residual Powers

AMSSA supports the views put forward by the Vancouver Refugee Council with respect to Chapters 7 through 10 of the report. These include:

Recommendation #84

The Protection Act should create a protection agency to be responsible for the management of Canada’s protection system.

Recommendation #85

The protection agency should develop a cadre of career civil servants as Protection Officers and Appeal officers. The protection agency should assign Protection Officers to determine protection claims both abroad and in Canada, and Appeal Officers to review decisions on in-Canada protection claims.

A fundamental part of any refugee determination system must be independent decision-making. The Report recommends that refugee determination be conducted by government

bureaucrats under the direct control of the Minister of Citizenship and Immigration Canada. However, independence is essential to a fair refugee determination process. These decision-makers must be completely separate from the enforcement side of the immigration process and from the influence of political opinion. The principle of independence is the mainstay of democratic systems of justice and is reflected in the way in which our judiciary is appointed.

Recommendation #88

The protection agency should give priority to the most vulnerable and those most in need. There should be no requirement that applicants be likely to establish themselves successfully in Canada.

We strongly support this recommendation. For many years, NGOs have been frustrated that the need for protection has been considered in tandem with criteria for successful establishment in Canada. It is crucial to the integrity of the refugee protection system that this recommendation be implemented.

Recommendation #89

The Protection Act should provide conditions to encourage claims for protection to be made at the earliest possible opportunity, which means in the following order: overseas, at the port of entry, inland.

While it may often be desirable to encourage refugee claimants to make refugee claims overseas, this is not always a practical solution. Given that many claimants may be in unsafe circumstances while waiting for their refugee determination overseas, the recommendation does not address the immediacy that may be required.

Recommendation #95

The Immigration and Citizenship Act should enable the Minister to prescribe a country as a safe third country, including in relation to a class of persons. The protection agency would have to be consulted. The proposed regulations and a statement indicating why the proposed country should be considered a safe third country would be submitted to the Standing Committee.

Recommendation #96

The Immigration and Citizenship Act should provide for the Minister to table before the House of Commons any safe third country regulations and a statement. The statement would include whether the proposed safe third country complies with relevant international law concerning the protection of persons seeking asylum and with other relevant human rights standards.

We are opposed to the ‘safe third country’ provisions. Such provisions deny refugees the choice of where they can make their claim. First, unlike some countries, Canada is not subject to large flows of refugees from neighbouring countries. There is, therefore, no need for such a restrictive measure. Second, such a denial discriminates against those refugees who cannot afford to buy a direct plane ticket or whose airplane route happens to pass through what has been designated as a safe third country. Third, such a policy would contravene internationally accepted principles of family unity given that such a law would restrict a refugee claimant from joining other family members who may already be in Canada.

Recommendation #100

The Immigration and Citizenship legislation should prescribe as a mandatory condition of provisional status for persons seeking protection in Canada, the requirement to undergo a medical examination for

reasons of public health and safety within 10 days of arriving in Canada.

The stipulated time frame of 10 days is unreasonable in that it does not take into consideration the many difficulties facing claimants and the systemic barriers that may exist in our own health care system. Medical personnel are often not available within these tight time limits especially for those persons who have located outside major centres.

Recommendation #101

The Protection legislation should codify all requirements and time limits of the inland process, equally applicable to all parties. The legislation would establish time limits for filing a protection claim inland, with possible extensions permitted due to a change in circumstances.

The aim of creating an inland protection determination system that is fair, consistent and timely and that reflects natural justice is clearly a valid and appropriate goal. While Recommendation #101 might make some steps toward creating a consistent and timely system, it would neither be fair nor in accordance with natural justice. Such a rigid procedure would also be contrary to Canada's international obligations.

There are many reasons why refugees will not be able to make protection claims expeditiously. For example:

- 1) Many refugees arrive in Canada having faced horrendous treatment and torture. They are often traumatized and suffering from psychological and emotional injuries which adversely effect their ability to protect their own interests;
- 2) Refugees also often arrive from countries that have unfair legal systems and where the government authorities have been the cause of their problems. Such people often have a fundamental mistrust of authorities;
- 3) Many refugees arrive in Canada without any proficiency in either of Canada's official languages, without contacts and without any knowledge of Canada's refugee protection system, or even the fact that it exists.

Recommendation #108

The Protection legislation should provide for appeals of protection decisions made by Protection Officers in Canada to an appeal section of the protection agency. The appeal should be restricted to a paper review based on the merits. The appeal section could request further information, confirm the decision, or render a new decision.

The proposed appeal process outlined in Recommendation #108 must not be carried out by the same body that made the first decision. It is not appropriate to simply have an appeal from one non-independent government bureaucrat to another. It is also not appropriate to limit the appeal process to a paper appeal.

Recommendation #114

All persons determined to be in need of protection either inland or overseas would be exempted from paying a fee for processing a landing application. They would still be subject to the right of landing fee, but a loan would be available.

We welcome the positive recommendation to eliminate the processing fee for landing applications for refugees. We also recommend the elimination of the right of landing fee for

refugee claimants as it is overly onerous for refugee claimants who have often already given up their life's possessions in fleeing their country.

Recommendation #103

The Immigration and Citizenship Act should permit the granting of provisional status to persons who claim to need protection except where a claimant is uncooperative, is determined to be a danger to the public, or poses a security risk. The Protection Act should accord persons with provisional status the right to work and other social benefits.

Recommendation #122

The Immigration and Citizenship legislation should only provide provisional status in situations where the person (i) is not likely to pose a danger to the public; and (ii) is likely to appear for removal from Canada if required; and (iii) has cooperated with respect to providing evidence of his or her identity and obtaining documentation which would enable departure from Canada if required; and (iv) is willing to comply with the conditions of provisional status.

Recommendation #124

The Immigration and Citizenship Act should prescribe that failure to abide by the conditions imposed on provisional status without due cause would result in revocation of that status and mandatory detention.

Recommendation #126

The Immigration and Citizenship Act should provide for an administrative process, presided over by a status determination officer, to determine alleged breaches of the Act.

The proposed new system for detention and release and the creation of a 'status determination officer' have numerous flaws and would result in a system that is both expensive and impractical. It would be essential to any system that determines liberty issues that the proposed Status Determination Officers be fully independent from Citizenship and Immigration Canada.

The removal of discretion in regard to detention issues would result in massive detention of people who would not be detained under the present Act, including people who do not pose a danger to the public and who would appear when requested. Such a lack of discretion would mean the detention of vast numbers of people who had valid reasons for not complying with conditions and hence they would lose status. The lack of discretion would also not leave any room for a decision-maker to consider humanitarian grounds.

Conclusion

We have a number of questions for the Minister that we trust will be answer as soon as possible. What will be the next step after the consultation and reception of briefs? Who will be responsible for weighing the various comments submitted? How will we be able to learn of the Department's comments on the feasibility and the desirability of the recommendations? Will there be a further report containing revised proposals based on submissions received?

AMSSA is very concerned that the report of the Legislative Review Advisory Group be thoroughly discussed and debated before any part of it is acted on. The report proposes the most significant and far-reaching changes to the Immigration Act since 1976. We have identified several proposed changes that seem positive to use, but we also have fundamental concerns about many of the recommendations. Given the time and resources spent to this point on the Review, and given Canada's historical sensitivity to refugee protection and reliance on immigration to build up our country, it is incumbent upon you to design a consultation that allows a full public discussion of these important issues - a consultation that meets the criteria set out by the Advisory Committee previously quoted.

Appendix A
AMSSA Member Agencies

Appendix B

Settlement Indicator Tool