Canadian immigration lawyers convene in Banff

By Shelly Minarik
Calgary

Lawyers frustrated with the current backlog in the federal immigration system might want to consider "streamlining" their clients through Quebec or alternatively, through a Provincial Nominee Programme (PNP).

"PNP's and Quebec's investor programme facilitate early temporary entry into Canada of provincially pre-approved individuals while their permanent resident status is being determined at the federal level in respect of security and medical checks" remarked Renald Gilbert, Director of Economic Policy and Programs for Citizen and Immigration Canada during the Canadian Bar Association's National Citizenship and Immigration Law Conference, held in Banff in mid-April.

"PNP processing takes less that one year" said Gilbert who should be commended for speaking on four separate panels during the 2 day conference. Processing times for Quebec's Business Immigration programme are also short with Hong Kong and Damascus processing applications in 5-6 months.

"PNP's are employer driven, not client driven ... the applicant is brought in to the province to fulfill specific labour needs identified by that province" said Kenneth Zaifman of Zaifman Associates, Winnepeg. This allows individuals into Canada who would otherwise not qualify under the available federal programmes.

"They do not need a 'Big 5' accountant to prepare their application." said Zaifman.

Quebec's investor programme attracts a different client. Similar to the federal investor programme in most respects, it requires applicants to possess ownership or management experience, as well as significant net worth ($800,000) and the ability to make a significant investment ($400,000). While there are no age requirements in either programme, the Quebec program also dispenses with any language requirements.

Besides canvassing what one panelist called "the smorgasbord of immigration options" available in Canada, another theme dominating the discussion was Canada's *Immigration and Refugee Protection Act* (IRPA).

Wendy Bouman-Oake of Edmonton's Andrew March & Oake, identified s. 64 of IRPA as being one area of particular concern to practitioners.

That section provides that "no avenue of appeal is available to a permanent resident who is issued a deportation order based on criminality if the permanent resident was convicted of a criminal offence and received a sentence of a period of incarceration of two years or more."

Questions arise concerning both the constitutionality of s. 64(2) and the interpretation of what constitutes "two years or more" of incarceration. Both of these questions have been certified by the Federal Court for consideration, said Bauman-Oake, following the decision in *Martin v. Canada*.

Immigration practitioners at the conference said they were waiting for a lucid judgment to reconcile the decisions found in one line of cases (*Poonawalla v. Canada* 2004 FC 428, *Correia v. Canada* 2004 FC 782, *Leong v. Canada* 2004 FC 1126) all of which grant a narrow discretion to immigration officers, the Minister, and his delegate as to whether or not to prepare an admissibility report in cases where Permanent Residents are caught under s. 64, with the more recent decision of *Cha v. Canada* 2004 FC 1507 which grants a broad discretion to the same group of individuals in very similar circumstances.

Other matters relating to IRPA's growing pains seem to be getting adequately resolved.

Referring to the infamous "stripper case" involving the Romanian exotic dancer who was granted a temporary work permit, Gordon Maynard of Vancouver's Maynard & Stojicevic noted that the case "wasn't really about an exotic dancer, it was about an out-of-status spouse of a Canadian who couldn't access in-Canada processing."

As of Feb. 18, out-of-status spouses are no longer required to leave the country if they do not qualify for a temporary work permit while their application is being processed. Such individuals can now have their spousal application processed in-land.

Two guest speakers spoke on the considerable impact of 9-11 on the practice of immigration law in Canada today: Barbara Jackman of Jackman & Associates, Toronto, who represents several clients whom are alleging that their human rights have been violated by various actions of Canada's Security and Intelligence Service; and Lorne Waldman of Waldman & Associates, Toronto, who represents Maher Arar, the Canadian of Syrian descent who was detained in the U.S. en route to Canada and was subsequently deported by U.S. officials to Syria.

"The *Arar* case shows us that the rule of law cannot be taken for granted" said Waldman.

He added, "Lawyers acting for government clients have a duty to be vigilant in their review of policies and legislation being advanced by their clients, to ensure that the rule of law is preserved."