



Mandatory Language Testing Required for Most Permanent Resident Applicants

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Originally published in *Blaneys on Immigration Law* (March 2011)



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Effective June 26, 2010, Citizenship and Immigration Canada ("CIC") made an important change to permanent residence applications by making it mandatory for the submission of an English or French language proficiency test. As of that date, if the principal applicant has not submitted *International English Language Testing System* ("IELTS") or a *Test d'Evaluation de Français* ("TEF") test results, his application will be returned to him, marked as incomplete. This is the case even for those applicants having been born, raised and educated in English speaking jurisdictions such as the United States, England and Australia.

This mandatory language test applies to all permanent residence applications under the Federal Skilled Worker Class, Canadian Experience Class and Business Class (investors, entrepreneurs and self-employed). The only exception is Family Class sponsorship applications and some Provincial Nominee Programs.

CIC's rationale for imposing a written language test was partially to eliminate incidences of fraud (for example in the past, some applicants fraudulently submitted another person's written work as proof of their own English language proficiency). Now when the applicant shows up at designated language testing centre, his personal identification is verified, so there is certainty that it is the applicant's work (instead of the work of someone else). In addition, as the language tests are standardized, it takes out the subjective element of an immigration officer using his discretion to decide a person's level of language proficiency based on his written work. The new mandatory language test now provides an unbiased and objective way to ensure a person's level of language proficiency.

Many people, particularly those born or raised in English or French language jurisdictions, are troubled by this change as it increases the cost of a permanent residence application (since the applicant must pay for the language test) and the location of the testing centres are not often convenient (particularly for those living in remote areas).

The above mandatory language test requirement was initially implemented by way of Ministerial Instructions. At the time, it was believed by many immigration practitioners that such a requirement was *ultra vires*, because Ministerial Instructions could not override the language of the *Immigration and Refugee Protection Regulations* ("IRPR"), which allowed alternative methods of establishing language proficiency. It would appear that the Canadian Government eventually came to the same conclusion because, on March 3, 2011, it amended the IRPR itself to specifically require mandatory language testing.

Initially, CIC made the English and French language tests valid for one year. However, very recently, they have relaxed the rule, such that effective December 23, 2010, those test results are now valid for 2 years from the time the applicant has taken his English or French language test. ■