

**REVIEW OF THE ECONOMIC STREAM
OF THE NOVA SCOTIA NOMINEE PROGRAM**

July 4, 2012

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EXECUTIVE SUMMARY

In 2003, the Province of Nova Scotia implemented its Provincial Nominee Program recognizing that attracting immigrants would be important to the province's economy, as well as creating a more diverse society.

Initially three streams of the Nova Scotia Nominee Program were introduced. The Economic Stream was one of the three. This Economic Stream was unlike any stream of any other provincial nominee program across the country. Introduced as a pilot, it was designed to provide new immigrants with Canadian work experience and a reference from the Canadian employer. This would be valuable when applying to future employers in Nova Scotia or help establish their own business.

Because of problems with program integrity, effective July 1, 2006 the stream was closed to new applications. It took a year and a half for the Nova Scotia Office of Immigration to process all the Economic Stream applications as many of these files received on or before June 30, 2006, were incomplete.

This review of the Economic Stream of the Nova Scotia Nominee Program has been conducted on the recommendation of the Nova Scotia Auditor General. It documents the problems that surrounded this stream in order for the Nova Scotia Office of Immigration to apply the lessons learned to existing and new streams of the Provincial Nominee Program.

Overall the Economic Stream of the Nova Scotia Nominee program did not succeed in retaining a significant percentage of those nominated through this stream. It would be fair to conclude that many of the Economic Stream nominees either did not come to the Province at all or left after recouping all or part of their original \$100,000 contribution.

While it is uncertain whether the province will incur any lasting economic or demographic benefits from this stream, it must be acknowledged that some Economic Stream nominees have settled successfully in Nova Scotia and many of those newcomers and their families would not be here in Nova Scotia had it not have been for this pilot.

INTRODUCTION

This review of the Economic Stream of the Nova Scotia Nominee Program (NSNP) is intended to document the issues that surrounded this pilot stream in order to ensure any new or existing streams of the Nova Scotia Nominee Program benefit from lessons learned.

The Nova Scotia Nominee Program Economic Stream pilot was initiated in 2003 but was closed effective July 1, 2006. No new applicants were accepted after this date and the stream was never reinstated. Program assessment revealed that a significant number of Economic Stream Nominees who landed intended to settle in other provinces in Canada. As such, Nova Scotia's program objective of retaining more immigrants to meet Nova Scotia's labour market and economic development needs was not being achieved through this stream.

At the time the stream was closed, there were a number of applications waiting to be processed. It took over a year and a half for the Nova Scotia Office of Immigration (NSOI) to process all the applications received on or before June 30, 2006. It has taken over five years for all the applications to be finalized and for people to officially land in Canada. As of December 31, 2010, of the 797 principal applicants processed through this stream, all but 7 were known to have arrived in Canada.

A separate evaluation of the existing nominee streams has also been conducted. These streams are:

- Skilled Worker
- Community Identified
- Family Business Worker
- International Graduate
- Non-dependent Child of NS Nominee
- Agri-food Pilot

The sources of data used to complete this review of the Economic Stream include the audit conducted by Nova Scotia's Auditor General, the Nova Scotia Nominee Program and Economic Stream databases, Citizenship and Immigration Canada Immigration Database (IMDB), information gathered from Economic Stream applicants who applied for residency refunds as well as the location of potential claimants under the Class Action Suit that reached a settlement agreement in September 2011.

BACKGROUND

On 27 August 2002, the Province of Nova Scotia entered into a five year agreement with the Government of Canada to pilot a Provincial Nominee Program (PNP)¹. This agreement to pilot a Provincial Nominee Program in Nova Scotia ended September 2007. It gave the Province of Nova Scotia the authority to nominate foreign nationals who met the labour market and economic development needs of the Province and intended to settle permanently in Nova Scotia. Nova Scotia was allowed to issue 1,000 nomination certificates over the five year period of the agreement. While the province was granted the authority to nominate, the Government of Canada continued to make the final decision as to whether or not to grant permanent resident status.

On December 9, 2002, the Nova Scotia Office of Economic Development (OED) entered into a contract with a private sector company to:

- help with program design
- facilitate international marketing
- file preparation and pre-screening
- recruit sufficient Nova Scotia businesses qualified to be Business Mentor companies and coordinate the employment contract/ business mentorship
- set up a Trust Fund to hold program fees
- complete all financial transactions.

This company established sub-agreements with immigration consultants/agents and lawyers to recruit applicants, ensured that the applicant met the basic eligibility criteria and that the application file was complete before sending it to the Province. Upon receipt the provincial nominee officer assessed the file, interviewed the applicant and determined whether the applicant met the Nova Scotia Nominee Program criteria. If the nominee officer was satisfied that the applicant met the criteria then a nomination certificate would be issued.

The contract ended with this company on June 30, 2006, and was not renewed.

The Economic Stream

Initially three streams of the Nova Scotia Nominee Program were introduced: Skilled Worker, Community Identified, and the Economic Stream. The Economic Stream is the focus of this report. The potential immigrant groups targeted under the Economic Stream were experienced professionals, business managers and entrepreneurs. Each nominated candidate once settled in Nova Scotia was to receive a six-month work experience contract at a middle management level and mentorship with an approved Nova Scotia company.

The eligibility criteria for the Economic Stream applicants included:

- legal status in the country of residence
- minimum net worth of \$300,000 obtained legally
- be between the ages of 21 and 55

¹ The Nova Scotia Office of Immigration was established in January 2005. Effective April 1, 2005 responsibility for the Nova Scotia Nominee Program was transferred from Office of Economic Development to the Nova Scotia Office of Immigration.

- have completed the equivalent to a Canadian high school diploma with a minimum of 13 years of education and/or training from a recognized institution
- basic English or French language proficiency to be employable and functional in Nova Scotia upon arrival
- minimum 3 years experience in business management
- sincere intention to settle in Nova Scotia
- willing to complete an employment contract (at least six months in duration) with an approved business mentor company for a minimum salary of \$20,000.

The original fee charged to the Economic Stream applicant was \$130,500 (after May 9, 2006, the fee was \$130,000), allocated as follows:

- \$500 to the Province (this portion was eliminated effective May 9, 2006)
- \$10,000 to the private sector company for marketing , file preparation/pre-screening, and employment contract/business mentor
- \$20,000 to the Immigration consultant/agent or lawyer (\$18,000 was paid until 15 August 2005),
- \$100,000 to the business mentor company

Rationale for the Business Mentor Program

According to the results of a 2005 research study, sponsored by Atlantic Canada Opportunity Agency (ACOA), “immigrants hold Nova Scotia in very high regard, but are often forced to leave the province to seek employment elsewhere.” The study concluded that Nova Scotia “should improve the employment prospects of new immigrants,” including short-term employment.

In a Greater Halifax Partnership (GHP) study of over 800 Halifax businesses, 95% thought that we needed more immigrants and would be willing to hire immigrants yet less than 3% of them had actually employed an immigrant.

The work experience and mentorship component of the Economic Stream was called the Business Mentor Program. It was envisioned that the Economic Stream nominees, through the business mentorship/employment contract, would receive Canadian work experience at a middle management level. This would serve as an orientation to Canadian workplace and business operations.

This work experience component was the only one of its kind in Canada at the time. It was hoped that this would be a valuable pathway to permanent employment either with the business mentor or another employer or through a business venture. If the employment contract was successful, the business mentor would provide a positive reference that the Economic Stream nominee could use to seek permanent work elsewhere. For those who planned to go into business for themselves, it was envisioned that the experience and orientation would be invaluable. Having an immediate income through the employment contract/mentorship would also assist newcomers in establishing credit.

The employment contract/mentorship was mandatory and it was envisioned that in the six month period, the nominee would begin to put down roots, establish connections, and gain Canadian work experience so they would settle permanently in Nova Scotia.

Once settled in Nova Scotia, nominees were to have been matched with an approved Nova Scotia company which would provide them a six-month employment contract with a minimum salary of \$20,000. The mentor company would receive \$100,000 in two installments of \$50,000. The first installment was paid at the beginning of the mentorship and the second installment was paid at the successful conclusion of the employment contract. Both the nominee and the business mentor were to report at the conclusion of the employment contract confirming that the employment contract and mentorship were successfully completed under the terms of the employment contract in order for the second payment to be released.

Businesses applying to be a Business Mentor were required to submit an application, along with a job description and pay an application fee. Initially the fee was \$2,500 (\$2,000 paid to the private company and \$500 to the Province) with half refundable if a match was not made. Effective September 1, 2005, the business applicants were given the option to either pay up front (\$2,500) or upon successful match (\$3,500) and all fees would be paid to the private company.

To qualify to be a Business Mentor, the business had to be a going concern, offer a middle management position for at least six months and have a minimum of five employees. The company could only mentor one nominee at a time with a minimum of one year between nominees.

PROFILE OF ECONOMIC STREAM NOMINEES
(Source: Nova Scotia Nominee Program Evaluation Report)

In total, 829 nominations were issued to Economic Stream Nominee applicants. Of these nominees, 31 either withdrew their application or were refused by Citizenship and Immigration Canada (CIC). As of August 31, 2011, all but four of the remaining 798 nominees had yet to arrive in Canada or have their application for permanent residence completed by CIC.

Table 1 shows that between 2003-2006, the NSNP received 1,548 applications, with the Economic Stream representing 86.7% of the total applications.

Table 1: Total NSNP Applications Received (Principal Applicants only) by Stream, 2003 – 2006

	2003	2004	2005	2006	Total
Economic Stream	23	101	268	949	1,341
Skilled Worker	1	14	37	41	93
Community Identified	9	20	34	51	114
Total	33	135	339	1,041	1,548

Source: Office of Immigration Nominee Database

Table 2 shows the total nominations made through all streams. Although the Economic Stream was closed to new applicants effective July 1, 2006, it took over a year and a half to process all the applications that were in the queue as many of them were incomplete. Since only one Economic Stream nominee nomination was made in 2008, it is useful to look at the 2003 – 2007 period. Of the 1,248 nominations issued between 2003 and 2007, the Economic Stream accounted for 66.4 % of the total. Following the closure of the Economic Stream, new streams were added including International Graduate Stream, Family Business Worker Stream and the Non-Dependent Child.

Table 2: Total NSNP Nominations Made (Principal Applicants only) by Stream, 2003 – 2008

	2003	2004	2005	2006	2007	2008	Total
Economic Stream	13	83	236	324	172	1	829
Skilled Worker	1	13	33	33	116	117	313
Community Identified	9	21	34	43	63	115	285
International Graduate Stream	-	-	-	-	40	57	97
Family Business Worker Stream	-	-	-	-	14	19	33
Non Dependent Children	-	-	-	-	-	-	-
Total	23	117	303	400	405	309	1557

Source: Office of Immigration Nominee Database

Table 3 shows the number of principal applicants who have landed, by stream (does not include family members). There is a time lag between the date the nomination is issued and the CIC approved nominee actually lands. By the end of 2008, Economic Stream nominees accounted for 57% of all landings through the NSNP.

Table 3: Total NSNP Nominees Landed (Principal Applicants only) by Stream, 2003 – 2008

	2003	2004	2005	2006	2007	2008	Total
Economic Stream	12	77	230	310	160	1	790
Skilled Worker	1	12	32	30	105	87	267
Community Identified	8	20	32	36	47	100	210
International Graduate Stream	-	-	-	-	38	49	87
Family Business Worker Stream	-	-	-	-	11	12	23
Total	21	109	294	376	361	249	1377

Source: Office of Immigration Nominee Database

With the closure of the Economic Stream in 2006, the focus of the NSNP shifted from the Economic Stream to employer-driven categories. By the end of 2008, all employment-driven categories combined (skilled workers, international graduates and family business categories) accounted for 27% of all PN's who had landed.

Table 4 shows the source countries of the Economic Stream Nominees and their family members. Many of the Economic Stream nominees were from the Middle East and Asia. In many cases this is because the private company contracted to promote this stream had contacts with immigration consultants in these countries.

Table 4 Top 10 source country for Economic Stream nominees (principle applicants and dependents)

Source Country	Number
Iran	446
China	178
Korea	128
Taiwan	118
Philippines	84
India	55
UK	34
Pakistan	29
Viet Nam	27
Syria	23

Data provided by Citizenship and Immigration Canada

Citizenship and Immigration Canada provided to the Office of Immigration additional data regarding our nominee outcomes from the Immigration Database (IMDB). The Immigration Database contains information about immigrant's income earnings, rate of self-employment retention in the province of nomination and access of government income programs. This data only includes principal applicants to the program. The time period for this data is 2003-2008.

Although this data includes all nominees Economic Stream nominees constitute a significant percentage of the nominee landings during this time period so conclusions can still be made regarding the impacts of this stream.

Table 5 shows that within 3 years of arriving in Nova Scotia, between 42-57% reported income earnings to Revenue Canada. Nominees who have been here for 3 years show an average annual income of \$36,900. Between 53-66% reported that all or some of their income came from self-employment. However, it could be that nominees were reporting income from their Business Mentorship or from receiving a Residency Refund and not necessarily from employment. If most of the Economic Stream nominees were to leave after receipt of a residency refund, it is unlikely the province will incur any lasting economic or demographic benefits from this stream. This will need to be determined in future evaluations.

Table 5 Summary statistics on incidence rates and averages, for the different types of earnings – NS nominees²

Type of earning	Years after landing			
	0*	1	2	3
Incidence rate of reporting employment earnings (%)	48.91	57.14	50.00	42.11
Average employment earnings (\$)	27,200	29,100	27,800	36,900
Incidence rate of reporting self-employment earnings (%)	7.30	15.24	20.00	26.32
Incidence rate of reporting employment earnings and/or self-employment earnings (%)	53.28	65.71	66.67	63.16
Incidence rate of reporting Employment Insurance benefits (%)	0.73	4.76	6.67	-
Incidence rate of reporting Social Assistance benefits (%)	-	-	-	-

Source: Statistics Canada/Citizenship and Immigration Canada Immigration Database (IMDB)

The percentage of nominees who reported accessing government income programs was quite low. Within 2 years of arrival, only 6.67% reported that they received Employment Insurance benefits and none reported receiving social assistance benefits.

This information provides a very positive outlook on the earnings of nominees who were in the province in 2003-2008. However some of this reported income would have been received from completing their business mentorship or from receiving a residency refund. We will continue to monitor this data for years after 2008 in order to better evaluate outcomes of all of our nominees and the economic impacts on Nova Scotia.

² The landing year (year 0) is not necessarily a full year for everyone in that cohort. Some might have landed at the beginning of the year, while others later during the year. Therefore, information about earnings in the landing year should be treated with caution.

Table 6 shows the retention rate of provincial nominees who were residing in Nova Scotia in 2003-2008 and filed a tax return with Revenue Canada. Overall we have a net retention rate of 68.4% for the Nova Scotia Nominee Program. Although we had out-migration of 245 nominees, we had in-migration of 55 nominees from other provinces.

Table 6 Summary statistics on retention - 2008 status (cohorts 2003-2008)

	Intended destination	Out-migration	In-migration	Net change	Net change (%)	Turnover rate	Retention rate
N.S.	770 ³	245	55	-190	-24.7	0.2	68.4

Source: Statistics Canada/Citizenship and Immigration Canada Immigration Database (IMDB)

CLOSURE OF THE ECONOMIC STREAM

On July 1, 2006, due to concerns regarding program integrity of the Economic stream, the Province stopped accepting Economic Stream applications and closed the stream⁴. The Province, however, was still obliged to continue processing applications received before July 1, 2006 and to provide the Business Mentor Program to all Economic Stream nominees who were issued a permanent resident visa to come to Nova Scotia.

Business Mentor Program

Of the 790 nominees who landed in Nova Scotia, 212 took part in an employment contract/ business mentorship. After July 1, 2006, when the Nova Scotia Office of Immigration became responsible for the Business Mentor Program, problems with program integrity of the Business Mentor Program became more apparent. These issues included non-bona fide business arrangements (e.g., agreements that the nominee would be paid but not mandatory to work), lack of middle management positions, and nominees not having adequate language skills to work at a middle management level.

The Office of Immigration also became aware of a number of third party brokers who were promoting the Business Mentor program and charging Economic Stream nominees and businesses to facilitate applications and matching. In some instances, these brokers approached businesses, offering to complete the application and giving the impression it was unlikely the nominee would ever show up for work. The business would benefit from the money with very little effort.

Economic Stream nominees, who appeared before Public Accounts in February 2008, reported that some third party brokers were charging the business up to \$10,000 for their services. These brokers also befriended immigration consultants in order to get in touch with Economic Stream nominees prior to the nominee contacting the Nova Scotia Office of Immigration. The brokers offered to find a business mentor for the Economic Stream nominee and promised to negotiate with the business

³ This number differs from the landing data in the NSNP database due to different data sources. The IMDB is based on tax filer data from Revenue Canada while the data in the NSNP database

⁴ Since July 1, 2006 with the closure of the Economic Stream of the Nova Scotia Nominee Program, the focus of our nominee program has been on skilled workers, international graduates, family skilled workers who have employment opportunities in Nova Scotia as well as community identified applicants who are able to economically attach.

mentor for more than the minimum \$20,000 salary. It was reported by nominees that they were given the impression that they need not show up for work.

In order for the second \$50,000 installment to be issued to the business mentor company, both the Business mentor and the Economic Stream nominee were required to submit a letter reporting on whether the employment contract/business mentorship was successfully completed. There were some instances in which, the broker encouraged the nominee and the business mentor to each submit a letter to the Office of Immigration indicating that the employment contract/business mentorship was successful. Later after the residency refund option was announced, some of these nominees complained publically through media interviews that they were dissatisfied with the mentorship.

Residency Refund (RR)

On October 12, 2007, the Office of Immigration (NSOI) introduced significant policy and operational changes to the Business Mentor Program in an attempt to improve program integrity, address suspected abuses of the program, better facilitate settlement of nominees in the province, as well as maintain the overall objectives of immigrant retention to Nova Scotia.

After landing in Canada, if nominees decided that they did not want to participate in the Business Mentor Program option, they could register for a Residency Refund option. This would qualify them to apply for a refund of the \$100,000 economic contribution after providing proof that they were residing in Nova Scotia for the last consecutive 12 months and still living in Nova Scotia at the time the RR application was processed.

After demonstrating that they met the residency requirements, 332 Economic Stream nominees were approved to receive the Residency Refund of \$100,000. There are two residency refund applications in process and another 15 were refused. Even after the Residency Refund Option was introduced, 6 nominees chose to have a mentorship rather than participating in the Residency Refund Program.

Expanded Residency Refund (ERR)

Subsequent to the Residency Refund option being implemented, an organization of approximately 75 nominees was created - Nominees Adversely Affected by Exclusion (NAABEX). NAABEX urged the province to provide those Economic Stream nominees who had completed a Business Mentorship and were still living in the province with a portion of the \$100,000 business contribution minus their employment contract salary and other payments including bonuses.

In October 2008, an Expanded Residency Refund was paid to 212 Economic Stream nominees who participated in the Business Mentor program and were previously excluded from the refund. Only those still residing in Nova Scotia would qualify for this refund.

The Expanded Residency Refund recognized the commitment which many nominees made to staying in Nova Scotia and provided an opportunity for these nominees who signed mentorships before October 2007 to also receive a refund.

To qualify, these nominees needed to meet criteria including:

- proof of residency in Nova Scotia for a minimum of 12 consecutive months as of October 1, 2008
- proof of residence in Nova Scotia at the time of application and at the time of the assessment of their claim.
- application submitted prior to January 5, 2009. Nominees who qualified applied for a refund of the \$100,000 without interest, minus the gross salary and other payments received from the Business Mentorship.

Of the 212 who took part in an employment contract/business mentorship, 107 received the Expanded Residency Refund. The average refund provided to qualified applicants was \$64,320, for a total of \$6,882,203. This showed a number of nominees received payments from the business mentor far in excess of the minimum \$20,000 payment. The remaining 105 either did not apply for the Expanded Residency Refund or were refused because they could not prove the residency requirement.

Analysis of Economic Stream Nominees who applied for either Residency Refund or the Expanded Residency Refund

For the period October 2007 to March 31, 2012, 476 applications had been received from Economic Stream nominees for either the Residency Refund or the Expanded Residency Refund. 439 of these applicants received a refund. The total payment was \$40.08 M (\$33.20M for Residency Refund and \$6.88 Expanded Residency Refund).

Of the 25 rejected applicants, the majority were refused because they were not able to prove that they had been living in Nova Scotia for 12 consecutive months and were still a resident of Nova Scotia at the time the application was assessed.

**Table 7: Residency Refund or the Expanded Residency Refund Applicants
October 2007 – March 31, 2012**

At March 31, 2011	Potential Applicants	Received Applications	Approved Applications	Refused Applications	Abandoned Applications	Applications in process	Number who did not apply
Residency Refund	583	359	332	15	10	2	224
Expanded Residency Refund	212	117	107	10	0	0	95
TOTALS	795	476	439	25	10	2	319

NSOI Staff who processed these applications were able to provide a profile of the applicants.

- Most of the applicants for the refund programs were highly educated males between the ages of 40-55 with extensive international work experience. Very few had located work in Nova Scotia at the time of applying for the RR or ERR and those who had a job were working in the service industry.
- Most Economic Stream nominees lived in the Halifax Regional Municipality. However, over 60% of Economic Stream nominee principal applicants returned periodically to their home

country to work or operate their business overseas in order to maintain an income for their families living in Nova Scotia.

- Virtually all Principal Applicant Economic Stream nominees and their spouses attended English as a Second Language classes and provided evidence of this in their application.
- Most nominees rented their accommodations after an initial temporary stay at a hotel or friend's home while a small number of applicants reported they had purchased a house in the first year.
- Many of the children of Economic Stream nominees attended university in Nova Scotia.

Table 8 provides a breakdown of how the monies raised through fees paid by the Economic Stream Nominees have been disbursed. Over 40% of the Economic Stream Nominees (319 of the 795) did not register for either the Business Mentor Option or the Residency Refund Option. There is anecdotal indication that many of those who registered for the residency refund only stayed in Nova Scotia long enough to recoup the \$100,000 contribution they initially made to apply for permanent residence through the Nova Scotia Nominee Program Economic Stream.

Table 8: Revenue raised and expended through the Special Purpose Fund July 2003 – March 31, 2012 (in millions)

Revenue	
Nominees Net Deposits (after refusals/ withdrawals)	105.12
Interest Earned	9.05
Total Revenue Raised	\$114.17
Expenditures	
Residency Refunds to Economic Stream Nominees	40.08
Fees and Commissions paid to Immigration agents, consultants and lawyers	24.23
Payments to Business mentors	19.90
Fees paid to the province (ended May 9, 2006)	0.68
Class Action Refunds	11.57
Other Class Action expenses	2.34
Other Liabilities	2.08
Sub-total	\$100.88
Balance Available for Remaining Class Action Suit and Costs	\$13.29

Class Action Settlement

In December 2009, a Class Action suit was filed against the province by an Economic Stream nominee who stated that he had come to Nova Scotia and made efforts to participate in the Business Mentor program but no suitable matches were available. He subsequently moved to British Columbia where he had been offered employment. The lawsuit was filed on behalf of Economic Stream nominees who did not benefit from either of the two previous refund processes.

A hearing was held on September 26, 2011, at which the Court certified the claim as a class action and approved a settlement agreement that had been negotiated by the Plaintiff's legal counsel and the Nova Scotia Department of Justice.

Persons eligible to participate in this claim are principal applicants from the Economic Stream who obtained permanent residence in Canada, who paid their Economic Stream fees and who have not received a refund pursuant to the Nova Scotia Residency Refund program (Non-Mentorship Class) or the Expanded Residency Refund program (Mentorship Class). Initial estimates indicated 362 potential claimants: 257 in the Non-Mentorship class and 105 in the Mentorship class.

Nominees from the Non-Mentorship class are eligible to receive \$75,000. Nominees from the Mentorship class are eligible to receive the sum of \$75,000 less any amounts previously paid as salary or other benefits either directly or indirectly during the mentorship. In both cases, a 15% legal fee is subtracted from the refund amount.

Claimants must not have made any material misrepresentations in the forms filed as part of, or in relation to, the NSNP's Economic stream application process, or in relation to the forms filed as part of the application for permanent residence or maintenance of permanent resident status. This includes documentation filed with the Federal Government.

Potential claimants who received notification of the settlement agreement had until January 5, 2012, to opt-out of the settlement and until May 4, 2012, to make a claim. In cases where the Office of Immigration had no evidence that a potential claimant received notice, a third party was contracted to locate the class member within a 120-day period. Those who are located have 90 days to make a claim.

A considerable effort has been made to notify potential claimants that they may be eligible to apply for the settlement. As a result, we have been able to track down the vast majority of them. Most of those living in Canada are living in Ontario or British Columbia. Of those who are abroad, some live at the same address as was the case when they made their initial application to be nominated. Their children, however, are often in Canada.

As evidenced from the campaign to notify potential class action claimants, except for some 30 instances, most eligible class members and their dependents are not living in Nova Scotia.

SUMMARY FINDINGS OF THE AUDITOR GENERAL OF NOVA SCOTIA

On October 31st, 2007, the Auditor General accepted the request of the Standing Committee on Public Accounts to conduct an audit of the Economic stream of the Nova Scotia Nominee Program.

On June 11, 2008, the Office of the Auditor General released Phase One of its report which included assessments regarding the contract procurement, program design, adequacy of contract with an outside private company, and the assessment of mentor applications to determine whether they met the set criteria, and trust fund controls.

On October 1, 2008, the Auditor General tabled to the Standing Committee on Public Accounts its Phase Two report on the Economic Stream of the Nova Scotia Nominee Program. Phase Two of the

audit examines nominee, mentor and agent experiences with the Economic Stream, reviews trust account withdrawals and activity, and assesses whether residency refunds were completed in compliance with policies.

Phase 1 Report main findings

The Auditor General's first report, released in June 2008, concluded the following:

- The process to award the contract to the private company did not follow the intent of the Province's procurement policy.
- The contract between the Province and the hired private company was inadequate as it did not include such clauses as: dispute resolution, termination and provisions regarding the Trust account, etc.
- The reporting requirements built into the contract were insufficient and therefore ability of the Province to properly monitor performance was deemed to be inadequate.
- Although the Audited Financial Statements were in accordance with generally accepted accounting principles, the contract did not define a sufficient level of financial reporting detail required to properly illustrate compliance with the contractual arrangement
- The objectives of the pilot were not clearly defined nor were the intended measureable outcomes and indicators of success.
- The Province was not in compliance with the former Canada-Nova Scotia Agreement on Provincial Nominees in that NSOI did not "track" nominees for five years, an evaluation was not conducted and a joint working group was not established with CIC. This agreement expired in August 2007.
- Not enough qualified business mentors were available and the support for approval of 14 of 16 businesses sampled was deemed to be inadequate.
- Internal controls set up to manage the Special Purpose Fund were adequately designed by the Province and were functioning well.
- Steps taken by NSOI to implement improvements to the Economic Stream category and Business Mentor component of the program did not correct the problems with program integrity.

Phase 2 Report main findings

The Auditor General's second report, released in October 2008, presented the following:

- The nominee's language ability was likely a key component of a successful mentorship at a middle management level. Basic level of English/French was not sufficient to perform at a middle management level and benefit from the mentorship
- There was inadequate documentation to validate net worth and source of funds to ensure funds were acquired legally. With net worth, unless all bank accounts are confirmed as of approximately the same date, there is a risk that the nominees could have transferred money between accounts to make it appear their overall net worth met the required threshold.
- 17 of 51 Economic Stream nominee application approvals did not meet the program criteria and should not have been approved.

- Most nominees interviewed were not aware that \$18,000-20,000 of their fee was a commission for their agent. Many were charged additional fees by their agent.
- 24 of 41 mentor applications tested did not meet the program’s approval criteria and should not have been approved.
- Four “non-bonafide” relationships were identified where the nominee never worked for the mentor.
- 14 final employment contract/mentorship reports were reviewed. Of the 14, 10 were not at the required middle management level.
- At that point in time, there were still outstanding agent commissions payments.
- The Auditor General was unable to contact many of the nominees even after a Canada 411 search. NSOI did not have post landing contact for all the nominees who had landed by that time and it was suspected that while some of the nominees had landed in Canada, they did not arrive and settle in Nova Scotia.
- The money in the Special Purpose Fund managed by the Province of Nova Scotia could be reconciled and accounted for.
- The Residency Refund program was following established policies correctly.
- Acknowledged the steps taken by NSOI to try and obtain control over the NSNP and to improve the Business Mentor program.
- The conduct of some immigration lawyers, ghost consultants, and third party brokers was of concern.

In summary, the Auditor General found that the contract between the Province and the private company was inadequate. The eligibility criteria were found to be insufficient to ensure successful integration into the labour market (e.g., requirement for basic English/French language ability was insufficient for a middle management position). There were significant deficiencies with the application of the program criteria for both nominees and business mentors. There was a lack of proper due diligence, oversight and monitoring.

RECOMMENDATIONS OF THE AUDITOR GENERAL:

Two recommendations were made by the Auditor General. One in the Phase 1 report and one in the Phase 2 report. These recommendations were as follows:

Recommendation Phase 1

“We recommend that, prior to any further application of this program, and in order to ensure other immigration programs benefit from lessons in which may be learned, a comprehensive review be conducted to evaluate the Economic Stream and measures be taken to correct the known program deficiencies.”

Recommendation Phase 2

“All deficiencies identified through our Phase One and Two audits of the Economic Stream should be considered as to their potential applicability to, and lessons to be learned for, other current or planned Provincial immigration programs. The deficiencies should be addressed to ensure these problems are not reflected in other areas of Provincial immigration”.

LESSONS LEARNED

This stream has not been replaced by a newly designed stream for Entrepreneurs or Business immigrants. If a new Entrepreneur stream was developed, lessons learned from the history of the previous Economic stream will need to be addressed during its development and implementation.

General Analysis of the Economic Stream

Selection criteria

While there was no difficulty attracting applicants, overall the Economic Stream of the Nova Scotia Nominee program did not succeed in retaining a significant percentage of those nominated.

The selection criteria were not well conceived. Most of those who applied and were nominated were in the mid 40 – mid to late 50 age group. Generally workers in these age cohorts tend to have a difficult time finding employment and are less adaptable. Many did not have sufficient language capacity to work at a middle management level. Most all of them were highly educated well qualified and had extensive experience in their respective areas of expertise. Some were professionals who were not able to work in their respective professions without credentialing in Nova Scotia. They had high expectations that they would easily qualify for high skilled jobs or be able to go into business. Unfortunately most were not able to find meaningful employment in their areas of expertise and only a few have been successful in business.

The net worth criteria of \$300,000 was insufficient. After an applicant paid program fees of \$130,000 (more than one third of the net worth).and relocation and settlement costs, the balance remaining was not sufficient to start /purchase a business or sustain the family while attempting to secure permanent employment.

Some of the Economic Stream nominees were sincere in their intention to settle in Nova Scotia. However others were seeking to immigrate to Canada but not necessarily intending to settle in Nova Scotia. Their immigration consultants or agents marketed the Economic Stream of the Nova Scotia Nominee Program to them as a quick and easy way into Canada. The net effect of this is that the Economic Stream by default was used by some as an immigrant investment linked scheme. This contravened the intent of the *Immigration Refugee and Protection Act*, the Regulations governing the Provincial Nominee Programs as well as the Bi-lateral Immigration agreement between Canada and Nova Scotia.

Specific Lessons Learned

Working with Private Companies

The Government Purchases Act and the Province of Nova Scotia Sustainable Procurement Policy governs purchasing, procurement, alternate procurement, process to handle unsolicited proposals and sole sourcing. Sole sourcing, or signing a contract for service with a single company without competition, is permitted, but as a general procurement rule, it is better to issue a Request for Proposals (RFP) through a competitive bid detailing the specifications required of the successful proponent

Any contract that is signed with a private company must contain clauses regarding dispute resolution, contract termination and provisions regarding the ownership of any money collected. Reporting requirements and monitoring would need to be included and enforced.

Note, with the exception of one province, all immigration business/entrepreneur streams operated by provinces and territories are solely developed and managed by government and do not work directly with private intermediaries.

Language Requirements

Immigrants coming to Nova Scotia through the Economic stream were only required to have “basic language ability” in English or French. It was found that basic language ability was not properly defined and many Economic Stream nominees did not have the ability to communicate at a middle management level. Due to this firsthand knowledge and other research about immigrant language ability, the Nova Scotia Office of Immigration has introduced minimum language requirements for all of our nominee streams. Applicants are required to have language ability of at least Canadian Language Benchmarks level 5 and require documentation of formal language testing. Language requirements for new streams should be consistent with this requirement.

In recognition of the fact that the employment outcomes of immigrants who come to Canada without basic or intermediate ability to communicate in English or French are not as positive as those who do have adequate language ability, Citizenship and Immigration Canada has introduced minimum language criteria for its Entrepreneur and skilled worker streams. Immigrants must provide independent proof from an approved language testing organization of their ability to speak English or French to support active management of business and labour market attachment. This language requirement also helps to prevent passive investment.

Monitoring and oversight

The Auditor General concluded that there was insufficient monitoring and oversight measures in place to oversee the employment contract/business mentor program. Problems with the Business Mentor Program included non-bona fide business arrangements (e.g., agreement that the nominee would be paid but not mandatory to work), lack of middle management positions, and nominees not having adequate language skills to work at a middle management level.

Should the Province of Nova Scotia introduce a business/entrepreneur stream of the nominee program, it would be necessary to build in careful program monitoring to ensure program integrity. Enforcement measures would also be required to ensure that the nominees are complying with the commitments to establish in business and actively manage the business within the province to ensure that the stream is not being used as an immigration-linked passive investment scheme.

Tracking retention and outcomes

To be able to measure the economic benefit to Nova Scotia and determine how well immigrants are doing in Nova Scotia, it is necessary to initiate a process to track nominees.

As part of the design of any new stream an evaluation framework and tracking/measurement mechanisms must be created at the beginning. Mobility Rights granted to all residents of Canada in

the Charter of Rights and Freedoms and Federal and Provincial privacy legislation means that it is very difficult to track the whereabouts of nominees and to determine the economic impact on the nominating province. The Office of Immigration has recently signed up to receive enhanced data from Citizenship and Immigration Canada that will help us to gauge our nominee retention and better know if they are finding employment.

As a result of the data gathered from applicants for the Residency Refund, and the Expanded Residency Refund as well as the results of the notification campaign to reach Economic Stream nominees potentially eligible under the class action, our understanding that many Economic Stream nominees did not come to Nova Scotia, or did not stay, was confirmed. With this knowledge combined with research into other business immigration programs in Canada, we have been able to make a number of conclusions about what structure would be required to be put in place prior to operating a new business or entrepreneur stream.

Program design criteria/mitigating risks

There are lessons to be learned from provincial nominee business /entrepreneur streams of other provinces and territories. A number of provinces and territories have designed their criteria to mitigate the risks associated with business/entrepreneur streams including program abuse, misrepresentation/fraud, passive investment schemes, and poor retention. Business/entrepreneurs selected through Provincial Nominee Programs must also meet certain conditions or outcomes or a penalty is imposed on the immigrant.

British Columbia has recently completed an evaluation of the BC PNP program. The results indicate that the BC PNP has been very successful. The BC Business nominees are doing well. They are staying in British Columbia. The economic impacts of the BC PNP's Business stream are substantial. The BC model, program integrity measures, monitoring and enforcement measures seem to be very effective. Therefore should the Province of Nova Scotia decide to introduce a business /entrepreneur stream, it is recommended that similar program design and program integrity measures be considered.

It is difficult to determine whether or not the business concept and corresponding investment are legitimate and not immigrant-linked passive investment schemes. Other provinces and territories have either built in expertise within their respective immigration departments or partner with their respective government economic development departments and agencies to properly assess business plans, financial statements and company viability.

In most cases, provinces have opted to require the business entrepreneur to make a financial deposit with the province. Certain conditions must be met. Often a Performance Agreement is required.

In British Columbia, Business candidates enter British Columbia on a two-year federal work permit and are nominated upon fulfilling the obligations of their Performance Agreement. BC also has a Fast Track Stream in which business candidates also must enter initially on a temporary work permit, but obtain immediate nomination by depositing a \$125,000 conditionally refundable performance bond with the Province that is refunded when they fulfill the obligations of their Performance Agreement.

Actions Taken To Date

As a result of lessons learned from the now closed Economic stream, a number of improvements were made to the operations and eligibility criteria of the NSNP in order to address the deficiencies discovered by the Auditor General.

1. An operational manual was developed to outline the steps involved in receiving, assessing, and approving/refusing a nominee application.
2. Standard assessment forms were revised and implemented.
3. A new case management system was developed and implemented to ensure that consistent criteria are being used to assess applications.
4. A pre-screening process was implemented to ensure that a completed application is fully submitted prior to being assigned to a nominee officer.
5. Once an officer makes a determination to approve or refuse a file, it is reviewed by the Senior Nominee Officer and then the final approval/refusal is made by the Director.
6. A procedural fairness process was implemented which allows an applicant who is going to be refused 30 days to respond with further information showing that they do meet the outlined criteria.
7. The Office of Immigration has recently signed up to receive enhanced data from Citizenship and Immigration Canada that will help us to gauge our nominee retention and better know if they are finding employment.
8. Applicants are required to have language ability of at least Canadian Language Benchmarks level 5 and require documentation of formal language testing.

RECOMMENDATIONS

It must be recognized that there are high risks associated with Business/Entrepreneur streams of provincial nominee programs. Should it be decided to add a Business/Entrepreneur stream of the NSNP, it is recommended that:

1. it be designed in consultation with Citizenship and Immigration Canada to ensure it is compliant with IRPA and PNP regulations with CIC agreeing to process applications under such a stream,
2. the policy objectives be clearly defined and aligned with Immigration Laws, Regulations and Agreements with the Government of Canada,
3. intended outcomes, measurement indicators, data collection system, and evaluation framework be put in place at the onset,
4. proper oversight and enforcement mechanisms be put in place for program integrity and to mitigate the risk of abuse including
 - a. requiring Entrepreneur nominees to report to NSOI upon arrival
 - b. training officers to detect fraudulent documents or credentials
 - c. following up with nominees periodically after their arrival
 - d. requiring quarterly reporting on progress being made to fulfill program outcome requirements
 - e. scheduled and unscheduled site visits to ensure that parties are fulfilling their business obligations under the program.
 - f. the development of proper penalties to be imposed should the nominee not fulfill their obligations.

5. designed with criteria that would support nominee success such as requiring higher level English/French language ability
6. the program be implemented under Provincial control to mitigate risks of the program being improperly marketed as a passive investment scheme
7. procurement policies and procedures be strictly adhered to if it is decided to contract services to a private agency. Through a public tendering process, the Province would specify the deliverable terms and conditions. The Contract(s) to successful proponent(s) should have clearly defined objectives, roles and responsibilities, deliverables, terms and conditions, reporting requirements, dispute resolution, provisions for fees/payments and termination.
8. it be properly resourced
9. ownership of any forfeited deposits or good faith deposits will need to be legally established
10. all aspects of any streams including fees and good faith deposits be completely transparent

CONCLUSION

Due to known issues with the program integrity and design of the Economic stream and Business Mentor program, the only recourse available to the Office of Immigration was to stop accepting applications to this stream. An option to receive a refund of their Business Mentor fees was provided to Economic Stream nominees who were residing in the province and did not wish to participate in this program, and then a residency refund option was also provided to nominees who were dissatisfied with their mentor experience.

The main conclusion that can be drawn from the Economic stream experience is that any future business/entrepreneur streams must be properly designed, resourced and monitored in order to ensure that nominees are meeting their agreed to obligations.

Overall the Economic Stream of the Nova Scotia Nominee program did not succeed in retaining a significant percentage of those nominated through this stream. It would be fair to conclude that many of the Economic Stream nominees either did not come to the Province at all or left after recouping all or part of their original \$100,000 contribution. However, it must be acknowledged, some Economic Stream nominees have settled successfully in Nova Scotia and many of those newcomers and their families would not be here in Nova Scotia had it not have been for this pilot.

It will be important to monitor the retention rate of Economic Stream nominees overtime to assess whether the province incurred any lasting economic or demographic benefits from this stream.

Appendix A

Economic Stream Statistics as of May 24, 2012

829 total nominations were made in the Economic stream, of which:

- * 32 were refused, rescinded, or withdrawn post nomination, leaving:

- * 797 nominees of which:

795 have landed, and there are 2 who CIC has not yet rendered a decision on whether to grant permanent residence. (790 had landed by December 31, 2010, and the other 5 landed between January 2011 and May 2012).

Of the 795 who have landed:

583 did not sign a business mentorship contract, of which

- * 332 have been approved for the \$100,000 Residency Refund, and at least two others are expected to apply.

212 signed a business mentorship contract, of which

- * 107 received the Expanded Residency Refund

Until May 4, 2012, the 354 who did not receive either the Residency Refund or the Expanded Residency Refund - or plan to do so - were potential claimants for the refund that arose from the Economic Stream class action lawsuit. There are two subclasses:

- * The non-mentor subclass, which included 249 people, none of whom has signed a mentorship contract

- * The mentor subclass, which included 105 people, all of whom has signed a mentorship contract

The number of potential claimants has now fallen to 342 as a result of 12 nominees missing deadlines to file a claim. As well, three potential claimants have opted out of the claim process, leaving the maximum number of claims at 339.

210 non-mentor claims have been approved, resulting in a \$63,750 payment to each claimant totaling \$13.4 million.

61 mentor claims have been approved and individual payment amounts vary, but the total is \$2.3 million, or an average payment of \$37,832.

1 mentor claim has been refused to date.

33 claims are pending a decision, and as many as 34 more claims may be received.