

**Shaping the future:  
Canada's rapidly changing immigration policies**

**By Naomi Alboim and Karen Cohl for The Maytree Foundation**

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## ABSTRACT

Between 2008 and July 1, 2012 the Government of Canada introduced many changes to policies affecting immigration, temporary entry to Canada, and citizenship. The government also changed the way in which reform was undertaken, including a dramatic increase in ministerial powers and the use of omnibus legislation. Based on recent federal announcements, it is clear that this unprecedented pace and scope of change will continue.

This paper describes the changes and analyzes their potential individual and cumulative impact. While some of the changes are positive, the authors conclude that the future of Canada will be negatively affected by the recent emphasis on short-term labour market needs, the lack of evidence-based policies, a retreat from traditional democratic processes, and a less welcoming environment for immigrants and refugees.

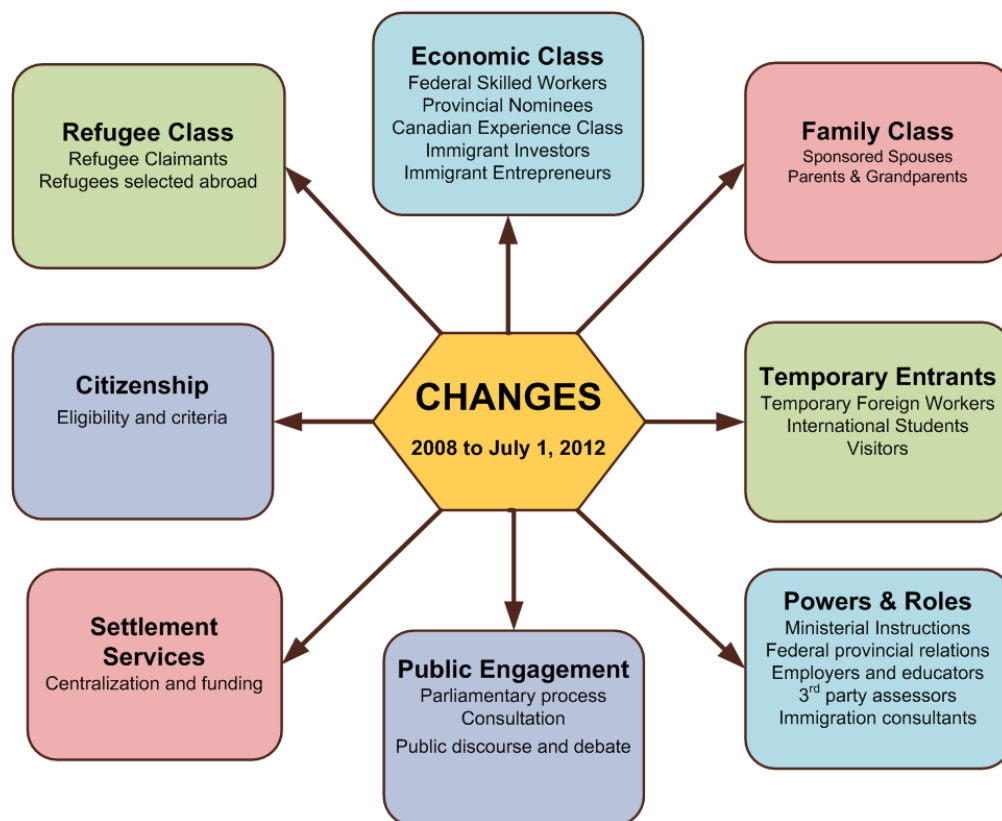
The authors propose that it is time for a national conversation on the kind of country Canada wants to be and how immigration and related policies can help us get there. They also propose that the conversation be based on a number of principles which are described in the last chapter of the report.

# 1. INTRODUCTION: PACE AND SCOPE OF CHANGE

The pace and scope of change in Canada's immigration policies in recent years can leave one breathless.

Between 2008 and July 1, 2012 the federal government introduced changes that affect Canada's approach to all three streams of immigration (economic, family reunification, and humanitarian), the rules for obtaining citizenship, and temporary entry as a foreign worker, international student, or visitor. In addition to altering the substance of immigration policies and programs, the government has transformed the process for undertaking immigration reform and the powers and roles of government and other key players.

**Figure 1: Scope of Change**



When looked at in their entirety, immigration policy changes are reshaping Canada's future. It is difficult to believe that so much fundamental change has occurred during the past four and a half years and that more changes are slated to occur.

Some of the changes are potentially positive, such as the increased focus on the Federal Skilled Worker Program, plans to introduce a program for skilled tradespersons, access to an appeal for some refugee claimants, increased protections for live-in caregivers, and transition to permanent resident status for eligible students and temporary workers. However, the success of these changes will depend on how they are implemented.

Other changes are more problematic, such as restrictions in family sponsorship and new categories of refugee claimants, especially when the potential cumulative impact is taken into account. Areas of concern include the government's growing focus on the economic class and short-term labour market needs, a lack of policy coherence and evidentiary basis for many decisions, a weakening of traditional democratic processes, and a less welcoming environment for the people Canada needs to attract.

This paper provides a preliminary analysis of what the changes – individually and cumulatively – could mean for Canada's future.

#### GUIDE TO THIS PAPER

Chapters 1 to 3 describe and analyze key changes the federal government has made over the past four and a half years, both to immigration programs and to government powers and stakeholder roles.

Chapter 4 describes the potential cumulative impact of the changes.

Chapter 5 articulates principles that should be included in the design of a future vision for Canada's immigration policy.

Appendix A lists changes that have been made or are proposed to immigration programs and Appendix B makes recommendations in response to those changes.



## Highlights

The federal government began a pattern of introducing substantial changes at a rapid pace in 2008, just six years after the *Immigration and Refugee Protection Act* was enacted. Based on news releases, speeches, and announcements, it appears that the main drivers for the government's immigration change agenda are to:

- Improve the relatively poor outcomes of recent cohorts of immigrants as compared to those who had arrived in the past;
- Increase the short-term contribution that immigration programs could make to the Canadian economy;
- Address backlogs that have developed in practically every category and prevent their re-occurrence; and
- Prevent fraud and minimize abuse of the immigration and refugee system.

To illustrate the dramatic pace and breadth of change, this section provides year-by-year highlights from 2008 to mid-2012, the period covered by this paper. Many of these changes are examined more fully in later sections.

### **2008**

Perhaps the change with the most significant impact was the granting of legislative authority for the Minister of Citizenship, Immigration and Multiculturalism to make decisions that fundamentally alter immigration policies and programs without having to go through the parliamentary process. This was accomplished through the 2008 Budget Bill that amended the *Immigration and Refugee Protection Act* to enable a minister to issue "Ministerial Instructions" to immigration officers. Ministerial Instructions were used for the first time in November 2008 to limit new federal skilled worker applications to those with an arranged employment offer, in specified occupations, or already in Canada as students or temporary foreign workers.

Another significant change in 2008 was the creation of the Canadian Experience Class. This allows some international students and highly skilled temporary foreign workers to make the transition to permanent residence from within Canada.

## **2009**

In 2009, in an attempt to reduce refugee claims, visitor visas were required of Czech and Mexican citizens travelling to Canada. In addition, an exemption to the Safe Third Country Agreement was removed. This meant that people who had obtained a temporary stay of removal could no longer make a refugee claim in Canada if they had the opportunity to make one in the United States.

The citizenship rules also changed in 2009. As a result, children born outside Canada on or after April 17, 2009 will be Canadian citizens at birth only if either of their parents was born in Canada or was naturalized in Canada.

## **2010**

In 2010 the federal government made several changes to the economic immigration stream. It increased the funds needed to qualify as an immigrant investor; imposed mandatory language testing for principal applicants in the Federal Skilled Worker Program and Canadian Experience Class; and placed caps on the numbers of new federal skilled worker applications that would be processed.

Live-in caregivers were given an additional year to complete their cumulative two-year employment obligation and were no longer required to complete a second medical examination at the time of applying for permanent residence.

The government also introduced a more rigorous citizenship exam with a higher minimum passing grade and a five-year wait before sponsored spouses could sponsor a new spouse.

## **2011**

The pace of change accelerated in 2011. The changes affected all three immigration streams, citizenship, temporary workers, immigration consultants, and settlement funding.

In the economic class, caps were imposed on new applications to the federal Immigrant Investor Program and were further reduced for new federal skilled worker applications. A new eligibility stream was created for international PhD students within the Federal

Skilled Worker Program and a decision was made not to accept new applications to the Entrepreneur Program.

In the family class, the government imposed a moratorium on the sponsorship of parents and grandparents and created a super visa for them to enter Canada as visitors.

In the refugee class, the rules for private sponsorship of refugees were tightened. In addition, the Source Country Class was repealed. This denied access to Canadian embassies or private sponsorship for people in need of protection while in their home countries.

Other changes in 2011 included a requirement to remove face coverings during the oath taking portion of citizenship ceremonies; legislation to “crack down on crooked immigration consultants;” and the introduction of open work permits for live-in caregivers once their two-year work obligations had been met. That year also saw a decrease in total federal settlement funding. This resulted in a substantial funding decrease in Ontario while increasing the amounts available to other provinces.

### ***First half of 2012***

Rapid and far-reaching federal immigration changes continued in the first six months of 2012.

In the economic class, decisions were made to return unprocessed, pre-2008 federal skilled worker applications, to return all applications submitted on or after July 1, 2012 for the Federal Skilled Worker Program and Immigrant Investor Program, and to impose a moratorium on new applications from most federal skilled workers. In addition, mandatory language testing was imposed for lower skilled provincial nominee applicants.

New legislation provided that refugee claimants from designated countries and those who arrived in a group and were designated as “irregular arrivals” would be denied the new appeal rights granted to other refugee claimants. Mandatory detention was imposed for all “irregular arrivals” over the age of 16. “Irregular arrivals” would also have delayed access to permanent residence, family reunification, and travel documents even if determined to be bona fide refugees by the Immigration and Refugee Board. At the same time, access to health services funded by the Interim Federal Health Program was

reduced for refugee claimants and most privately sponsored refugees. In addition to swifter deportation of failed refugee claimants, a pilot project was created for failed claimants wishing to return home voluntarily.

The government expedited the Labour Market Opinion process for highly skilled temporary foreign workers in management, professional and technical occupations and allowed employers to pay them up to 15% less than the prevailing wage. The Minister was given legislative authority to require temporary resident applicants (visitors, students, and workers) from certain visa-required countries to provide biometric data before coming to Canada.

The federal government announced a regulation that will require proof of official language ability to be submitted with applications for citizenship, and a decision that the federal government will resume the management of settlement programs previously devolved to British Columbia and Manitoba. A decision was also made that requests for humanitarian and compassionate consideration made from outside Canada will be denied for permanent resident applications not identified for processing under Ministerial Instructions.

Mid-way through 2012, it is apparent that immigration changes show no signs of stopping and appear to be accelerating. As of July 1, 2012, there are many proposals that the government has announced but which have not yet been implemented or authorized by statute, regulation, or Ministerial Instruction. These proposals, if implemented, will make still more changes to the family and economic immigrant classes, add stricter conditions to maintain permanent residence, and change the rules for international students. The proposals are summarized in Table 1 below.

**Table 1: Federal Immigration Proposals Outstanding as of July 1, 2012**

<b><i>Family Class</i></b>
<ul style="list-style-type: none"> <li>• Make permanent residence for newly married sponsored spouses conditional on living with their sponsors for two years</li> <li>• Re-design the sponsorship program for parents and grandparents</li> </ul>
<b><i>Economic Class</i></b>
<p><u><i>Provincial Nominees</i></u></p> <ul style="list-style-type: none"> <li>• Refocus Provincial Nominee Programs to meet only economic objectives and not duplicate federal programs</li> </ul> <p><u><i>Investors and Entrepreneurs</i></u></p> <ul style="list-style-type: none"> <li>• Create a “start-up” visa program for more innovative immigrant entrepreneurs</li> <li>• Re-design the Immigrant Investor Program to increase the funds needed to be eligible and to require more active investment in Canadian growth companies</li> </ul> <p><u><i>Federal Skilled Worker Program</i></u></p> <ul style="list-style-type: none"> <li>• Revise the selection points grid</li> <li>• Require principal applicants to meet higher language requirements and to obtain an assessment of their international educational credentials prior to application</li> <li>• Create a separate and streamlined program for skilled tradespersons</li> </ul> <p><u><i>Canadian Experience Class</i></u></p> <ul style="list-style-type: none"> <li>• Reduce the Canadian work requirement from two years to one year before skilled temporary workers are eligible for permanent residence</li> </ul> <p><u><i>Expression of Interest</i></u></p> <ul style="list-style-type: none"> <li>• Develop an “expression of interest” model for federal skilled workers and possibly other economic immigrants in which governments and employers could recruit from a pool of pre-screened applicants</li> </ul>
<b><i>Permanent Residence</i></b>
<ul style="list-style-type: none"> <li>• Deport permanent residents without appeal after serving a sentence of six months or more (now two years)</li> </ul>
<b><i>International Students</i></b>
<ul style="list-style-type: none"> <li>• Ensure that student visa holders pursue their studies in Canada</li> <li>• Issue student work permits only to those who have valid student visas</li> <li>• Limit the types of educational institutions eligible to host international students</li> </ul>

While the scope of change over the past four and a half years has been extraordinary, some fundamentals of the Canadian immigration model remain constant.

- Canada maintains a high level of permanent immigration to Canada and the government has given no indication that it intends to reduce that level. This will help to ensure that Canada’s demographic challenges can be addressed.

- There continue to be three major streams of immigration: economic, family reunification, and humanitarian. However the proportions have changed over time with a greater share going to the economic stream at the expense of the others.
- There have always been programs for temporary entrants to the country, but the number of temporary foreign workers has increased dramatically. Making the transition to permanent residence while in Canada is now possible for some students and temporary workers.
- Refugee claimants continue to be able to seek asylum in Canada but now face more barriers before, during, and after the determination process.
- Citizenship continues to be the goal for immigrants to Canada and their children, but fewer will be able to achieve it.
- Many players continue to be involved in the development and implementation of immigration policy and programs, but their roles are changing and the Minister's decision-making authority has expanded.

Although many “fundamentals” of the immigration model continue to be in place, the cumulative impact of recent changes is to shift Canada's approach to immigration in several fundamental respects. This has the potential to reshape the future of the nation. (See discussion of cumulative impact in Chapter 4.)

## 2. CHANGING POWERS AND ROLES

In addition to the many substantive policy changes the government has made to immigration policies, there have been striking changes in related roles and relationships. Most dramatic is the increase in the minister's decision-making authority coupled with the use of omnibus and budget bills. Federal-provincial relations have also become strained due to federal government decisions made unilaterally or with insufficient regard to provincial positions. Other trends have been the devolution of specific roles to employers and educational institutions and attempts to "crack down" on immigration consultants.

### **Ministerial Power and the Role of Parliament**

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#### **Ministerial Instructions**

It used to be that major changes in immigration policy were achieved through legislation and regulations. Legislation would typically be preceded by public consultation, task forces, discussion papers, committee hearings, and parliamentary debate. Regulations were also the subject of consultation before being approved by the federal Cabinet.

A sea change occurred when the 2008 *Budget Implementation Act* came into effect in February of that year. This budget bill amended the *Immigration and Refugee Protection Act (IRPA)* of 2002. As a result, the Minister became authorized to issue Ministerial Instructions to immigration officers.

Ministerial Instructions issued since 2008 have affected the Federal Skilled Worker Program, Canadian Experience Class, Immigrant Investor Program, Entrepreneur Program, and Parent and Grandparent Sponsorship Program. The authority of the Minister is broad enough to cover other topics as well, such as the processing of temporary residents. Through this new decision-making vehicle, the Minister of Citizenship, Immigration and Multiculturalism has sole discretion to limit the number of applications processed, accelerate some applications or groups of applications, and return applications without processing them to a final conclusion.

Table 2 summarizes changes made to date through Ministerial Instructions.

**Table 2: Changes Made by Ministerial Instructions November 2008 to June 2012**

<ul style="list-style-type: none"><li>• Limiting new federal skilled worker applicants to those with an arranged employment offer, in specified occupations, or already in Canada as students or temporary foreign workers (2008)</li></ul>
<ul style="list-style-type: none"><li>• Imposing mandatory language testing for principal applicants in the Federal Skilled Worker Program and the Canadian Experience Class (2010)</li></ul>
<ul style="list-style-type: none"><li>• Placing caps on the number of federal skilled worker applications that will be processed in total and for each occupation annually (2010 and 2011)</li></ul>
<ul style="list-style-type: none"><li>• Imposing temporary moratoriums on new applications from immigrant investors and entrepreneurs (2011) and on most federal skilled workers (2012)</li></ul>
<ul style="list-style-type: none"><li>• Imposing a moratorium on the sponsorship of parents and grandparents and creating the Parent and Grandparent Super Visa for them to enter as visitors (2011)</li></ul>
<ul style="list-style-type: none"><li>• Creating a new eligibility stream for international PhD students (2011)</li></ul>
<ul style="list-style-type: none"><li>• Returning all applications and processing fees submitted on or after July 1, 2012 for the Federal Skilled Worker Program and Immigrant Investor Program (2012)</li></ul>
<ul style="list-style-type: none"><li>• Denying requests for humanitarian and compassionate consideration made from outside Canada for permanent resident applications not identified for processing under Ministerial Instructions (2012)</li></ul>

The power to make Ministerial Instructions was further expanded by the 2012 *Budget Implementation Act* which received Royal Assent on June 29, 2012. This includes the power to retroactively apply Ministerial Instructions to any pending applications or requests and to create immigration classes that would be exempt from regulatory oversight. This legislation authorizes a minister to establish and govern new classes of permanent residents as part of the economic class for up to five years, with a maximum of 2,750 people to be processed per year unless stated otherwise. It also allows a minister to determine the number of applications or requests by category or otherwise to be processed in any year, if any.

Ministerial Instructions may now be applied to sponsorship applications, permanent and temporary resident applications and applications for work permits and study permits, but not to refugees applying for permanent residence. Ministerial Instructions may also be used to impose conditions on employers in relation to the employment of foreign nationals, to provide the power to inspect in order to verify compliance with requirements pertaining to temporary foreign workers, and to indicate the consequences of failure to



comply. The new legislation recognizes the Minister of Human Resources and Skills Development Canada as a minister who can also issue Ministerial Instructions in some instances.

These new ministerial powers are more extraordinary and far reaching than those contained in the 2008 Budget. It is alarming what decisions can be made at the will of a minister without the checks and balances of public consultation and parliamentary processes. This can now include creating new immigrant programs and classes, retroactively determining processing quotas and priorities, eliminating applications in permanent and temporary categories, and imposing conditions on employers.

The speed and frequency with which Ministerial Instructions have been issued and the impact of their content could have significant implications for how Canada is perceived by potential immigrants. They may not wish to invest their time, energy, money, and dreams on a country that changes the rules continuously and does not even commit to assessing all applications.

### **Budget Bills and omnibus legislation**

In addition to the section on Ministerial Instructions, the 2012 Budget Bill authorizes the retroactive application of regulations and eliminates the previous requirement to process eligible applications in the order in which they were received. The section of the bill that received most public attention was the termination of approximately 300,000 federal skilled worker applications that had been submitted before February 27, 2008 and had not been determined to meet selection criteria as of March 29, 2012. Fees are to be returned to these applicants with no interest and no right of appeal, recourse or indemnity against the government. In the future there is nothing to prevent the government from similarly terminating applications in other categories. For example, the government may be tempted to use these powers to address backlogs in parent and grandparent sponsorships, immigrant investor and entrepreneur programs, or private sponsorship of refugees.

The granting of broad Ministerial powers through a budget bill is especially concerning because to vote down such a bill in a minority government, as was the case in 2008, is a non-confidence issue that could bring down the government and force an election. The government has prevented focused, thoughtful discussion and debate by burying major

immigration changes in a 2012 Budget Bill containing more than 400 pages and covering a wide variety of subject areas.

Another example of legislative change to dramatically increase Ministerial powers is Omnibus Bill C-31, *Protecting Canada's Immigration System Act*, which received Royal Assent on June 29, 2012. This legislation enacted new "anti-smuggling" provisions and amended the *Balanced Refugee Reform Act* before it came into force. The provisions of the new legislation give the Minister the power to deem refugee claimants to be from Designated Countries of Origin or to be Designated Foreign Nationals who came to Canada as "irregular arrivals." The exercise of this new power will have an enormous impact on refugee claimants who will be subject to harsher treatment if they are deemed to fall into one of these two new categories.

The legislative process for the changes affecting refugees serves as a cautionary tale that illustrates the weakening of democratic and Parliamentary processes, as illustrated in Table 3.

**Table 3: Parliamentary Process Case Study: Refugee Legislation**

<p style="text-align: center;"><b>March 2010</b></p> <p>In March 2010, the <i>Balanced Refugee Reform Act</i> was introduced by a minority government. The inclusion of an appeal mechanism was seen as a positive development. However, opposition parties and stakeholders severely criticized other elements of the bill as draconian. After hearings and intense negotiation inside and outside the committee process, the bill was amended in a way that was acceptable to the main parties and stakeholders.</p>
<p style="text-align: center;"><b>June 2010</b></p> <p>An amended <i>Balanced Refugee Reform Act</i> was approved by both houses and received Royal Assent in June 2010. It was set to come into force on June 29, 2012.</p>
<p style="text-align: center;"><b>October 2010</b></p> <p>In October 2010, the government introduced the <i>Preventing Human Smugglers from Abusing Canada's Immigration System Act</i>. The opposition parties and many stakeholders believed this bill to contravene the <i>Charter of Rights and Freedoms</i> and to be punitive to both refugees and refugee claimants. The bill died on the order paper when an election was called.</p>
<p style="text-align: center;"><b>May 2011</b></p> <p>On May 2, 2011 the Conservative government was re-elected with a majority.</p>
<p style="text-align: center;"><b>June 2011</b></p> <p>On June 16, 2011 the anti-smuggling bill was re-introduced with no changes.</p>
<p style="text-align: center;"><b>February 2012</b></p> <p>On February 16, 2012 the government introduced omnibus Bill C31 entitled the <i>Protecting Canada's Immigration System Act</i>. This bill incorporated the anti-smuggling bill, with a change to exclude minors under the age of 16 from mandatory detention. The bill also amended the <i>Balanced Refugee Reform Act</i> to re-insert many of the most contested sections that had been negotiated out in June 2010.</p>
<p style="text-align: center;"><b>June 2012</b></p> <p>The omnibus bill with amendments to detention review timelines received Royal Assent on June 29, 2012 and the new refugee provisions became law.</p>

## **Federal-Provincial Relations**

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Federal-provincial relations have become strained in recent years due to decisions taken by the federal government. Even when the policy basis for decisions is sound, problems arise if they are made unilaterally or with insufficient consultation or consideration of provincial positions. This is especially troubling in a federal system where immigration is a shared jurisdiction between the federal and provincial governments, with the federal government having paramount responsibility. This section of the paper briefly discusses some federal decisions that have caused concerns among provinces and territories.

### **Provincial Nominee Programs**

With the rise of Quebec nationalism, Quebec became the first province interested in assuming more responsibility and authority in immigration. By 1991, Quebec had negotiated its fourth federal/provincial agreement on immigration with the power to select all economic immigrants and assume responsibility for all settlement and integration services with a generous grant from the federal government.

Over time, other provinces became interested in assuming more responsibility for immigration selection, for both economic and demographic reasons and to encourage more immigrants to settle in their provinces. In 1996, the federal government created the Provincial Nominee Program in which provinces could nominate a limited number of economic immigrants to respond to regional needs. The first national target was for 1,000 individuals. Manitoba was the first to negotiate an agreement in 1996. Since then, all other provinces and two territories have followed suit. Ontario was the last province to come on board in 2005 and the Northwest Territories obtained its agreement in 2009.

Early on in the development of Provincial Nominee Programs, provinces successfully argued for the freedom to develop their own criteria for their programs and to avoid caps on the numbers they could nominate. Between 1996 and 2010, the volume grew significantly as did the number of sub-streams in each provincial program.

However, in 2010, the Minister of Citizenship, Immigration and Multiculturalism announced that Provincial Nominee Programs would be capped at their then current levels to allow for more federal skilled workers to be processed. Provinces viewed this change as detrimental to economic growth and a reversal of previous commitments.

After an evaluation of Provincial Nominee Programs conducted in 2011 by the federal government, the federal government announced that it would impose language criteria on lower skilled provincial nominees. While national language standards are a positive step, provinces were not pleased to have conditions imposed on their programs. The federal government has also indicated that it expects provinces to focus their programs on economic objectives and not duplicate federal programs which aim to provide family reunification or help international students transition to permanent residence.

## **Settlement programs**

By 2005, all provinces had federal-provincial immigration agreements, with Quebec's being the most extensive. British Columbia and Manitoba had federal funds transferred to them for the delivery of settlement activities. Alberta has a co-management agreement with the federal government for settlement services. The agreements of the remaining provinces provided for the federal government to manage the delivery of federal settlement programs in those jurisdictions. Within that model, Ontario had the most comprehensive agreement that included a role for municipalities.

In the past few years, other western provinces and Ontario became interested in assuming responsibility for the management of federal settlement programming. Ontario was unsuccessful in negotiating this as part of the renewal of its agreement which expired in 2011 after a one-year extension and more than \$200 million underspending by the federal government. As a result, Ontario, the province which receives the most immigrants, is now left without an immigration agreement.

In April 2012, the federal government informed Manitoba and British Columbia that it will be reassuming responsibility for the management of federally funded settlement programs by April 1, 2013 and April 1, 2014 respectively. This was a unilateral decision announced without prior consultation.

While funding for settlement services increased substantially between 2006 and 2011 (by approximately \$400 million), there was a decrease of almost \$6 million overall between 2011-12 and 2012-13. Although this was an overall decrease in federal funding for settlement activities, all provinces experienced an increase except for Ontario which received a cut of \$32 million. The process of de-funding and decreasing funding to

service provider organizations in Ontario was problematic as it was done without consultation with the affected parties.

The devolved responsibility to Quebec, Manitoba and British Columbia has resulted in inconsistency in programs available and accessible to immigrants in Canada depending on the province in which they settle because of the varying amount of provincial funding available for programs and the type of programming provinces favour. This adds to disparity across the country, although some provincial programming has been innovative in responding to local needs. Another issue is that there are no federally funded settlement services for refugee claimants, temporary foreign workers, international students or citizens, despite the need. Some provinces have stepped in to fill this gap, but this adds to inconsistency across the country.

In 2012, the federal government, as a cost saving measure, reduced the number of regional and local Citizenship and Immigration offices across the country and reconsolidated the bulk of regional operations to national headquarters in Ottawa. There is growing concern that the delivery of the settlement program will be negatively affected by the closing of local CIC offices and that programs will be less responsive to regional and local needs.

On the other hand, there have been some positive federal initiatives over the past several years to facilitate successful settlement and integration by immigrants to Canada. Online information about how to enter the Canadian labour market in a variety of occupations and provinces is readily available for immigrants before they arrive in Canada. Pre-arrival orientation sessions and individualized information and referral services for federal skilled workers, provincial nominees and their families is provided overseas through the Canadian Immigrant Integration Program in many countries. This service, launched as a pilot in 2007, is now being evaluated. The federal government also introduced a small internship program for skilled immigrants in 2010 which has placed 130 immigrants in 20 different departments and has recently expanded to two private sector partners.

In 2009, federal-provincial-territorial ministers approved the Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications. Three federal departments (CIC, HRSDC and Health Canada) are working with provinces and

territories to implement the framework. Incremental but slow progress is being made by priority occupational regulatory bodies to facilitate the assessment and recognition of internationally trained professionals. CIC has also initiated a web-based information sharing tool for stakeholders involved in foreign qualification recognition (The International Qualifications Network, available at: [www.credentials.gc.ca/iqn](http://www.credentials.gc.ca/iqn)).

## **Immigration programs**

Provinces and territories also have concerns about federal decisions related to specific immigration programs, especially those that were made with little consultation or that were made contrary to provincial positions.

One example pertains to the application of Ministerial Instructions to the economic class of immigration. An evaluation of the first set of Ministerial Instructions revealed that provincial representatives interviewed during the planning phase had been opposed to the concept of a national occupation list for the Federal Skilled Worker Program and reacted negatively to the list that was established, claiming it did not respond to their needs. Nonetheless, Citizenship and Immigration Canada went ahead with the Ministerial Instructions to introduce the occupation list.

Another example pertains to policy changes affecting refugees and refugee claimants which will result in additional costs to provinces. The changes include increases in:

- provincial health costs as a result of reduced access by refugee claimants and some refugees to interim health coverage;
- detention costs for “irregular arrivals” who are detained in provincial facilities;
- child protection and foster home costs for children who need placements while their parents are in mandatory detention; and
- social assistance costs due to the delay in eligibility for refugee claimant work permits and the complex needs of government-assisted refugees after their Resettlement Assistance Program coverage ends.

These and other changes to the different classes of immigration are examined more fully in Chapter 3.

## **Forums for discussion**

The substance of the changes made by the federal government to ensure greater pan-Canadian consistency in selection and settlement is not necessarily troubling. The main problem is that these developments were done in the absence of meaningful consultation with provinces and territories to ensure responsiveness to regional needs.

The move to bilateral discussions and agreements in the past led to a more fragmented approach to immigration policy and programming. More meaningful and extensive use of multilateral Federal-Provincial-Territorial tables would provide an important forum for discussing the implications of proposed changes. It would also allow the ministers responsible for immigration in each province to work together to develop national frameworks within which regional differences could be accommodated.

Immigration is a joint responsibility under the Constitution. This demands real discussion and consultation on significant policy changes, not the imposition of unilateral federal decisions.

## **Third Party Roles**

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The federal government has begun to devolve some of its role in selecting Canada's future citizens to employers and postsecondary institutions. These bodies recruit temporary foreign workers and international students, some of whom will go on to become permanent residents. While the involvement of these two sectors is welcome, they do not have the national interest as their primary mandate or objective in selecting people who will ultimately become Canadian citizens.

### **Employers**

There are clear advantages to involving employers up front especially if it results in a good job that matches the immigrant's skills and expertise. An evaluation of the Federal Skilled Worker Program shows that those who arrived with validated offers of employment were the most successful immigrants within that program. Similarly, an evaluation of Provincial Nominee Programs shows that provincial nominees achieve



positive and immediate economic advantages because most already have employment or employment offers.

There is danger, however, in devolving too much responsibility for selection to employers. This is because employers seek people who can contribute immediately at the least cost. Their ability to select temporary foreign workers, for example, removes the incentive to invest in training or capital improvements, to recruit people underrepresented in the labour force, or to work with educational institutions to produce future employees. And it can change the labour market by depressing wages and working conditions. None of this is in the national interest.

Temporary foreign workers are ineligible for federally funded settlement services. Employers are not obligated to provide any such services to their workers although some have chosen to do so. This has resulted in service inconsistency which has increased workers' vulnerability, particularly those working in low-skilled occupations.

### **Post-secondary institutions**

Educational institutions select international students on the basis of their immediate ability to learn a particular subject matter. As with employers, it is not their mandate to select individuals on the basis of long-term potential to contribute to Canada as citizens. Post-secondary institutions also lack the capacity to offer supports and services to help ensure successful long-term integration to international students wanting to transition to permanent residence. Although international students pay higher tuition fees, these funds rarely, if ever, are targeted to pay for the special services and supports they need.

Government policy changes to encourage international students to become permanent residents have had some success. If such efforts are to continue, they should be accompanied by a clarification of the roles and expectations of educational institutions, including a commitment to monitor the program. Proposed new regulations may require educational institutions to ensure that persons admitted to Canada as international students are actually attending school. The sector may resist this new role.

## Immigration Consultants

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Given all the tightening of requirements for both admission and citizenship, many prospective immigrants and refugees as well as prospective citizens seek help from immigration consultants both offshore and in Canada. In the case of economic immigration, there are so many potential doors for entry (including the various Provincial Nominee Programs) that assistance is needed to sort through its complexities. People also seek assistance about entering Canada through the family class or as a refugee.

Experience shows that some consultants provide accurate information and sound advice. Others are unscrupulous and may provide false information and faulty advice or may intentionally help people to get around or break the rules for admission and citizenship. To address these problems, the federal government has introduced a series of initiatives to better regulate the immigration consulting business and tackle immigration fraud. Legislation came into force in June 2011 to “crack down on crooked immigration consultants.” The legislation makes it an offence and imposes penalties for anyone other than an accredited immigration representative to provide advice for a fee or other consideration at any stage of an immigration application or proceeding.

The newly created Immigration Consultants of Canada Regulatory Council and regulations introduced in 2012 allow Citizenship and Immigration Canada, the Canada Border Services Agency, and the Immigration and Refugee Board to disclose information about the conduct of immigration representatives to those responsible for governing or investigating that conduct.

The intent of these measures is good but they are unlikely to be effective for consultants working overseas beyond the reach of Canadian law. Special measures may be needed to address issues affecting temporary foreign workers who obtain assistance from consultants working as off-shore recruiters who engage in potentially exploitative practices.

## 3. CHANGES TO POLICIES AND PROGRAMS

### Permanent Entry

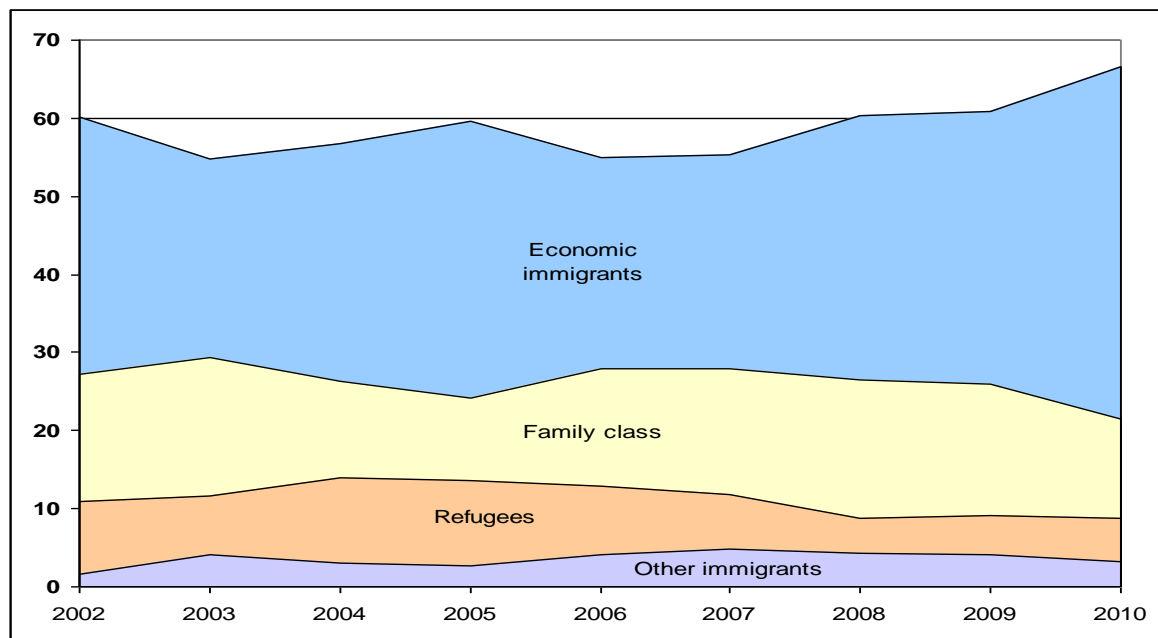
This section examines recent changes the federal government has made to the economic, family and humanitarian classes of immigration and to the rules for obtaining citizenship.

The three classes have existed for many years as the fundamental routes for permanent entry to Canada. However, the subclasses within them and their relative proportions have changed over time. In 2010, the Economic Class represented 66.6% of the total immigrant flow to Canada.

See [Appendix A](#) for a list of changes to immigration programs.

See [Appendix B](#) for related recommendations.

**Figure 2: Canada – Percent of permanent residents by category, 2002 to 2010**



Source: Facts and Figures, CIC

### ECONOMIC CLASS

All sub-categories of the economic class have undergone – or are undergoing – rapid change. The changes were put into place to address backlogs that had developed, and

to meet the government’s interest in selecting the “best and the brightest” who can contribute to the economy, especially in the short term. The result is that it is becoming more difficult to enter Canada as an economic immigrant.

## Federal Skilled Worker Program

*Occupation lists, caps, moratorium, returned applications*

Recent changes to the Federal Skilled Worker Program include the use of occupation lists as a screen, the imposition of caps, and a moratorium on new applications. A

decision was also made to return all unprocessed applications that were submitted prior to 2008. These changes were introduced to manage the intake of new applications while the backlog was addressed and until new selection criteria and processes could be put into place.

The occupation lists restricted most new applicants to those with experience in 39 and then 28 occupations identified as “in demand.” Caps restricted the number of applications to be accepted in total and per occupation annually. The moratorium announced in June 2012 closed the program temporarily to all new applicants except those with valid employment offers and those in the new PhD stream.

Caps, moratoria and returning applications may deter potential applicants and make it more difficult for Canada to compete with other countries seeking skilled immigrants. Occupation lists are also problematic, especially in the absence of reliable data to identify and forecast occupations in demand. Occupation lists do not respond well to different regional needs and raise expectations about the ability to enter the labour market in the listed occupations.

Trying to address the backlog is laudable. However, restricting intake through occupation lists, caps and moratoria may not be the best way to go in light of the

<b>Changes: Federal Skilled Worker Program</b> 2008 to July 1, 2012
<b>Implemented</b>
<ul style="list-style-type: none"> <li>• Occupation lists</li> <li>• Annual caps on applications that will be processed</li> <li>• Return of backlogged applications and fees</li> <li>• Moratorium on most new applications</li> <li>• 3<sup>rd</sup> party assessments of language ability</li> </ul>
<b>Additional federal proposals</b>
<ul style="list-style-type: none"> <li>• Higher minimum standard for language</li> <li>• Third party assessment of education credentials</li> <li>• More points for younger applicants</li> <li>• Separate program for skilled trades</li> </ul>

unintended consequences described above. A preferable approach may be to increase the overall levels for immigration, especially for federal skilled workers because the evidence has shown them to be the most successful group over the long term.

*Selection criteria: language, education, age*

The government's proposed changes to the federal skilled worker selection criteria include higher language standards, a preference for younger applicants, and a new requirement for third party assessment of education credentials.

The stricter requirements for language ability and age are well supported by evaluation results and evidence about the importance of these factors for successful integration. However, these requirements could have unintended consequences. For example, source countries will change so that applicants from English or French speaking countries will predominate. This will have an impact on traditional source countries such as China. China is a country Canada needs as a trade partner and its second generation immigrants have succeeded well. There may also need to be a more nuanced approach to the allocation of points based on age so that people at the height of their careers are not prevented from immigrating to Canada.

Third party assessors of educational credentials will bring objectivity, expertise and efficiency to the assignment of points. However, regulatory bodies should be actively involved in the process so that assessments are recognized for licensure purposes as well as for the assignment of immigration points.

*New program for tradespersons*

The government has announced its intention to introduce a new program for tradespersons. This change is welcome and long overdue as individuals from the skilled trades often have difficulty meeting federal skilled worker selection criteria even though their skills are in high demand. The proposed regulations for this new program would require qualifying offers of employment for a minimum of one year or a Certificate of Qualification from a Provincial or Territorial Apprenticeship Authority. Additional requirements include evidence of language proficiency, two years of post certification work experience in the trade, and qualifications that satisfy Canadian employment criteria. Discussions with provinces, trades regulators and employers will be necessary

to ensure that individuals requiring Certificates of Qualification can obtain them before or as soon as possible after arrival.

## Provincial Nominee Programs

Provincial Nominee Programs enable provinces and territories to respond to specific economic or demographic needs in their regions by nominating individuals who might not meet the criteria of other federal immigration programs. These programs have been successful in distributing immigrants beyond Toronto, Vancouver and Montreal and in generating positive short-term economic outcomes, primarily in the western provinces.

Provincial Nominee Programs have grown significantly, at the expense of the Federal Skilled Worker Program. However many nominees lack the human capital to succeed in changing labour market environments. An evaluation conducted by CIC indicated that, over time, federal skilled workers have better economic outcomes. This suggests that Canada is achieving short-term economic gain through provincial nominees as opposed to long-term gain through federal skilled workers.

**Table 4: Federal Skilled Workers & Provincial Nominees as % of Economic Immigrants**

	2001		2010	
	#	% of economic immigrants	#	% of economic immigrants
Federal Skilled Workers	137,231	88.1	119,357	63.9
Provincial Nominees	1,274	.8	36,428	19.5
Total Economic Immigrants	155,717		186,913	

Source: Facts and Figures, CIC

### *Caps, language requirements, and economic focus*

After a period of rapid expansion in Provincial Nominee Programs, the federal government has imposed a cap on provincial nominees and new language requirements for those in low- and semi-skilled occupations. The government has also proposed that Provincial Nominee Programs focus on economic objectives to the exclusion

### **Changes: Provincial Nominee Programs**

2008 to July 1, 2012

#### **Implemented**

- Imposition of caps
- Language requirement for those in low- and semi-skilled occupations

#### **Additional federal proposals**

- Focus on economic objectives

of family reunification or other initiatives which may duplicate federal programs.

The new language requirement is a good first step towards national standards for Provincial Nominee Programs. National standards are necessary in light of the mobility rights of all permanent residents regardless of how or where they were initially selected.

The unilateral imposition of caps is a disappointment to the provinces. The federal proposal to gear Provincial Nominee Programs to economic objectives will further limit the provinces' ability to select people who have family connections which make them more likely to remain in the province. The re-design of the Provincial Nominee Programs will require extensive consultation with the provinces about national standards, admission levels, and the intersection of these programs with other immigration streams.

## **Immigrant investors and entrepreneurs**

### *Higher and more active investment for investors*

The Immigrant Investor Program represents a small part of immigration to Canada (only about 4% of total flow in 2010) but if managed well can be a good source of funds for economic development.

Recently the government has tightened the federal program by limiting it to higher net worth and investments. This is a positive change.

Currently, Quebec has its own investor program as do seven other provinces as part of their Provincial Nominee Programs. Three Atlantic programs have experienced difficulties due to investigations for fraud and other irregularities. Consultations with the provinces should determine whether there is an ongoing need for separate federal and provincial investor programs and how to monitor programs to avoid fraud or impropriety.

Since 2008, the federal government has required active involvement in the management of a company of investors who immigrate to Canada under a Provincial Nominee Program, although there is no such requirement for the

<b>Changes: Immigrant Investors Program</b> 2008 to July 1, 2012
<b>Implemented</b> <ul style="list-style-type: none"><li>• Annual caps and temporary closures (2010, 2011 and 2012)</li><li>• Doubled amounts required for net worth (\$1.6 million) and investment (\$800 thousand)</li><li>• Active investment requirements in PNP investor programs</li></ul>
<b>Additional federal proposals</b> <ul style="list-style-type: none"><li>• Switch to "high value global investors"</li><li>• More active investment in Canadian growth companies</li><li>• No guaranteed returns</li></ul>

federal Immigrant Investor Program. Quebec is the only province authorized to administer a passive Immigrant Investor Program as per the terms of the Canada-Quebec Accord. Requiring active investor involvement in managing the economic activity funded by their investment can help to avoid the perception that people are simply buying their way into Canada.

#### *Moratorium and pilot for start-up visas for entrepreneurs*

The Entrepreneur Program is difficult to administer and monitor and appears to require considerable effort for relatively low stakes. The number of principal applicant entrepreneurs has been in decline from 1,608 in 2001 to a low of 291 in 2010. It makes sense for the government to have imposed a moratorium while the program is redefined.

The government's proposal for a five-year pilot for "start-up visas" for entrepreneurs with innovative new business ideas warrants consideration. Good candidates could be deterred from applying, however, if permanent residence is made conditional on being successful in the start-up, given the risks associated with any entrepreneurial venture.

<b>Changes: Entrepreneur Program</b> 2008 to July 1, 2012
<b>Implemented</b>
<ul style="list-style-type: none"><li>• Moratorium pending redesign</li></ul>
<b>Additional federal proposals</b>
<ul style="list-style-type: none"><li>• Pilot on "start-up visa" for innovative entrepreneurs, using Ministerial Instructions</li></ul>

### **Expression of Interest model**

The federal government has indicated its intention to create an Expression of Interest model that may ultimately affect all economic programs outside Quebec, likely beginning with the Federal Skilled Worker Program. This would be a two-stage application process, modeled after the system used in New Zealand and modified by Australia. Potential economic immigrants would submit a preliminary expression of interest that would be screened according to national selection criteria. Then governments (federal, provincial, territorial and perhaps municipal) and employers could identify people from the pre-screened pool who would be invited to submit formal applications for immigration. People not identified within a given time period would have their expressions of interest returned without processing. This would prevent the development of an application backlog.



The Expression of Interest model looks promising because it would likely use national human capital criteria as a preliminary screening tool and it would provide a “single door” approach for included categories of economic immigrants. However, the devil is in the details and there are few details that have been made publicly available. For example, would employers be pre-screened before they had access to the pool? Is this program intended to replace Provincial Nominee Programs? How would municipalities be involved? Would regulatory bodies have a role in screening for regulated occupations? Would investors and entrepreneurs be part of the pool?

It will be important to consult widely to determine the scope, viability, inherent risks, and implementation challenges of an Expression of Interest model. It may be useful to pilot the concept in a particular sector or province. Canada needs to learn from the experience in New Zealand and Australia and recognize that it cannot simply “transplant” their processes here.

## FAMILY CLASS

### Spouses

Spouses represented 14.5% of the total immigration to Canada in 2010, a steady decline from a high of 19% in 2007. A policy change made in 2010 requires individuals who came to Canada as a sponsored spouse to wait five years before sponsoring a new spouse. On the surface, this seems to be a reasonable requirement. However, there is no data that demonstrates the need for this provision. Without evidence of serial fraudulent marriages taking place, the new waiting period is hard to justify. It could cause hardship in situations of a legitimate marriage breakdown or in the case of the death of the sponsoring spouse.

<b>Changes: Sponsorship of Spouses</b> 2008 to July 1, 2012
<b>Implemented</b>
<ul style="list-style-type: none"> <li>• Five-year period before a sponsored spouse can sponsor a future spouse</li> </ul>
<b>Additional federal proposals</b>
<ul style="list-style-type: none"> <li>• Permanent residence conditional on two years of cohabitation</li> </ul>

The federal government is also proposing to require sponsored spouses married less than two years and without children to live with their sponsor for a two-year period before they can be considered permanent residents. In the absence of data showing that marriage fraud is a widespread problem, applying a two-year cohabitation requirement is

excessive. This could result in serious harm, especially for individuals in an abusive relationship who risk deportation if they leave the marriage. Even though Citizenship and Immigration Canada has indicated that the conditional status would cease where there is evidence of abuse or neglect, it is far from clear how such evidence will be obtained and who will determine its sufficiency. In addition, there are bona fide circumstances in which spouses live apart for periods of time due to studies, work, or family emergencies, and situations where relationships naturally end within the first two years. Enforcement targeted to actual or suspected marriage fraud would be better than putting an entire group at risk.

### **Parent and Grandparent Sponsorship Program**

In November 2011, the federal government announced a multi-pronged strategy to deal with the backlog of 165,000 applications, lengthy processing times of up to four and a half years, and other concerns about the Parent and Grandparent Sponsorship Program. The strategy included an increase in the number of parents and grandparents to be admitted as permanent residents in 2012 and placing a moratorium on new applications for two years while the program is redesigned.

<b>Changes: Parent and Grandparent Sponsorship</b> 2008 to July 1, 2012
<b>Implemented</b> <ul style="list-style-type: none"><li>• Increased admissions for 2012</li><li>• Moratorium pending redesign</li><li>• Consultation on redesign to tighten program</li><li>• Introduction of the Parent and Grandparent Super Visa</li></ul>



At the same time, the government introduced the Parent and Grandparent Super Visa which allows parents and grandparents to visit Canada for two years at a time over a ten-year period. A consultation is also underway to define the parameters of a new sponsorship program for parents and grandparents.

**Table 5: Volume of Parent/Grandparent Admissions as Permanent Residents**

	2001	2010	2012 (projected)
Principal applicant parents and grandparents	11,076	8,253	
Spouse and dependents	10,265	7,071	
Total	<b>21,341</b>	<b>15,324</b>	<b>25,000</b>

Facts and Figures, CIC

The increase in admissions for 2012 is welcome but the moratorium on new applications will cause hardship. The super visa may alleviate this hardship in some cases, but only for families that can afford to pay for the often prohibitive cost of private health insurance. The lack of permanent status and access to services or employment may cause dependency on sponsors and limit integration. More importantly, super visas do not achieve the goal of permanent family reunification.

The consultation questions for redesigning the sponsorship rules are indicative of a trend towards tightening access to permanent entry based on economic considerations. In the case of parents and grandparents, the government's objective appears to be excluding those who are perceived as a potential drain on the economy. This approach seems to ignore the social and economic contributions of this group. Further, by making it more difficult to sponsor one's parents and grandparents, Canada may become less competitive in attracting the best and brightest economic immigrants who may factor the ability to be reunited with their families into their immigration decisions.

<b>Consultation Questions for Redesign of the Parent and Grandparent Sponsorship Program</b>
• Should sponsors be required to have higher incomes?
• Should sponsors pay a substantial sponsorship fee (\$40K)?
• Should sponsorship undertakings be for the lifetime of the parent or grandparent rather than for 10 years?
• Should only citizens be allowed to sponsor a parent or grandparent?
• Should sponsorship be only for parents and grandparents and not for the accompanying siblings of the sponsor?
• Should parents and grandparents be eligible only if at least half or a majority of their children reside permanently in Canada?
• Should sponsorship of parents and grandparents be allowed only in special circumstances?
• Should there be a cap on the number of applications accepted and processed per year so that no backlog develops?

At a minimum, parents and grandparents who initially enter as visitors should be able to transition to permanent residence from within Canada if they and their sponsors meet eligibility criteria.

## REFUGEE CLASS

Refugees are admitted as permanent residents in one of two ways. Some are selected abroad through the Government-Assisted Refugee Program or the Private Sponsorship of Refugees Program. Others arrive at Canada's borders as refugee claimants seeking asylum and are determined to be refugees after having gone through a status determination process by the Immigration and Refugee Board within Canada. In recent years, the federal government has made many changes affecting refugee claimants and several changes affecting refugees selected abroad.

Refugees admitted to Canada form a smaller proportion of the total immigrant flow than they have in the past. Within the refugee class, the numbers of government-assisted refugees have remained fairly constant, privately sponsored refugees have increased and the number of successful refugee claimants admitted has decreased dramatically.

**Table 6: Volume of Refugees Admitted as Permanent Residents**

	2005	2010	2011 (prelim)	2012 (targeted)
Government-assisted refugees	7,424	7,264	7,365	7,500
Privately sponsored refugees	2,976	4,833	5,564	5,500
Successful refugee claimants	19,935	9,041	10,741	8,500
Refugee dependents	5,441	3,558	4,182	4,500
<b>Total #</b>	<b>35,776</b>	<b>24,696</b>	<b>27,852</b>	<b>26,000</b>
% of total immigrant flow	<b>13.6%</b>	<b>8.8%</b>	<b>11.2%</b>	<b>9.8%</b>

Source: Facts and Figures, CIC

### Refugee claimants

The *Protecting Canada's Immigration System Act* (Bill C-31) and the *Balanced Refugee Reform Act* have radically altered the landscape for refugee claimants. This legislation, most of which came into force mid-way through 2012, is based on legitimate objectives such as expediting refugee claims and deterring criminal activities associated with

human smuggling. However, the methods for achieving these objectives are highly problematic.

The new legislation introduces two new categories of refugee claimants, both of which will receive harsher treatment than other refugee claimants. Essentially the way refugee claimants will be treated now depends on their country of origin and whether they arrived alone or in a group with the aid of someone who received payment to help them get here. The category in which a claimant falls will affect detention processes, timelines for submitting claims and preparing for hearings, access to appeals and other post-hearing recourse, speed of deportation, health coverage, and access to work permits, travel documents and permanent residence (see tables 9 and 11).

The changes victimize vulnerable people and create a negative image about refugee claimants in general, many of whom are ultimately found by the Immigration and Refugee Board to be bona fide refugees in need of Canada's protection. The harsh treatment contained in the new legislation is exacerbated by government messaging that implies that those seeking asylum in Canada are less worthy than those selected abroad and labels them as "queue jumpers" or "bogus refugees."

#### *Designated countries of origin*

The first new category consists of claimants arriving from countries of origin designated by a minister as unlikely to produce refugees. The risk of persecution and human rights violations should be the primary consideration.

The process by which designation decisions are made is critically important in light of the harsher treatment that will be imposed on claimants arriving from the designated countries. The designation decision should be made by a committee of experts, rather than by a minister who may be influenced by political pressure made by countries that have trade and other relationships with Canada to be put on this list.

The lack of consideration of circumstances within designated countries may cause harm to individuals from persecuted minority groups. For example, Hungary could be a safe country except for Roma or Jews. Sri Lanka may not be safe for Tamils in a particular part of the country. Gays may be at risk of persecution within many otherwise safe countries. Yet all claimants coming from designated countries will face the same harsh treatment in the new Canadian refugee system.

*Designated foreign nationals (“irregular arrivals”)*

The second new category consists of “irregular arrivals.” These are claimants who arrive in groups of two or more in a way that prevents the timely examination of their identity and admissibility, or allows a minister to reasonably suspect the involvement of human smuggling for profit or with the support of a criminal organization or terrorist group. The example often given by government is a group of refugee claimants who arrive by boat. Once determined to be “irregular arrivals,” the claimants become designated foreign nationals.

All designated foreign nationals who come as “irregular arrivals” will be detained if they are over the age of 16, with later and less frequent detention reviews than other refugee claimants. Mandatory detention is difficult to justify in the absence of evidence that the claimants pose a security or flight risk, and it has not worked as a deterrent to mass arrivals in Australia. Briefs submitted by the Canadian Bar Association, the Canadian Association of Refugee Lawyers, and the Canadian Council for Refugees indicate that mandatory detention runs counter to the *Canadian Charter of Rights and Freedoms* and appears to contravene Canada’s obligations under the United Nations Convention on the Rights of the Child. It also contravenes Article 31 of the United Nations Convention Relating to the Status of Refugees which prohibits imposing penalties on refugees on account of their unlawful entry.

<b>Changes: Refugee Claimants</b> 2008 to July 1, 2012
<ul style="list-style-type: none"><li>• Short timelines to submit claims, prepare for a hearing, and perfect an appeal</li><li>• Less access to due process and work permits for claimants from designated safe countries</li><li>• Mandatory detention and less access to due process for claimants determined to be “irregular arrivals”</li><li>• Five-year waiting period for “irregular arrivals” to apply for permanent residence, travel documents, or family sponsorship after having been determined to be bona fide refugees</li><li>• Limits on access to the Interim Federal Health Program</li><li>• Risk of losing refugee and permanent status if found to have re-availed oneself of home country’s protection</li><li>• Assisted Voluntary Return and Reintegration pilot program for eligible failed refugee claimants</li></ul>

If refugee claimants are housed in medium security prisons alongside convicted criminals due to the lack of immigration-specific facilities, this will cause additional trauma for individuals fleeing violence, torture or other serious harm.

The legislation imposes a minimum five-year delay before designated foreign nationals who have been determined to be refugees by the Immigration and Refugee Board may apply to obtain permanent residence. This is punitive and discriminatory. Without permanent residence they are not able to reunite with their family who may still be abroad. In practical terms this means that refugees will be separated from their family for six to eight years from the date their claim is accepted.

Canada is not faced with large numbers of migrants arriving in groups and seeking refugee status. In close to a hundred years between 1914 and 2011, a total of seven ships carrying 2,780 “irregular arrivals” came to Canada’s shores on the east and west coasts.<sup>1</sup> Even if the numbers were larger, the response should be appropriate to the situation and focus on punishing the smugglers and not the victims.

### *Timelines*

The legislation imposes timelines for all refugee claimants to submit their claims (15 days) and prepare for hearings (30 to 60 days). The prescribed timelines are so short, especially for those from designated countries, that it is difficult to see how refugee claimants and their representatives will be able to prepare their claims so that due process can occur. The timelines will likely result in faulty decisions with dire consequences for individual claimants. Not only could the determination system break down when the timelines cannot be met by claimants, but the Immigration and Refugee Board may face its own challenges in meeting them if past resource, appointment and training issues are not addressed.

### *Appeals, post-hearing recourse, and deportation*

The new legislation enables refugee claimants to appeal a negative decision from the IRB. This is a welcome addition but the timeline for filing and perfecting appeals is far too short at 15 days after the first decision is received. Equally important, access to appeal is not available to the two new categories of claimants (“irregular arrivals” and those from designated countries of origin), denying them a fundamental due process safeguard. Nor are the two new groups eligible for an automatic stay of removal if they

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<sup>1</sup> Audrey Macklin, “Irregular Arrivals 1914-2011” October 2011. Presentation available at: [www.refugeereseach.net/sites/default/files/BillC4\\_presentation.ppt](http://www.refugeereseach.net/sites/default/files/BillC4_presentation.ppt)

pursue a judicial review from the Federal Court. Although all failed refugee claimants are theoretically entitled to have a pre-removal risk assessment and humanitarian and compassionate review of their circumstances, faster deportation policies and increased mandatory waiting periods (one to three years after negative decision) to access these rights mean that many will be deported before they have a chance to exercise them. This could put people's lives at serious risk.

**Table 7: Legislated Changes for Refugee Claimants**

<b>DETENTION</b>			
	<b>Claimants from designated countries</b>	<b>Designated foreign nationals ("irregular arrivals")</b>	<b>Most other claimants</b>
<b>Mandatory vs. discretionary</b>	Discretionary if flight or security risk, or if identity unconfirmed	Mandatory if 16 years or older	Same as claimants from designated countries
<b>Detention reviews</b>	After 48 hours, then one week, then every 30 days	After 14 days, then every six months	
<b>TIMELINES</b>			
<b>Time to submit basis of claim for hearing</b>	15 days (port of entry) At eligibility interview (inland)		
<b>Time for first hearing</b>	Within 30 days	Within 60 days	
<b>POST HEARING RECOURSE</b>			
<b>Access to appeal</b>	No		Yes with exceptions, but not if referred to IRB before statute is in force
<b>Humanitarian and compassionate consideration</b>	Must wait one year after negative decision		
<b>Pre-removal risk assessment</b>	Must generally wait three years after negative decision	Must generally wait one year after negative decision	
<b>Automatic stay of removal upon application for judicial review</b>	No		Yes, with exceptions
<b>WORK PERMITS</b>			
<b>Access to permit</b>	Must wait six months or until positive decision	After release from detention or after positive decision	After deemed eligible to submit claim for refugee status
<b>PERMANENT RESIDENCE, FAMILY SPONSORSHIP, TRAVEL DOCUMENTS</b>			
<b>Eligible to apply</b>	Upon positive decision	After positive decision, must wait five years	Upon positive decision
<b>LOSS OF REFUGEE AND PERMANENT RESIDENCE STATUS</b>			
<b>Loss of Status</b>	Permanent residence status can be revoked if refugees re-avail themselves of the protection of their home country.		



### *Voluntary return*

An Assisted Voluntary Return and Reintegration pilot program was launched in June, 2012 in the Greater Toronto Area. It assists eligible, failed refugee claimants who wish to voluntarily return to their home country by providing an alternative to forced removal. Upon the participant's return to their country of origin, a local service partner in the home country will administer assistance up to a maximum of CAN\$2,000 per person to implement a reintegration plan. The funding can be used by the individual to go back to school, start a business or obtain help to find work.

This is a positive initiative for failed refugee claimants who can safely return to their home countries and provides them with some funds to re-establish themselves. Care must be taken to ensure that claimants do not feel compelled to pursue this option as opposed to exercising whatever post-hearing appeal rights they may have.

### *Risk of losing permanent resident status*

Even after becoming a permanent resident, successful refugees are now at risk of losing their permanent residence status in addition to their refugee status if the Immigration and Refugee Board determines that they have “re-availed themselves of the protection of their home country.” There is no appeal of this decision. This may prevent bona fide refugees from returning to their home country even to visit ailing family members for fear that this may trigger a loss of refugee and permanent residence status. The threat of losing one’s permanent residence status appears to be unnecessarily harsh.

### *Reducing the volume of refugee claims*

The federal government has increased its focus on measures to reduce the volume of refugee claims. This includes the imposition of visitor visas for Mexico and the Czech Republic. It also includes cooperation with other countries, such as the Thai government, to prevent boats from setting sail to Canada and increasing the number of border control officers in international airports to check travel documents.

Canada is also increasing its efforts to obtain international cooperation in prosecuting immigration consultants in foreign countries where they knowingly provide false information about immigrating to Canada or making a refugee claim or who advise people on how to enter illegally or under false pretences.

Canada and the U.S. entered into a “Safe Third Country Agreement” which came into effect in December 2004. This requires asylum seekers, with some exceptions, to apply for refugee status in the country they first entered, whether it was Canada or the U.S. In July 2009, Canada’s federal government removed the exemption clause that allowed people from countries under a Canadian temporary suspension of removals to make a refugee claim in Canada at a Canada-U.S. land border. This change affects nationals from Afghanistan, the Democratic Republic of Congo, Haiti, Iraq and Zimbabwe.

The imposition of visitor visas for two new countries, the removal of the exemption under the Safe Third Country Agreement, and strong interdiction efforts abroad have contributed to a reduction in the volume of refugee claims in Canada. Further, there is concern that the new measures also prevent bona fide refugees from seeking refugee status.

**Table 8: Volume of Refugee Claims**

	2009	2010	2011
Volume of claims	33,118	23,110	
% of successful claims	42%	40-45%	38%

Facts and Figures, CIC

## Refugees selected abroad

### *Volume, funding and support*

As part of the new refugee legislative package, the government announced a 2,500 increase in the number of refugees selected from abroad. This can be viewed as a positive demonstration of Canada’s commitment to humanitarian objectives if the increase actually happens and if supports to these refugees increase as well.

Government-assisted refugees are those generally referred to Canada by the United Nations High Commission for Refugees (UNHCR) because they are most in need of protection. They tend to have been in protracted refugee situations, often in refugee camps, and may arrive with complex health and social difficulties. In recent years, they

have less language capacity in English or French, are older, have less formal education, and more serious medical problems than previous cohorts.<sup>2</sup> After arrival in Canada they are eligible for support at reception centres for several weeks and for income support at local social assistance levels for up to a year from CIC's "Resettlement Assistance Program" (RAP). In rare cases, this income support can continue for up to two years in total.

The funding and services provided to government-assisted refugees are not commensurate with their needs, as confirmed in CIC's own evaluation. Despite this evidence, no substantive changes have been made other than a \$9 million infusion of new funds for the Resettlement Assistance Program.

Government-assisted refugees are expected to pay for their transportation to Canada, and the government offers a loan for this purpose. The loan could be as high as \$10,000 for a family. Even though the income support they receive is less than one half of the income required to meet Canada's low income cut-off, they are expected to pay back this loan while receiving government support.

Most government-assisted refugees are not self-sufficient when their eligibility for income support under the Resettlement Assistance Program ends. This increases the costs for health and social services for provinces like Ontario which receive a disproportionate share of government-assisted refugees.

#### *Limits on private sponsorship*

Private sponsors assume responsibility for the financial and emotional support of refugees, usually for one year. There have been two recent changes affecting privately sponsored refugees. The first change was to place a limit on the number of new sponsorship applications submitted for refugees overseas who had been identified by name by national umbrella organizations. This cap was imposed in part due to the backlog of sponsorship applications for 23,200 named people which had accumulated.

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<sup>2</sup> CIC. "Evaluation of Government Assisted Refugees (GAR) and Resettlement Assistance Program (RAP)" Available at: <http://www.cic.gc.ca/english/resources/evaluation/gar-rap/section1.asp>

There is no cap on sponsorship applications submitted for people referred by Canadian visa officers abroad.

The second change requires Groups of Five or community organizations to sponsor only refugees already recognized by the United Nations High Commission for Refugees or other states.

Encouraging sponsors to become involved with people referred by visa officers makes good sense. In the absence of a specific refugee reunification program, however, friends and families of refugees still abroad will be left without the support they need to be reunited. In addition, sponsoring groups who want to assist people who have approached them or for whom they have a special concern will have less opportunity to do so. Sponsoring groups fear that the caps on “named refugee” applications, and the delays in processing those in the backlog, may result in a dampening of enthusiasm to participate in sponsorship activities in the future.

#### *Elimination of Source Country Class*

In October 2011, the federal government eliminated the Source Country Class for refugees. This means that people in need of protection in their home countries can no longer have direct access to Canadian embassies to seek asylum and can no longer be eligible for private sponsorship while in their home countries. They must now make their way out of their country and obtain a referral from the United Nations High Commission for Refugees, be “named” by a private sponsor group, or find their way to Canada as a refugee claimant.

<b>Eligible Groups for Private Sponsorship</b>
<p><b>Sponsorship agreement holders and their affiliates</b> Generally national or regional ethnic or faith-based organizations approved to undertake sponsorship responsibilities</p>
<p><b>Groups of Five</b> Five or more individuals approved to assume sponsorship responsibilities</p>
<p><b>Community sponsors</b> Incorporated private or not-for-profit organizations approved to undertake sponsorship responsibilities</p>

<b>Changes: Refugees Selected Abroad</b> 2008 to July 1, 2012
<p><b>Government-Assisted Refugee Program</b></p> <ul style="list-style-type: none"> <li>• Increased annual admissions target</li> <li>• \$9 million increase to the Resettlement Assistance Program</li> </ul>
<p><b>Privately Sponsored Refugees</b></p> <ul style="list-style-type: none"> <li>• Increased annual admissions target</li> <li>• Cap on annual number of “named” applications by sponsorship agreement holders</li> <li>• Limits on sponsorship by Groups of Five and Community Sponsors to refugees recognized by the United Nations High Commission for Refugees or a state</li> <li>• Limits on access to the Interim Federal Health Program</li> </ul>
<p><b>All</b></p> <ul style="list-style-type: none"> <li>• Elimination of source country program</li> </ul>

The elimination of the Source Country Class will have serious repercussions for people in need of protection in countries listed in the Source Country regulation at the time of its elimination: Democratic Republic of Congo, Sudan, El Salvador, Guatemala, Colombia and Sierra Leone. The program provided Canada with the capacity to respond to people facing persecution when they have been unable to escape from their own country. This included human rights activists targeted because they speak out against a repressive regime, union leaders threatened for their defence of workers' rights, and individuals persecuted on the basis of their religion, ethnicity or sexual orientation.

Offering protection to persecuted individuals through the Source Country Class allowed them to get to safety without having to undertake risky and possibly illegal border crossings.

### **Reduction of federal health benefits**

The Interim Federal Health Program used to provide all refugees and refugee claimants with access to health services until they were covered by provincial or territorial health insurance. This included basic coverage for hospital services, treatment by doctors, nurses and other health care professionals, as well as laboratory, diagnostic and ambulance services. It also included supplemental health care benefits similar to those provided through provincial social assistance plans, such as prescribed medications and dental and vision care.

As of June 30, 2012, only government-assisted refugees and those privately-sponsored refugees in the Joint Assistance Sponsorship program, who are in receipt of income support through the Resettlement Assistance program, maintain this level of interim health coverage. Other refugees and claimants now have significantly decreased access and receive less coverage than welfare recipients. They are no longer eligible for any supplemental benefits such as dental or vision care, prosthetics or mobility devices. They are eligible for medications and vaccines only where there is a risk to public health or a public safety concern. And they are only eligible for health care coverage for hospital or health care professionals if it is urgent or essential. Those from designated countries and failed refugee claimants have even less access to coverage for health services. They are only eligible for health coverage if there is a risk to public health or a public safety concern.

For Privately Sponsored Refugees, the cuts will add to the financial burden of sponsors. This may deter them from sponsoring additional people, especially those with health concerns. Refugee claimants, many of whom will ultimately be determined to be bona fide refugees, will also be disadvantaged. The most serious negative impact will be felt by claimants from designated countries and those who have received negative decisions on their claim. Restricting such claimants to treatment and medication only in cases involving public health or safety will severely jeopardize their health.

Reducing access to services risks the health of people who are vulnerable to illness due to the hardships they endured while overseas. This may end up costing Canadian governments significantly more in the long run as chronic conditions are not treated, prenatal care is not provided, hospital emergency department usage increases, and minor conditions become more serious.

**Table 9: Access to Interim Federal Health Benefits as of June 30, 2012**

	<b>Health Care Coverage</b>	<b>Supplemental Benefits</b>
<b>Refugees selected abroad who receive income support from the Resettlement Assistance program (RAP)</b> <ul style="list-style-type: none"> <li>• <b>Government-assisted refugees</b></li> <li>• <b>Privately Sponsored Refugees who are Visa Office Referrals or Joint Assistance refugees</b></li> </ul>	<ul style="list-style-type: none"> <li>• Hospital services</li> <li>• Access to licensed health care professionals</li> <li>• Laboratory, diagnostic and ambulance services</li> </ul> <p>Until the person qualifies for provincial or territorial health insurance</p>	<ul style="list-style-type: none"> <li>• Prescribed medications</li> <li>• Dental &amp; vision care</li> <li>• Prosthetics and mobility devices</li> <li>• Home care and long-term care</li> <li>• Psychological counselling</li> <li>• Post-arrival health assessment</li> </ul> <p>As long as the person receives income support through RAP or for duration of sponsorship</p>
<b>Other Privately Sponsored Refugees</b>		
<b>Successful Refugee Claimants</b>		
<b>Failed claimants with a positive pre-removal risk assessment</b>	Same as above but only if of an “urgent or essential” nature	Access to medications and vaccines only where there is a risk to public health or a public safety concern
<b>Pending Refugee Claimants not from “designated countries of origin”</b>		
<b>Pending Refugee Claimants from “designated countries of origin”</b>	Same as above but only if there is a “risk to public health” or a “public safety concern”	No access to any other supplemental benefits
<b>Failed Refugee Claimants</b>		
<b>Refugee claimants in detention (including “irregular arrivals”)</b>	Health services provided as for others in detention	Same as for others in detention

## **CITIZENSHIP**

Canada’s immigrants have traditionally been viewed as “citizens in waiting.” They are entitled to apply for citizenship status after three years of permanent residence. At 89%, Canada has one of the highest naturalization rates in the world.<sup>3</sup>

<sup>3</sup>Garnett Picot and Feng Hou, *Naturalisation: A Passport for the Better Integration of Immigrants? Citizenship Acquisition in Canada and the United States: Determinants and Economic Benefit* (OECD 2011), p.171.

### *Citizenship guide, exam, and passing grade*

In 2009 the passing score on the citizenship exam was 60% and fewer than 4% failed. A new, longer citizenship guide was issued in November 2009 with a corresponding new exam in March 2010. As a result of these changes and a higher minimum passing grade of 75%, the failure rate rose. As of October 2010, after a revision of the exam, the failure rate has stabilized at 15%.

Failure rates are not consistent across the board. There is a growing divide between those from English speaking and European countries on the one hand and Asian countries (the primary source countries for immigration to Canada) on the other. The failure rate for people from Vietnam, for example, went from 14.8% in 2005 to 41.2% in 2011. The exam, which puts more emphasis on the monarchy and military history, is being questioned for its relevance and whether it is acting as a barrier to citizenship.

### *Language requirements*

On April 21, 2012, CIC proposed amended regulations in the Canada Gazette to require those aged 18-54 to submit objective evidence of speaking and listening language ability in English or French as part of their citizenship applications. This can be in the form of test results from a third party assessor, proof of secondary or post-secondary education completed in English or French, or the achievement of Canadian Language Benchmark Level 4 in a government-funded language program.

### *Place of birth*

Another recent change is that children born outside Canada on or after April 17, 2009 are Canadian at birth only if either of their parents was born in Canada or was naturalized in Canada.

The Minister has also indicated his intention in March 2012 to amend the Citizenship Act before the end of the year to prevent “birth tourism.” This will mean that some people born in Canada will no longer automatically receive Canadian citizenship.

#### **Changes: Citizenship Requirements**

2008 to July 1, 2012

#### **Implemented**

- Harder exam and 75% minimum passing grade
- No automatic citizenship for foreign-born children
- Requirement to uncover face during citizenship ceremony

#### **Additional federal proposals**

- Proof of language required with application
- No automatic citizenship for everyone born in Canada



### *Citizenship fraud*

In July 2011, Citizenship and Immigration Canada announced that it was beginning a process to revoke the citizenship of up to 1,800 citizens who had obtained it fraudulently. In September 2011, it announced the Citizenship Fraud Tip Line.

### *Citizenship oath*

Another development occurred in December 2011 when the government introduced a requirement to take the citizenship oath with an uncovered face. This requirement may discourage individuals from certain cultures from pursuing citizenship or create the impression that Canada is not accommodating of cultural differences.

### *Evidentiary base*

There does not appear to be a strong evidentiary base to support the need for any of these changes. In some cases no data exists. For example, how many foreign-born children of foreign-born Canadians are there? How many people without status in Canada come here to give birth? Are people who passed previous citizenship tests not good citizens?

The changes to citizenship policy will decrease the number of people who become citizens, either because they are no longer eligible, are unsuccessful in meeting the requirements, or are deterred from even trying. Such individuals will not be able to vote in Canadian elections and will always live in fear of deportation. There are also currently lengthy delays in access to the citizenship exam which may discourage some from even applying.

Citizenship is the foundational element of nation-building. It is in Canada's interest to encourage and empower future citizens.

Citizenship is the foundational element of nation-building. It is in Canada's interest to encourage and empower future citizens. Canada should collect data, analyze results and establish an evidence base before proceeding with further action that discourages, delays or prevents the attainment of citizenship.

# Temporary Entry and Two-Step Immigration

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## CANADIAN EXPERIENCE CLASS

In 2008, the government created a new category of economic immigrants called the Canadian Experience Class. This program was designed to enable eligible international student graduates and highly skilled temporary foreign workers to apply for permanent residence from within Canada. The number of people provided with permanent residence under the Canadian Experience Class rose from 2,545 in 2009 to 6,022 in 2011. It is expected that this number will rise to 7,000 in 2012.

On April 16, 2012 the government proposed a regulation change that would require temporary

foreign worker applicants to have completed only one year instead of two years of work experience in Canada.

It makes eminent sense to allow people who have been working or studying in Canada to apply for permanent residence here. It is important, however, that two-step immigration (coming to Canada first as a temporary entrant before transitioning to permanent status) not become the norm as it is in some other countries. One of Canada's competitive advantages is that people can be selected and enter the country as permanent residents from the outset, with full rights, access to services, and on the track for citizenship. Having to enter first with temporary status could delay integration because temporary residents are ineligible for federally-funded settlement services and are often unable to bring their families to Canada. This could also make Canada a less attractive place for the best and brightest. Therefore the government's proposed regulatory change to reduce the Canadian work experience requirement for skilled temporary workers before they can transition to permanent resident status is a step in the right direction.

The Canadian Experience Class provides an important opportunity for tradespeople who often cannot obtain enough points to enter under the Federal Skilled Worker Program. The downside is that they must first obtain a temporary position in Canada. The

<b>Changes: Canadian Experience Class</b> 2008 to July 1, 2012
<b>Implemented</b> <ul style="list-style-type: none"><li>• Creation of the Canadian Experience Class in 2008</li></ul>
<b>Additional federal proposals</b> <ul style="list-style-type: none"><li>• Reduce work experience from two years to one year before temporary workers may apply for permanent residence</li></ul>

proposed new stream for skilled tradespeople in the Federal Skilled Worker Program may eliminate the need for two-step immigration for this group of workers.

Another concern about the Canadian Experience Class is that it excludes temporary workers employed in low-skill jobs, even though there are many such workers in Canada due to the Pilot Project for Occupations Requiring Lower Levels of Formal Training (commonly referred to as the “Low-Skill Pilot Program”) described below. This is a vulnerable group who can work in Canada for up to four years with no access to services and limited possibilities for family reunification. When the “temporary” period expires, some people can be expected to go underground as undocumented workers, increasing their vulnerability and subjecting Canada to problems like those European countries experienced with their guest workers and by the United States with its large undocumented population.

## **TEMPORARY FOREIGN WORKERS**

Temporary foreign workers are a rapidly growing group. In 2010 and 2011 there were more temporary foreign workers in Canada than permanent residents admitted as immigrants or refugees. As Table 10 indicates, some streams of temporary foreign workers are growing especially quickly. Between 2002 and 2010 the numbers of live-in caregivers and “other temporary workers without Labour Market Opinions” living in Canada tripled. The number of people in the Low-Skill Pilot Program rose dramatically from 1,304 when it began to 28,930 in 2010.

In 2010 and 2011 there were more temporary foreign workers in Canada than all permanent residents admitted in those years as immigrants or refugees.

**Table 10: Temporary Workers Present on December 1st by Yearly Sub-Status**

	2002	2010	% change from 2002	2011	% change from 2010
1. Seasonal Agricultural Worker Program	18,588	23,930	+29%	n/a	n/a
2. Live-In Caregiver Program	11,997	35,006	+192%	n/a	n/a
3. Low-Skill Pilot Program	1,304	28,930	+2119%	n/a	n/a
4. Other Temporary Workers (LMO required)	16,618	33,600	+102%	n/a	n/a
5. Other Temporary Worker (no LMO)	52,592	161,305	+207%	n/a	n/a
<b>Total Temporary Foreign Workers</b>	<b>101,099</b>	<b>282,771</b>	<b>+180%</b>	<b>300,111</b>	<b>+6%</b>
<b>Total permanent immigrants admitted</b>	229,048	280,681	+23%	248,748	-11%

Source: CIC Facts and Figures

### Workers requiring Labour Market Opinions

Approximately 40% of temporary foreign workers present in Canada entered under one of the first four streams listed in Table 10. Each of these streams requires the employer to obtain a positive Labour Market Opinion (LMO) from the government before the temporary worker is eligible to apply for a work permit. A Labour Market Opinion assesses whether a job offer is genuine, whether the employer meets the conditions of the program, and whether there is a labour market need. Employers must show they have attempted to hire Canadians or permanent residents, that the foreign worker will be paid the prevailing wage rate, that working conditions meet provincial labour market standards, and that there will be a benefit to the economy. There is no charge to employers for obtaining an LMO, but temporary workers have to pay to apply for a work permit.

To address concerns about the treatment of temporary foreign workers by employers, particularly at the low end of the labour market, the federal government introduced a series of changes in 2011 that affect most temporary foreign workers where LMOs are required.

### *Assessment prior to LMO issuance*

Although the government announced more rigour in the assessment of job offers, little appears to have been done to ensure that the jobs are truly temporary and that they cannot be done by Canadian citizens and permanent residents, many of whom are facing unemployment or underemployment. The availability of renewable LMOs may be a disincentive for employers to make the job more attractive to Canadians and permanent residents by investing in training, technology and infrastructure or to improve wages, benefits and working conditions for jobs filled by temporary workers.

### *Ineligible employers*

As a result of recent changes, employers are ineligible to participate in the Temporary Foreign Worker Program for two years if they have not honoured wages or working conditions for their employees. Ineligible employers will have their names posted on the CIC website. In addition, individuals who work for ineligible employers will no longer have legal temporary foreign worker status in Canada.

A year after these changes were announced, no names of ineligible employers appear on the website. This is an indication that monitoring efforts to enforce the changes have not been substantial and that complaint-based enforcement does not work when people's immigration status is at stake. This is an example of a potentially good change that is not being implemented in a serious way.

### *Loss of status for workers*

Temporary foreign workers who work for an ineligible employer can lose their status in Canada and be forced to return to their country of origin. This may be unduly harsh particularly if the worker was unaware of the employer's status.

#### **Changes: Temporary Foreign Workers Requiring Labour Market Opinions**

2008 to July 1, 2012

##### **Assessment**

More rigorous assessment of the genuineness of job offers

##### **Ineligible employers**

Two-year ineligibility for employers who do not honour wages or working conditions and posting their names on the CIC website

##### **Loss of status for workers**

Loss of status in Canada for temporary foreign workers who work for an ineligible employer

##### **4-Year limit for low-skilled temporary foreign workers to remain in Canada**

Cumulative time limit set at four years (excluding caregivers and seasonal agricultural workers); followed by a four-year wait outside Canada before being eligible to return as a temporary foreign worker.

### *Four-year limit for workers in low-skilled occupations*

Workers who are employed in a position that requires a Labour Market Opinion (other than live-in caregivers and seasonal agricultural workers whose programs have different time limits) must now leave Canada for four years if they have been working in Canada for the maximum four-year period. There is no corresponding prohibition on employers to prevent them from applying for a new LMO and recruiting a new temporary foreign worker to immediately refill the same position. This punishes the worker but not the employer for hiring temporary foreign workers for work that is not truly temporary.

The four-year limit for temporary work in Canada and a four-year wait before returning is particularly harsh for those in low-skill occupations because they are not eligible to apply for permanent residence under the Canadian Experience Class. In the absence of exit controls and with limited enforcement, there is also no guarantee that people will actually leave when their visas expire. On April 1, 2015, when the first four-year period ends after this change was introduced, many can be expected to go underground.

### **Seasonal Agricultural Worker Program**

This longstanding program has been lauded internationally as an exemplary temporary program for agricultural workers. The bilateral agreements between Canada and source countries (Mexico and six Caribbean countries) are intended to protect workers and ensure that they return to their country of origin after their work permit has expired. The maximum stay is eight months at a time for as many years as the labour need is demonstrated.

There have been no recent changes to the agricultural program despite longstanding concerns about the treatment of some workers by their employers. The lack of monitoring and enforcement continues to be a concern. Employer-specific visas add to the workers' vulnerability because their legal status in Canada is tied to a particular employer. Sector-wide visas would allow workers to leave one employer and work for another. This would likely raise the working and living conditions in the sector. Having multi-entry visas would also allow for short visits home during the eight month period.

Also of concern is the use of the Low-Skill Pilot Program for agricultural workers. Although agricultural workers in the Pilot can stay longer than the eight month maximum

of the Seasonal Agricultural Worker Program, they will be in a more vulnerable position. Unlike those recruited under the Seasonal Agricultural Worker Program, they will not benefit from protections contained in bilateral agreements with their home countries.

### **Live-in Caregiver Program**

The Live-in Caregiver Program admits temporary foreign workers who live in their employer's home to provide on-site care for children, the elderly, or persons with disabilities. After satisfying the cumulative two-year work obligation, live-in caregivers may apply for permanent residence. The vast majority has been successful in making this transition.

Live-in caregiver entries rose from 4,369 in 2001 to 8,394 in 2010. However the entries have been in decline since a 2007 high of 13,773. This reduction could be a result of lengthy processing delays and the unwillingness of employers to wait for long periods of time to employ caregivers for their loved ones.

#### *Protections for caregivers*

Concerns have been expressed by community organizations serving caregivers about the potential and real exploitation faced by caregivers since they work alone in their employer's home and with limited enforcement of working and living conditions, wages and overtime payments.

Changes to the program were introduced in 2010 to provide added protection for live-in caregivers. The changes include:

- Standard contracts were introduced to specify the key terms of employment and employer obligations to cover specified costs.
- Employers are now ineligible to apply for another LMO for a two-year period if they have failed to honour their contract with the caregiver.
- Overtime can now be taken into account when calculating the two-year work obligation.

- The two-year work obligation can now accumulate over a four-year period rather than three.
- Caregivers can now obtain emergency work permits and employer authorizations if they leave a job due to abuse.
- There is no longer a requirement for a second medical exam when applying for permanent residence.

Such protections have been welcomed by the caregiver community. Unfortunately there is no proactive monitoring or enforcement in place to ensure that employers honour their commitments. It is still a complaint-driven system which places many caregivers at risk because they are unlikely to complain for fear of losing their job, home and opportunity for the permanent residence which they need to sponsor their families.

#### *Open work permits*

Processing times for permanent resident applications from caregivers have increased to 24 months. This often necessitates new background checks which are only valid for one year, delaying the process even further. To compensate for the delay, an open work permit became available in December 2011. The open work permit enables live-in caregivers who have completed their work obligations

<b>Protections for Live-in Caregivers Implemented in 2010 and 2011</b>
<p><b><i>Labour Market Opinion</i></b></p> <ul style="list-style-type: none"> <li>• Assessment of job offer, adequacy of accommodation, and ability to pay before LMO is issued</li> </ul>
<p><b><i>Overtime</i></b></p> <ul style="list-style-type: none"> <li>• Including overtime when calculating the two-year (or 3,900 hour) work obligations</li> </ul>
<p><b><i>Medical Exam</i></b></p> <ul style="list-style-type: none"> <li>• Eliminating the requirement for a second medical exam when applying for permanent residence</li> </ul>
<p><b><i>Accumulation of Work Obligation</i></b></p> <ul style="list-style-type: none"> <li>• Allowing the required work obligation to be accumulated over a four-year period rather than three</li> </ul>
<p><b><i>Standard Contract</i></b></p> <ul style="list-style-type: none"> <li>• Requiring employers and caregivers to sign a standard contract outlining salary, hours of work, overtime, sick leave, vacations, termination and resignation</li> </ul>
<p><b><i>Costs</i></b></p> <ul style="list-style-type: none"> <li>• Requiring employers to pay travel costs to Canada, medical insurance, workers compensation, and third party recruitment agency fees</li> </ul>
<p><b><i>Employer Ineligibility</i></b></p> <ul style="list-style-type: none"> <li>• Deeming an employer ineligible to apply for another LMO for a two-year period if they have failed to honour their contract with the caregiver</li> </ul>
<p><b><i>Dedicated Phone Line</i></b></p> <ul style="list-style-type: none"> <li>• Establishing a dedicated phone line for caregivers to report and discuss concerns</li> </ul>
<p><b><i>Emergency Work Permit</i></b></p> <ul style="list-style-type: none"> <li>• Providing emergency work permits and employer authorizations if the caregiver left her job as a result of abuse</li> </ul>
<p><b><i>Open Work Permit</i></b></p> <ul style="list-style-type: none"> <li>• Providing open work permit after completing work obligations</li> </ul>



to work at any job in any sector while awaiting permanent resident status. There are waiting periods of several months to obtain these new permits.

The decision to allow open work permits is a positive change but its impact is minimized by delays to obtain them. More significantly, this change does not address the underlying issue of delay in obtaining permanent residence. Caregivers have already been separated from their families for years and their priority is to sponsor family members to come to Canada as quickly as possible. They cannot do this until they become permanent residents. Since almost all caregivers successfully make the transition from temporary to permanent status, the delays are unwarranted and unfair.

#### *Future of the Live-in Caregiver Program*

Canada has an aging population with many who want to remain in their homes as long as possible. Fewer people with disabilities are institutionalized. Universally available and affordable child and elder care are still a dream while many adult family members must work outside the home to make ends meet. The need for live-in caregivers therefore remains strong. We need to retain and strengthen this program and to respect and value the caregivers as important contributors to modern Canadian life.

One approach to address the vulnerabilities of this group is to provide sector-specific rather than employer-specific employment authorizations. This would allow for easier movement within the sector and would likely have a positive impact on living and working conditions. Allowing for employers and workers to agree on whether living in the employer's home is a job requirement for the duration of the employment contract would also provide flexibility and additional options for both parties.

#### **Pilot Project for Occupations Requiring Lower Levels of Formal Training**

The Pilot Project for Occupations Requiring Lower Levels of Formal Training (“Low-Skill Pilot Program”) was launched in 2002 for occupations requiring lower levels of formal education. This program allows employers to recruit for positions that usually require only a high school diploma or on-the-job training, such as those in hotel cleaning, food services, and meat packing plants. While the Pilot has not significantly changed during the four and a half years covered by this paper, it has grown dramatically. This is problematic because labour market forecasts do not provide a basis for increasing

temporary entrants to fill low-skilled jobs. Further, such workers are vulnerable to exploitation with limited recourse. They cannot change employers easily because they are only eligible to work for the employer specified on their work permit. There is little proactive enforcement of employment standards, and workers are unlikely to complain for fear of being sent home. Nor are they entitled to federally-funded settlement services or language training, even though some of them may live and work in Canada for up to four years. In some cases, they are at the mercy of unscrupulous recruiters abroad or in Canada, who may charge exorbitant fees or promise jobs and working conditions which do not exist.

Because workers filling low-skill jobs are ineligible for permanent residence through the Canadian Experience Class and some Provincial Nominee Programs, they are the most likely of the four streams of temporary foreign workers to go underground when their work permits expire.

Some economists see the recruitment of low-skilled temporary foreign workers as interfering with market forces that would otherwise result in higher wages, better working conditions, investment in training, research and development, and the employment of unemployed permanent residents and citizens. The Pilot has been running and expanding for almost 10 years, despite many concerns. The program should be put on hold until alternatives have been considered on the basis of a thorough evaluation and consultation process.

**Other temporary foreign workers: Labour Market Opinion required**

*Accelerated Labour Market Opinion*

The other temporary worker stream requiring LMOs is for workers in managerial, professional, technical and other highly skilled occupations. Since April 25, 2012, Service Canada has offered an Accelerated Labour Market Opinion for this group with a reduced processing time of ten business days as opposed to two to four months. Employers will have the flexibility to pay up to 15% less than the prevailing wage for an occupation.

<b>Changes: Other Temporary Workers</b> 2008 – July 2012
<b>LMO Required</b> Accelerated Labour Market Opinions: <ul style="list-style-type: none"> <li>• Reduced processing time (10 days)</li> <li>• Flexibility to pay up to 15% less than prevailing wage</li> <li>• Attestation and compliance audits to replace proof of recruitment and employer interview</li> </ul>
<b>No LMO Required</b> Open work permits to spouses and children of returning Canadians for health and academic positions (Ontario pilot)

Instead of a mandatory interview and proof of recruitment, employers will file an attestation that they meet all the requirements for an LMO, and audits will be conducted on a sample of employers.

Reducing the requirements for employers to receive an accelerated LMO and allowing them to pay less than the prevailing wage will make the program more attractive to employers. This will lead to an even greater increase in temporary foreign workers in Canada. It will also reduce the incentive for employers to try to attract potential workers already in the country. Economists warn that allowing payment of less than the prevailing wage may depress wages.

### **Other temporary foreign workers: no Labour Market Opinion required**

Sixty percent of temporary foreign workers present in Canada as of 2010 belonged to the fifth stream as “other” temporary foreign workers (see Table 12). Unlike the other four streams, this is the group where no Labour Market Opinion is required. Temporary workers without Labour Market Opinions receive work permits on the basis of international agreements such as NAFTA or other international reciprocal arrangements, youth exchange programs, intra-company transfers, or post-doctoral research fellowships. Some also come as accompanying spouses of highly skilled temporary foreign workers or international students.

Many workers in this stream receive open permits entitling them to work anywhere and for anyone in Canada. On January 30, 2011, an Ontario pilot project began to grant immediate open work permits to spouses and children of Canadians returning to Canada. These permits will be limited to work in health or academic positions.

There are good policy reasons for allowing individuals to work in Canada for reasons other than meeting short-term labour market needs. It is worrisome, however, to see the substantial number of work permits issued without LMO requirements, without any supporting data or follow up to determine how many are indeed working, what work they are doing and for whom.

## INTERNATIONAL STUDENTS

Canada has a longstanding interest in attracting international students. They add to the diversity in our educational system and contribute to the educational experience of domestic students. They are a welcome source of revenue for educational institutions and contribute economically through their purchasing power and work in the labour market both on and off campus. Governments have also begun to view international students as an excellent source of potential immigrants.

Efforts to attract international students have had some success. The number of international students entering Canada has increased overall in the ten-year period between 2001 and 2011 by approximately 22%. Students present in Canada increased by 75% during that same time, indicating they are remaining for longer periods of time.

While the proportion of those destined to university has remained stable at 39%, those enrolling in “other post-secondary institutions” (e.g. language schools and private training institutions) has doubled from 12% to 24.4% of all international students.

The federal government’s 2011 Budget announced \$10 million over two years to develop and implement an international education strategy to recruit more students and to make Canada a more attractive destination. Efforts are now focusing on ensuring that those who come to Canada are the ones with the highest potential to contribute to the economy should they decide to remain in the country following their studies.

### *Work permits*

One strategy for making Canada more attractive to international students has been to improve opportunities for employment during their period of study. For example, in 2006 international students were given permission to work off-campus part-time during their academic terms and full-time during their breaks. In April 2008, graduates from public universities and colleges and private degree granting institutions became eligible for an open work permit for up to three years with no restrictions on the type of employment and no requirement for a job offer. In February 2011, a pilot in British Columbia expanded open work permits for graduates of private post-secondary institutions with career training programs. Between

Between 2002 and 2011 the number of international students holding work permits increased from 6,800 to 60,000.

2002 and 2011 the number of international students holding work permits increased from 6,800 to 60,000.<sup>4</sup>

Allowing international students to work while studying, and allowing graduates of recognized Canadian post-secondary institutions to remain in Canada for up to three years with an open work permit makes studying in Canada very attractive. It helps defray their costs (including tuition fees which are higher than those paid by domestic students), provides Canadian work experience and contacts, and may allow some to send money home. The policy intent was to encourage the best and the brightest international students to apply to remain in Canada permanently, but the evidence is still not clear as to whether this strategy is working.

The B.C. pilot should be monitored closely to ensure that registering in a private vocational school does not become a back door way to obtain open work permits. Care should also be taken to avoid any negative backlash against international students during a time of high rates of student, youth and graduate unemployment among Canadian and permanent resident young people.

#### *Transition to permanent residence*

International students have been transitioning to permanent resident status in a variety of ways. Some marry Canadians and achieve permanent residence as sponsored spouses. Some become permanent residents as sponsored dependent children of parents already in Canada. Others leave Canada after their education and reapply as federal skilled workers. Others apply from within Canada under Provincial Nominee Programs (except in New Brunswick), the Canadian Experience Class (since 2008), or under the new PhD track of the Federal Skilled Worker Program (since 2011). As shown in Table 13 below, more international students are making the transition as a spouse or dependent of a provincial nominee than under the Canadian Experience Class.

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<sup>4</sup> Citizenship and Immigration Canada, "Temporary Foreign Worker Trends." Presentation at *Roundtable on Temporary Migration and the Canadian Labour Market* (Ottawa: Institute for Research on Public Policy, April 30, 2012). Available at: [http://www.irpp.org/events/archive/20120430/presentations/masse\\_ppt.pdf](http://www.irpp.org/events/archive/20120430/presentations/masse_ppt.pdf)

**Table 11: International Students' Transition to Permanent Residence**

Method of transition	2001	2010
Family class	1,720	1,264
Skilled worker (principal applicant)	2,124	2,886
Skilled worker (spouse or dependant)	1,695	1,509
Canadian experience class (principal applicant)	n.a.	90
Canadian experience class (spouse or dependant)	n.a.	175
Provincial nominee (principal applicant)	5	85
Provincial nominee (spouse or dependant)	17	1,388
Refugee	37	19

Source: Facts and Figures, CIC

The Canadian Experience Class has not been as successful as its designers had hoped for this group. While some Provincial Nominee Programs allow students to transition to permanent residence, the federal government has advised provinces that this is seen as duplicating the Canadian Experience Class and may not be permissible in future designs of the provincial programs.

The recently created PhD track is promising. Twenty-five percent of those enrolled in PhD programs in Canada are international students and many of them could make valuable contributions to Canada, given the evidence that higher education results in better economic outcomes.

Investment in settlement supports for international students would go a long way toward attracting international students and retaining them in the long-term, whether through the Canadian Experience Class or the PhD stream.

*Enforcement and monitoring*

On June 30, 2012 proposed regulations were published in the *Canada Gazette* regarding “conditions for foreign nationals who seek to study in Canada.” These changes would require individuals to enrol and pursue their

<b>Changes: International Students 2008 to July 1, 2012</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Eligibility to apply for permanent residence under new Canadian Experience Class</li> <li>• Open work permit for three years post-graduation</li> <li>• B.C. pilot to extend open work permits to graduates of private career training programs</li> <li>• Funding an International Education Strategy to attract and recruit more students</li> <li>• Enabling international PhDs studying in Canada to apply to the Federal Skilled Worker Program earlier than they could apply under the CEC</li> </ul> <p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Elimination of student streams of Provincial Nominee Programs</li> <li>• Requirement to study at an eligible institution after arrival to maintain status in Canada</li> <li>• Work permits available only to those who meet student visa requirements</li> <li>• Designation of eligible institutions to host international students</li> </ul>

studies in institutions approved to host international students in order to retain their status in Canada as an international student, would limit the kinds of educational institutions deemed eligible to host international students, and would allow student work permits to be issued only to valid student visa holders.

These proposals are a positive development. Currently there is no follow up to ensure that international students actually attend the educational program for which they have received their student authorization. Nor do safeguards exist to ensure that the educational program is of high quality. Care must be taken to prevent an industry from developing, as it did in Australia, to enrol students in the shortest courses necessary to meet the requirements of permanent residence with minimal quality control. International students represent a promising pool of potential economic immigrants due to their language skills, Canadian credentials, and head start at integration. This will not be the case if questionable institutions offer poor quality programs to non-genuine students.

Provincial consultation and cooperation will be necessary to develop and implement the proposed regulations in order to identify and monitor eligible educational institutions and to determine their role in monitoring student attendance.

## **VISA APPLICANTS**

### *Biometric data for visa applicants*

The Budget Bill passed in June 2012 allows for biometric data to be collected as part of the application process for temporary resident visas from students, visitors, and temporary foreign workers from visa-required countries. Implementation is scheduled for 2013. Given the potential for privacy breaches, it will be important that regulations be developed for the collection, use, storage, transmittal, and destruction of the biometric data to ensure security. Complaint and appeal procedures as well as remedies should be in place. Any use of this information for other than Canadian immigration purposes should not be allowed.

## 4. CUMULATIVE IMPACT

When looked at in their entirety, immigration policy changes from 2008 to mid-2012 are reshaping Canada's future. It is difficult to believe that so much fundamental change has occurred over a four-and-a-half-year period and that more changes are slated to occur.

As noted earlier in this paper, some of the recent changes are potentially positive, although success will depend on the effectiveness of their implementation. Other changes are potentially more problematic. All will require monitoring and evaluation to allow for quick correction when necessary.

It will also be important to monitor and evaluate the cumulative impact of all the changes to determine if there are negative or unintended consequences. This section offers some thoughts about the potential cumulative impact.

### Focus on Short-term Labour Market Gains

The federal government has expressed its desire for a faster, more flexible and responsive immigration system that better meets Canada's economic needs. This has translated into a "just in time" labour market strategy that favours immigrants and temporary entrants who can make a short-term economic impact. This is evident in policies that are designed to welcome people who can "hit the ground running" and to restrict the entry of those perceived to be unable to do so. The short-term focus has resulted in priority given to provincial nominees at the expense of federal skilled workers, occupational screens for federal skilled workers and to the ever increasing number of temporary foreign workers who receive priority processing, some now with Accelerated Labour Market Opinions. This has been done despite evidence showing that federal skilled workers selected for their

#### EXAMPLES: "JUST IN TIME" ECONOMIC FOCUS

##### **Temporary Foreign Workers**

Accelerated processes to bring in temporary foreign workers, with no targets or caps

##### **Federal Skilled Worker Program**

Occupation-based screen for admission

##### **Provincial Nominee Programs**

Enabling employers to identify applicants for provinces to nominate for selection, based on immediate labour market needs

##### **Canadian Experience Class**

Enabling international students and highly skilled temporary workers to transition to permanent residence



human capital have better long-term outcomes than other members of the economic class.

### **An emphasis on temporary foreign workers instead of permanent residents**

Recent changes have restricted or tightened requirements for permanent entry to Canada as an economic immigrant, sponsored family member, or refugee while it has become easier to enter Canada on a temporary basis as a temporary foreign worker or international student. It has also become easier for highly skilled individuals within those groups to make the transition to permanent residence through Provincial Nominee Programs and the new Canadian Experience Class. These “two-step” immigration processes are also indicative of the focus on short-term economic impact. Many workers and graduates are well positioned to make the transition and may already have jobs or job offers.

It is interesting to note that in the past few years, caps or moratoria have been placed on every permanent stream of immigration to Canada but none have been placed on temporary entrants. A distinctive feature of the temporary foreign worker and international student streams is that they are demand driven and often given priority processing. Unlike permanent entries, there are no targets or quotas tabled annually. Employers are not limited in the number of Labour Market Opinions they may request to bring in temporary foreign workers. While the use of temporary foreign workers to address acute skill or labour shortages is justifiable, some employers are using them to fill ongoing vacancies without exploring more durable long-term solutions. This is an illustration of how federal policies which facilitate temporary entry to Canada sometimes have long-lasting detrimental effects.

Caps or moratoria have been placed on every permanent stream of immigration to Canada, but none have been placed on temporary entrants.

In addition, many individuals who used to be on a one-step immigration track will now have to wait. Parents and grandparents, for example, were previously eligible to come as sponsored immigrants. Now they must enter as visitors and hope to eventually become permanent residents once the moratorium on such sponsorships is lifted. And many sponsored spouses will now obtain only conditional permanent residence when

they arrive. These policies ignore the direct and indirect economic contributions made by these individuals.

The main policy driver behind these changes to the “rules of admission” for permanent and temporary entry has been to attract individuals who can make a contribution to the economy in the short term. A problem with this short-term economic focus is that employers and provinces may be selecting workers they need now, without consideration of the skills that are needed for the future. Evidence indicates that choosing people for adaptability is a more successful strategy than basing decisions purely on a current specific skill or occupation. An over-reliance on temporary foreign workers may also have negative long-term impacts by suppressing wages and decreasing investment in training, innovation and capital infrastructure.

Further, the more resources used to process Temporary Foreign Workers and international students, the fewer there will be available for permanent residents Canada needs for the future of the nation.

### **Less focus on nation building**

More importantly, the emphasis on short-term gains represents a missed opportunity as it does not take into account the long-term interests of Canada as a nation. Canada needs people who will stay and contribute to the country.

By focusing on all three permanent immigration streams (economic, family, and refugee), Canada can welcome more people who want to stay, many of whom have much to contribute to the economic and social fabric of the country. For example, immigrants who can sponsor family members will be more likely to form a long-term attachment to Canada as will refugees, provided they arrive to a welcoming environment. Economic benefits will also flow from the second generation and beyond. The contribution of the children of all immigrant classes is just as important as the first generation’s immediate labour market attachment.

Nevertheless, the government has focused much of its efforts on the recruitment of economic immigrants who are the most mobile and least likely to stay in Canada. In addition, it has expanded the Temporary Foreign Worker Program, and many of these

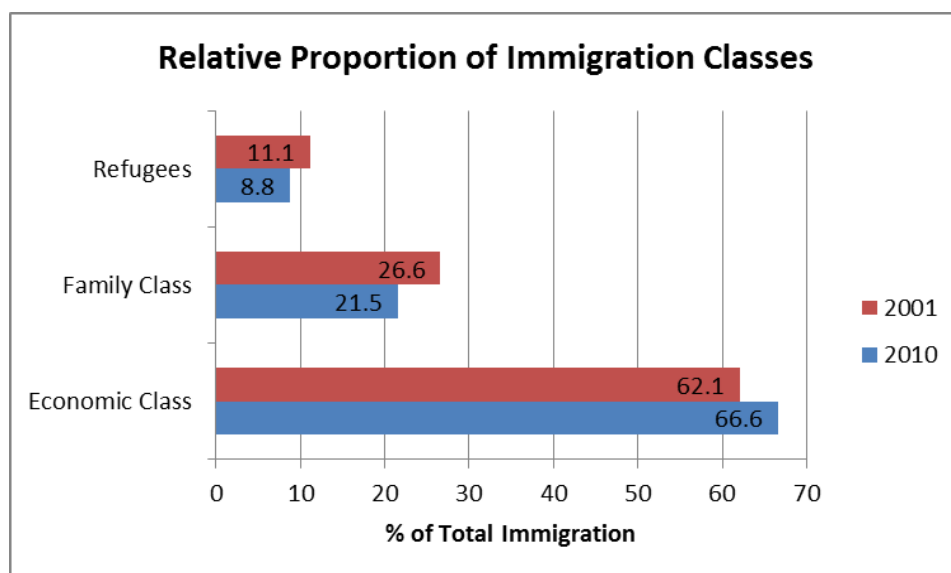
workers are not eligible to remain in Canada. Those who remain without legal status could become a vulnerable underclass, rather than tax paying contributors.

Nation building includes encouraging all immigrants to become citizens and actively engage in the responsibilities of citizenship. However with some of the changes introduced and proposed, people who have been successful in becoming permanent residents and have lived, worked and contributed to Canada for years will find it more difficult to become citizens due to more stringent citizenship tests and language requirements. They may also find permanent residence to be an increasingly precarious state, for example refugee claimants who visit their home country even briefly risk losing their status. This situation will worsen if the government implements proposals to establish conditional permanent residence for newly married sponsored spouses.

### Rising proportion of economic class

The federal government's "just in time" economic focus is overshadowing other important interests. This trend is evidenced by the rising proportion of the economic class at the expense of refugees and family reunification.

**Figure 3: Relative Proportion of Immigration Classes**



The proportion of economic immigrants has been steadily increasing from 54.7% in 2003 to 66.6% in 2010. If this trend continues, economic immigration could outstrip the other

classes. Part of the challenge faced by Citizenship and Immigration Canada is the nature of the annual levels planning which determines the number of immigrants to be admitted each year and the proportion of each of the three classes and sub-classes within them.

There are many factors taken into account by Citizenship and Immigration Canada before the annual plan is tabled in Parliament: the state of the economy, government and departmental priorities, the wishes of provinces and territories, departmental operational budgets and the capacity of local communities. However, for the past number of years, the assumption has been that the overall yearly levels will remain more or less around 250,000. This means that any increase in one class or sub-class requires a decrease in another.

The size of the “pie” remains constant despite projections of demographers and economists who argue for significant increases in permanent immigration to Canada to respond to population decline, labour and skill shortages as a result of our aging population and low fertility rate – a need for nation building.

Multi-year planning exercises with the provinces based on evidence and accurate forecasting would help to address what size the total pie should be and to provide more flexibility in determining increases desired in certain classes and over what time period, without requiring corresponding decreases in others. This planning process should include targets for temporary entries given the administrative costs involved in their selection and the likelihood that some temporary residents will transition to permanent residence.

## **Lack of Policy Coherence, Evidence, Consistency and Predictability**

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### **Lack of policy coherence**

Many of the changes that have been implemented or proposed since 2008 relate to individual immigration streams, classes and programs. There has not been a concerted attempt to look at the interaction among them and the bigger picture. Much has been driven purely by the priority placed on managing intake and reducing or eliminating

backlogs. Some of the changes may be positive but it is too early to tell and in many cases will depend on the details of implementation. All have the potential for unintended consequences, including duplication or working at cross-purposes.

We have seen, for example, the confusion and policy incoherence that is created by the simultaneous existence of federal programs, Quebec programs, and 11 separate Provincial/Territorial Nominee Programs with up to 60 subcomponents, in a country where mobility rights mean that many immigrants will not stay in the province that selected them. Canada needs a strong national program that allows for regional responsiveness and variations or strong regional programs that adhere to a set of common national standards. Today, we have neither.

There would be considerable benefit in thinking about the links between the different streams. Could members of the family and refugee classes fill jobs currently filled by low-skilled temporary workers? Could removing the occupation screen and introducing a trades stream for skilled workers reduce the need for expanded Provincial Nominee Programs? Will restrictions on the sponsorship of parents have negative impacts on the attraction of economic immigrants?

## EXAMPLES: POLICY INCOHERENCE

### ***Family sponsorship***

- It has become tougher for parents and grandparents to enter Canada, partly because it is assumed that they will cause an economic burden. Yet siblings – the children of sponsored parents, who could enter the labour market, contribute to the economy, and help to support their parents – are not a target for immigration.

### ***Settlement and support***

- Many refugees and claimants come with complex health needs, yet recent policy changes reduce access to federally funded health benefits.
- The federal government has re-assumed responsibility for the administration of settlement programming in Manitoba and British Columbia but has reduced its capacity to do so by closing CIC offices in those regions.

### ***Temporary entrants***

- Employers and post-secondary educational institutions select temporary entrants, many of whom will remain in Canada, but have no responsibility to provide settlement support to the people they select.
- Previously, agricultural workers could only come to Canada as part of the Seasonal Agricultural Workers Program. Now employers can choose to recruit agricultural workers under the Pilot Project for Occupations Requiring Lower Levels of Formal Training without the protections of bilateral international agreements.

## **Lack of evidence-based policy decisions**

While some of the recent changes are based on evidence, others are not and appear to be based more on anecdote. Still others run contrary to the evidence and may be based on ideology. All of this compounds the lack of policy coherence.

## EXAMPLES: EVIDENCE BASE FOR POLICY CHANGES

### ***Policies based on evidence***

- Many changes to the economic class are based on evaluation, research and data

### ***Policies without an evidentiary basis***

- Many changes to the family class and citizenship are based on anecdote without evidence to show magnitude of problems (e.g. marriage fraud or birth tourism)
- The small number of migrant boats does not warrant mandatory detention of “irregular arrivals” who may ultimately prove to be bona fide refugees

### ***Policies contrary to the evidence***

- The occupation list for federal skilled workers goes counter to the evidence of the evaluation of the Federal Skilled Worker Program.
- The detention of “irregular arrivals” has not worked as a deterrent in other countries.
- European and American experience shows clearly that temporary foreign workers do not always leave when their legal status ends.

The challenge of making evidence-based policy decisions is exacerbated by two decisions that reduced the research, data collection, and analysis available to government for policy analysis. The first change was the elimination in 2011 of the mandatory long-form census which provided statistics for longitudinal research to assess how immigrants were faring in Canada. The second change was the 2012 decision to defund the Canadian Metropolis and affiliated Centres of Excellence across the country which enabled academics and non-governmental bodies to conduct and share a broad range of immigration-related research.

### **Lack of policy consistency**

A notable area of policy inconsistency has been in enforcement. Enforcement is being increased in certain areas such as deportations, citizenship fraud, unscrupulous immigration consultants, and asylum seekers who arrive in an “irregular” fashion with the aid of smugglers. At the same time there are other areas crying out for enforcement action to protect vulnerable workers such as live-in caregivers, low-skilled temporary foreign workers and seasonal agricultural workers. In these latter areas, announcements have been made but little enforcement action has actually been taken.

Enforcement activities are uneven. Additional resources have been allocated to deport failed refugee claimants but not towards working with provinces to prosecute employers who do not honour employment standards for their temporary foreign workers.

Another concern is that some of the recent enforcement mechanisms provide a broad brush rather than a targeted approach. Examples include requiring conditional permanent residence for *all* spouses of two years or less, and detaining *all* “irregular arrivals” over the age of 16 rather than only those deemed to be security or flight risks. Such approaches are punitive, costly, overkill and assume the worst in people.

Too often, in the name of going after the perpetrator, the victim is punished. For example, to prevent human smuggling, the “irregular arrivals” are detained and treated differentially. To prevent the inappropriate use of temporary workers, it is the workers who have limits placed on the length of their employment, even though employers can apply for new temporary workers to replace them. Another example would be the five-year waiting period imposed on the sponsored spouse with no comparable restriction on the original sponsoring spouse.

The public wants to know that the government is in control of immigration to Canada, that legislation is followed, that people are not abusing the system, and that the system is fair. People will be more supportive of immigration if they feel that enforcement measures are in place and working well. However, it is risky to contextualize immigration within a law and order agenda, to implement enforcement measures in a way that may be perceived to be uneven and unfair, and to label people as “queue jumpers,” “bogus refugees,” and “marriage fraudsters.” The overemphasis on certain types of enforcement and the mixed and negative messaging may ultimately reduce support for immigration among Canadians.

### **Lack of predictability**

Further, the sheer pace and scope of changes to immigration policy and programs creates a climate of unpredictability. One never knows when a moratorium will be imposed (as it has been for federal skilled workers, immigrant investors, entrepreneurs, and the sponsorship of parents and grandparents), when applications will be returned (as is the case for those in the queue for the Federal Skilled Worker Program), when caps will be imposed, removed, or imposed again (as they were for provincial nominees,



refugee sponsors, and federal skilled workers), and when program criteria will be changed (as they have been for many categories of immigrants and refugees and for citizenship acquisition).

When looking to attract the best and brightest, unpredictability can be a real disincentive to potential immigrants. Many immigrants are looking for security, stability, and permanence for themselves and their families. If the immigration system reflects insecurity and instability, they will think twice before applying to come to Canada.

The fact that criteria changes can now be made unilaterally by a single minister and imposed retroactively adds to the perception that the rules of the game are constantly changing. Until recently, immigrants were assessed on criteria in place at the time they applied. Now, someone can apply under one set of rules and qualify under those rules, but before the application is processed to completion the rules can change and be applied retroactively to disqualify the application.

Occupational screens and low annual caps add more unpredictability. Deciding whether to apply, or assessing one's chances of success, will depend on a guess about whether one has a chance of getting through before the cap closes, and they tend to close quickly. Last year's cap for the investors program was filled in 30 minutes!

All of the above unpredictability acts as a disincentive for anyone applying for immigration to Canada. There are application fees and other upfront costs to be paid and life decisions to be made. Without confidence in how the system works and will continue to work, applying for immigration can be a risky venture that highly skilled immigrants may decline.

## **Weakening the Democratic Process**

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### **Limited public consultation**

The unilateral imposition of policies by Ministerial Instructions, the reliance on omnibus and budget bills as opposed to stand-alone bills, and dwindling opportunities for public discourse and parliamentary debate have all contributed to a weakening of the democratic process. This trend is in stark contrast to the process leading to the

enactment of the *Immigration and Refugee Protection Act* in 2002 which involved comprehensive consultation, discussion and parliamentary debate.

While the current Minister of Citizenship and Immigration can be credited for travelling coast to coast, making speeches and issuing a multitude of press releases about new changes, that is not a substitute for meaningful consultation and parliamentary processes. And the sheer volume of the changes makes it hard to keep track of what is happening, let alone figure out how it all fits together. The government has not issued a comprehensive “green paper” with the vision they are trying to achieve, the evidence on which it is based, and how the pieces fit together. Nor has it established a task force, commission or broadly based public consultation process on possible new directions. The changes have been realized through a tightly controlled political process without allowing for real engagement and discourse. Consultations that have taken place have generally been by invitation only, on individual issues, or consisting of online questionnaires. There have also been some disturbing examples of constructive criticism being dismissed, discounted and undermined as coming from a “special interest group” or unworthy commentator. In a democratic country it is important for people to feel they can express their views without being attacked.

<b>EXAMPLES: WEAKENING THE DEMOCRATIC PROCESS</b>
<ul style="list-style-type: none"> <li>• Power of minister to impose policy and program changes through Ministerial Instructions</li> </ul>
<ul style="list-style-type: none"> <li>• Reliance on omnibus and budget bills</li> </ul>
<ul style="list-style-type: none"> <li>• Less opportunity for public discourse and parliamentary debate</li> </ul>
<ul style="list-style-type: none"> <li>• Unilateral federal decision-making and transfer of costs to provinces</li> </ul>
<ul style="list-style-type: none"> <li>• Lack of due process for the two new categories of refugee claimants</li> </ul>
<ul style="list-style-type: none"> <li>• Increase in individuals who will never become citizens</li> </ul>

### **Strained federal-provincial relations**

Federal-provincial relations are also strained in the face of unilateral federal decision-making, greater centralization, inadequate consultation with provinces, and the transfer of costs to provinces and municipalities.

When changes proceed without provincial consultation or consideration of provincial concerns, the federal government is discounting the authority of duly elected governments. Yet it is devolving more and more responsibility to unelected parties such as employers and post-secondary institutions that are selecting temporary residents who may one day become permanent residents and citizens.

## **Lack of respect for legal process**

New policies affecting refugee claimants and refugees have led to concerns about the lack of respect for the *Charter of Rights and Freedoms* and international agreements to which Canada is signatory. Examples include a lack of due process because of short timelines to present one's case to the Immigration and Refugee Board, detaining 16-year-old children, or treating refugees differently on the basis of national origin and how they entered the country. There is also concern that some of the government's policies are inconsistent with Supreme Court precedents, for example those provisions which allow the government to apply rules retroactively.

## **Reduced access to citizenship**

Changes to the rules for obtaining citizenship are also weakening Canada's democracy as growing numbers of people either will not be able to obtain citizenship, will have to wait longer, or go through "more hoops" to do so. Without citizenship, individuals cannot participate in the fundamental aspects of democratic life, including the opportunity to vote for the municipal, provincial or federal representatives who make decisions that affect their lives.

More people will have their citizenship denied as they will no longer be eligible, or because they were born to Canadian parents abroad or on Canadian soil to non-Canadian parents. Others – such as certain refugees, sponsored spouses, and those using two-step immigration processes – will now have to wait longer to become citizens. Still others who are eligible for citizenship may not apply (due to stricter rules, including language testing and the requirement to take the oath with no face covering) or may fail (due to harder tests and higher scores required to pass). All those who cannot or do not qualify, or must wait longer to pursue citizenship will be deprived, at least for a time, of the opportunity to participate in the fundamental aspects of democratic life, including the opportunity to vote for their municipal, provincial or federal representatives.

Many low-skilled temporary workers will never be eligible for permanent residence and therefore never be eligible for citizenship. If they don't leave the country when their work permits expire, this could result in a permanent underclass of people without status and no voice in the policies that affect them.

## Less Welcoming Environment

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Perhaps Canadians have become complacent in thinking that there will always be a long line of people waiting to come here. There is no question that Canada is currently a country of choice for many people from all over the world. That may not be the case in future, especially for highly skilled people of interest to all industrialized and some developing countries. While no single change would make Canada an unattractive destination, the cumulative impact may create the impression that Canada is no longer as welcoming as it once was.


Unpredictability and complexity do not create a welcoming environment. Tightening the criteria for permanent residence and for re-uniting with family members may deter some from even applying. Higher up-front application costs and reductions in post-arrival supports such as medical care can also act as a deterrent to potential applicants and sponsors. While the doors may remain open for most international students and temporary foreign workers, access to settlement support would be beneficial for them and for Canada, so that their integration can begin immediately.

The emphasis on enforcement can also act as a deterrent to potential immigrants by creating the impression that people coming to Canada are perceived as cheaters, fraudsters, and queue jumpers taking advantage of Canada's generosity. This negative messaging can create an anti-immigrant climate which does not send a welcoming message to attract the immigrants that Canada needs to continue to build the nation. Some changes may also create the impression that Canada is not welcoming of diverse cultures (e.g. the uncovered face rule for citizenship ceremonies) or languages (e.g. language requirements that work against potential immigrants from non-English or French speaking countries).

How Canada treats the most vulnerable in its midst is an indication of the kind of society it is. Harsh treatment of asylum seekers (e.g. detention of 16 year olds) and exploitation of temporary foreign workers can create a negative image of Canada for people looking for a stable, fair, humane, democratic, secure country in which to settle and raise their children. It is not a matter of choosing what's in the best interest of Canada or what is in the best interest of immigrants/refugees or temporary workers. Both are important and complement each other.

Essentially, the ongoing changes to all aspects of immigration policy may individually and cumulatively affect Canada’s attractiveness and may be counterproductive to Canada’s economic and nation-building objectives. Canada must do much more to ensure that it retains its reputation as an immigration destination of choice. The future of our nation depends on it.

**Table 12: Shaping the Future**

<b>SHAPING THE FUTURE</b>		
<b>IMPACT OF RECENT CHANGES</b>	<b>VS.</b>	<b>WHAT CANADA NEEDS</b>
		
<b>1. Focus on short-term labour market gains</b>		<b>Long-term vision to meet future needs of the nation through permanent entrants who will stay and contribute</b>
<b>2. Policy incoherence and unpredictability</b>		<b>Evidence-based policies that work together under a national vision</b>
<b>3. Weakening the democratic process</b>		<b>Public engagement, parliamentary processes, and meaningful provincial involvement</b>
<b>4. Less welcoming environment</b>		<b>Ensuring that Canada remains a desirable immigration destination</b>

## 5. A VISION FOR THE FUTURE

Immigration policy decisions affect how Canada is perceived in the world and the shape of the nation for generations to come. These decisions are too important to make quickly on a piecemeal basis without strong evidence, impact analysis, public engagement and debate, and democratic processes.

This paper has examined the individual and cumulative impact of the multitude of immigration policy changes the federal government made during the four-and-a-half-year period between 2008 and July 1, 2012. Based on that analysis, the authors propose that it is time for a national conversation on what kind of country we want to be, how immigration can help us get there, and implications for current and future immigration policies. This national conversation should be based on the following principles.

***Immigration policy should be based primarily on long-term social and economic objectives and a commitment to citizenship.***

Canada's immigration policy should focus primarily on long-term nation-building objectives to meet social, economic, demographic, and regional needs. This should include a focus on improving the outcomes of newcomers and their children. This would involve increasing the overall numbers for permanent immigration, long-term planning for levels and mix, and recognizing the value of all three immigration streams: economic, family, and refugee. There should be an increased focus on permanent entrants as opposed to temporary entrants and an emphasis on stable permanent residence and transition to citizenship. Employers should be encouraged to seek alternatives to temporary foreign workers to halt the development of a guest worker underclass.

***Immigration policy should be evidence-based, comprehensive, fair and respectful of human rights.***

Immigration policy decisions must be supported by a strong evidence base informed by data collection, research, analysis, evaluation, and forecasting. Policies should be developed in a comprehensive way that recognizes the inter-connectedness between immigration streams and other policy domains. Enforcement policies need to protect both program integrity and vulnerable persons in a fair, balanced way and to respect international agreements and Canada's Charter of Rights and Freedoms.

***Immigration policy should be developed through public and stakeholder engagement, meaningful federal-provincial-territorial consultation, and democratic processes.***

The development of federal immigration policies should respect parliamentary processes and significant policies should be enshrined in legislation and regulation. No Minister should be granted the sole discretion to determine or change immigration-related policies or programs. While there is federal paramountcy in areas such as immigrant selection and citizenship, provinces and municipalities should be meaningfully involved in policy and program development and delivery. Policies should be grounded in national frameworks that respond to regional variation and clearly identify accountabilities. Responsibilities for program delivery by non-government stakeholders should also be clearly delineated.

Governments should actively engage public and private institutions, individuals and groups in debate and consultation. These activities should be supported by a communication strategy that increases public understanding of and support for immigration.

***Immigration policy should enhance Canada's reputation around the world.***

All policies and programs should be assessed individually and cumulatively to see whether they will help to make Canada a desirable immigration destination. This will be essential to attract those who can contribute to building the future of the nation.

## Appendix A: Program Changes 2008 to JULY 1, 2012

### ECONOMIC CLASS

<b>FEDERAL SKILLED WORKER PROGRAM</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Occupation lists</li> <li>• Third party assessments of language</li> <li>• Annual caps on applications to be processed</li> <li>• Return of backlogged applications and fees</li> <li>• Moratorium on most new applications received July 1, 2012 or later</li> </ul> <p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Higher minimum standard for language</li> <li>• third party assessment of education credentials</li> <li>• More points for younger age</li> <li>• Separate program for trades</li> </ul>
<b>PROVINCIAL NOMINEE PROGRAMS</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Imposition of caps</li> <li>• Language requirement for workers in low- and semi-skilled occupations</li> </ul> <p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Focus on economic objectives</li> </ul>
<b>IMMIGRANT INVESTOR PROGRAM</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Annual caps and temporary closures (2010, 2011 and 2012)</li> <li>• Doubled amounts required for net worth (\$1.6 million) and investment (\$800 thousand)</li> <li>• Active investment requirements imposed on Provincial Nominee Program investor streams</li> </ul> <p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Switch to “high value global investors,” more active investment in Canadian growth companies, and no guaranteed returns</li> </ul>
<b>ENTREPRENEUR PROGRAM</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Moratorium pending redesign</li> </ul> <p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Pilot on “start-up visa” for more innovative immigrant entrepreneurs, using Ministerial Instruction</li> </ul>
<b>CANADIAN EXPERIENCE CLASS</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Creation of the Canadian Experience Class in 2008</li> </ul> <p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Reduce work experience from two years to one year before temporary workers may apply for permanent residence</li> </ul>
<b>EXPRESSION OF INTEREST MODEL</b>
<p><b>Federal proposals</b></p> <ul style="list-style-type: none"> <li>• Develop an “expression of interest” model for federal skilled workers and possibly other economic immigrants in which governments and employers could recruit from a pool of pre-screened applicants</li> </ul>



## FAMILY CLASS

<b>SPONSORSHIP OF SPOUSES</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Five-year period before a sponsored spouse can sponsor a future spouse</li> </ul>
<p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Permanent residence conditional on two years of cohabitation</li> </ul>
<b>PARENT AND GRANDPARENT SPONSORSHIP PROGRAM</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Increased admissions in 2012</li> <li>• Moratorium pending redesign</li> <li>• Consultation on redesign to tighten program</li> <li>• Introduction of the Parent and Grandparent Super Visa</li> </ul>

## REFUGEE CLASS

<b>ALL</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Elimination of source country program</li> </ul>
<b>GOVERNMENT-ASSISTED REFUGEE PROGRAM</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Increased annual admissions target plus \$9 million increase to the Resettlement Assistance Program</li> </ul>
<b>PRIVATELY SPONSORED REFUGEES</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Increased annual admissions target</li> <li>• Cap on annual number of “named” applications by Sponsorship Agreement Holders</li> <li>• Limit sponsorship by Groups of Five and Community Sponsors to refugees recognized by UNHCR or by a state</li> <li>• Limits on access to Interim Federal Health Program</li> </ul>
<b>REFUGEE CLAIMANTS</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Short timelines to submit claim, prepare for hearing, and perfect appeal</li> <li>• Less access to due process, work permits, for claimants from ministerial designated “safe” countries</li> <li>• Mandatory detention and less access to due process for claimants determined to be “irregular arrivals”</li> <li>• Five-year waiting period for “irregular arrivals” to apply for permanent residence, travel documents, or family sponsorship, even if determined to be bona fide refugees</li> <li>• Limits on access to Interim Federal Health Program</li> <li>• Risk of losing refugee and permanent status if found to have re-availed themselves of the protection of their home country</li> <li>• Assisted Voluntary Return and Reintegration pilot program for eligible failed refugee claimants</li> </ul>

## CITIZENSHIP

<b>CITIZENSHIP REQUIREMENTS</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Harder exam and 75% minimum passing grade</li> <li>• No automatic citizenship for foreign-born children</li> <li>• Requirement to uncover face during citizenship ceremony</li> </ul>
<p><b>Additional federal proposals</b></p> <ul style="list-style-type: none"> <li>• Proof of language required with application</li> <li>• No automatic citizenship for everyone born in Canada</li> <li>• Deportation of permanent residents who have not obtained citizenship, with no appeal, after serving a sentence of six months or more (currently this is two years)</li> </ul>

## TEMPORARY FOREIGN WORKERS

<b>ALL STREAMS REQUIRING LABOUR MARKET OPINIONS</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• More rigorous assessment of job offers (except for accelerated LMOs)</li> <li>• Two-year ineligibility for employers who do not honour wages or working conditions and loss of status for the foreign workers of those employers</li> <li>• Four-year limit on temporary work in Canada and four-year waiting period to return to Canada</li> </ul>
<b>LIVE-IN CAREGIVERS</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Assessment of job offer, adequacy of accommodation, and ability to pay before LMO is issued</li> <li>• Allow overtime to be taken into account in calculating minimum work requirements for permanent residence</li> <li>• Elimination of second medical exam requirement for permanent residence application</li> <li>• Allow work obligations to be accumulated over a four-year period</li> <li>• Require standard contract with set terms</li> <li>• Require employers to pay specified costs</li> <li>• Emergency work permits in cases of abuse</li> <li>• Dedicated phone line for caregivers with concerns</li> <li>• Open work permit after completing work obligations</li> <li>• Two-year employer ineligibility for failure to honour contract with caregiver</li> </ul>
<b>PILOT PROJECT FOR OCCUPATIONS REQUIRING LOWER LEVELS OF FORMAL TRAINING</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Can now be used to bring in temporary agricultural workers</li> </ul>
<b>OTHER TEMPORARY WORKERS (LMO REQUIRED)</b>
<p><b>Implemented</b></p> <p><u>Accelerated Labour Market Opinions for certain high skill occupations</u></p> <ul style="list-style-type: none"> <li>• Reduced processing time (10 days)</li> <li>• Flexibility to pay up to 15% less than prevailing wage</li> <li>• Attestation and compliance audits to replace proof of recruitment and employer interview</li> </ul>
<b>OTHER TEMPORARY WORKERS (NO LMO REQUIRED)</b>
<p><b>Implemented</b></p> <ul style="list-style-type: none"> <li>• Ontario pilot to give open work permits to spouses and children of returning Canadians (for health and academic positions)</li> </ul>

## INTERNATIONAL STUDENTS

### Implemented

- Eligibility to apply for permanent residence under new Canadian Experience Class
- Open work permit for three years post-graduation
- B.C. pilot extends open work permits to graduates of private career training programs
- Funding of an international education strategy to attract and recruit more students
- Enabling international PhDs studying in Canada to apply to the Federal Skilled Worker Program earlier than they could apply under the CEC

### Additional federal proposals

- Elimination of student streams within Provincial Nominee Programs
- Requirement to study at an eligible institution after arrival to maintain status in Canada
- Student work permits available only to those with valid study permits
- Designation of eligible institutions to host international students

## Appendix B: Supplementary Recommendations

Chapter 5 proposes a vision for the future of Canadian immigration based on defined principles and the cumulative impact of federal changes to immigration programs, roles and relationships. The following supplementary recommendations respond to specific changes that the federal government has proposed or implemented in regard to individual immigration programs or subcategories. This list could form the basis of a research, evaluation and consultation agenda to ensure the evidence supports the proposed directions.

### ECONOMIC CLASS

#### FEDERAL SKILLED WORKER PROGRAM

##### *Intake*

1. Do not include occupation lists as a preliminary screening tool in the re-design of the Federal Skilled Worker Program.
2. Instead of focusing primarily on intake management, consider increasing overall immigration levels to allow for more federal skilled workers to be admitted to Canada.

##### *Language*

3. Closely monitor the impact of new language requirements and evaluate for unintended negative consequences.

##### *Education*

4. Work with provinces and territories to offer incentives for regulatory bodies to assume responsibility for the overseas assessment of education credentials of immigrant applicants in their profession, which would then be used for both immigration and licensure purposes.

##### *Age*

5. Adopt a nuanced assignment of points for age that recognizes the potential contribution of older persons and the potential challenges faced by very young adults.

### *Skilled trades*

6. Work with provinces, territories, trade certification bodies, and employers to ensure that the tradespersons selected for immigration can obtain a Certificate of Qualification where required, either before or as soon as possible after arrival.

### **PROVINCIAL NOMINEE PROGRAMS**

7. Consult with provinces and territories on the future of Provincial Nominee Programs. Include discussions about national standards, admission levels, and the intersection of PNPs with other components of economic immigration. PNPs should complement federal programs, not replace or duplicate them.

### **IMMIGRANT INVESTORS**

8. Determine with the provinces whether the federal and provincial immigrant investment programs should be integrated into one program which is responsive to regional differences. Develop effective monitoring systems to avoid cases of fraud or impropriety.

### **ENTREPRENEUR PROGRAM**

9. Once consultations are completed, the “start-up visa” pilot should be prescribed in regulation rather than Ministerial Instructions. Do not make permanent residence for start-up entrepreneurs conditional on the success of the business.

### **EXPRESSION OF INTEREST MODEL**

10. As part of the consultation with provinces, territories, municipalities, employers and regulators on the Expression of Interest Model, consider piloting the concept in one province or sector.

## **FAMILY CLASS**

### **SPOUSES**

11. Do not proceed with conditional permanent residence for sponsored spouses in light of inadequate evidence to support the change and its potential negative consequences.

12. Allow for exceptions to the five-year waiting period for sponsored spouses to sponsor new spouses

## **PARENT AND GRANDPARENT SPONSORSHIP PROGRAM**

### *Redesign of the Parent and Grandparent Sponsorship Program*

13. In redesigning the sponsorship program for parents and grandparents, take into account the positive contributions that they and their accompanying dependents make to the family's economic and social integration.

### *Parent and Grandparent Super Visa*

14. Continue the super visa for parents and grandparents alongside the new sponsorship program and allow for the transition from visitor to permanent resident status from within Canada.

## **REFUGEE CLASS**

### **REFUGEE CLAIMANTS**

#### *Detention of "irregular arrivals"*

15. Do not make detention mandatory; do not detain minors; and conduct detention reviews more frequently for designated foreign nationals.
16. Place detainees in immigration-specific facilities and not in general prisons with criminal offenders.

#### *Designated countries*

17. Do not treat refugees differently based solely on their country of origin.
18. If the decision to designate countries as unlikely to produce refugees is maintained, human rights violations should be the primary factor considered, and recognized experts should be involved in the designation decision. It should not be a unilateral decision by a minister who may be influenced by trade or diplomatic considerations.
19. Exempt persecuted minority groups within designated countries from provisions affecting designated countries of origin.

### *Refugee claimant timelines*

20. Allow reasonable timelines for all claimants to submit claims and prepare for their hearings and appeals.
21. Address resource, training and appointment issues related to the Immigrant and Refugee Board of Canada and the new Refugee Appeal Division.

### *Post-hearing recourse*

22. Provide access to appeal and post-hearing recourse for all refugee claimants.

### *Work permits*

23. Provide employment authorizations to all refugee claimants as soon as they are deemed eligible to submit a claim.

### *Rights upon positive determination*

24. Allow all refugees to apply for permanent residence, sponsorship and travel documents as soon as a positive determination of refugee status has been made.

### *Loss of refugee and permanent residence status*

25. Apply a stringent test before removing refugee or permanent resident status.

### *Enforcement outside of Canada's borders*

26. Monitor and evaluate the impact of the Safe Third Country Agreement, visas on refugee producing countries, and interdiction efforts with other countries.
27. Put safeguards in place in international agreements with other countries to protect the privacy and security of Canadian residents.

### *Removal backlog reduction strategy*

28. Undertake removals as soon as possible after those to be deported have had access to due process, including appeals and post-hearing recourses.

### *Voluntary return*

29. Monitor and evaluate the effectiveness of the Assisted Voluntary Return and Reintegration pilot program.

## **REFUGEES SELECTED ABROAD**

### *Government-Assisted Refugee Program*

30. Increase federal government support for government-assisted refugees to respond to their complex needs.

### *Private sponsorship*

31. Provide incentives to sponsoring groups to respond positively to visa referred refugees in need of sponsorship.
32. Develop a new program for refugee family reunification. Allow for support to be provided by both family members in Canada and sponsor groups.

### *Source Country Class*

33. Allow individuals to seek asylum in Canada from within their home country in prescribed circumstances.

### *Transportation loans*

34. Refugees selected abroad should not be required to repay the cost of their transportation to Canada.

## **FEDERAL HEALTH BENEFITS**

35. Reinstate Interim Federal Health Program coverage for all refugees and refugee claimants.

## **CITIZENSHIP**

36. Ensure that the acquisition of citizenship is facilitated and encouraged among newcomers to Canada. Collect data, analyze results and establish an evidence base before proceeding with any action that discourages or prevents the attainment of citizenship.



## TEMPORARY ENTRY AND TWO-STEP IMMIGRATION

### CANADIAN EXPERIENCE CLASS

37. Expand opportunities for low-skilled workers to transition to permanent residence.
38. Treat the Canadian Experience Class and Provincial Nominee Programs as complements to the Federal Skilled Worker Program but maintain one-step immigration as the preferred option for skilled workers.

### TEMPORARY FOREIGN WORKERS

#### *Labour Market Opinions*

39. Implement rigorous assessments before LMOs are issued to ensure that employers have considered other options and people already in Canada or applying as permanent residents to Canada, before looking abroad for temporary foreign workers.
40. Implement proactive enforcement measures in collaboration with provinces and territories to ensure that employers are providing the required wages, benefits and working/living conditions.
41. Require employers to pay to obtain LMOs to help defray the costs of processing, monitoring and enforcement.

#### *Agricultural workers*

42. Create one program for agricultural workers which allows for longer stays and better protections for the workers.
43. Consider multi-entry, sector-specific visas for agricultural workers as opposed to single-entry, employer-specific visas.

#### *Live-In Caregiver Program*

44. Implement a program of proactive monitoring and enforcement in collaboration with provinces and territories to ensure that employers honour their commitments.

45. Expedite the processing of applications for permanent residence of live-in caregivers and enable simultaneous processing of family sponsorship applications.
46. Consider the introduction of sector-specific work permits and the negotiated option to live outside the employer's home.

#### *Pilot Project for Occupations Requiring Lower Levels of Formal Training*

47. The Pilot should be put on hold until a thorough consultation and evaluation have been conducted and alternatives considered.

#### *Accelerated Labour Market Opinions*

48. Require a rigorous assessment prior to the issuance of any LMO.
49. Require employers to pay temporary workers the prevailing wage in their community.
50. Allocate resources to conduct audits and undertake proactive enforcement of employer obligations with a priority on the most vulnerable workers.

#### *Open work permits with no LMO required*

51. Collect data on people receiving open work permits with no LMOs to analyze the impact they have on the labour market.

### **INTERNATIONAL STUDENTS**

#### *Open work permits*

52. Collect data and monitor the outcomes of open work permits for international students and graduates.

#### *Transition to permanent residence*

53. Evaluate the student component of the Canadian Experience Program and Provincial Nominee Programs to see if they are meeting the policy objective of encouraging students to apply for permanent residence in Canada.

54. Involve community organizations and educational institutions in the provision of services and supports to international students interested in making the transition to permanent residence.
55. Continue with the PhD stream in the Federal Skilled Worker Program, monitor its take-up, and evaluate its impact.

*Monitoring and enforcement of international student programs*

56. Work with provinces and territories to develop and implement monitoring mechanisms for educational institutions and international students.

**VISA APPLICANTS**

*Biometric data*

57. Develop regulations to ensure the privacy of individuals is not breached by the use of biometric data.