

France Houle



Canadian Immigration Law

How do you analyze the present state of the Canadian immigration law?

The last reform to the Canadian immigration law came into force in 2002 with the adoption of the Immigration and Refugee Protection Act. One of the most important changes that was brought to the former statute was to its selection grid of would-be immigrants belonging to the 'economic immigration' category. With the former selection grid, applicants would see their chances to be selected depending on occupational demand. With the new selection grid, successful applicants are those with a college or university degree. This major change was made to ensure that Canada would give itself the means to structure a knowledge economy. Since then, skilled and highly skilled immigrants can come to Canada with a permanent resident status which gives them a constitutional right to mobility within Canada, as per s. 6 of the Canadian Charter of Rights and Freedom. After three years of residency, permanent residents can apply for citizenship.

Up to recently, Canada did not purposely select individuals with a specific set of skills in order to develop economic clusters in, for example, air or train transportation, energy (oil sands and hydroelectricity), health and pharmaceuticals. Applications were treated in a chronological order. Although this way of administering files had the benefit of ensuring equal treatment to applicants (and also developing a more diverse knowledge society), its downside was that Canadian industries did not have access to the skilled and unskilled labour it needed. After 2005, when the shortage of labour started to become problematic, industries asked the government to be more responsive to their needs. This request was heard by the recently elected Conservative government which made several changes to the Canadian immigration regulatory system.

Among the changes was the creation of temporary programs aiming at providing greater flexibility to Canadian industries to select the skilled and unskilled migrants they needed. On a five-year period, the number of temporary migrants tripled in Canada. Access to permanent resident status was thereafter facilitated for skilled migrants, but not to unskilled migrants: they were still required to leave Canada after a maximum of two years of work. Another important change was the modification to

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the Immigration and Refugee Protection Act entitling the Minister of Immigration to make a discretionary selection of applicants whose skills were in demand by Canadian industries and from the backlog of 'economic immigrant' files. Finally, the last change to the immigration regulatory system was to give to all provinces the power to select their own candidates (until then only the Province of Quebec had successfully negotiated such a right mainly in arguing for the preservation of its culture).

As a results of all these changes, the selection of economic immigrants is not based on chronological order (first come, first serve basis), but on an occupational demand basis. In some respect, the Canadian Parliament and Government backtracked from its 2002 reform. It is not clear yet what will be the consequences of these changes. Will they have a positive impact on the Canadian economy on a short a long-term basis? It is too early to tell.

In your opinion, how will the situation likely evolve over the next five years?

The shortage of labour will become more and more problematic starting in 2013. Therefore, it is likely that Canadian governments (Federal Provincial and Territorial) will favour the development of public immigration policies favouring greater openness of our frontiers to skilled and highly skilled migrants. There are already some signs that Canadian governments are moving in this direction. First, there are multiple bilateral negotiations between the Federal government and different states to increase the mobility of workers (for example, workers having experience in the oil industry to help develop the Canadian oil sands). The Federal government is also multiplying commercial discussions with India, in particular. As it is well-known, India trains numerous students in high technology sectors and these highly skilled future workers are in great demand in Canada. For similar reasons, China has also been approached by the Federal government. Finally, Canada is in the process of negotiating a global commercial and economical agreement with Europe which will contain provisions regarding the mobility of workers.

Provinces and territories are also active on this front. Although the constitutional powers of provinces and territories are more limited than those of the Federal government (they allow them to only act with respect to specific legislative competences: mainly civil rights), for our purposes, they are working together to increase the mobility of workers inside the Canadian interior market. With respect to skilled workers in particular, a protocol was recently signed between provinces and territories, including the Federal Government. The Ninth Protocol sets the basic legal principles to increase the mobility of professionals and tradespersons (citizens and permanent residents) through the establishment of a mutual recognition of credential regulatory system. Also, Canadian governments have signed an agreement in 2009 to

accelerate the recognition of credentials of immigrants. Lastly, the province of Quebec signed an agreement with France whose sole purpose is to establish a system of mutual recognition of professional qualifications for the benefit of professionals and tradespersons exercising a regulated profession. With this new regulatory system, individuals who have acquired professional credentials in France or in Québec and wish to work on the other territory will benefit from Mutual Recognition Arrangements concluded between professional orders and trade associations. In these Arrangements, requirements for the deliverance of a permit to exercise a specific trade or profession are clearly stated.

In the next five years, Canadian governments will be particularly aggressive in developing and strengthening these systems to ensure that skilled and highly skilled migrants and immigrants will be able to rapidly exercise their trade or profession in Canada. With respect to unskilled migrants, interest groups are pressuring governments to improve their labour rights. So far, their efforts have not led to any significant legal changes and the Conservative government, which will be in power for the next 5 years, made it clear that it has no intention of changing the regulatory regime for unskilled workers. Interest groups are also active in the judicial system, especially to improve the working conditions of agricultural workers. However, the latest decision of Supreme Court of Canada in the Fraser case (2011) does not give much hope in the sense that the Court has decided that the Ontario legislature is not required to provide a particular form of collective bargaining rights to agricultural workers, in order to secure the effective exercise of their associational rights.

What are the structural long-term perspectives?

If we assume that the current economic model based on growth will continue to be supported by Canada and its economic partners (such as OECD countries), it is likely that profound changes will occur in the next 10 to 20 years. Indeed, the need for skilled and unskilled human resources sourced from outside the country will continue to grow as the demographic profile continues to evolve toward a situation where Canada cannot replace its labour force through the effective birth rate of its own population. Competition among states will become fierce and perhaps unsustainable (as states may offer more and more advantages to attract workers to their territories). In this context, predictions are that many public policies will be rethought from top to bottom.

For example, countries may develop a far more open policy to welcome skilled and unskilled workers. Privatisation of selection of economic migrants by large and medium size corporations may then become a "fait accompli" as they will then be authorized to select their own workers in the global human resources market without having to demonstrate, prior to the hiring, that no citizens or permanent resident of a

country can be found to fill in the position. Although health and security checks will still need to be performed, the question will be: whose tasks will it be? Each nation state may continue to find it advantageous to do it by itself, but it is also possible that a cost-benefit analysis may show that it could be preferable to establish a supranational organisation in charge of performing such a task.

Other changes may also occur at the level of social protection policies. For skilled workers, companies will likely offer them generous insurance plans so that these workers will not need to rely on public welfare programs. However, unskilled workers will still be in need of protection and it will come a time when states will have to organise their safety net systems to ensure portability of social programs (most importantly : health, pension and unemployment). Here again, administering such programs at a national level rather than a supranational level may prove to be too complex and too costly to be adapted to workers who are constantly on the move. Taxation of income may also undergo deep changes: Will governments, especially countries with a small population, be able to ensure their financial stability if the main source of income is taxation to the source of employment? Will they be tempted to tax income on the basis of citizenship? If yes, will they become less tolerant in authorizing double and multiple citizenship? As the US example shows us, such a system is complex and costly to administer. Therefore, one solution may be to establish a taxation system mainly or solely based on consumer and corporate taxes. Lastly, collective representation of labour may also undergo profound changes: from a system based on industries representation, sectoral representations may become the most preferred and effective means to protect workers. Then, the ILO may be called upon to fulfill this important role.

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