

# CHAPTER 5: IMPROVING FOREIGN CREDENTIAL RECOGNITION THROUGH REFORM IN IMMIGRATION LAW AND POLICY

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*Immigration is of paramount importance to Canada and its present and future economic prosperity. Immigrants make considerable contributions to the nation's economy, and to effectively maximize these contributions, foreign credential recognition is of particular significance. Canada accepts a large number of immigrants each year, many of whom possess foreign credentials, and a significant proportion of these immigrants are unable to work in occupations that correspond appropriately to their skills and training. Alterations in immigration law and policy can help to address these issues.*

*To ensure that the points awarded for education in the federal skilled worker immigration category are commensurate with the actual value of the academic credentials in Canada, and to provide full disclosure to immigrants with respect to the value of their credentials in Canada:*

- *The federal government should consider awarding points for education in the federal skilled worker immigration category based on a credential's value in Canada, as opposed to the credential's standing in the country in which it is earned.*

*To encourage and facilitate the immigration of people who are guaranteed to have credentials that are recognized in Canada, and who either have or are guaranteed to obtain valuable Canadian work experience:*

- *The federal government should consider allowing the educational portion of the Canadian Experience Class of immigration's requirements to be satisfied by credentials from Canadian university campuses abroad. The additional requirement for one year of skilled work experience in Canada for those with Canadian post-secondary credentials could also be altered; a concrete offer of employment in a skilled occupation, or one year of previous skilled work experience in Canada, should be adequate to satisfy this requirement.*

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*To increase transparency in the immigration process, and to minimize the false hopes that some immigrants experience:*

- *The federal government should establish and maintain a database of “match rates” for specific regulated occupations for immigrants from key immigration source countries. This database should be available online to anyone who wishes to access it.*

## I. INTRODUCTION

Foreign credential recognition in Canada is directly and intricately linked to immigration. Before discussing the immigration law and policy that affects foreign credential recognition, it is prudent to briefly survey current issues in immigration, and immigrants’ actual experiences with credential recognition processes.

In November 2009 Jason Kenney, Canada’s Minister of Citizenship and Immigration, asserted that Canada was “maintaining the world’s highest relative levels of immigration” at 0.8% of the population annually, approximately 250,000 people per year, and that “no country in history has maintained that kind of velocity of demographic change.”<sup>1</sup> Minister Kenney reiterated in March 2010 that “[w]e intend to continue with historic high levels for immigration.”<sup>2</sup> Many of these immigrants hold international credentials, and it can be reasonably inferred that with historically massive levels of immigration, foreign credential recognition is currently playing, and will continue to play, a key role in Canada’s economic prosperity. The government of Canada wants these immigrants to integrate both socially and economically. For successful economic integration, Canada must develop effective mechanisms to facilitate the recognition of foreign academic credentials and substantive competencies.<sup>3</sup> In addition to desirable changes in other areas, alterations in immigration law and policy can be an important part of the solution.

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<sup>1</sup> Interview of Jason Kenney by Steve Paikin (20 November 2009) on *The Agenda with Steve Paikin*, TVO television broadcast, Toronto, online: TVO <<http://www.tvo.org>>.

<sup>2</sup> Citizenship and Immigration Canada, *Speaking Notes for the Honourable Jason Kenney, PC, MP Minister of Citizenship, Immigration and Multiculturalism* (Speech delivered at a news conference delivered in Toronto, 26 June 2010), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/department/media/speeches/2010/2010-06-26.asp>>.

<sup>3</sup> Interview of Jason Kenney by Steve Paikin (2 June 2009) on *The Agenda with Steve Paikin*, TVO television broadcast, Toronto, online: TVO <<http://www.tvo.org>>; see also Chapter 7: Facilitating Credentials Recognition at Frontline Agencies.

Foreign credential recognition processes must be made fair, transparent, consistent and timely, and assessment results should be portable across Canada.<sup>4</sup> Although there have been efforts put forth to improve foreign credential recognition in Canada, and important progress has been made in some areas, Canada's present immigration law and policy does not adequately facilitate the most efficient and effective economic integration of immigrants. This paper addresses problems related to the false expectations experienced by some immigrants whose credentials are considered relevant for the purposes of immigration, but then not recognized for employment purposes upon arrival, the need for increased transparency in the immigration system, and the importance of recognizing immigrants' foreign credentials once they are in Canada in an accurate and expedient manner.

### A. The Immigration Debate

There is not a consensus that high levels of immigration are desirable or helpful to Canada economically. Some assert that rather than spending time and money improving foreign credential recognition and facilitating economic integration, immigration levels should be significantly lowered. It has been argued that Canada's immigration levels are already much too high, with the problem potentially being compounded as the leaders of all of Canada's major political parties promise even higher immigration levels.<sup>5</sup> Proponents of this view argue that even during times of prosperity, immigrants are a great burden on the country economically. One study contends that the 2.9 million immigrants who arrived in Canada between 1990 and 2002 "received \$18.3 billion more in government services and benefits than they paid in taxes" in 2002.<sup>6</sup>

This study should only be considered in light of the assumptions made in it. The findings are arrived at based on the fact that in Canada income is distributed "from high to low income earners," and immigrants generally earn less income than those born in Canada. The result is lower income taxes paid by these immigrants, while they benefit equally from social services.<sup>7</sup> It is also asserted that the lower average income of immigrants results in them paying less

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<sup>4</sup> Canada, Forum of Labour Market Ministers, *A Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications*, (Gatineau, QC: Publications Services, 2009) at 4-5, online: Human Resources and Skills Development Canada <[http://www.hrsdc.gc.ca/eng/workplaceskills/publications/fcr/pcf\\_folder/PDF/pcf.pdf](http://www.hrsdc.gc.ca/eng/workplaceskills/publications/fcr/pcf_folder/PDF/pcf.pdf)>; see also Chapter 6: Improving Labour Market Integration and Interprovincial Mobility for Immigrants Holding Foreign Credentials.

<sup>5</sup> James Bissett, "Truth and Immigration", *The Ottawa Citizen* (18 September 2008) A17.

<sup>6</sup> *Ibid.*

<sup>7</sup> Herbert Grubel, ed, *The Effects of Mass Immigration on Canadian Living Standards and Society* (Canada: The Fraser Institute, 2009) at 103, online: Centre for Immigration Policy Reform <<http://immigrationreform.ca/doc/the-effects-of-mass-immigration-on-canadian-living-standards-and-society-fraser-institute.pdf>>.

in sales taxes and “taxes on their asset holdings.”<sup>8</sup> The key point is that the precise tax remittance numbers were estimated based on assumptions, and it was determined based on this that in 2000 “the value of government services consumed by the average immigrant who arrived in 1990 exceeded the value of the taxes paid by \$6,294.”<sup>9</sup> This number is then used for each of the 2.9 million immigrants who arrived in Canada between 1990 and 2002, and the conclusion is reached that these immigrants as a whole cost Canadian taxpayers \$18.3 billion in the year 2002 alone.<sup>10</sup> This assertion is, the author admits, “based on a number of important assumptions, some spelled out and some implicit. Only further work can establish the extent to which the results were influenced by unrealistic assumptions.”<sup>11</sup> These calculations should only be used with caution to influence immigration law and policy, simply because the assumptions made cannot be confirmed. It should also be noted that the economic value of immigration is not solely based on the first years that a person is in Canada, but on the contributions of an immigrant over a lifetime.

Some are extremely critical of the point of view that immigrants are a burden to Canadian society. In 2009, 73,000 immigrants came to Canada under the Federal Skilled Worker program;<sup>12</sup> immigrants in this class are selected based on the perceived likelihood they will succeed economically.<sup>13</sup> Additionally, the “baby boom generation” is beginning to enter retirement, and all of these workers cannot be replaced by Canadian-born workers.<sup>14</sup> It has been estimated that by 2011, all of Canada’s net labour force growth may be derived from immigration, and by 2030 immigration may produce all of Canada’s population growth.<sup>15</sup>

It is true that immigrants face higher levels of poverty than Canadian-born people, and many immigrants “face a tough time in establishing themselves in our country, partly because their prior skills and experience often go unrecognized.”<sup>16</sup> Improvements in foreign credential recognition in Canada can undoubtedly facilitate the stronger and faster economic integration of immigrants upon arrival. “[T]he cost of untapped potential is estimated to range

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<sup>8</sup> *Ibid* at 105.

<sup>9</sup> *Ibid* at 106.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid* at 106-107.

<sup>12</sup> Citizenship and Immigration Canada, *Report to Parliament on Immigration 2010*, (Ottawa: Citizenship and Immigration Canada, 2010) at 12, online: Citizenship and Immigration Canada <[http://www.cic.gc.ca/english/pdf/pub/immigration2010\\_e.pdf](http://www.cic.gc.ca/english/pdf/pub/immigration2010_e.pdf)> [Report on Immigration 2010].

<sup>13</sup> *Ibid* at 6.

<sup>14</sup> Anne Golden, “We do need more immigrants”, Editorial, *The Ottawa Citizen* (22 September 2008) A13.

<sup>15</sup> Statistics Canada, *The Daily*, (Ottawa: StatCan, 10 September 2007) at 8.

<sup>16</sup> Golden, *supra* note 14.

between \$2.4 and \$5.9 billion annually,”<sup>17</sup> which highlights the importance of facilitating immigrants’ economic integration to Canada generally.

Some argue that affluence is not dependent upon labour force growth, but on “sound economic policies,” and effective and efficient use of the current labour force.<sup>18</sup> The postulation that these things alone would lead to greater prosperity for the country than they would in addition to labour force growth is contradicted by statistics relating to Canada’s aging population. In 2006 “the ratio of the population age 65 and over to the population of traditional working age (18-64)” was 20%.<sup>19</sup> It is estimated that “based on current fertility rates, current immigration levels and moderately rising life expectancy,” this ratio will increase “to 46 percent in 2050.”<sup>20</sup> This would mean that for every 100 Canadians between the ages of 18 and 64, there would be 46 Canadians aged 65 or older.<sup>21</sup> It is argued that the extreme level of immigration needed to maintain a ratio of 20% is unsustainable, and this shows “clearly that immigration cannot realistically be used to solve Canada’s problem” in this area.<sup>22</sup>

Immigration should not be disregarded as part of the solution simply because it will not solve the problem alone. It would not be reasonable to suggest that immigration rates should be increased to maintain a dependence rate of 20%. To do this, if the age distribution of immigrants remains the same, the required increase would be “immediate and colossal,” bringing Canada’s population to 56.6 million by 2020, and 165.4 million by 2050.<sup>23</sup> Using immigration alone to solve this problem is simply unrealistic,<sup>24</sup> but relatively high levels of immigration can alleviate the rising dependence ratio to an extent. Lowering immigration rates significantly, as some suggest is desirable, would ostensibly result in the dependence ratio rising higher and faster than the above estimations suggest, given that those estimations are based on maintaining current immigration rates.<sup>25</sup> Relatively high levels of immigration combined with the efficient and effective use of Canada’s present and future labour force is a desirable means to

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<sup>17</sup> House of Commons, Standing Committee on Citizenship and Immigration, *Recognizing Success: A Report on Improving Foreign Credential Recognition* (November 2009) (Chair: David Tilson) at 1 [Recognizing Success].

<sup>18</sup> Martin Collacott, “Immigration is not the Key”, Letter to the Editor, *The Ottawa Citizen* (25 September 2008), online: Canada.com <<http://www.canada.com/>>.

<sup>19</sup> Yvan Guillimette & William Robson, “No Elixir of Youth: Immigration Cannot Keep Canada Young” (2006) 96 Background 1 at 1.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Grubel, *supra* note 7 at 112.

<sup>23</sup> Guillimette & Robson, *supra* note 19 at 6.

<sup>24</sup> See especially *ibid* at 6.

<sup>25</sup> In *ibid*, the rise to 46% was based on maintaining immigration rates at 2006 levels of about 230,000 people per year.

maintain affluence across the country.<sup>26</sup> Immigration is part of the solution, and Canada owes it to its future immigrants and its present citizens and permanent residents to develop strong and effective foreign credential recognition processes to assist in the economic integration of a large portion of Canada's labour force.

## B. Economic Integration: The Cost of Failing to Recognize Foreign Credentials

In 2007, approximately 55% of immigrants to Canada were accepted under the economic category,<sup>27</sup> and in 2008, almost 45% of Canada's immigrants held university level degrees.<sup>28</sup> Many economic class immigrants are accepted at least partially because of their internationally obtained academic credentials and work experience. These people will require assessment and recognition of their credentials and competencies if they are to properly integrate economically.

There is an economic cost to Canada that results from the inability to properly recognize these foreign credentials. The Parliamentary Standing Committee on Citizenship and Immigration estimates the cost at \$2.4 to \$5.9 billion annually.<sup>29</sup> It is clear that there are significant benefits to establishing adequate credential recognition mechanisms.<sup>30</sup> Such mechanisms will facilitate economic integration, leading to financial advantages for both Canada and individual immigrants, while enhancing Canada's reputation abroad as a destination of choice for highly educated and skilled immigrants.

The foreign credential recognition problem is especially significant in the regulated occupations, where regulatory bodies often define stringent and specific credentials that one must hold in order to enter a given occupation in a certain jurisdiction.<sup>31</sup> In 2006 there were 1.8 million people in Canada holding degrees that would "typically lead to work in a regulated occupation." Of these people, slightly over 600,000 were immigrants, and slightly over 400,000 of those immigrants were educated abroad.<sup>32</sup> If any considerable portion of the 400,000 immigrants with the required credentials from institutions abroad cannot have those credentials properly recognized and work in their appropriate occupations,

<sup>26</sup> See *ibid* for a discussion about the different immigration estimation models used, and other economic forces that may ease the consequences of the rising dependence ratio.

<sup>27</sup> Kara Somerville & Scott Walsworth, "Vulnerabilities of Highly Skilled Immigrants in Canada and the United States" (2009) 39 *American Review of Canadian Studies* 147 at 150.

<sup>28</sup> Rene Houle & Lahouaria Yssaad, "Recognition of newcomers' foreign credentials and work experience" (2010) 11 *Perspectives on Labour and Income* 18 at 18, online: Statistics Canada <<http://www.statcan.gc.ca/pub/75-001-x/75-001-x2010109-eng.pdf>>.

<sup>29</sup> Recognizing Success, *supra* note 17.

<sup>30</sup> See Chapter 7: Facilitating Credentials Recognition at Frontline Agencies.

<sup>31</sup> Danielle Zietsma, "Immigrants Working In Regulated Occupations" (2010) 11 *Perspectives on Labour and Income* 13 at 14, online: Statistics Canada <<http://www.statcan.gc.ca/pub/75-001-x/75-001-x2010102-eng.pdf>>.

<sup>32</sup> *Ibid*.

the result is a significant waste of human capital. This leads to what is colloquially termed the “doctors driving cabs” problem. The quandary is highlighted by the unemployment rates of these highly educated and skilled immigrants being significantly higher than their Canadian educated counterparts.

Foreign-educated immigrants with degrees that would normally lead to regulated occupations had an unemployment rate of 7% in 2006, compared to their Canadian counterparts’ rate of just 2.5%.<sup>33</sup> Even further stressing credential recognition problems in Canada, only 24% of these foreign-educated immigrants were working in the fields that their credentials would normally entitle them to work, compared to 62% of Canadian-educated workers.<sup>34</sup> In order to maximize the well-being of these immigrants, and to maximize the utilization of their potential contributions to Canada, efforts must be made to ensure that those with foreign credentials are able to work in jobs commensurate with their skills, training and experience. Canada is presently failing its immigrants in this regard.

### C. Immigrants Finding Work Commensurate with their Skills and Training

An immigrant to Canada may find herself unable to work in an occupation for which she is qualified for a number of reasons.<sup>35</sup> These reasons can include a “lack of foreign credential recognition,” a lack of both Canadian work experience and “connections in the job market,” the discounting of foreign work experience, and not having adequate support networks, such as friends and family, to help.<sup>36</sup> Any of these things may lead to a person not being able to work in a position that she or he is qualified for. This occurs too often in Canada, and is an inexcusable waste of human capital.

It has been suggested that the large number of immigrants coming from Asian countries with educational systems about which relatively little is known may cause some employers to be suspicious of a credential, and this can result in an immigrant experiencing difficulty finding a job commensurate with his education and abilities.<sup>37</sup> This trend appears when comparing immigrants who arrived prior to 1991 with more recent ones arriving between 1991 and 2006. In 2006, 21% of male immigrants with university degrees who had arrived in

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid* at 15.

<sup>35</sup> Statistics Canada, *Immigrants’ perspectives on their first four years in Canada: Highlights from three waves of the Longitudinal Survey of Immigrants to Canada*, (Ottawa: StatCan, 2007) at 9, online: Statistics Canada <<http://www.statcan.gc.ca/pub/11-008-x/2007000/pdf/9627-eng.pdf>> [First Four Years].

<sup>36</sup> *Ibid* at 8-9.

<sup>37</sup> Diane Galarneau & Rene Morissette, “Immigrants’ education and required job skills” (2008) 9 *Perspectives on Labour and Income* 5 at 9, online: Statistics Canada <<http://www.statcan.gc.ca/pub/75-001-x/75-001-x2008112-eng.pdf>>.

Canada between 1990 and 1994 worked in low-skilled occupations, compared to only twelve percent of university educated immigrants in 1991 who had arrived between 1975 and 1979.<sup>38</sup> This highlights the importance of providing ways to assess a person's competencies, and not only their academic credentials.

The "match rates" (working in the occupation that one's credentials would typically lead to)<sup>39</sup> for people educated in Canada are higher than for foreign-educated immigrants, regardless of how long an immigrant has been in Canada. Match rates do increase with time for people with foreign credentials,<sup>40</sup> but it is unclear whether that is the result of additional training and/or education. The match rates for those with foreign credentials for some specific occupations are abysmal. The lowest match rates are in law (12%), engineering (19%), and teaching (20%).<sup>41</sup> The fact that the match rate for engineering is so low is particularly troublesome, because 52% of foreign-educated immigrants with credentials that normally lead to regulated professions have degrees in engineering.<sup>42</sup>

For Canadian-educated workers, the match rates are very high in medicine (92%) and nursing (73%), but this is not the case for foreign educated workers who have match rates of only 56% for both of those occupations. Foreign-trained optometrists have a match rate of 38% compared to 95% for those educated in Canada.<sup>43</sup> This is disturbing considering that labour shortages were reported in all three of these occupations in 2006, and these shortages were expected to persist over the next decade.<sup>44</sup>

The match rates for workers in all regulated occupations combined for those with credentials from certain countries vary depending on the destination province. For all foreign-educated workers, match rates range from a low of 19% in Quebec to a high of 60% in Newfoundland and Labrador, and the national average is 24%.<sup>45</sup> Newfoundland's match rate of 60% for foreign-educated individuals is just three percent lower than that province's match rate for Canadian-educated people, but the number of foreign-educated immigrants is

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<sup>38</sup> *Ibid* at 15.

<sup>39</sup> Zietsma, *supra* note 31 at 14.

<sup>40</sup> *Ibid* at 15-16.

<sup>41</sup> *Ibid* at 16.

<sup>42</sup> *Ibid* at 15.

<sup>43</sup> *Ibid* at 16.

<sup>44</sup> Human Resources and Skills Development Canada, *Looking Ahead: A 10-Year Outlook for the Canadian Labour Market (2006-2015)*, (Ottawa: Human Resources and Social Development Canada, 2006) at 30 and 58, online: Human Resources and Skills Development Canada

<[http://www.hrsdc.gc.ca/eng/publications\\_resources/research/categories/labour\\_market\\_e/sp\\_615\\_10\\_06/sp\\_615\\_10\\_06e.pdf](http://www.hrsdc.gc.ca/eng/publications_resources/research/categories/labour_market_e/sp_615_10_06/sp_615_10_06e.pdf)>.

<sup>45</sup> Zietsma, *supra* note 31 at 17.



very small (605).<sup>46</sup> The match rates for domestically-trained workers also vary by province, from a low of 59% to a high of 65%.<sup>47</sup>

Generally, immigrants who earn credentials in countries with education systems similar to Canada's have higher match rates. The highest are for those educated in Ireland (59%) and New Zealand (57%), and the countries with the lowest match rates are Kazakhstan (7%), Moldova (9%), and Morocco (9%).<sup>48</sup> The top three countries from which Canada's economic immigrants are currently derived are China, India, and Pakistan.<sup>49</sup> India and Pakistan both have match rates of 21%, and China's is 15%.<sup>50</sup>

Many immigrants to Canada feel that their expectations are not met, and economic immigrants are the most likely to feel this way.<sup>51</sup> It is postulated that the explanation for this could be that economic immigrants have higher expectations regarding their employment prospects before arriving in Canada, and subsequently have "difficulty realizing these."<sup>52</sup> These high expectations may be at least partially the result of Canada assigning points in the immigration system for their educational achievements, but then failing to properly recognize that education for employment purposes.

To increase transparency for potential immigrants, the government of Canada should consider the establishment and maintenance of a public database identifying match rates each year for immigrants holding credentials from specific countries that typically lead to specific occupations. This would provide a greater degree of transparency from the Canadian government regarding the success of immigrants, and would assist potential immigrants in deciding whether to come to Canada. Such a database would also act as a gauge for Canada to measure its progress regarding the improvement of its foreign credential and competency recognition processes, and the effectiveness with which its most highly educated and skilled immigrants are integrating economically.

#### D. Summary

The facts outlined above should serve as a catalyst for change in the area of recognition of foreign credentials in Canada. Canada accepts large numbers of immigrants each year, and by failing to provide adequate means of recognizing their foreign credentials, the country is causing frustration and economic hardship for these immigrants, while also diminishing their potential contributions to Canada. Internationally obtained credentials and competencies

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.* at 18.

<sup>49</sup> First Four Years, *supra* note 35 at 6.

<sup>50</sup> Zietsma, *supra* note 31 at 20.

<sup>51</sup> First Four Years, *supra* note 35 at 13.

<sup>52</sup> *Ibid.*

need to be accurately assessed and recognized, which would increase the ability of people holding these credentials to work in occupations that correspond to their skills and experience.

It is important to maintain barriers to professional licensure to the extent required to guarantee the safe and competent delivery of services to Canadians. While overly restrictive barriers may be sufficient to achieve the goal of public protection, they are not necessary to achieve that goal. Combined with the removal of unnecessary barriers to regulated occupations,<sup>53</sup> accurate assessment and recognition of foreign credentials and competencies would ensure the safe provision of services to Canadians, increase Canadians' access to these services, promote competition in these occupations, and facilitate the economic integration of many immigrants.<sup>54</sup>

Immigration law and policy is one avenue through which positive change can be achieved. The government decides who will be allowed to immigrate to the country, and often bases this decision partly on a person's education. In doing this, the government of Canada has an obligation to see that these credentials are accurately recognized in terms of their Canadian equivalents, for the good of the immigrants themselves, the Canadian economy, and for Canada's future stature as a desirable destination for highly educated and skilled immigrants.

## II. THE IMMIGRATION AND REFUGEE PROTECTION ACT

The criteria based upon which immigrants are selected, and the processes in place to facilitate their integration are often defined, and always influenced, by immigration law and policy. Immigration in Canada is governed by the *Immigration and Refugee Protection Act (IRPA)*.<sup>55</sup> Under *IRPA*, the government develops immigration plans each year; these plans attempt to balance three important goals. One goal is to ensure the continued economic prosperity of Canada. An additional objective is to see family reunification in Canada, and the final goal is to "uphold Canada's international humanitarian obligations."<sup>56</sup>

There are several different categories under which one can immigrate to Canada. The three broad categories correspond to the main objectives of Canada's immigration plans. These categories are the Economic Class, the Family Class, and Protected Persons; within the Economic Class there are

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<sup>53</sup> See Chapter 2: Effective Foreign Credential Recognition Legislation: Recommendations for Success; see also Chapter 1: Human Rights Legislation and the Recognition of foreign Credentials.

<sup>54</sup> See e.g. Chapter 3: The Application of Competition Law to Foreign Credential Recognition.

<sup>55</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27.

<sup>56</sup> Report on Immigration 2010, *supra* note 56 at 8-9.

subcategories.<sup>57</sup> Different types of Economic Class immigrants include federal skilled workers, “provincial and territorial nominees, the Canadian Experience Class, and live-in caregivers, as well as their immediate family members.”<sup>58</sup> For those outside of the economic class, and even for some within it, educational credentials do not affect the decisions made regarding one’s immigration status. This paper mainly focuses on categories in which education is a factor, but it should be noted that although educational considerations are not relevant for some immigrants in terms of their immigration statuses, many of these people still hold foreign credentials which they will rely on during the economic integration process.

*IRPA* was amended in 2008 in response to a large backlog of potential immigrants awaiting responses to their applications.<sup>59</sup> These amendments will be discussed first, followed by considerations regarding the categories of immigration, and what could be done to manipulate immigration law and policy to better facilitate foreign credential recognition and the economic integration of immigrants.

### A. The 2008 Amendments to the Immigration and Refugee Protection Act (IRPA)

In June 2008, Canada’s parliament approved amendments to *IRPA*, that were meant to improve efficiency in “the processing of select skilled worker applications.”<sup>60</sup> The concern was that because of extended wait times resulting from the backlog that had amassed, “Canada [was] losing out on talented immigrants who [were] choosing to go to other countries such as Australia where the wait time [was] six months, not six years.”<sup>61</sup> Improving wait times is a very important objective in improving Canada’s immigration system, and it is encouraging that there is recognition that Canada has to be aware of the possibility of losing highly skilled and educated immigrants to other countries. In addition to potentially losing immigrants due to long wait times, there is also a danger of losing immigrants to countries with better processes for recognizing internationally-obtained credentials and competencies. Conversely there is an opportunity for Canada to develop both competency-based and academic credential recognition processes that act as an attractive force to highly educated and skilled immigrants.

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<sup>57</sup> Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration 2009*, (Ottawa: Citizenship and Immigration Canada, 2009) at 13 [Report on Immigration 2009].

<sup>58</sup> *Ibid.*

<sup>59</sup> “Legislative amendments to the Immigration and Refugee Protection Act”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca>> [2008 *IRPA* Amendments].

<sup>60</sup> Report on Immigration, 2009, *supra* note 56 at 8.

<sup>61</sup> Canada, House of Commons, *Hansard* 39th Parl, 2nd Sess, No 071 (3 April 2008) at 1215 (Ed Komarnicki).

Canada's constitutional division of powers delegates various powers that impact foreign credential recognition to the provinces/territories and the federal government.<sup>62</sup> The provinces and territories have jurisdiction over education, the trades and most regulated professions, while the federal government's role stems from "its responsibilities for the immigration system, national labour market policies, and providing leadership and national tools to strengthen the economic union."<sup>63</sup> With respect to immigration, it is notable that the 2008 *IRPA* amendments take into account the need for faster processing of applications for those who have credentials in areas that are in demand in Canada, but the amendments remain silent regarding the recognition of those foreign credentials.

Under the amended *IRPA*, Canada is no longer required to assess every immigration application received, which was previously the case.<sup>64</sup> It may seem that all applications should at least be reviewed, but the requirement to consider each candidate led to a massive backlog in the immigration system that reached about 925,000 applications in 2008.<sup>65</sup> There was a fear that if nothing was done, the backlog had the potential to reach 1.5 million people by 2012.<sup>66</sup> The government of Canada is still required to process each application that was received before these amendments came into effect, but since all new applications do not need to be considered, the backlog should stop growing.<sup>67</sup> Of the 925,000 accumulated applications, approximately 640,000 were in the economic category. That portion of the backlog has been reduced by over 40%, to 374,827 (as of 31 March 2010).<sup>68</sup>

The Minister of Citizenship and Immigration may now issue instructions regarding which applications are eligible to be processed under *IRPA*.<sup>69</sup> If an application in the Federal Skilled Worker category meets the required criteria as

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<sup>62</sup> Justin Ikura, "Foreign Credential Recognition and Human resources and Social Development Canada", (Spring 2007) *Canadian Issues* 17 at 17 (Lexis).

<sup>63</sup> *Ibid*; *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, ss 91-92 and 95 reprinted in RSC 1985, APP II, No 5 (while the federal government has paramount responsibility with respect to Immigration, the provinces have concurrent authority over immigration to their respective jurisdictions. In case of conflict, federal law prevails. A number of provinces have entered into agreements with Canada that give them a substantial role in the selection of immigrants). See e.g. *Canada-Québec Accord Relating to Immigration and Temporary Admission of Aliens*, 5 February 1991, s 12(a) ("Québec has sole responsibility for the selection of immigrants to that province and Canada has sole responsibility for the admission of immigrants to that province"), online: Citizenship and Immigration Canada <<http://cic.gc.ca>>; *Canada-Manitoba Immigration Agreement*, 6 June 2003, online: Citizenship and Immigration Canada <<http://cic.gc.ca>>.

<sup>64</sup> 2008 *IRPA* Amendments, *supra* note 59.

<sup>65</sup> *Ibid*.

<sup>66</sup> *Ibid*.

<sup>67</sup> *Ibid*.

<sup>68</sup> Report on Immigration 2010, *supra* note 12 at 6.

<sup>69</sup> 2008 *IRPA* Amendments, *supra* note 59.

set out in the instructions, then the application is “processed according to the six selection factors in the skilled worker points grid.”<sup>70</sup>

These instructions will impact tens of thousands of potential immigrants each year. For example, Canada’s 2011 immigration plan calls for up to 161,300 economic immigrants, up to 65,500 immigrants under the family reunification category, up to 29,000 protected persons, and as many as 9,200 “others,” who are mostly admitted on compassionate or humanitarian grounds.<sup>71</sup> Up to 80,400 of the economic class immigrants can immigrate under the federal skilled worker category.<sup>72</sup>

The current Ministerial Instructions were published on June 26, 2010, replacing the original ones issued in 2008.<sup>73</sup> Minister Kenney asserted in 2010 that due to implementation of the original instructions “processing times have improved, with the majority of new applications processed in six to 12 months.”<sup>74</sup> “[R]ising volumes of new federal skilled worker applications prompted an exploration of options to update the Ministerial Instructions to ensure sustained progress on the Action Plan for Faster Immigration,” which resulted in the development of the new instructions.<sup>75</sup>

It is now indicated that “[f]or [an] application to be eligible for processing, [applicants] must include the results of [a] language proficiency test, and either” have a year of full-time or equivalent paid experience in one of 29 listed occupations, or “have a valid offer of arranged employment.”<sup>76</sup> It should be noted that the requirement for submission of a “language test result” is new, and will apply to the Canadian Experience Class as well as the Federal Skilled Worker category.<sup>77</sup>

A limit has also been placed on the absolute number of applications that will be considered “eligible for processing” each year under the 29 listed occupations. A cap of 20,000 applications in all of the listed occupations each year has been established, and there is also a limit of 1,000 applications that can be considered for any single listed occupation. It is worth noting however, that “[t]he limit does not apply to applicants with a job offer.”<sup>78</sup>

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<sup>70</sup> “Skilled workers and professionals: Who can apply”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/>>.

<sup>71</sup> Report on Immigration 2010, *supra* note 12 at 9.

<sup>72</sup> *Ibid.*

<sup>73</sup> Government of Canada, *Action Plan for Faster Immigration*, online: Government of Canada <<http://www.canadainternational.gc.ca/>>.

<sup>74</sup> Report on Immigration 2010, *supra* note 12 at 3.

<sup>75</sup> *Ibid.* at 6.

<sup>76</sup> “Eligibility criteria for federal skilled worker applications”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/>>.

<sup>77</sup> Citizenship and Immigration Canada, News Release, “Government of Canada will welcome more immigrants in 2010” (26 June 2010) online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/>>.

<sup>78</sup> *Ibid.*

## B. The Economic Class of Immigration

### i. Federal Skilled Workers

The skilled worker category includes both federal and Quebec-selected skilled workers. Quebec selects these workers based on its own needs and criteria.<sup>79</sup> For the rest of Canada, skilled immigrants are selected based on a points system. Points are awarded based on a person's "level of education, previous work experience, knowledge of English and/or French, age, arranged employment, and adaptability."<sup>80</sup> Federal skilled workers are often admitted to Canada based heavily on their educational attainment abroad. Once they have been admitted on this basis it is disingenuous to then convey to them that their credentials are not valued in Canada.

Of the maximum 161,300 economic immigrants to be accepted into Canada in 2011, up to 80,400 spots are designated for federal skilled workers.<sup>81</sup> When applying *IRPA*, Citizenship and Immigration Canada employees "consult operational chapters and operational bulletins for guidance."<sup>82</sup> "OP 6," the "Federal Skilled Workers" operation manual<sup>83</sup> provides ample insight regarding how applications are processed in this category. It is clarified that when awarding points for education in an immigration application, Visa Officers are to "assess programs of study and award points based on the standards that exist in the country of study. The Regulations do not provide for comparisons to Canadian educational standards."<sup>84</sup>

Up to 25 points are available on the basis of a person's educational attainment, which will be discussed in more detail below. If an immigrant has arranged employment that she "is able to perform and is likely to accept and carry out," that person can receive an additional 10 points on her immigration application.<sup>85</sup> In order to receive these points, the offer needs to meet certain requirements. If a person is presently employed in Canada, then her employer "must have made an offer to give [her] a permanent job if [she is] accepted as a federal skilled worker," and her temporary work permit has to be valid throughout the entire process.<sup>86</sup> Additionally, the person's "work permit must

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<sup>79</sup> "Strategic Outcomes and Program Activity Architecture", online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/>> [Strategic Outcomes].

<sup>80</sup> *Ibid.*

<sup>81</sup> Report on Immigration 2010, *supra* note 12 at 9.

<sup>82</sup> "Operational Manuals and Bulletins", online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/>>.

<sup>83</sup> See Canada, Citizenship and Immigration Canada, *OP 6 Federal Skilled Workers*, (Ottawa: Citizenship and Immigration Canada, 2010) at 30, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/resources/manuals/op/op06-eng.pdf>> [OP-6].

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid* at 42.

<sup>86</sup> "Skilled workers and professionals: Who can apply – Arranged employment", online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/>>.

have been confirmed by Human Resources and Skills Development Canada (HRSDC) through a positive labour market opinion,” or the person’s occupation must be one “that is exempt from an Arranged Labour Opinion” (AEO).<sup>87</sup> If the person is not presently employed in Canada, an offer “is valid if [his] prospective employer” has both made a job offer for an indefinite amount of time and “has obtained a positive Arranged Employment Opinion,” or the occupation is one that is exempt from requiring an AEO.<sup>88</sup> In addition, if the job offer is in a regulated occupation, the person must “meet all required Canadian licensing or regulatory standards” that are relevant.<sup>89</sup>

Perhaps more points should be awarded where there is arranged employment, because it would be advantageous to increase the probability of a person with such an offer being accepted to immigrate to Canada. Statistics indicate that for immigrants who arrived in Canada between 2000 and 2001, “having a pre-arranged job at landing is the strongest correlate of work experience recognition: 87% compared to 42% for those without a prior employment arrangement.” In addition, arranged employment increased the “predicted probability of credential recognition,” from 29% for those without arranged employment to 40% for those with it.<sup>90</sup>

Immigrants who have obtained employment before arrival will almost immediately begin to contribute to Canada’s overall economic prosperity, and the economic integration of these people will be greatly facilitated by this first Canadian job. The immigrant would have more time to go through any foreign credential recognition processes that are required, without needing that recognition immediately to obtain adequate employment. This would also likely result in a decrease in the frustration and disappointment felt by many immigrants who come to Canada with the expectation of finding suitable employment, only to have those expectations dashed due to issues relating to their foreign credentials.

Up to 10 points for adaptability can also be awarded. Half of these points are based on the “educational credentials of the accompanying spouse or common law partner.” The other five are awarded if the accompanying spouse has completed at least two years of study in Canada, even if no diploma was awarded for this education. Only one spouse can obtain adaptability points based on the other’s educational credentials.<sup>91</sup> This compounds the importance of foreign credential recognition; it is conceivable that a person nearing the 67 total points

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<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.* See “Human Resources and Skills Development Canada (HRSDC)/Service Canada Assessment for Arranged Employment Opinions”, online: Human Resources and Skills Development Canada <<http://www.hrsdc.gc.ca>> for information on how a labour market opinion is formed.

<sup>89</sup> *Ibid.*

<sup>90</sup> Houle & Yssaad, *supra* note 28 at 28.

<sup>91</sup> OP-6, *supra* note 83 at 43.

required to be admitted to Canada as a permanent resident<sup>92</sup> will pass that threshold due to the combination of credentials held by that person and his or her spouse, only to find that the credentials are not fully or properly recognized in Canada. In total, 35 of the required 67 points can be awarded on the basis of educational attainment. The remaining points are awarded on the basis of age (10), proficiency in French and/or English (24), arranged employment (10) and experience (21). There are 100 points available in total.<sup>93</sup>

## ii. A Discussion Regarding the Points System

A major dilemma with Canada's points-based system is that it may leave immigrants with the idea that their credentials have been assessed by the Canadian government, and will be considered equivalent to corresponding Canadian credentials. The points system currently lacks any connection to credential recognition, and this problem is plainly visible in the *Premakumaran* case,<sup>94</sup> which frames this defect in a striking way. The Premakumarans are an immigrant couple who argued in a lawsuit against Citizenship and Immigration Canada:

[T]hat the points system used to select skilled immigrants is deceptive and flawed, as the process misrepresents that selected applicants have been screened for special occupational skills and experience that will be readily transferrable to the Canadian labour market.<sup>95</sup>

The case was dismissed,<sup>96</sup> but it still serves as an important voice for immigrants, and a significant warning for Canada, illuminating a flawed system that can lead to frustration and disappointment.

Some may argue that instead of placing such a heavy value on education in the points system, Canada should require pre-arranged employment. If this approach is adopted, foreign credential recognition issues would have to be addressed by an immigrant and employer prior to immigration. It is argued that this approach, which is taken in the United States, eliminates the foreign credential recognition problem, and that "vulnerabilities related to miscommunication about realistic expectations of employment opportunities are less important...in the United States, compared to their Canadian counterparts."<sup>97</sup> In the United States however, there is also a "bottleneck" in the immigration system causing delays and frustration for both employers and immigrants. To get around this, some employers have begun using potential immigrants as temporary foreign workers until the immigration process can be completed.<sup>98</sup> The problem with this is that it leaves the potential immigrant

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<sup>92</sup> *Ibid* at 44.

<sup>93</sup> *Ibid* at 28.

<sup>94</sup> *Premakumaran v Canada*, 2006 FCA 213, [2007] 2 FCR 191.

<sup>95</sup> *Ibid* at para 4.

<sup>96</sup> *Ibid* at para 28.

<sup>97</sup> Somerville and Walsworth, *supra* note 27 at 148.

<sup>98</sup> *Ibid* at 148-149.



vulnerable to exploitation, because the employer can remove the offer of employment at any time and dash the immigrant's hopes of permanently moving to the United States.<sup>99</sup> Requiring pre-arranged employment would be a major shift in Canadian immigration policy, and may hinder efficiency in the system based on the experience of the United States. Canada currently considers an offer of employment as a factor rather than a requirement, awarding points to federal skilled workers with such offers. This is probably the correct approach in conjunction with economic immigration already based on labour market needs (the ministerial instructions).

The points system is a practical way to attempt to ensure immigrants coming to Canada have the most advantageous educational backgrounds and other characteristics to become productive members of society. The reasons for the current setup in the immigration points system should be considered before recommending any substantial change to it. *IRPA* regulations state that the federal skilled worker class is intended to be "a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada."<sup>100</sup> To determine whether a person "will be able to become economically established in Canada, they must be assessed on the basis of," among other things, "education, in accordance with section 78."<sup>101</sup> Points are to be awarded based on the level of education attained, to a maximum of 25 points; the number of points awarded for a given academic credential ranges from five for a secondary school diploma to 25 for a "master's or doctoral level" credential.<sup>102</sup>

While only 28% of immigrants arriving between 2000 and 2001 that held foreign credentials had them recognized in their first four years in Canada,<sup>103</sup> the "principal applicants" in the federal skilled worker category for this period had better "recognition rates...(38% for credentials and 51% for work experience)...than any other group."<sup>104</sup> This seems to suggest that the points system does presently produce its desired results to an extent, but the fact that 62% of these people did not have their credentials recognized within four years of arrival in Canada also implies that there is room for improvement.

Awarding points for education and other desirable attributes is a prudent method for seeking those who will be likely to succeed and integrate economically, but for an educational credential to most accurately predict economic success, that credential's value in Canada would have to be established. Assigning points based on a credential's value in Canadian terms

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<sup>99</sup> *Ibid.*

<sup>100</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 75(1).

<sup>101</sup> *Ibid* at s 76(1)(a)(i).

<sup>102</sup> *Ibid* at s 78(2).

<sup>103</sup> Houle & Yssaad, *supra* note 28 at 19.

<sup>104</sup> *Ibid* at 22.

would be an effective avenue through which the intention of awarding points for education can be more accurately realized.

Awarding the points based on a credential's value in the country in which it is earned is undoubtedly an efficient way to go about awarding points, because this information is likely more readily available. Although this method is relatively inexpensive in terms of making a decision on a potential immigrant, finding an efficient way to award points based on a more accurate valuation of a foreign credential would have several advantages. It would decrease the level of unrealistic expectations felt by immigrants, and it would benefit Canada as a whole by awarding points in the immigration system based on a credential's value in Canada, thus awarding more points to those who would be in better positions to integrate economically upon arrival.

More education "probably makes workers more flexible and more adaptable."<sup>105</sup> One could argue that this would be the case whether or not a credential is actually recognized. As a result, it may be advantageous to Canada to have highly educated immigrants, even if these people's credentials will not be recognized. This argument is a valid one, but Canada has a responsibility to be up front with potential immigrants about this. By providing potential immigrants with a very accurate idea of the values of their credentials in Canada during the application process, the expectations of those whose credentials will not be fully recognized will be more realistic.

The government of Canada should consider amending *IRPA*'s regulations to award points in the federal skilled worker category based on a credential's value in Canadian terms, not based on the credential's standing in the country in which it is earned. As it presently stands, a nursing degree (or any other degree) from Kazakhstan is awarded the same number of points as a corresponding degree from Ireland. This is significant, because 49% of immigrants from Ireland with degrees typically leading to regulated occupations work in the occupations those degrees normally lead to, whereas that is the case for only seven percent of their Kazakhstani counterparts.<sup>106</sup> Part of this large discrepancy may be explained by Canadian regulators and assessors having a stronger understanding of the Irish education system. It is reasonable to assume, however, that a significant portion of the discrepancy is the result of Kazakhstani credentials reaching Canadian standards less often than Irish ones do.<sup>107</sup>

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<sup>105</sup> Alan S Blinder, "Offshoring: The Next Industrial Revolution?" (2006) 85 *Foreign Affairs* 112 at 118, online: International Trade Relations <<http://www.global-trade-law.com/Blinder.Offshoring%20%28Foreign%20Affairs,%20March-April%202006%29.pdf>>.

<sup>106</sup> Zietsma, *supra* note 31 at 18.

<sup>107</sup> This is not to suggest that the Kazakhstani nurse in this example should not be allowed to immigrate to Canada, but rather that the points awarded should correspond appropriately to Canadian standards. This example also highlights the importance of bridging programs; if the Kazakhstani degree is properly recognized as equivalent to a partially completed Canadian

- *One implementation option that could be considered is introducing legislation allowing the federal government to adopt the decisions of standalone credential assessment agencies<sup>108</sup> for immigration selection purposes. The federal government could then retain the services of these agencies to perform assessments of academic credentials, and award points based on the assessed Canadian value of the credential. Another implementation option would be for the federal government to develop the capacity to assess the credentials on its own, and award points based on the outcome of these assessments.*
- *The costs of assessment and recognition of credentials are not entirely avoided by basing points on the value of the credential in the country in which it was earned, but the cost is simply borne at a different time in the immigration process. Presently the cost of assessment and recognition of credentials is usually not paid for by the federal government; assessment fees are often covered by the immigrants themselves, employers, regulatory bodies or provincial governments.<sup>109</sup> Funding options for this recommendation include the federal government providing all funding, consortium funding from the federal government and the provinces, putting the cost on potential immigrants by increasing immigration application fees, or some combination of these options. Funding determinations should be considered in light of the fact that if this recommendation is adopted, the cost of assessments as a whole would not only temporally shift, but would also increase. The increases would be the result of the fact that many immigrants presently do not have their credentials assessed at all. This is demonstrated by the fact that for immigrants who arrived between 2000 and 2001, about 40% did not have those credentials assessed during their first four years in Canada.<sup>110</sup> Additionally, the credentials of many of those whose immigration applications are not ultimately accepted would also be assessed. The result would be a significantly larger number of actual assessments being performed.*
- *Implementation of such a recommendation would be a large departure from present practice in the federal skilled worker category. Before adopting the*

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Nursing degree, then the person could utilize an appropriate bridging program to obtain certification in a Canadian jurisdiction.

<sup>108</sup> See Chapter 7: Facilitating Credentials Recognition at Frontline Agencies.

<sup>109</sup> For example, in Manitoba, an assessment from ACAS is free for the immigrant, whereas assessments from most other standalone assessment agencies in Canada can be paid for by anyone (i.e. an individual immigrant, an employer, or a regulatory body. Some regulatory bodies (i.e. Engineers Canada) assess credentials on their own. See for example Facilitative Mechanisms Appendix C; see "Assessment and recognition of credentials for the purpose of employment in Canada", online: Canadian Information Centre for International Credentials <<http://www.cicic.ca>>.

<sup>110</sup> Houle & Yssaad, *supra* note 28 at 31.

*recommendation, further research regarding feasibility and the most effective and efficient mechanisms to carry out the recommendation would be prudent. This would ensure that adequate capacity to carry out the increased number of assessments is developed. It is also important to note that implementation of this recommendation could further heighten the expectations of immigrants regarding the type of employment they can attain in Canada. Hopefully these higher expectations would then be met with better and more consistent outcomes.*

### iii. The Canadian Experience Class

The Canadian Experience Class (CEC) is a relatively new economic immigration category, established in September 2008. This category is intended for temporary foreign workers and foreign students who have graduated from Canadian educational institutions.<sup>111</sup> In order to apply for permanent residence under this category, one must “plan to live outside the province of Quebec,” be either a “temporary foreign worker with at least two years of full-time (or equivalent) skilled work experience in Canada,” or a foreign student who has graduated from “a Canadian post-secondary institution with at least one year of full-time (or equivalent) skilled work experience in Canada.” This study and/or work must have been legally authorized, and the application must be received while the person is still in Canada, or within one year of that person’s departure.<sup>112</sup> Skilled work experience means “skill type 0,” “skill level A,” or “skill level B” based on the Canadian National Occupational Classification.<sup>113</sup>

Immigrants coming under the CEC will not have the same foreign credential recognition difficulties that their fellow newcomers often encounter. This is simply because they will possess Canadian credentials and experience. It may be advantageous to consider extending the CEC’s reach to certain foreign-educated immigrants. There is a piece of legislation that has already been approved by India’s cabinet, and is currently before Parliament in that country called the *Foreign Educational Institutions (Regulation of Entry and Operations, Maintenance of Quality and Prevention of Commercialisation) Bill*. This bill would allow foreign post-secondary educational institutions to establish satellite campuses in India.<sup>114</sup> If a Canadian post-secondary institution is granting a credential in India, and there is assurance from that institution that the

<sup>111</sup> “Canadian Experience Class”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/immigrate/cec/index.asp>>.

<sup>112</sup> “Canadian Experience Class: Who can apply”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>>.

<sup>113</sup> *Ibid.* See “Welcome to the National Occupational Classification”, online: Human Resources and Skills Development Canada <<http://www.hrsdc.gc.ca>> for more information on the Canadian National Occupational Classification.

<sup>114</sup> “Foreign university bill gets cabinet nod” *The Times of India* (15 March 2010), online: The Times of India <<http://timesofindia.indiatimes.com>>.

standards of the programs are on par with Canadian standards, then the educational portion of the CEC should be satisfied by such a credential. Alteration of the requirement for both a Canadian post-secondary credential and a year of skilled work experience in Canada could also be considered. A concrete job offer in a skilled occupation in Canada for an indefinite term should be adequate in lieu of a year of past experience. This way, a person educated at a Canadian university abroad would be eligible to apply to immigrate in the CEC once that person obtains an acceptable job offer in a skilled occupation, ensuring work commensurate with her or his skills upon arrival in Canada.

If someone is permitted to immigrate to Canada in the CEC only on the basis of a credential from a Canadian university campus abroad and an offer of employment in Canada, it may seem that one of the rationales for the CEC would be undermined. These people's "experience in Canada" is an important factor in selection, which is intended to facilitate "a more seamless social and economic transition."<sup>115</sup> This is a legitimate concern. For immigrants arriving in Canada between 2000 and 2001, "when controlling for the effect of individual characteristics ... the probability of [a person having his] foreign credentials" recognized within four years increased from 29% to 43% if the person had "[l]ived in Canada at least one year before landing," and the likelihood of these people's foreign work experience being recognized also increased (44% to 51%).<sup>116</sup> Clearly there are advantages to having Canadian experience, but a similar increase in the predicted likelihood of credential recognition was found in cases where there was arranged employment (29% to 40%). There was also a very substantial increase in the predicted likelihood of these immigrants having their foreign work experience recognized (42% to 87%).<sup>117</sup> Although implementation of this recommendation may result in immigrants arriving without the same advantages that current CEC immigrants have, they would be very likely to attain very similar advantages in their first few years in Canada.

The only Canadian post-secondary institution that has expressed serious interest in setting up a campus in India is York University's Schulich School of Business,<sup>118</sup> but if successful, it is possible that others would follow. This type of strategy would not need to be reserved for India, because similar laws are already established in China, Singapore, The Philippines, and Vietnam.<sup>119</sup>

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<sup>115</sup> Citizenship and Immigration Canada, News Release, "Canada's government to help temporary foreign workers and foreign student graduates become permanent residents", (12 August 2008) online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/English/departement/media/releases/2008/2008-08-12.asp>>.

<sup>116</sup> Houle & Yssaad, *supra* note 28 at 23, 28.

<sup>117</sup> *Ibid.*

<sup>118</sup> Nick Clark, "Branch Campuses in India: Will They Come?" *World Education News and Reviews* (10 April 2010), online: World Education Services <<http://www.wes.org>>.

<sup>119</sup> Tim Rogers, "The Indian gold rush: Foreign varsities eye the riches of India" *MBA Universe* (21 May 2010), online: MBA Universe <<http://www.mbauniverse.com>>.

Whether the Canadian government should subsidize the establishment of foreign campuses of Canadian post-secondary institutions should also be considered. Perhaps subsidizing an academic institution that serves the population of a foreign country seems unattractive, but if there are a reasonable number of students attending this institution who are considering applying to immigrate to Canada, it may be advantageous. This subsidization would also assist foreign students planning to stay in their home countries who attend the institution, and this would reduce the extent to which Canada is siphoning human capital out of these countries.

### C. The Family Class

A Canadian citizen or permanent resident may sponsor a family member coming to Canada, and upon approval the sponsored person will become a Canadian permanent resident.<sup>120</sup> Once the family member is in Canada as a permanent resident, the sponsoring person is held responsible for the sponsored person for a period of time ranging from three to 10 years; this is done to ensure the sponsored person does not rely on social assistance.<sup>121</sup> A person may sponsor any “eligible relative,” which includes spouses, common law partners, conjugal partners, dependent children, parents, grandparents, siblings, nephews or nieces, and grandchildren who are orphaned, less than 18 years old, and not married or in a common law relationship, or “another relative of any age or relationship, but only under specific conditions.”<sup>122</sup>

The Supreme Court of Canada recently ruled in a unanimous decision that “the risk of a rogue relative properly lies on the sponsor, not the taxpayer.”<sup>123</sup> Even if the government does not desire to collect repayment of relevant welfare expenditures from a sponsor, they have only “limited discretion ... to delay enforcement action having regard to the sponsor’s circumstances ... but not simply to forgive the statutory debt.”<sup>124</sup> Essentially, regardless of the personal circumstances that a sponsor is in, the government is obliged to secure recovery of any welfare payments that went out to the relatives they sponsored.

Family Class immigrants who arrived between 2000 and 2001 and held foreign credentials had a “predicted probability” of having those credentials recognized within four years of arrival of just 20%.<sup>125</sup> The possible burden of supporting the person that one has sponsored is a significant responsibility to

<sup>120</sup> “Sponsoring your family”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca>>.

<sup>121</sup> Strategic Outcomes, *supra* note 79.

<sup>122</sup> “Sponsoring your family: Eligible relatives—Who can apply”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/immigrate/sponsor/relatives-apply-who.asp>>.

<sup>123</sup> *Canada (Attorney General) v Mavi*, 2011 SCC 30, [2011] 2 SCR 504 at para 76, Binnie J.

<sup>124</sup> *Ibid* at para 4.

<sup>125</sup> *Houle & Yssaad*, *supra* note 28 at 26.

take on. This situation highlights the importance of foreign credential recognition, as well as competency-based assessment, even in non-economic immigration categories. If the government expects the sponsored person to come to Canada and become a self-sustaining member of society quickly, it must provide adequate mechanisms to facilitate economic integration. Although immigrants in this class are not admitted on the basis of educational attainment, many still possess credentials that are required or advantageous for their desired occupations.

### III. CONCLUSION

There is room to improve foreign credential recognition in Canada by making some changes to immigration law and policy. Awarding points based on an academic credential's Canadian value would be an effective way to ensure that those who are admitted to Canada based on their educational attainment actually have credentials that will facilitate economic integration. It makes little sense to admit a person to Canada as a permanent resident based on a credential that does not meet Canadian standards. This practice results in unrealistic expectations from immigrants regarding the type of work available to them in Canada, and from Canada regarding the expectation that the immigrants will be able to quickly integrate economically.

Immigration law and policy has been adapted to ease foreign credential recognition issues to a degree, with the establishment of the Canadian Experience Class in 2008. Encouraging those with Canadian credentials and experience to apply to immigrate circumvents credential recognition issues because the applicants possess Canadian credentials. The expansion of this program to allow those with credentials from Canadian university campuses abroad and concrete job offers in skilled occupations will only increase the degree to which these issues can be avoided.

Although these and other alterations to immigration law and policy can improve foreign credential recognition in Canada, these changes alone are not sufficient. Changes in immigration law and policy are one piece of the puzzle needed to create the most effective foreign credential recognition regime possible, along with improvements in facilitative mechanisms, international and interprovincial labour mobility agreements, fair access legislation, human rights laws and competition legislation. Ensuring that immigrants who come to Canada have the proper credentials to integrate economically must be accompanied by the elimination of barriers to fair and proper recognition, as well as the establishment of mechanisms to actually recognize credentials and competencies, while ensuring they are adequate to allow for the safe and competent delivery of services to Canadians. The federal government must expend time, money and effort to assist provinces in taking active steps to facilitate the economic

integration of immigrants. This includes assistance with the recognition of academic credentials, help with the clinical assessment of applicants where required, and with bridging programs where there are legitimate gaps in education or skills.