Federal-Provincial Relations on Immigration:

Striking the Right Balance

by

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This thesis addresses the complex relationship between the federal and provincial governments with regard to the creation and implementation of economic migration policies and programs. As immigration is subject to shared jurisdiction under the Constitution, provinces have begun to take up an important and ever-increasing role in immigration policy and have used it as an effective tool to reach regional economic and demographic objectives. However, devolving responsibilities for economic migration policy to the provinces raises questions about the proper balance between federal and provincial immigration powers. The thesis will address this issue by giving an overview of the current mechanisms in place that govern the division of immigration powers between the two levels of government, the main critiques on it and the theoretical framework that supports the choices made. It then tries to provide the reader with alternative approaches to the division of powers for specific elements of the immigration process.
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1. Introduction

“Immigration goes to the core of our values and aspirations. It has shaped our country. It speaks to who we are as Canadians, and what sort of a society our children will inherit. Immigration is an issue in which all Canadians have a stake.”

Immigration is a shared power between the federal and provincial government. For the longest time the federal government has held the reins in devising Canada’s immigration policy, but the balance has been shifting. Provinces have become increasingly more assertive in their demands for an immigration policy that is reflective of regional needs and objectives. As a result, provinces have become active players in devising immigration programs that complement and at times replace their federal counterpart. The federal government’s recent decision to limit the scope of the Federal Skilled Worker class will put even more emphasis on provincial immigration programs and will provide them with a more prominent place in Canada’s immigration landscape. This thesis will address the various issues that will arise from such a shift in balance.

The aim of this thesis is to analyze the existing division of responsibilities between the federal and provincial government with regards to economic migration and outline its weaknesses and strengths. From there, it will be possible to provide for alternative approaches to this division that might be more responsive to the various interests involved and might alleviate some of the existing concerns about Canada’s current immigration policy. The research will focus on economic migration for two

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reasons. First it is the main category of immigration through which the majority of immigrants arrive. Secondly, the other two categories, refugees and family reunification, are predominantly managed at the federal level and do not allow for much provincial involvement; they are therefore less relevant for the current discussion. Furthermore, within the economic immigration class the focus will be on skilled workers as they take up the majority of the admission numbers both at federal and provincial level.

The structure of the thesis will be as follows: chapter two will first give a historical overview of Canadian immigration policy and federal-provincial cooperation in this field. It will continue with outlining the various legal mechanisms currently in place that govern the federal-provincial relationship on immigration. Chapter three will provide background information on the various issues currently surrounding the debate on Canadian immigration policy and the role the provinces play in it. This discussion will rely heavily on a 2009 report by the Auditor-General of Canada and a report by Naomi Alboim from the Maytree Institute of the same year. The same chapter will also address the objectives pursued by federal and provincial immigration policies, which will increase understanding of the choices already made with regards to dividing immigration powers and the direction such a division should take in the future. To complement these backgrounder a section on the advantages and disadvantages of devolving immigration policy is also included in this chapter. Chapter four will be the heart of this thesis and provides for a discussion on alternative approaches to the division of federal and provincial power regarding three elements of Canada’s immigration policy: the selection of skilled workers as permanent

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3 Quebec has been granted some limited powers to select refugees from abroad, but the federal government is responsible for determining the scope of the refugee and family class.

4 Facts and Figures 2009, supra note 2.


residents, temporary migration and settlement and integration. Chapter five will conclude the thesis with an overall summary. With that, the thesis hopes to have given a good overview of current federal-provincial relations on economic immigration and to have provided for an interesting discussion on what changes could be made to increase its potential to make Canadian immigration policy a successful tool to achieve both national and regional objectives.
2. The historical and legal landscape of Canadian immigration policy

2.1 A historical overview

Canada’s history is made up of tales of immigration and settlement. These migration streams were the result of a mixture of stimuli ranging from war, poverty and disease to big promises by colonial settlers and the British Empire’s politics. A formalized approach to immigration did not become evident until after Confederation when the federal government used immigration as a tool to bolster industrial growth and to foster the settlement of newcomers in the largely unpopulated West as a way to secure national sovereignty in that region.\(^7\) The first Immigration Act was issued by the federal government in 1869.\(^8\) With very few restrictions in place, the Act promoted an open-door immigration policy and became a flexible instrument with as its main purpose guiding existing migration streams. The policies and rules it set in place were not able, however, to increase the number of immigrants that entered Canada nor were they able to prevent the exodus of Canadian residents to the United States.\(^9\)

Despite the ‘open-door’ policy of the first Immigration Act, Canadian immigration policy, up until the Second World War, was earmarked by racial understandings of who could become a member of Canadian society. The immigration offices that were set up by the federal government post-Confederation, for example, were mainly localized in Britain, the United States and continental Europe and aimed to attract a specific group of immigrants of Caucasian descent.\(^10\) A more prominent example of the racial prejudice of Canada’s immigration policy is the Chinese head tax that was introduced in

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\(^8\) *Immigration Act 1869*, S.C. 1869, c.10, ss. 17-23.
\(^9\) Kelley & Trebilcock, supra note 7 at 63.
1885 by the *Chinese Immigration Act*, also popularly known as the *Chinese Exclusion Act*. The federal government enacted the Act in response to pressure by the province of British Columbia, which was concerned about the large number of Asian workers that arrived on its territory to work on the Canadian Pacific Railway. The head tax was a nominal fee that Chinese immigrants had to pay the government upon arrival in Canada and increased over time to such a substantial amount that it effectively barred Chinese immigration altogether. The 1923 *Chinese Immigration Act* formalized this bar by prohibiting all immigration from China, with the exception of some restrictive categories of persons such as e.g. merchants and diplomats. The ban was not lifted until 1947 when the Act was repealed. However, the head tax and ban has marked early Canadian immigration policy as exclusionary and racist.\(^{12}\)

Provincial involvement in Canadian immigration policy started promising. The first federal-provincial conference was held in 1868. At this meeting the tasks and responsibilities of each partner were determined. The federal government was mostly in control of attracting immigrants and providing quarantine stations upon arrival in Canada. The provinces took it upon them to provide for the settlement and colonization of land. Until 1874 both levels of government met frequently to discuss the subject matter of immigration and cooperation was the name of the game.\(^{13}\) However, the 1874-conference revealed inconsistencies in provincial immigration policies. They at times even conflicted with the federal approach. As a result federal-provincial cooperation diminished and the annual consultations ended.\(^{14}\)

When British Columbia became a province the dynamics changed even further. Its racist and discriminatory immigration laws, targeting specifically those with an Asian background, became a battle

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\(^{11}\) Knowles, supra note 10 at 71.


\(^{14}\) Knowles, supra note 10 at 70.
field for legal and political control. As will be outlined below, courts often took refuge in the Constitution to invalidate these provincial laws by ruling that the subject matter fell within the federal government’s jurisdiction. As a result, the topic of immigration became a controversial and politically sensitive one. The fear for federal disapproval in combination with harsh economic times might explain the passive attitude of the provinces towards law-making on the subject matter in the following years. Immigration law and policy was therefore principally a federal concern in the first half of the twentieth century.\textsuperscript{15}

\textit{Modern immigration law and policy}

The 1962 regulations were the start of a new era for Canadian immigration policy. Not only was there a shift away from admissions based on race and country of origin, more emphasis was also placed on the economic benefits of immigration.\textsuperscript{16} In 1967 the first steps were taken to implement an admission policy based on an individual’s skill set, which became the foundation for Canada’s current Federal Skilled Worker program. The introduction of a point system was meant to limit the highly discretionary nature by which independent immigrants were assessed and admitted by officials under the 1962 regulations.\textsuperscript{17} The new system assessed applicants’ eligibility on the basis of several categories, such as education, occupational demand and skills, language proficiency, adaptability and the existence of arranged employment. For each category points were awarded and if these points accumulated to a specific pass mark the applicant could be granted admission to Canada.\textsuperscript{18}

\begin{footnotes}
\item[15] Knowles, supra note 10 at 449.
\item[16] See e.g. Canada, Department of Manpower and Immigration, \textit{White Paper on Immigration} (Ottawa: 1967), 7.
\item[17] Kelley & Trebilcock, supra note 7 at 358.
\end{footnotes}
The importance of long-term goals for a Canadian immigration policy was codified in the 1976 *Immigration Act*.\(^\text{19}\) The new act served as the cornerstone of Canadian immigration policy until 2001 and was able to set out for the first time fundamental principles and objectives that should underlie it. These included demographic, economic, social and cultural goals. For present purposes it is important to note that the Act made it mandatory for the federal government to consult with the provinces with regards to the future planning of immigration and to set annual targets for the numbers of immigrants that the government was considering to admit.

Despite a shift in emphasis in the law on the long-term benefits of economic migration, Canadian immigration policy in subsequent years can be classified as reactive and haphazard. Many of the proposed new rules and policies were implemented in a response to specific high-profile cases, which attracted a lot of media attention.\(^\text{20}\) There was also an increase in family-class immigration. As a result the percentage of independent immigrants saw a steep drop to less than 30% of the total number of immigrants in 1983 from more than 70% in 1971.\(^\text{21}\) These numbers were, however, able to improve and economic migrants have consistently taken up anywhere between 50-60% of Canadian immigrants in the last two decades.\(^\text{22}\)

The introduction in 2001 of the *Immigration and Refugee Protection Act*\(^\text{23}\) (IRPA) was meant to streamline the ad hoc policy structure that was created in previous years. The Act now serves as a general framework from which all immigration law and policy is derived. The *Immigration and Refugee Protection Regulations (IRPR)*\(^\text{24}\), which are passed by the governor in council, further detail the specifics

\(^{19}\) *Immigration Act*, S.C.1976, c. 52.


\(^{21}\) Knowles, supra note 10 at 230.


\(^{24}\) *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 75-85.6 (IRPP).
of the immigration policy that is set out in the Act. Policy and program manuals, which are used by the officers in the field and are drafted by Citizenship and Immigration Canada, provide further practical guidance to the implementation of the immigration rules.

The general nature of the legal framework established by the IRPA and IRPR allows for an adaptive and flexible immigration policy and as a result has made some fundamental changes to how we view economic migration. The new law shifted Canada’s focus even more towards the long-term benefits of admitting skilled workers by zooming in on an applicant’s human capital, which are those characteristics which make him or her a successful immigrant in the long run. Under the old law, skilled migrants were selected on the basis of matching his or her individual qualities with a pre-determined list of occupations that represented current shortages in the labour market. However, this long-term vision so ambitiously embraced has been off-sided by the current changes in immigration policy, which require applicants to the Federal Skilled Worker program to either possess a job offer from a Canadian employer or to have experience in one of the 29 in-demand occupations. Consequently, economic migration has been shifting forum and focuses more and more on provincial initiatives. Whether this phenomenon can be reconciled with the original long-term aspirations of the IRPA for the Canadian economy as a whole is something to consider, especially when one reads the wording of section 3(1)c, which lists as one of the objectives of the Act: “to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada”.

2.2 The role of the Constitution and the Charter

The boundaries of immigration law in Canada are determined by the Constitution. Section 95 of the 
Constitution Act, 1867\(^{26}\) attributes the power to legislate on immigration matters to both the federal and 
provincial government, with the condition that in case of conflict federal law will trump the provincial 
law; section 91(25) grants the federal government the exclusive right to legislate with regard to the 
issues of ‘naturalization and aliens.’ Historically, courts have used the constitutional division-of-power 
sections to override provincial legislation that was discriminatory in nature but in a pre-Charter era 
could not be invalidated on its substance. Unfortunately, this could only be done to provincial laws and 
policies; courts were not able to rule on the validity of discriminatory federal laws such as the Chinese 
Immigration Act.\(^{27}\)

With the creation of the Canadian Charter of Rights and Freedoms\(^{28}\) immigration rules and 
decisions have become subject to a much closer scrutiny by the courts. Not only did it expand the 
procedural review of immigration laws, policies and decisions, it also allowed for substantive 
constitutional review, which courts were not able to perform previously. It was the decision in Singh\(^{29}\) 
that established that the protections granted by the Charter are enjoyed by all the people present on 
Canadian territory, including those without residence status. As such it reaffirmed the significant effect 
of the Charter on immigration law and policy. In Singh the Supreme Court established the procedural 
right to an oral hearing for those who claim refugee status from within Canada when credibility is an 
issue. The case does not clarify, however, if those applying from outside of Canada can invoke the same


\(^{27}\) at 140 (Carasco et. Al). See specifically the cases of Union Colliery v. Bryden, (1899) A.C. 580 (Bryden) and the 

\(^{28}\) Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, RSC 1985, app. II, no. 44. (Charter)

\(^{29}\) Singh v. Minister of Employment and Immigration, (1985) 1 SCR 177 (Singh).
procedural safeguards. Other case law has suggested that the Charter does not apply to those who apply from outside of Canada.\(^{30}\)

It is not only the courts who can rely on the Charter. Early case law by the Federal Court of Appeal has established that also immigration tribunals have the power to apply the Charter and to declare specific sections of the Immigration Act, 1976 inoperative if the application of it would result in a Charter violation vis-à-vis a particular individual. The Court furthermore confirmed that immigration officials are under a duty to act in compliance with the Charter when deciding on individual cases.\(^{31}\) IRPA has codified this case law in section 3(3)\(d\), which states: “This Act is to be construed and applied in a manner that ensures that decisions taken under this Act are consistent with the Canadian Charter of Rights and Freedoms…”

The Charter’s significance for setting the boundaries for immigration law and policy can also be found in its mobility-guarantee established by section 6. Section 6(1) sets out the general right to enter, remain and leave Canada for Canadian citizens. Section 6(2) determines that both citizens and permanent residents have the right to move and take up residence or to “pursue the gaining of a livelihood” in any province. This guarantee has been very important for the operation of the so-called provincial nominee programs (PNP’s), which will be discussed below. Legally, provinces are not able to demand from new immigrants, which arrived through these programs, to remain on their territory. Any future immigrant can therefore opt to make use of a provincial program to gain access to the full Canadian territory; an ever more popular route since the recent changes to the Federal Skilled Worker Program and the speedier processing times offered by these provincial programs. The success of provincial immigration programs to reach their specific goals will therefore depend on more than just

\(^{30}\) See e.g. *Ruparel v. Canada (Minister of Employment & Immigration)*, (1990) 3 F.C. 615 (T.D.). (Ruparel)

their application process; it will be greatly influenced by the facilities that are put in place by the specific province to retain the new immigrants upon arrival in their territory.

Furthermore, it is important to realize that the provinces are attributed the sole constitutional power in many legislative areas that directly affect the daily lives of immigrants, such as labour law, the provision of adequate housing, health and social services and so on.\textsuperscript{32} So even though, the concept of immigration itself is a shared power with a predominant federal flavour, provinces will have a considerable power in devising laws and policies that determine an immigrant’s success and well-being in Canada once admitted.

The constitutional constraints on Canada’s immigration law and policy are a fundamental aspect that cannot be underestimated. Even though policymakers will not have to deal with these issues specifically on a daily basis, it does form the basic underpinnings of any discussion on federal-provincial cooperation in the field of immigration. It gives us the boundaries of a policy framework within which the levels of cooperation and specialization can be determined.

\textbf{2.3 Provincial immigration policy explained}

The Constitution lays out the foundation for the division of powers between federal and provincial government on immigration matters and bases itself on an ideal of concurrent power with supremacy for the federal legislator if the two collide. However, in practice the federal-provincial dynamic has been one of constant changing levels of cooperation. As shown, the first few years of Confederation, both levels were actively engaged with each other in framing a cooperative immigration policy. However, up

\textsuperscript{32} S.92, 92A and 93 of the \textit{Constitution Act, 1867}. 
until the 1960’s provinces have pursued a passive approach to immigration and Canada’s immigration policy was mostly federal terrain.

Quebec

The lack of provincial involvement lasted until the 1960’s when Quebec’s Quiet Revolution changed the Canadian landscape of immigration law forever. Declining birthrates and the secularization of its society led Quebec to realize that a federal approach to immigration policy did not meet its demographic and distinct cultural needs. It decided that it had to come up with an action plan to attract immigrants, who met the cultural and linguistic requirements of its society. In 1968 Quebec set up its own immigration department, which was in charge of facilitating the process of immigration into the province and to provide information about the province to newcomers. In the 1970’s, Quebec entered into three agreements with the federal government, each subsequently allowing more power for the province. The first step was allowing Quebec officials to represent and promote the province in visa offices abroad. The role of these officials was subsequently broadened as they were given an active part in the selection process of new immigrants. The third agreement, the Cullen-Couture agreement, allowed Quebec to have a real say in the selection of immigrants destined to its territory. Quebec was allowed to determine its own selection criteria and its officials could actually veto the landing of applicants in the ‘independent immigrant’-class. The 1978 agreement also expressly recognized Quebec’s ability to use

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33 Immigration Department Act, R.S.Q. 1977, c M-16, originally enacted as S.Q 1968, c. 68.
immigration policy as a tool to preserve its ‘distinct society’ and to promote its cultural heritage and the French language.\textsuperscript{34}

Quebec’s active involvement in immigration policymaking and immigrant selection culminated into the 1991 Canada-Quebec Accord on Immigration.\textsuperscript{35} The Accord allows the government of Quebec to select its own immigrants in the independent class, while the federal authorities remain in charge of the final admission and its procedures, such as health and security checks, the setting of immigration levels and the determination of immigration categories. Every year the federal government will determine the number of immigrants that Quebec can select, which is proportionate to the total population of the province. The province is also in charge of its own settlement services, such as language training, for which they will receive compensation from the federal budget. The Accord, furthermore establishes modes of cooperation and information-sharing, such as the creation of a Joint Committee, “which has a general mandate to promote the harmonization of the economic, demographic and socio-cultural objectives of the two parties in the area of immigration and integration, as well as to coordinate the implementation of the policies of Canada and Québec relating to these objectives.”\textsuperscript{36}

Quebec has developed provincial law implementing the agreement.\textsuperscript{37} The majority of the immigrants, who now settle in Quebec, qualify under the economic class. Their selection is based on a point system, just as with the Federal Skilled Worker program. The allocation of points to different categories varies however. A policy change in 2006 has put more emphasis on French language skills. This change has not gone without criticism, especially since Quebec not only has issues reaching its

\textsuperscript{34} Bagambiire, supra note 13 at 452.
\textsuperscript{35} Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens, (Ottawa: Employment and Immigration Canada, February 1991) (Canada-Quebec Accord).
\textsuperscript{36} Canada-Quebec Accord, Annex A, s. 2.
\textsuperscript{37} An Act respecting immigration to Quebec, R.S.Q., c. I-0.2 and its attendant regulations.
immigration levels, but also has problems retaining those admitted to its territory. A stricter language requirement might exacerbate these issues, although other factors also seem to play a role.\textsuperscript{38}

In sum, Quebec has played an important role in Canadian immigration policy. Not only did it pioneer its way to more provincial power on the subject matter, it also has been able to show how immigration can be a tool to serve specific community interests. As such, Quebec served as a role model for other provinces to take control of their immigration objectives and to use them as guidance to devise provincial policies and programs.

\textit{Federal-Provincial Agreements}

Section 10 of the IRPA lies down a consultation requirement between the federal government and the provinces with respect to the number of immigrants admitted in each class, their distribution over the country considering regional, economic and demographic needs and which measures should be taken to facilitate their integration into Canadian society. The federal government may also, but is not required, to consult with the provinces on immigration policies and programs in order to facilitate cooperation and to consider the effects these may have on the provinces. Section 10 is complemented by section 8 of the IRPA which mandates the federal government, upon the consent of the Governor in Council, to enter into individual agreements with the provinces for the purpose of the Act. Currently, almost all provinces have such an agreement with the federal government.\textsuperscript{39} The main objective of these

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\textsuperscript{39} A list of the agreements can be found online: Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/department/laws-policy/agreements/index.asp>.
\end{flushleft}
agreements is to set out the parameters for provincial-federal cooperation by defining the responsibilities of each partner. Next to this main purpose, there are a couple of characteristics that these agreements share; most of them contain a section on shared immigration planning. Usually it requires the federal government to consult the provincial government in the creation of federal programs and policies in order to make them more responsive to provincial objectives and needs with regard to a province’s economic, social and demographic circumstances. It also usually requires the province to set annual immigration targets and share them with the federal government.40

Another common element to be found in provincial-federal agreements on immigration is a shared responsibility for promotional and recruitment activities. For example, provinces will provide federal immigration officers with the necessary information about the province, its labour market, living conditions, specific immigration programs and any other relevant facts the provinces deems necessary to be passed on to future immigrants.41 Most agreements will also have a section on settlement services. Some of these pass on the responsibility for these services completely to the province, while the federal government provides for the funding of the initiatives.42 Other agreements provide a basis for shared responsibility on the issue. Often they also point out the important role to be played by other actors with regards to settlement and integration, such as municipalities, religious and cultural communities, labour organizations and so on.43

40 See e.g. section 4 of the Agreement for Canada-Alberta Cooperation on Immigration, originally signed on May 11, 2007, online: Citizenship and Immigration Canada <http://www.cic.gc.ca>.
41 Ibid. section 5.2
42 See e.g. Annex A to the Canada-British Columbia Immigration Agreement, 2010, online: Citizenship and Immigration Canada <http://www.cic.gc.ca>.
43 See e.g. section 5 of the Canada-Saskatchewan Immigration Agreement, originally signed May 7, 2005, online: Citizenship and Immigration Canada <http://www.cic.gc.ca>.
Provincial Nominee Programs

Most provinces also signed on to so-called Provincial Nominee Programs (PNP’s). PNP’s have seen a tremendous growth in the last two decades and have become an important cornerstone of provincial immigration policy. They provide provinces with the opportunity to select their own immigrants in order to meet regional economic and labour market needs. As opposed to the Quebec Accord, these programs do not replace federal programs. They are meant to provide future immigrants with an alternative immigration route. Once an applicant has met provincial selection criteria and becomes a nominee of the program, he or she still has to go through the federal application process to receive permanent resident status. The final admission of applicants through a PNP is a discretionary decision by the federal immigration officer. However, faster processing times and less demanding selection criteria provide PNP’s with a competitive edge, which allows these programs to become increasingly popular with aspiring immigrants.

Manitoba was the first province to establish a PNP after the federal government created the category in a response to the unequal distribution of immigrants over Canadian territory. Even until today the vast majority of the immigrants settle in three big cities; Toronto, Montreal and Vancouver, while between the provinces Ontario welcomes the largest number of newcomers each year. But immigrants are needed in all parts of Canada to meet regional demographic and economic demands. Manitoba realized it had to recruit its own immigrants if it was ever going be a real competitor to Ontario and build a strong and viable economy. As a result the province created an extremely successful

44 See section 87(3) of the Immigration and Refugee Protection Regulations.
46 For an overview of the Manitoba Provincial Nominee Program and the various categories through which immigration is possible visit: http://www2.immigratemanitoba.com.
47 Egan & Hameed, supra note 45.
PNP, which allowed it to attract thousands of immigrants since its inception. Many provinces followed Manitoba’s lead and set up their own PNP’s, but the execution of the concept differs significantly among them. Most of the programs have a variety of classes under which an economic immigrant can apply; they generally include business immigrants, investors and skilled workers. Focusing on skilled workers, most PNP’s can be divided into two categories; those which follow a point system and those which are employer-driven. Provinces, which apply a point system, determine their own selection criteria and pass mark. Most provinces, which use this approach, also require applicants to be in the possession of a job offer. Manitoba is the only province that allows prospective immigrants to apply to the program without arranged employment. The second category of PNP’s is employer driven; employers can apply through the program to recruit foreign workers when labour shortages occur in their industry. Once approved, workers can then apply for permanent residence status. Employers usually do have to prove that they are not able to fill their vacancies domestically through a pre-screening process. Both point-based and employer-driven programs have their advantages and disadvantages and it depends on a province objectives and needs, which one is the preferred method.

Surprisingly enough, Ontario developed a PNP as well in 2007. Although the original intent of these programs was to divert immigration streams away from this province, the increasing popularity of this policy tool made Ontario believe it had to devise its own PNP to stay competitive in the recruitment of skilled migrants. The scope of Ontario’s PNP was limited, however. Not only was its skilled-worker category employer-driven, it also had a limited list of occupations under which one could apply. In 2008, Manitoba managed to attract 7,968 immigrants through its PNP; a mere 35% of all immigrants that arrived in Canada through a PNP. Manitoba Labour and Immigration, Immigration, Settlement and Multiculturalism Division, *Manitoba Immigration Facts: 2008 Statistical Report*, summer 2009, online: <http://www2.immigratemanitoba.com>. Egan & Hameed, supra note 45. James P. Egan & Naumaan Hameed, “Ontario’s New Provincial Nominee Program: An Overview of the Province’s Historic PNP Project” (June 2007) 18 Imm. & Cit. #5.
2009, Ontario expanded the category to include all occupations on the federal NOC-list that fall under the A, B or O-category. It still follows the employer-driven approach, however.\(^{51}\)

*Temporary migration*

Most of the discussion on PNP’s centers around the recruitment of high-skilled permanent residents. However, with the recent changes to the federal immigration policy, which turned its focus to short-term solutions for the Canadian economy, a new interest in temporary migration has occurred. In principle it is the federal government that is responsible for devising and administering the Temporary Foreign Worker program.\(^{52}\) This immigration category allows employers to hire foreign workers after a two-step selection process. First the employer has to apply to Service Canada for a Labour Market Opinion (LMO), which will determine if the hiring of a foreign worker does not interfere with the domestic labour market. Once approval is granted, the temporary worker has to apply to Citizenship and Immigration Canada for the work permit. The program has been criticized for its long and arduous process, which often does not provide a suitable remedy for an employer who is in dire need of workers. Although the Temporary Foreign Worker program is completely in the hands of the federal government, its implementation is done regionally through Service Canada. This has led to stark regional disparities in how the program is administered.\(^{53}\) The future success of this program can therefore be debated. One solution would be to strengthen federal involvement and drastically increase national resources to

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improve the workings of the program. Another option would be to devolve the selection of temporary migrants completely to the provinces. After all, as this category is about responding to short-term economic needs, a regional approach will probably be better and more efficient in achieving its objective. Not only are provincial governments closer to regional labour markets and employers and are therefore in a better position to effectively respond to their demands; it also makes sense to put a regional authority in charge of a program, whose mandate is to fill up labour shortages, which are usually very localized.

The federal program for temporary workers focuses on high-skilled workers. But it has become clear that Canada also needs lower-skilled migration to keep its economy running; how can a country provide its population with the basic necessities if it does not have truck drivers to deliver food to the grocery store? Although hesitantly, the federal government has started to come to terms with this dilemma and has created a pilot-project to attract lower-skilled temporary workers. The project has its drawbacks though, as it does not allow temporary migrants to apply for permanent residence once they have worked for a while under the program. After two years the person has to leave the country for four months, before it can re-apply to the program. The transition from temporary worker to permanent resident seems to be a privilege given only to high-skilled migrants. Furthermore, applicants to the pilot-project have had difficulties obtaining work permits from CIC even after Service Canada has given the approval for an employer to hire the specific applicant out of fear that these immigrants will overstay their visa. The reluctance of the federal government to acknowledge that there is a need for permanent low-skilled immigration has prompted some provinces to set up an immigration category for lower-skilled migrants through their PNP’s.54 Alberta, for example, has a semi-skilled worker category within its employer-driven stream. The category allows employers in specific industries, such as food and

beverage production, hotel and lodging and the trucking sector, to nominate workers for permanent residence, who are already in the country on a temporary work permit.\(^{55}\)

*Settlement Services*

Next to providing future immigrants with provincial programs, through which they can apply for permanent residence, provinces have also been very active in integration and settlement programs. As discussed above, many federal-provincial immigration agreements mandate provinces to pursue these services by providing federal funding. Ontario, as the province which attracts the largest number of immigrants, has plenty of experience in this field. Various services are offered, such as language training, providing information on housing, social and health services. Many of these services are further delegated by the province to private organizations and most of these organize themselves locally or provide a specialized service.\(^{56}\) The recognition of credentials and getting licensed for regulated trades and professions is another issue many newly arrived immigrants face and many provinces have developed services and policies that deal specifically with these issues.

*Conclusion*

Provincial participation in the making of immigration law and policy has been haphazard and not always very welcoming in the past, but the 1970’s changed the legal landscape for immigration. No longer is

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\(^{56}\) For an overview of the various services offered visit: http://www.ontarioimmigration.ca/en/index.htm.
immigration a federal domain. With Quebec’s successful quest for more autonomy in this field and the emergence of PNP’s provinces can no longer be considered passive participants under the shared constitutional power on immigration. They have actively pursued policies and programs that not only benefit their regional needs and objectives, they also provide Canada with a localized immigration environment that could benefit the whole of the country in the long run. The emergence of provincial action in immigration policy and law-making can, therefore, be considered a promising addition to its federal counterpart. The question remains how much provincial involvement is desirable and where the federal line should be drawn, if at all.
3. Practical and theoretical perspectives

3.1 Current issues

Canadian immigration policy in the 21st century has known some turbulent changes. When in 2002 the IRPA was introduced it aimed to make Canada a highly attractive destination for skilled migrants. The introduction of a point system that emphasised human capital versus occupational demand confirmed the long-term vision for Canada’s immigration policy. Unstable economic times and increasing backlogs in the system changed the scenery, however; a backlog of 620,000 applications in the Federal Skilled Worker category and an average waiting period of 63 months prompted the federal government to amend the IRPA in 2008.\(^\text{57}\) The amendment removed the requirement that all applications have to be processed to a final decision. It furthermore authorized the Minister to provide instructions for the processing of applications such as how many should be processed in a given year and in which order.\(^\text{58}\)

The first ministerial instructions were issued in that same year. They severely limited the scope of the Federal Skilled Worker category; under the old system applicants qualified for the category if they possessed experience and/or education for a job that fell under one of the 351 job categories on the National Occupation Classification (NOC) list. The instructions reduced this list to 38 qualified occupations and to those who are able to acquire an offer of arranged employment or had been living in the country as an international student or foreign worker for at least one year.\(^\text{59}\) In 2010 new ministerial instructions reduced the list even further to 29 qualifying occupations. They also erased the opportunity

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\(^{57}\) Auditor-General 2009, supra note 5 at 16.


\(^{59}\) Ministerial Instructions, C. Gaz. 2008 I.3043.
for temporary workers and international students to apply to the program and capped the annual admission levels for those without a job offer to 20,000.60

The changes to the Federal Skilled Worker program have been heavily criticized. It is argued that they return Canadian immigration policy to a pre-IRPA era, where occupational demand determined who could apply. The emphasis on human capital that induced the introduction of IRPA no longer seems to be a prominent element of the new policy.61 The short-term focus of the new system has made many commentators fear for the future of Canada’s economy. A severely restricted NOC list is feared to soon be out of date as Citizenship and Immigration Canada (CIC) does not possess the instruments to be able to adjust the list rapidly enough to stay in tune with changing economic and labour market demands.62

Provinces have their own concerns with the federal changes. They have already seen an increase in PNP applications as many future immigrants who no longer qualify for the federal program now turn to the provinces for their immigration plans. It is projected by Citizenship and Immigration Canada that within two years PNP applicants will outnumber those in the Federal Skilled Worker category.63 However, the increased interest in PNP’s has not been met with sufficiently increased immigration levels, which are set by the federal government in consultation with the provinces annually in its report to Parliament. Despite a recent announcement by the federal government that it will increase the admission levels for PNP-applicants, the numbers are still considered too low by some provincial authorities to fully meet provincial economic and demographic needs.64 Furthermore, the 29 job categories identified by the NOC list do not always correspond with the labour market needs of a specific province. This means that provinces will have to adapt their own immigration programs to

60 Updated Ministerial Instructions, C. Gaz. 2010.I.1669.
61 Auditor-General 2009, supra note 5 at 22.
62 Ibid.
63 Alboim, supra note 6 at 17.
64 Harleen Kaur, “Limit of Canadian visas increased for provinces” Canada Updates (12 August 2010), online: <http://www.canadaupdates.com/content/limit-canadian-visas-increased-provinces>.
attract those immigrants that possess the required skills, which means an increased stress on provincial resources.65

An increase in immigration through provincial channels has its own issues. Currently, provinces are completely free to determine the content of their PNP’s. This has led to a vast variety in immigration categories, selection criteria, administering bodies, fees and so on. Although this diversity corresponds with the need for flexibility for provinces to tailor their PNP’s to specific economic and demographic demands, it also creates a very scattered and inconsistent immigration policy for Canada as a whole, which leaves future immigrants confused and in the dark about their possible opportunities to live and work in Canada.66 Finding a proper balance between national consistency and provincial initiative will be one of the keys to a successful Canadian immigration policy.

Another problem provinces are confronted with is the inability to measure the success of their immigration programs. As the Charter provides a mobility-guarantee, it is at times difficult for provinces to assess how many of the selected immigrants actually stay in the province and contribute to its economy. Research on retention rates has shown that some provinces have been extremely successful in tying newcomers to their society, while others had much more difficulty doing so.67 Manitoba, for example, has shown to maintain an excellent retention rate due to its strong emphasis on family and community ties to the province in its PNP categories. Quebec, however, has had much more difficulty

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65 Alboim, supra note 6 at 33.
66 Ibid., at 34-35.
with this aspect, which is contributed to a variety of factors such as its language policy, the overall attitude toward immigrants in Quebecois society and better economic prospects elsewhere.\(^{68}\)

The restrictions on the Federal Skilled Worker program has also led to another phenomenon; an increase in temporary migration. The federal Temporary Foreign Worker Programs allows foreign workers to come to Canada for a defined period of time. They are sponsored by employers, who are not able to fill their positions domestically. As such these programs provide an excellent opportunity to respond to temporary labour shortages effectively and quickly. However, as permanent migration for high-skilled workers becomes increasingly difficult, there is a danger that their refuge to temporary programs will generate a short-term solution to a long-term problem. When temporary worker programs are used to address long-term labour market issues, they might not be able to attract the kind of immigrant that provides Canada with the skills and economic resourcefulness the country needs for a prosperous future. It allows employers as opposed to the federal government to select Canada’s future citizens as many foreign workers use the temporary programs to gain access to permanent immigration through e.g. the Canadian Experience Class and provincial nominee programs. Leaving it to employers to hire high-skilled workers, who intend to remain in Canada permanently, might jeopardize national immigration objectives if there is no clear federal framework in place.\(^{69}\)

A further issue with an increase in temporary migration is that it increases the risk of abuse and exploitation of an already vulnerable group in society. As a temporary work permit is attached to a single employer for a specified period of time temporary workers will not always feel confident to report instances of wage exploitation or bad working conditions, for instance, out of fear to lose their status and to be removed from the country. The federal government was at first hesitant to interfere in these


\(^{69}\) Alboim, supra note 6 at 50-51.
situations as labour relations falls under provincial jurisdiction. But increased pressure by the provinces, labour organizations and other stakeholders led to the Temporary Foreign Worker program being amended to include a variety of mechanisms that are meant to protect the migrant worker, such as the requirement of an employment contract and restrictions on the use of recruitment agencies. However, the effectiveness of these mechanisms depends on the successful implementation and enforcement by provincial authorities, which has been proven difficult. Employment standards differ significantly between provinces and often exclude temporary foreign workers from entitlement to them. Alberta, for example, excludes agricultural and domestic workers from the scope of its *Labour Relations Act*. This prevents them from exercising collective bargaining rights and claiming specific work-related entitlements such as overtime pay and statutory holiday. They are furthermore not protected by health and safety regulations.

The need to provide more effective protection to temporary foreign workers has induced both provincial and federal authorities to initiate programs and policies to this end in the last three years. Several provinces have concluded agreements with the federal government governing temporary foreign workers. They aim to identify areas of cooperation so as to provide provinces with mechanisms to facilitate the entry of foreign workers into their territory in order to serve economic development needs, to increase information sharing and program evaluation, and to ensure that all parties involved are aware of their rights and responsibilities. This includes stronger enforcement and compliance monitoring of employers and employment agencies to ensure their compliance with the conditions of the Temporary Foreign Worker program and with federal and provincial laws. A few provinces have also concluded agreements on information sharing with HRSDC and Service Canada in order to provide

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70 Fudge & MacPhail, supra note 54 at 28-29.
the federal government with data on the enforcement of their labour standards. This information will assist Service Canada in its decision whether to authorize an employer to hire foreign workers.\textsuperscript{73} As of April 1, 2011 employers who have failed to meet program requirements or have not fulfilled obligations towards their workers with regard to wages, working conditions and occupation can be prohibited from hiring foreign workers for up to two years.\textsuperscript{74}

Provinces have also initiated regional programs to ensure the fair treatment of foreign workers. Alberta has opened up two advisory offices in Edmonton and Calgary which provide information to both employers and employees about their rights and responsibilities and also handles complaints from foreign workers.\textsuperscript{75} Manitoba requires employers to register when they intend to hire foreign workers. The registration enables Manitoba officials to check if employers comply with provincial labour standards.\textsuperscript{76} Several provinces have also banned employment agencies to charge fees to the foreign worker for placement services.\textsuperscript{77} These are just a few examples as other provinces have also developed programs and policies to deal with the issue.

In general there seems to be a step in the right direction towards more protection for temporary foreign workers. However, the variety of instruments put in place due to the fact that labour relations is mostly a provincial matter makes it difficult to enforce a national approach to the problem. Despite the many resource centers available, foreign workers, who are considering to make the move to Canada, will have a tough time discovering their rights and responsibilities; information which could influence their decision in which part of Canada to take up employment.

\textsuperscript{73} Currently such agreements are signed by Alberta (2008), Manitoba (2008), British Colombia (2010) and Saskatchewan (2010).

\textsuperscript{74} Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers), C. Gaz. 2009.I.3051.

\textsuperscript{75} Online: <http://employment.alberta.ca/Immigration/4548.html>.

\textsuperscript{76} Worker Recruitment and Protection Act, S.M. 2008, c. 23.

\textsuperscript{77} Ontario has recently put such a ban in place for the live-in-caregiver program: Employment Protection for Foreign Nationals Act, S.O. 2009, c. 32.
3.2 Objectives of a Canadian and provincial immigration policy

The current issues facing today’s designers of immigration policy requires them to have a good look at what Canadian immigration is all about; what does it envision, what does it want to achieve? An investigation into the objectives of Canada’s immigration policy might shed light on what direction to take from here onwards. A good starting point for this exercise is the Immigration and Refugee Protection Act (IRPA). Section 3 lists the objectives of the Act. Section 3(1)a establishes that one of the goals of immigration is “to permit Canada to pursue the maximum social, cultural and economic benefits of immigration.” Focusing on the economic benefits of immigration section 3(1)c states that the Act aims to “support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada.”

Immigration for the longest time has been considered an important mechanism for ‘nation building’; an aging population and low fertility rates will reduce Canada’s working population significantly in the coming years. This will have serious effects for the functioning of the economy, future economic, cultural and social development and to Canada’s competitiveness globally. To ensure that the economy can keep functioning at current levels and can continue to grow and prosper the country needs a consistent supply of workers. One way to achieve this goal is through immigration. The federal government has consistently held that immigration is an effective method to address short-term and long-term labour shortages and that it ensures the continued existence of Canada’s social system. The emphasis on immigration as a cure for persistent demographic shortfalls has led to a continuous

increase in admission levels since the 1990’s. It is even predicted that immigration will become the main method of population growth within a couple of decades. 

Despite the heavy reliance on immigration as a tool to improve the number of the working age population, several authors have casted doubt on the effectiveness of this approach. It has been argued that the current levels of admissions are way too low to even come close to solving the demographic problem. Furthermore, there are concerns that current immigration policies are not able to affect the age structure of the population even if it can increase its overall number; immigration does not lower the average age of the Canadian population and therefore might not alleviate the problems that arise from an aging population. There have also been debates whether Canada should bother with population growth at all when resource scarcity and environmental issues only become a greater concern. This is especially true since most immigrants settle in the bigger cities and attempts to scatter newcomers to more rural areas have had limited success.

Although theories on the link between immigration, demographics and economic growth are not conclusive, Canada maintains immigration can be a successful instrument to reach its short- and long-term economic and demographic goals. Also provinces have embraced economic and demographic arguments as the main rationale behind their provincial immigration policies. Manitoba, for example, made immigration a vital element of its economic growth strategy and aims to double immigration to the province within the next few years. It also has made immigration a tool for population growth by

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82 Monique M. Rose & Julie Desmarais, “Directions to Consider in Favour of Regionalization of Immigration” (Paper presented at: Migration Economic Growth and Social Cohesion, 12th International Metropolis Convention, October 2007), Our Diverse Cities: Rural Communities, no.3/summer 2007, online: <http://www.metropolis.net>.
adding a family support stream to its PNP. The selection criteria for this category focus on family connections rather than education or skills. By setting an age requirement of 21-49, the program ensures that the applicant can contribute to Manitoba’s society economically and by bringing his or her dependents the applicant also aids in Manitoba’s population growth.\(^4\)

Other provinces use their immigration policy mainly as a tool to address their economic needs. British Columbia’s PNP, for example, has a general skilled workers stream, which allows applications for all occupations which are on the federal NOC-list with skill level O, A and B. The application will not be approved, however, if there is a current surplus of workers domestically in the specific sector or long-term prospects for the job are poor.\(^5\) Alberta, very recently, suspended its family and U.S. Visa Holder category for an unlimited period due to an economic downturn. In a press release the Albertan minister for immigration explained the policy choice by stating: “Our focus needs to be on jobs for Albertans and Canadians first. We will continue to process applications for people who have the skills our growing economy needs.”\(^6\)

So provinces adapt their immigration programs to their specific needs, which can include any combination of economic and demographic objectives, but there is also a more general, overarching rationale for a provincial approach to immigration. Federal immigration policy has led to the urbanization of immigration. Most immigrants that arrive through federal programs move to the major urban hubs of the country; Toronto, Montreal and Vancouver. This has led to an inequality between provinces in their ability to profit from the concept of immigration. In order for other regions to take advantage of the benefits of immigration, provinces have to devise special programs to attract newcomers to these less popular areas. Provincial nominee programs with their expedited processing

\(^4\) See <http://www2.immigratemanitoba.com/browse/howtoimmigrate/pnp/pnp-family_support.html>.
times are one way to achieve the goal of ‘regionalization of immigration’. A regional approach to immigration can contribute to a province’s economic growth, demographic demands and it can also help in the revitalization of its rural areas.  

At a national level immigration policy also needs to respond to international demands and interests. The demographic and economic issues that face Canada also face many other countries. Canada, but also the United States and Australia, have been part of a group of countries that are considered destination countries for immigrants. These countries have a long history of attracting immigrants and have put elaborate immigration policies and programs in place to increase high-skilled migration to their territory, which would promote economic growth and/or would address their population needs. As such these countries are in competition; the distinct elements of their immigration policies and its attractiveness to prospective immigrants will determine who will win the ‘race for talent’.  

Canada has been able to provide itself with a competitive edge by granting skilled workers permanent residence immediately upon qualifying; other countries provide permanent admission only after a period of temporary stay in the country. However, this promise of citizenship has been diluted by the recent increase in the use of temporary programs in Canadian immigration policy. To stay competitive Canada will have to ensure that its immigration policy continues to portray an inviting, immigrant-friendly country.

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89 Alboim, supra note 6 at 50.
3.3 Devolving immigration powers

The Constitution makes immigration a shared responsibility of the federal and provincial government. As shown, the federal government shouldered the responsibility for immigration policy mostly by itself for the longest time. Only in the last few decades have provinces started to actively participate in devising policies and programs in this area. Now that Canada has gained some experience in multilevel immigration policymaking, an inquiry into the effects of devolving immigration powers to the provinces might be warranted. Decentralizing these powers raises normative questions as it can have a deep impact on the functioning of Canada as a federation and on its economic and political structures.

There are a variety of reasons for the decision to decentralize or centralize immigration policy. They can basically be divided into economic and political rationales.\(^90\) From an economic perspective, immigration is considered to be an important tool for economic growth and prosperity. A decentralized approach to immigration can provide provinces with the necessary tools to respond quickly and effectively to regional labour market demands. Provinces will know better than the federal government which sectors are suffering from shortages and where extra hands are needed in the long-term as they stand closer to their constituents such as employers. The fact that many provinces have very specific PNP streams shows how different labour markets are across Canada; British Columbia, for example, has a special category for health professionals\(^91\) and Alberta provides a PNP category for farmers.\(^92\) Provincial needs go beyond labour market concerns, however, and also other interests play a role in the quest for provincial control of immigration. The Manitoba’s PNP, for example, used to comprise a community stream, which allowed people with strong ties to a specific religious or cultural community


\(^91\)<http://www.welcomebc.ca/wbc/immigration/come/work/about/strategic_occupations/health_professionals/who.page? >.

to apply to the program.\textsuperscript{93} This category has now been abandoned and has been replaced by the ‘strategic initiative’-category, which allows people to apply who have the support of an ethno-cultural community organization or a regional economic development organization and have been invited to a pre-approved exploratory visit to the province.\textsuperscript{94} These examples show the vast variety of interests a province tries to serve with its immigration programs. When provinces are allowed to set their own immigration priorities this will lead to a greater responsiveness to the region’s needs and specific circumstances.

The need to tailor immigration policy to provincial needs has to be offset, however, by the needs of the country as a whole. A scattered immigration policy can hamper Canada’s ability to maximize the potential of economic migration. The existence of a vast variety of PNP programs can confuse prospective immigrants and might not lead to the best allocation of their skills over the territory. The recent downsizing of the Federal Skilled Worker program, the increased use of PNP’s as a means to gain permanent residence and a stronger reliance on temporary migration are all factors that could harm the building of a Canadian knowledge economy if there is no clear national framework and vision in place.\textsuperscript{95}

Devolving immigration powers to the provinces also has serious consequences from a political perspective. Immigration is in most people’s conception tightly linked to notions of nationhood and sovereignty; the ultimate exercise of sovereignty is determining who can be part of its society. Selecting citizens is therefore considered a national task, which is exemplified by the fact that the grant of citizenship is an exclusive federal power according to the Constitution.\textsuperscript{96} Although provinces do no grant


\textsuperscript{94} <http://www2.immigratemanitoba.com/browse/howtoimmigrate/pnp/pnp-strategic.html>.

\textsuperscript{95} Alboim, supra note 6 at 51.

citizenship themselves to immigrants, they do select permanent residents through their PNP’s, which is a first step towards citizenship. And provinces are not the only actors in this process; employers, postsecondary education institutions and local communities all have a say in who can become eligible for citizenship. Most PNP categories require immigrants to have a job offer before they can apply for permanent residence. As such it is the employer who selects the immigrant. The same goes for postsecondary education institutions, which by selecting its students, determines who becomes eligible for citizenship through the Canadian Experience Class and provincial international-student PNP streams. As the example of Manitoba’s strategic initiative stream shows, also local communities can have a say in who can be nominated and gain prospects to becoming a citizen. Neither of these actors chooses immigrants on the basis of their long-term potential to contribute to Canadian society as a whole, but rather selects them on what they can contribute to their company/school/community specifically.\(^97\) Especially in federations it is important that there exists some basic form of common identity at the national level, which will bind the country politically, culturally and socially together. Preserving the grant of citizenship as a federal prerogative can be an important mechanism to achieve this goal as the federal government selects citizens, who can contribute to the forming of such a common identity.\(^98\) Devolving immigration power can dilute this power by allowing other actors to have a role in the selection of citizens.

On the other hand allowing sub-national governments to select immigrants that address their specific economic, cultural or linguistic needs can also be an important form of nation-building at the local level. The case of Quebec is an excellent example of this. In Quebec immigration policy is an important tool in preserving its distinct cultural and linguistic values. As earlier shown preserving Quebecois society was the main rationale behind Quebec’s attempt to gain more control on immigration

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\(^{97}\) Alboim, supra note 6 at 51.

\(^{98}\) Luedtke, supra note 90 at 10.
in the 1970’s. Although other provinces might not have the same urgent need to preserve their provincial identity, they also will have certain goals that are specific to their society, which are best pursued at provincial level as the provincial constituency will be more willing to support those policies. An example would be the funding of French language classes for newly arrived immigrants. Local French communities, which can be found all across Canada, will be much more likely to be in favour of government subsidies for such programs, while nationally Canadians might not consider it an essential settlement service. Immigration policy and especially local settlement services can therefore be a helpful tool in promoting sub-national social, cultural and linguistic values.

Besides these economic and political arguments, there is also a more pragmatic reason to devolve immigration powers to the provinces. It provides the country with an opportunity to experiment and innovate in immigration policymaking. By allowing provinces to devise their own immigration policies and programs, they will be able to match them with regional needs and interests. As these interests are different for each province, each policy will have its own characteristics. This in turn can lead to a process of exchange and learning. Some of these provincial interests, however, are very similar. The need to attract high-skilled migrants to bolster economic growth, for example, is a goal shared by both provinces and Canada as a whole. Diversification of immigration policy in these areas can also bring to the foreground best practices from which other provinces and the federation can borrow. Whether an immigration program is effective is something that can be measured by the in- and outflow of the number of immigrants. The so-called ‘voting with your feet’ argument, which shows an immigrant’s discontent or satisfaction with a particular policy by moving away or into a territory, will be the best sign

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99 Luedtke, supra note 90 at 8-9.
whether the right immigration policy is pursued.\textsuperscript{100} So a decentralized approach to immigration can improve the efficiency and the overall quality of immigration policy in a country.

Although it seems from the previous discussion that Canada still upholds a strong centralized approach in immigration policies and provincial initiatives only account for a small share of the overall immigration levels, compared to other countries Canada is much further in the process of localizing immigration policy. In the United States, for example, the federal government is the primary policymaker on immigration matters. This is due to the plenary power-doctrine that has been developed by the United States’ courts. Although the word ‘immigration’ is not mentioned once in the US constitution, courts have interpreted it in such a way as to provide the federal government with the primary legislative authority on immigration matters. States are, however, involved in the implementation of the federal policy and have also increasingly become more concerned with the enforcement of immigration laws.\textsuperscript{101}

Australia is another example of a federation which is also an important destination-country for immigrants. Unlike Canada and the United States, the Australian constitution explicitly attributes the power to legislate with regards to immigration solely to the federal government.\textsuperscript{102} However, the federal government has used this power in a way that has left room for states and territories to be involved. An example is a range of measures called \textit{State Specific and Regional Migration (SSRM)} initiatives, which aim to address regional demands for skilled workers. It allows state and territory governments to sponsor eligible candidates under a variety of programs. Although this seems to strongly resemble the nomination process under Canada’s PNP category, the difference lies in the fact that Australian state and territory governments cannot define their own selection criteria under these programs; it is the

\textsuperscript{100} Ilya Somin, “Tiebout Goes Global: International Migration as a Tool for Voting with your Feet” (2008) 73 MO. L. Rev. 1247. Although this article is about voting with your feet between nation-states, I believe the same principles can also be applied to interprovincial migration.


\textsuperscript{102} \textit{Commonwealth of Australia Constitution Act}, section 51(xxvii).
federal government, which determines who is eligible to be nominated. It does, however, provide regional authorities with a method to influence the number and profile of skilled migrants settling in their territory, which can then be brought in line with regional development needs and goals.\footnote{Austl., Commonwealth, Department of Immigration and Citizenship, \textit{Fact Sheet 26 – State Specific Regional Migration}, online: <http://www.immi.gov.au/media/fact-sheets/26state.htm>.
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The examples of the United States and Australia show that Canada possesses a much more decentralized approach to immigration than most countries. There is no clear cut answer as to whether such an approach is better or worse than a centralized immigration policy. In Canada’s case the economic benefits of regional immigration initiatives seem to ease some of the political concerns about their effect on Canada’s identity as a nation-state. And although there are some sincere concerns about the fragmentation of Canadian immigration policy and its effect on the long-term vision for Canada as a growing knowledge economy, in general more involvement of the provinces is welcomed as an effective tool to meet regional and local needs. The next chapter will have to address all these different angles and will hopefully give a deeper insight in what can be done to solve some of the current issues, while still providing provinces and the federation with effective tools to meet their immigration goals benefitting the regions and Canada as a whole.
4. Alternative approaches to federal-provincial relations

The previous chapters have addressed a vast array of issues currently dominating the immigration dialogue. They range from concerns about the short-term focus of the Federal Skilled Worker program, to the flourishing of provincial immigration programs and their overall effect on Canadian immigration policy, to problems associated with an increase in temporary migration such as labour rights protection. These problems are all interrelated and cannot be addressed separately. They all find their roots in one cause; the lack of a coherent framework for Canadian immigration policy as the current policies and programs in place are scattered over various governance levels and lack consistency. Although the federal government provides its immigration plans for each coming year in its annual report to Parliament, it has never written a concrete multiyear plan on immigration.\(^\text{104}\) And despite the existence of federal-provincial agreements on immigration and various consultation mechanisms in place, the two levels of government have never really sat down with each other to determine who is responsible for which part of the immigration process. The subject matter of immigration has become a buffet from which provinces can pick and choose to determine their level of responsibility for a variety of aspects of it. A good example is the provision of settlement services. Depending on the province, newcomers will be directed to federal, provincial, municipal and/or community programs. Many of these initiatives are further privatised leaving new immigrants at times clueless as to where to turn for their settlement needs.\(^\text{105}\)

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\(^\text{104}\) Auditor-General 2009, supra note 5 at 13.
\(^\text{105}\) For example, Ontario has a website especially dedicated to provide information on settlement services for newcomers. A search for settlement agencies in Toronto will give 18 pages of results. [http://www.settlement.org/findhelp/](http://www.settlement.org/findhelp/).
In order to bring some much needed structure to the current immigration framework this chapter will address possible solutions to divide or share power between the federal and provincial government for specific elements of the immigration process with a focus on economic migration. These elements include the selection of skilled workers as permanent residents, the admission of temporary workers and the provision of settlement services.

4.1 The selection of skilled workers as permanent residents

High skilled immigration became the cornerstone of Canadian immigration policy in the 1960’s with the introduction of the point system. Economic migration now takes up about 60% of all admissions each year of which the majority are admitted through the Federal Skilled Worker class. But as has been previously pointed out, this class is now on its return due to recent changes made to it by the federal government. This has increased the pressure on provincial immigration programs as their admission categories for skilled workers become more attractive to prospective immigrants. Consequently, the balance between federal and provincial initiatives with regard to skilled migration has shifted. Previously the Provincial Nominee Programs acted as an overflow category, where a limited number of immigrants could qualify on the basis of provincial selection criteria. Now, due to the limited scope of the Federal Skilled Worker class, it is projected that provincial nominee programs will soon be the forum through which the vast majority of skilled immigrants will arrive. Such a shift in admission policy will have a huge impact on the division of power between federal and provincial authorities. It will put provinces in a position where they will determine the direction the country will take. As provinces become in charge of selecting Canada’s largest group of future immigrants, skilled workers, they will determine the course

107 Alboim, supra note 6 at 17
of Canada’s economy, its population growth and its cultural and social dynamic. Considering that each province has its own immigration objectives, such a trend will create a very fragmented approach to nation-building.

There are various options to address this issue. One option would be to take the current events one step further and devolve the selection of economic migrants completely to the provinces. This would allow provinces to most efficiently address their specific economic and demographic needs. As each province determines its own selection criteria, they will be able to select immigrants that best suit the province’s cultural and social character as well as addressing specific economic circumstances. Because the Constitution does not allow for exclusive provincial jurisdiction of immigration matters, such an approach could be modelled to the Canada-Quebec Accord. Provinces would be granted the power to select its future economic immigrants while the federal government handles the final admission procedures and deals with enforcement issues. As a result all federal economic migration programs, such as the Federal Skilled Worker category, the Canadian Experience Class and the Business Immigration Program, would be eliminated. Bringing the selection of economic migrants within the exclusive jurisdiction of the provinces would not only allow for increased responsiveness of Canada’s immigration policy to the immigration objectives and needs of the provinces, it would also promote the flourishing of policy initiatives, which would induce innovation and the exchange of best practices between provincial authorities.\footnote{See also the earlier discussion on the advantages of devolving immigration policymaking.} Furthermore, provinces could themselves determine the number of immigrants they would want to admit and adjust these numbers to their economic cycles.\footnote{Margaret Young, \textit{Immigration: Constitutional issues}, Law and Government Division, BP-273E, October 1992, online: \url{http://dsp-psd.pwgsc.gc.ca}.} Although there is no longer a cap on the admission numbers of provincial nominee programs, in practice the federal government, through its annual immigration plan, still determines how many immigrants can be nominated. This practice has led to a rigid approach that limits provinces’ ability to quickly respond to...
specific regional labour market changes.\textsuperscript{110} Allowing provinces to be fully in charge of the selection of
their own immigrants can generate faster response time to changing economic circumstances due to the
provincial authorities’ closer proximity to the regional labour market. It also allows them to be more
flexible in devising immigration categories that correspond to province-specific social, cultural and
demographic characteristics; just as Quebec puts special emphasis on attracting immigrants with strong
French language skills, so can Manitoba for example focus on attracting immigrants with backgrounds
that would meet its immigration objective of strengthening cultural diversity.\textsuperscript{111}

Despite these strong benefits to the choice to completely devolve the selection of economic
migrants to the provinces, there are, however, also quite a few downfalls. First of all it could undermine
a national approach to immigration. As economic migration takes up the bulk of the admission numbers
at this point in time, a fragmented regional approach could divert attention away from national
immigration goals. As provinces can determine their own levels of immigration, the overall number of
admissions might not meet national demographic and economic needs. Furthermore, provinces, which
have more experience with immigration policy, might be more successful in attracting immigrants to its
region than others, which can further aggravate the problem of uneven distribution of newcomers.
Provinces will at times be in competition with each other when they target the same group of
immigrants. If one province can outbid the other provinces due to more lenient selection criteria or
stronger marketing skills, for example, the most efficient allocation across the country of immigrants’
skills and labour and overall population growth can be disrupted.

\textsuperscript{110} Office of the Premier, Western Premiers’ Conference, News Release, “Western Economic Agenda to Drive
Canada’s 21\textsuperscript{st} Century Economy” (16 June 2010), online: <http://www2.news.gov.bc.ca>.
\textsuperscript{111} See Manitoba Labour and Immigration, Statement of Vision, online:
<http://www.gov.mb.ca/labour/immigration/index.html>. Manitoba’s desire to complement the cultural
background of its population can also be inferred from the emphasis on family and community connections in its
various PNP streams.
Secondly, a devolved economic immigration policy could also undermine the functioning of the federation by threatening its cohesive powers as a nation state. Previously, it has been stated that immigration policy-making and the grant of citizenship is considered an important expression of sovereignty. Determining who is eligible to become a long-term member of Canadian society has significant effects on Canada as a country with regards to its social, cultural and economic character. Removing that power from the federal domain could weaken Canada’s position as a nation-state.\textsuperscript{112} When the federal government chose to introduce the provincial nominee category in response to provincial requests for more input on Canada’s immigration policy and the need for a more even distribution of immigrants over the country, it explicitly chose to deny the other provinces the same selection privileges as it had granted to Quebec. The rationale for this choice lies partly in the recognition of the distinctiveness of Quebecois society, but it was also a method to preserve some form of federal unity in immigration policy.\textsuperscript{113} Consequently, a devolved immigration policy could weaken the nation-state by voiding the federal prerogative to select Canada’s future citizens.

Thirdly, from a more practical perspective, a devolved immigration policy also hampers Canada’s ability to promote itself as an attractive destination for immigrants and as such reduces its competitiveness in the global market for highly-skilled migrants. As provinces design and implement immigration policies and programs that best suit their regional needs and objectives, a maze of immigration categories will be created, which can highly confuse potential immigrants.\textsuperscript{114} Therefore, for a provincial approach to economic immigration to be successful for Canada as whole, it will have to be supported by a strong coordinated promotion campaign. Provinces will have to work together to ensure that prospective immigrants, who want to immigrate to ‘Canada’ and not specifically to British Columbia

\textsuperscript{112} Luedtke, supra note 90 at 10.
\textsuperscript{114} Such confusion already exists under the current approach as is pointed out by Naomi Alboim in her report on Canada’s economic immigration policy. Alboim, supra note at 35.
or Alberta, are aware of the various programs and their options to become a long-term resident of the
country as a whole. This is especially important since provinces cannot legally bind immigrants to their
territory due to the Charter’s mobility-guarantee. Immigration to Canada and not to a specific province
is furthermore an important message that will ensure the unity of the federation, which is as mentioned
an important political element of Canada’s immigration policy.\textsuperscript{115}

Lastly, not all provinces might be interested in an exclusive selection power of economic
migrants. Especially for those provinces that do not possess the resources to run an immigration
bureaucracy, a federal approach to economic migration might be more beneficial.\textsuperscript{116} The costs involved
vary from running immigration offices abroad to promote the province and process applications to
running an administrative bureaucracy to handle all the paperwork once the immigrant is landed to the
provision of settlement services upon arrival. The financial input and infrastructure needed might be
much more than smaller or less affluent provinces like Prince Edward Island or Newfoundland can
handle. Such provinces might prefer a federal approach as a provincial approach would limit their
resources to become competitive with other provinces in their objective to attract the immigrants they
need to meet regional economic and demographic goals.

At this point in time, to grant exclusive power to the provinces to select economic migrants and
to eliminate the federal programs might be one step too far. The strong benefits of diversification and
tailor-made programs do not seem to outweigh the costs associated with it both from a normative and
practical standpoint. That leaves us with two more options to deal with the selection of economic
migrants; leave it at the status quo or reduce provincial input. To reduce provincial involvement would
mean turning back the clock forty years. It would return Canadian immigration policy to an era where
provincial interests were not accounted for and a national approach was followed. The option

\footnotesize{\textsuperscript{115} Young, supra note 109. \textsuperscript{116} Ibid.}
contradicts the current success of provincial nominee programs and the various statements of approval
issued by the federal government and its plans to expand these programs. An approach where there
is room for provinces to have an input and which allows them to meet specific regional objectives, as is
currently in place, is more desirable even from a national perspective.

The status quo, however, fails to fully meet all the national and regional goals set for Canada’s
immigration policy. A lack of coordination hampers the efficiency of the laws and programs in place and
as such limits their potential to create an immigration framework that can meet all the interests
involved. Despite the various mechanisms in place, such as provincial-federal agreements, consultation
procedures and annual reports, the authorities have not been able to provide Canada with a long-term
plan on immigration that accounts for and promotes the various interests of stakeholders at national,
provincial and local level. To ensure strong provincial involvement in immigration matters, which does
not hamper the achievement of national immigration objectives, it is therefore important that more
efficient monitoring and evaluation mechanisms regarding federal-provincial relations on immigration
are put in place.

The Auditor-General of Canada specifically recommended the creation of evaluation
mechanisms to ensure that the blossoming of provincial immigration programs does not undermine the
federal immigration goals as laid down in the IRPA. In a response to this recommendation Citizenship
and Immigration Canada is currently devising an evaluation framework for the provincial nominee
program for its 2010/2011 Evaluation Plan. In the same document the department also announced its

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117 See e.g. Annual Report 2009, supra note at 9.
118 Auditor-General 2009, supra note 5 at 27.
intention to collaborate with provinces to establish a planning process for the setting of immigration levels that is able to balance the goals of flexibility with predictability.\textsuperscript{119}

In her 2009 report on Canada’s economic immigration policy, Naomi Alboim also addressed the issue of management of provincial nominee programs. Her recommendations included the creation of a national framework for the category, which would set out basic selection criteria, procedures, timelines and fees. She also urged for a more elaborate evaluation mechanism that would measure retention rates and the economic success of PNP participants after arrival.\textsuperscript{120} Such a framework would be highly desirable as it will enhance the accessibility of PNP’s both by making them more transparent and by reducing procedural hurdles. However, the establishment of baseline selection criteria for PNP’s would most likely negate the inherent flexibility and individuality of these programs. A much better approach would be to assess specific PNP streams against criteria that reflect the objectives of a national immigration policy as laid down in the IRPA. Currently, provinces only need to inform the federal government when they create new PNP categories; they are not required to obtain approval.\textsuperscript{121} Requiring provinces to present new PNP categories to the federal authorities in order to assess them on their compatibility with the IRPA, allows the federal government to uphold basic national immigration objectives, while maintaining the province’s ability to devise an immigration strategy that satisfies regional needs. Such an approach would complement the already existing power of federal immigration officials to substitute provincial selection criteria by federal selection criteria if the officer is not convinced that the provincial criteria will ensure the successful economic establishment of the nominee in Canada.\textsuperscript{122}

\textsuperscript{120} Alboim, supra note 6 at 57.
\textsuperscript{121} Auditor-General 2009, supra note 5 at 25.
\textsuperscript{122} Article 87(3) IRPR
The current approach to the selection of skilled workers as permanent residents can form a proper foundation for Canada’s future immigration policy. With an increasing reliance on provincial nominee programs, it becomes increasingly important to ensure that national immigration objectives are being met while not compromising the flexibility and the advantages of tailor-made solutions that provincial immigration programs can offer. By providing stronger and more efficient monitoring and evaluation mechanisms in combination with long-term planning initiatives, immigration of skilled workers can remain cornerstone of a successful provincial and federal policy.

4.2 Temporary migration

The selection and admission of temporary workers is administered by the federal government through the Temporary Foreign Worker Program. In chapter three, the various difficulties with increasing reliance on this program have been outlined. Increasing numbers of temporary migrants might jeopardize the long-term goals of a Canadian immigration policy by pursuing short-term solutions to long-term economic needs. Furthermore, this trend puts the selection of Canada’s future citizens in the hands of private actors, such as employers and post-secondary educational institutions, whose interests do not always coincide with national citizenship policy. There are also concerns about the protection of rights of temporary migrants, who are subjected to the whims of their employers and exclusionary provincial labour laws.

These issues are not unfamiliar to governmental authorities and critics alike. Various solutions have been put forward, which mostly involve stricter enforcement and monitoring. However, none of the solutions seem to question the exclusive federal power on the subject matter of temporary migration. There is, however, an array of reasons for making temporary economic migration a provincial

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123 See Auditor-General 2009, supra note 5 at 28-35, and Alboim, supra note 6 at 36-41.
concern. Firstly, temporary immigration has as its main goal the relieving of temporary labour shortages. These labour shortages can occur nationally, but more often they are localized to a specific sector in a specific region. The most often-cited examples are the oil-sands in Alberta and sectors involved in providing the infrastructure for the 2010 Winter Olympics in British Columbia, but also other regional sectors are confronted with temporary labour shortages that cannot always be addressed domestically. It will therefore be regional actors that will be able to first detect labour shortages when they occur. Provinces are in closer proximity to employers, labour organizations and other stakeholders involved in regional economic planning, which makes them more knowledgeable and faster to respond to labour market changes and needs than the federal government. Furthermore, temporary migration programs are meant to address short-term temporary labour shortages; they are not meant to address long-term economic immigration needs. Provinces are, however, allowed to use permanent immigration to address long-term economic and demographic needs through provincial nominee programs, but they are barred from using temporary migration programs to address short-term economic demands. Therefore, a provincial policy for temporary migration seems to be much closer to a province’s mandate to use immigration as a tool to meet regional economic objectives. As such a provincial approach to temporary migration would not interfere with a federal immigration policy that aims at nation-building.

Another reason to devolve temporary immigration policy to the provinces is that the subject matter of labour relations has been interpreted as falling within provincial jurisdiction. Consequently, provinces determine most of the rights and responsibilities of temporary foreign workers and their employers. Although the federal Temporary Foreign Worker Program does require employers to comply

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126 This default rule has been reaffirmed by the Supreme Court in the recent case of Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters, (2009)3 S.C.R. 407.
with a specific set of rules, the implementation and enforcement of them are performed at regional level through Service Canada.\textsuperscript{127} It follows that it is provincial authorities, not the federal government, that will be the first point of contact for a foreign worker when issues arise. An approach whereby a temporary foreign worker would only have to turn to one government service with regards to the issuance of its work permit and the governance of the employment-relationship to which the work permit applies, would increase the overall efficiency and accessibility of the system.

A provincial approach could also relieve some of the concerns about exploitation of foreign workers surrounding the Temporary Foreign Worker Class. Currently, the federal government is in the process of introducing policy changes that will enhance the protection of temporary workers, but these changes have a limited reach due to scope of the program.\textsuperscript{128} They do not provide for a comprehensive national framework that allows provinces to provide compliance monitoring and enforcement mechanisms at a level of protection for the foreign worker that corresponds with provincial labour standards.\textsuperscript{129} Although it would be preferable to have a national approach to setting employment standards that can provide the protection of rights of foreign workers, the provincial autonomy in labour relations prevents such a mechanism. The best option can only be increased cooperation in this field between provinces themselves. However, when temporary migration becomes a provincial concern these issues become less problematic. As opposed to permanent residents, foreign workers are usually bound to a specific location due to the fact that the work permit is linked to a specific employer for a specific length of time. They are, therefore, bound to the province in which they work. An asymmetry

\begin{footnotesize}
\begin{enumerate}
\item Leeboish, supra note 53.
\item Regulations Amending the Immigration and Refugee Protection Regulations, C. Gaz. I. 1771. These changes include a more rigorous assessment of the ‘genuineness’ of the job offer, the requirement to provide an employment contract specifying wages, hours etc., and a possible two-year ban to hire foreign workers for employers who did not honour previous commitments to employees regarding wages, working conditions and occupation.
\item Karl Flecker, “Canadian Labour Congress Response to IRPA Regulatory Changes Regarding Temporary Foreign Workers” Canadian Labour Congress (5 January 2010), online: Canadian Labour Congress \textless http://www.canadianlabour.ca\textgreater at 3.
\end{enumerate}
\end{footnotesize}
between workers’ rights across the country, although not desirable, will then be less of concern because foreign workers will have applied for a work permit through provincial channels and hopefully have acquired with it all the information on their rights and responsibilities as a foreign worker. They are thus only concerned with provincial policy with regards to both their migration process and the rules governing their employment relationship. The disconnection between the federal policy determining the legal status of foreign workers and the provincial policy, which protects their rights as an employee, can then be avoided. A provincial approach to temporary migration might even improve the protection of rights enjoyed by foreign workers as provinces can incorporate specific requirements on employment standards into their temporary migration policies as well as mechanisms to enforce them. As mentioned earlier various provinces have already addressed the concerns about exploitation of foreign workers and have put policies and programs in place to prevent and combat the occurrence of it.

The use of foreign workers to fill up temporary labour shortages can be an effective use of immigration policy. However, the current approach, which makes temporary economic migration an exclusive federal power, shows a lack of concern for the most effective use of resources. Because temporary migration deals specifically with labour market needs that are mostly regional in nature and the governance of the relationship between the foreign worker and its employer falls within provincial jurisdiction, it is much more logical to put the responsibility for temporary migration in provincial hands. It will allow for the most efficient use of immigration policy to address short-term economic needs. And, as opposed to permanent immigration, temporary migration policy will not undermine a national approach to immigration as it is not meant to provide Canada with long-term residents that can affect Canada’s economic prospects or its cultural and social identity.

There is, however, the concern that many temporary foreign workers become permanent residents through the Canadian Experience Class and specific PNP categories. This two-step process
towards permanent residency has some significant drawbacks; it is a privilege granted to high-skilled workers only, which leaves lower-skilled workers with no avenue to remain in the country, which can lead to a loss of a trained labour supply and potentially increase illegal immigration. It can also hamper the successful integration of newcomers as they do not have immediate access to settlement services and are not always entitled to bring their family from the start.\textsuperscript{130} To ensure that such transition programs complement national immigration objectives and provide Canada with immigrants that have the ‘human capital’ to become a successful contributor to Canadian society, it is important that they are based on a selection system that accounts for both provincial and national interests. As long as temporary migrants are made aware of the different selection criteria and procedures for becoming a permanent resident and their eligibility for it, a provincial temporary migration policy does not have to interfere with national immigration objectives.

4.3 Settlement services

The provision of settlement services is another area where provincial and federal immigration powers overlap and where the division of powers is not always clear-cut. For many it is not entirely obvious whether integration should be a federal or provincial concern. Most immigrants currently arrive through federal programs, but most of the essential services, such as housing, employment, health services and so on are provided at provincial level. The federal government has tried to devolve the responsibility for integration and settlement to the provinces. Only British Columbia and Manitoba agreed to do so.\textsuperscript{131} Quebec was already in charge of this element of immigration policy as was agreed in the Canada-

\textsuperscript{130} Alboim, supra note 6 at 49.
Quebec Accord.\textsuperscript{132} The other provinces opted to maintain federal responsibility and have developed various levels of involvement in the provision of settlement services. Ontario, for example, co-manages the federal programs and has been receiving considerable funding to do so.\textsuperscript{133} The federal settlement program consisted of three main services; ISAP, which provides for basic settlement services and information; LINC, which provides newcomers with free language training; and HOST, which sets new immigrants up with Canadians for friendship and mentoring, which would facilitate their integration.\textsuperscript{134}

A new funding strategy by CIC has now replaced these three programs by one single settlement program. Service provider organizations can now apply for federal funding if they provide services that fall within one of the six categories, which include; information and orientation, language and skills development, labour market participation, community connections, needs assessments and referrals and support services.\textsuperscript{135} Although the funding of settlement initiatives is now streamlined, the actual implementation is confusing. The provision of these services is delegated to private organizations, so-called service provider organizations (SPO’s), which are often community-based or have strong ethnocultural or religious affiliations. Next to these federally funded programs, there are many privately-funded settlement initiatives as well as provincial and municipal projects. The wealth of settlement services provided and the involvement of so many actors can compromise their transparency and accessibility reducing their overall effectiveness.

Consequently, coordination and cooperation are important keywords in settlement and integration. Various initiatives have been developed at both federal and provincial level to address this

\textsuperscript{132} See Section III of the Canada-Quebec Accord.
\textsuperscript{133} Annex D: Settlement Services to the Canada-Ontario Immigration Agreement, 2005, online: Citizenship and Immigration Canada <http://www.cic.gc.ca/english/department/laws-policy/agreements/index.asp>. The agreement provided Ontario with $920 million in federal funding for settlement services over a five year period.
issue. Most recently, immigration ministers at a federal-provincial ministerial meeting announced the creation of Pan-Canadian framework that would establish a common set of successful settlement indicators across jurisdictions as well as the evaluation of service delivery models. Although Quebec is not required to participate as it performs its own evaluation of its settlement programs under the Canada-Quebec Accord, it agreed to share best practices with the other provinces.\textsuperscript{136} An example of a provincial initiative to increase cooperation between the various stakeholders in the field of settlement and integration is Ontario’s development of Local Immigration Partnerships (LIP’s) under the Canada-Ontario Immigration Agreement. The agreement specifically allows municipal governments to play a role in the planning and delivery of local settlement and integration services.\textsuperscript{137} As a result partnership councils can be set up by municipalities that consist of various stakeholders in the field of settlement services, like e.g. language instructors, settlement agencies, health care providers and so on. These councils will then develop a local settlement strategy that addresses specific community needs. As such LIP’s promote increased coordination of local settlement initiatives.\textsuperscript{138}

Manitoba, as one of the provinces which have taken over responsibility for settlement and integration from the federal government, has designed a settlement strategy that shows a strong commitment to involvement of community stakeholders. As a result its settlement programs have been applauded as being one of the best in Canada.\textsuperscript{139} Another strong element of its policy is the centralized assessment and referral of individual settlement needs, which allows newcomers to get all the


\textsuperscript{137} Article 1(5) of Annex D: Settlement Services to the Canada-Ontario Immigration Agreement, 2005, online: Citizenship and Immigration Canada \texttt{<http://www.cic.gc.ca/engli$h/department/laws-policy/agreements/index.asp>}.

\textsuperscript{138} See House of Commons report, supra note at 13. For an illustration of the workings of an LIP visit the website of the city of Windsor, which recently established the Windsor Essex County Local Immigration Partnership, online: City of Windsor \texttt{<http://www.citywindsor.ca/003027.asp>}.

\textsuperscript{139} Martine August and Christopher Leo, \textit{Not Your Grandfather’s Immigration Policy: Manitoba’s Responsive Approach to Settlement and Immigration}, online: \texttt{<http://blog.uwinnipeg.ca/ChristopherLeo/ISW.ecomm06-04-18.pdf>} at 31.
information they need in one spot.\textsuperscript{140} The Atlantic provinces on the other hand have been more reluctant to show initiative in devising settlement programs and policies. New Brunswick, for example, does not have an agreement on immigration with the federal government that addresses the topic of settlement and integration.\textsuperscript{141} The provision of settlement services to newcomers is administered by a vast variety of settlement agencies and multicultural and ethno-cultural associations, which are governed by the New Brunswick Multicultural Council. This council serves as an umbrella organization and is funded by the provincial government and CIC together.\textsuperscript{142}

The asymmetry in responsibility for settlement and immigration between provinces makes it more difficult to devise a national strategy on the subject-matter. It also makes it harder for immigrants to access these services. This is especially true since these programs target permanent residents, who can take advantage of the Charter’s mobility guarantee and are therefore able to settle in any province. The availability and access to settlement services will therefore not only rely on where they land, but will also depend on the choice of residence after they arrive. Most immigrants will often change cities and even provinces in the first years in order to find the best job opportunities or living conditions. Their settlement needs will move along with them and a national framework for settlement and integration would therefore be highly desirable. Although many of the services offered by settlement agencies are considered a provincial interest, a national framework that would unify service categories and would centralize its access would greatly benefit newly arriving immigrants and aid their successful establishment in the country. The current attempts to involve various stakeholders at local, provincial and federal level, which have a variety of mandates with regard to the provision of settlement services, like e.g. multiculturalism, health and employment, are a desirable trend and efforts to increase

\textsuperscript{140} See Flowchart Manitoba Settlement Strategy, online: Government of Manitoba \textlt{http://www2.immigratemanitoba.com/browse/regionalcommunities/settlement_strategy.html}.  
\textsuperscript{141} The province of New Brunswick does have an agreement on provincial nominees, but it does not address settlement and integration. Canada-New Brunswick Agreement on Provincial Nominees, 2005, online: Citizenship and Immigration Canada \textlt{http://www.cic.gc.ca/english/department/laws-policy/agreements/index.asp}.  
\textsuperscript{142} See New Brunswick Multicultural Council, online: \textlt{http://www.nb-mc.ca/}. 
cooperation between them in this field should be welcomed. However, an overarching national framework is needed to ensure that settlement and integration services are readily accessible to newcomers, which will ensure that their potential to contribute to Canadian society is maximized.

4.4 In conclusion

The division of responsibility for various aspects of the immigration process between federal and provincial level of governments is a continuing balancing act, which the actors involved are performing on a daily basis. The above discussion has tried to give some suggestions on how specific elements of immigration policy could be addressed. It has been argued that the selection of skilled workers as permanent residents should remain a shared responsibility between the federal government and the provinces, but that an increasing reliance on provincial immigration programs should be accompanied by a national framework that ensures that provincial immigration categories correspond with national immigration objectives, while maintaining their inherent flexibility and tailor-made functionality.

With regards to temporary migration it has been argued that this element of immigration policy should be left to the provinces to administer as they are in a better position to quickly respond to labour market changes. It would be a better use of resources to allow provinces to use temporary migration as an effective tool of immigration policy to address short-term economic needs. Settlement and integration is another element of immigration policy, which has been hampered by an unclear vision for the division of powers between the federal and provincial authorities. The asymmetry between provinces with regards to their level of responsibility in this field undermines the transparency and accessibility of these programs. A national framework that unifies the services offered in combination with a single point of access would greatly enhance the ability of mobile immigrants to make these services work for them.
5. Conclusion

Immigration policy and law-making address the core of a country’s identity and future. Canada has recognized this by creating an immigration framework that is meant to provide it with economic migrants that can contribute to the development of a strong and prosperous economy and strengthen its social and cultural fabric. Increasing provincial involvement in economic immigration has created opportunities to further enhance these benefits by allowing regional objectives and needs to be met by local immigration policies and programs. However, to ensure that federal and provincial initiatives reinforce rather than undermine each other, it is important that both levels of government are aware of each other’s needs and interests and take them into account when devising these initiatives. The creation of federal-provincial agreements on immigration, the use of provincial nominee programs and various other methods of consultation and cooperation have helped Canada to balance the federal-provincial relationship. However, a great deal more can and should be done to ensure that the interests and needs of all involved parties, including those of permanent and temporary migrants, are being met.

This thesis has outlined various aspects of Canada’s immigration policy that have become points of criticism. An adjustment of the balance of federal and provincial powers on these matters could go a long way in fixing them and putting the immigration framework back on track by providing it with more coherency and efficiency. The attraction of permanent and temporary skilled workers, who are essential to the future functioning of Canada’s economy and society as a whole, remains a vital part of both federal and provincial immigration policy. A proper allocation of resources and powers between the two levels of government will allow these immigration programs to serve their purpose and to meet both national and provincial needs. Continuing efforts of cooperation and coordination among provinces and
between the provinces and the federal government will provide Canada with a promising immigration framework that allows it to remain competitive at the global stage.

Federal-provincial relations on immigration have become an integral part of Canada's immigration framework. The features of this relationship are constantly changing and it will remain a balancing act until an equilibrium is found. This thesis has provided some suggestions that might bring Canada and the provinces closer to this point of balance. However, it is only a start and future federal and provincial policy-making on immigration will determine the rest of its course.
BIBLIOGRAPHY

Legislation

**Constitutional documents**


**Federal documents**


IRPA. *Immigration and Refugee Protection Act*, S.C. 2001, c .27

IRPR. *Immigration and Refugee Protection Regulations*, S.O.R./2002-227


Updated Ministerial Instructions, C. Gaz. 2010.I.1669.
Provincial documents

Alberta Labour Relations Act, R.S.A 2000, c. L-1.

An Act respecting immigration to Quebec, R.S.Q., c. I-0.2

Employment Protection for Foreign Nationals Act, S.O. 2009, c. 32.

Immigration Department Act, R.S.Q. 1977, c M-16, originally enacted as S.Q 1968, c. 68.

Worker Recruitment and Protection Act, S.M. 2008, c. 23.

Jurisprudence

Armadale. Armadale Communications Ltd. v. Canada (Minister of Employment & Immigration), (1991) 3 F.C.


Secondary Materials

Books


Knowles, Valerie. Strangers at our Gates: Canadian Immigration and Immigration Policy,
Articles


Singer, Colin R. “Quebec Immigration Rules: Economic Immigration Stream – Part I” (September 2009) 20 Imm. & Cit. #7 revised.

Government Publications


Canada, Citizenship and Immigration Canada, Strategic Outcomes and Program Activity Architecture, CIC’s Modernized Approach to Settlement Programming, online:
Citizenship and Immigration Canada


Canada, Citizenship and Immigration Canada, Facts and Figures 2009: Summary Tables – Permanent and Temporary Residents; Table 1 Canada – Permanent Residents by Category 2005-2009, online: Citizenship and Immigration Canada

Canada, Citizenship and Immigration Canada, Report on Plans and Priorities 2010-2011,
online: Citizenship and Immigration Canada


*Electronic Resources*


August, Martine and Leo, Christopher. *Not Your Grandfather’s Immigration Policy: Manitoba’s Responsive Approach to Settlement and Immigration*, online:


Kaur, Harleen. “Limit of Canadian visas increased for provinces” Canada Updates (12 August 2010), online: <http://www.canadaupdates.com/content/limit-canadian-visas-increased-provinces>.


Websites

http://www2.immigratemanitoba.com
http://www.albertacanada.com
http://www.cic.gc.ca
http://www.citywindsor.ca
http://employment.alberta.ca
http://www.hrsdc.gc.ca
http://www.nb-mc.ca
http://www.ontarioimmigration.ca