EFFECTS OF POSTWAR IMMIGRATION SELECTION POLICY ON ETHNOCULTURAL DIVERSITY IN CANADA

RAPHAEL GIRARD

Raphael Girard joined what was then the Department of Citizenship and Immigration in 1963 and moved to External Affairs in 1981. Over the span of 40 years in the Canadian foreign service he specialized in refugee and immigration issues, leading the task force on refugee determination which developed legislation that continues to form the basis of Canada's approach to the protection of persons claiming asylum.

The following article is sourced from the Canadian Immigration Historical Society (CIHR) Bulletin*, March 2021, Issue #96.*

In Canada's 2016 census data, 7,674,585 people identified themselves as members of a visible minority group. They represented 22.3 percent of the total population. Of these visible minorities, almost 70 percent were born outside the country and came to live in Canada as immigrants.

Contrast this with what prevailed when I joined the Department of Citizenship and Immigration in 1963. Results of the 1961 census show that only 1.33 percent of the non-aboriginal population in Canada consisted of members of visible minority groups. People of British origin dominated, while those coming from continental Europe were close behind.

No one disputes the fact that the most important contributor to the growth in ethnocultural diversity in Canada has been and remains the immigration program. My intention is to demonstrate how the transformation of the face of Canada was a direct result of the way the immigration program was managed, rather than of a deliberate choice by governments. Surprisingly there was very little legislation and even fewer parliamentary debates behind this dramatic demographic shift. Two key changes in immigration regulations created the legal framework and were followed by vigorous implementation by public servants within the immigration program. This combination was the primary driver that created the Canada we see today, which will continue to become more diverse into the future. This is a situation where the plumbing (program delivery) was at least equal to, if not more important than, the poetry (policy).

In the years after the Second World War, immigration policy was controversial. Within the federal

cabinet, the immigration portfolio was thought to be the graveyard of ministerial ambitions. Between 1910 and 1978 there was only one significant legislative change, and yet by 1978 the wheels had already been set in motion to transform the ethnocultural composition of Canadian society. The questions are: how did that happen, and who was responsible?

During my 34 years in the immigration program, the last 10 of which were in senior management, bureaucrats had a remarkably free hand in shaping how and where immigration services were dispensed to the world at large. In most cases, rather than directing the department, ministers looked to it for guidance in dealing with the enormous pressures flowing from the immigration program and its multiple facets. There were exceptions—Robert Andras, Lloyd Axworthy, Flora MacDonald, Barbara MacDougall, and Sergio Marchi—but by and large ministers looked to the department for advice rather than imposing their vision on it.

I joined the immigration department in September 1963 shortly after graduating from the University of British Columbia. I left as assistant deputy minister of Operations in August 1997 to accept an appointment as ambassador to Yugoslavia. That period coincided with the program's transformation. I do not pretend that I had a major influence on the changes that made Canada a much more diverse and tolerant society than the one I grew up in, but I influenced some of the improvements that were made in policy and program delivery, and I was certainly a witness to the rest.

The numbers tell the story. In 1963, immigration to Canada was still primarily European—a pattern that began in colonial times and continued into the immediate postwar years, when much of western Europe was in ruins from the effects of World War II.

Statistics for that year show that Canada welcomed 74,586 immigrants and the top five source countries were Great Britain, the United States, Italy, Germany, and Portugal. Statistics for 1997, by contrast, show a transformation in sources and ethnic composition: the top five source countries were China, India, Taiwan, Sri Lanka, and the Philippines, in a movement in excess of 216,000 immigrants.

European migration, which had accounted for more than 80 percent of the immigration flow in 1963, was reduced to 17 percent by 1997, while Asia, Africa, and the Middle East accounted for almost 68.5 percent—an almost complete inversion of the immediate postwar pattern.

How did this transformation happen? While there was waning interest in immigration to Canada among Europeans once the postwar economic miracle took root in Europe by the early 1970s, it was not just a matter of replacing Europeans with more numerous candidates from elsewhere. There were a number of other factors.

In 1963, immigrant selection was governed by the *Immigration Act* of 1952,which had been authored by Jack Pickersgill. It delegated authority to the government to decide, more or less at its discretion, who could be admitted for permanent residence. There were no classes of immigrants mentioned in that Act. The basic test for a person to be accepted as an immigrant was the ability to establish successfully. The 1952 Act did little to change the

direction implicit in the *Immigration Act* of 1910, but it did provide a ministerial override on decisions by immigration officers to circumscribe concerns about their arbitrary decision making.

The regulations that followed the 1952 Act preserved preference for British subjects from the old Commonwealth and for citizens of countries in continental Europe. Curiously, it also included Egypt, Israel, Lebanon, and Turkey among preferred sources. Pickersgill was the minister behind Prime Minister Mackenzie King's speeches that supported the need for immigration but insisted that it should not change the character of the country. Application forms and landing records from that era still contained references to the holder's religion and ethnicity, although by 1963 these were no longer formal selection factors.

The 1952 Act also maintained a number of longstanding clauses that, by the time I started my career in immigration, were already considered anachronisms by my peers and more experienced colleagues. The prohibited classes barred homosexuals (who were lumped in with pimps and prostitutes); it excluded people who were public charges or unable to settle in Canada; and it prohibited the entry of people labeled as idiots, imbeciles, and morons. Immigrant selection could be arbitrarily denied to individuals based on their inability to adapt to Canada's climate or culture, which was seen as shorthand for a colour bar. Similarly, immigration could be denied based on the individual's habits with regard to the ownership of property, which excluded communal religious groups such as Hutterites and Doukhobors. The Act proudly proclaimed that decisions taken under the *Immigration Act* were not reviewable by any court.

Through the 1950s, Canada opened more widely to the world as it industrialized and developed a national identity. Canada became an active player in the United Nations system and a leader in the Commonwealth. The election of the Progressive Conservatives in 1957 provided an impetus for human rights reform, both domestically and in immigration policy. The proclamation of the Canadian Bill of Rights in 1960 made it virtually impossible to continue to pursue an immigration policy consisting of preferred sources selected on the basis of race and ethnicity.

Initial Conservative government attempts to bring about an ambitious reform of the *Immigration Act* ran into difficulty almost immediately. In 1957, thanks to the Hungarian Revolution and Suez debacle, more than 250,000 immigrants came to Canada, the second-largest number since the turn of the century. With the economy in recession and poorly skilled people from southern Europe outpacing British immigration year after year, the federal government felt pressure from Ontario to slow things down. A planned change to limit sponsorship rights to curb unskilled migration was shelved rather quickly after a bitter and well-organized campaign by Italian and other southern Mediterranean communities in southwest Ontario. Instead, the government resorted to less transparent administrative restraints while it searched for a means to increase the skill requirements for new immigrants.

The first woman appointed to the Diefenbaker cabinet, Ellen Fairclough, was named Minister of Citizenship and Immigration and counseled to avoid parliamentary debate on immigration reform. She settled instead for a change in the immigration

regulations in 1962. For the first time, anyone, anywhere in the world could qualify to immigrate to Canada if they could prove they had the skills and the means to establish successfully without assistance from government or family. I regard this as less an attempt to universalize access to Canada and broaden the number of source countries than an attempt to inject more skill content into the immigration flow to curb the flow of unskilled southern Europeans.

Even after 1962, for many who wanted to immigrate to Canada the opportunity remained largely theoretical. Entire regions had no access to selection because everyone who wanted to settle in this country had to apply for and receive an immigrant visa before travelling to Canada. There was a mandatory personal interview with a visa officer as well as medical and other tests. The network of visa offices was biased toward the old policy, and there were no plans to change it substantially. Fully 23 of the 30 visa offices Canada operated abroad were in Europe, while there were only two in Asia, two in the Middle East, and one in Africa. Americans could simply present themselves at any border station to be assessed for immigration.

The 1962 regulations also perpetuated some of the discriminatory provisions of the 1952 regulations. All Canadians had the right to sponsor immediate family living abroad, but only Canadians from Europe and the four eastern Mediterranean countries named above could sponsor extended family members. The 1962 regulations also retained the miniscule quotas on total immigration from the Indian subcontinent.

The watershed for fundamental change came in 1966–1967. The reform package was preceded by a government policy paper (known as a "White Paper"). Both emphasized matching immigration to skill shortages and did not set out to make the immigration movement more diverse. The problem the paper sought to rectify was the continuing large-scale intake of sponsored immigrants with skills that did not correspond to labour market shortages. There was no public policy review or parliamentary debate, but the process did elicit a fair amount of reaction, mainly from ethnic communities that complained about the measures in the same way they had objected to the proposed restraints on extended family migration proposed in 1957.

What have become known as the regulation changes of 1967 occurred during the tenure of Jean Marchand, one of the "three wise men" brought into the cabinet from Quebec by Liberal Prime Minister Lester Pearson. My own view is that, although the changes certainly reflected the liberal attitudes of Marchand, they were very much a creature of his deputy minister, Tom Kent. Almost all of the reforms that Kent championed were achieved through changes to immigration regulations pursuant to the 1952 Act. Some minor changes in law were enacted in 1967, such as when the government enacted a separate piece of legislation to create the Immigration Appeal Board as a body independent from the department.

There remained an abiding reluctance to open up the Act to debate, given the uncertainty about Canadians' attitudes on either side of the question. Government majorities in parliament were razor-thin through the period, and political strategists therefore avoided controversial issues. Amendments to the 1952 Act had been proposed

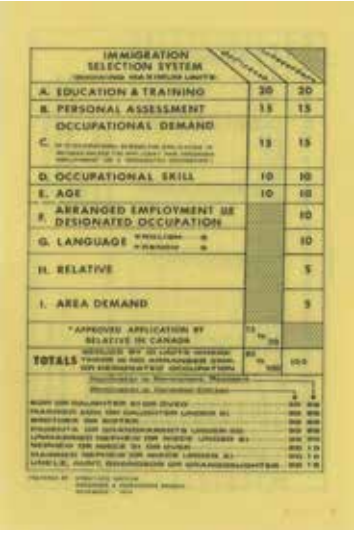
by the immigration department almost annually since the Act was first proclaimed to bring it into step with evolving practices and social values, yet political support for such changes was always found wanting.

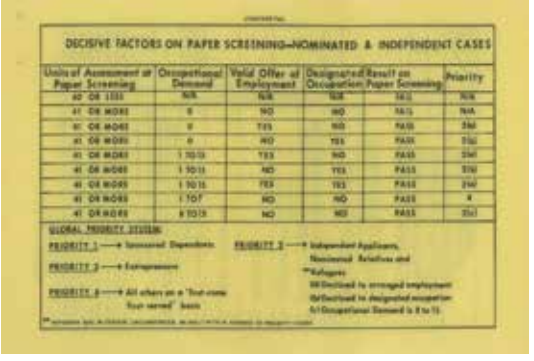
The 1967 regulatory changes embodied five major principles:

1. Immigrant selection criteria were universally applicable. The last vestiges of discrimination by country of origin were swept away though regulation changes that made family class and extended family sponsorship available to everyone who had the means and reaffirmed that anyone who could establish successfully in Canada could apply and receive a decision.

2. A point rating system was introduced in order to standardize selection practices and remove the subjectivity that had plagued the system in the postwar years. Points were awarded on the basis of age, education, skill level, demand for the applicants' skills, linguistic competence in English and French, close family already established in Canada, arranged employment, labour market conditions in the area of destination, and personal assessment by the visa officer in charge of the application. The pass mark was initially 50 points, but over time it varied to produce more or less volume annually depending on Canada's general economic conditions.

3. Facilities would be created to accept applications from candidates in any country except those where security screening facilities were not available, such as countries in the





Information reference card for visa officers, prepared by Canada's immigration department, showing the grid for Canada's "points system". Published in November 1974 (notated at the bottom of the first image). Fortunately, both sides of the card were retained and scanned! (Images courtesy: Michael J. Molloy)

communist bloc. Provision was also made for visitors to Canada to apply to change their status to that of permanent resident without leaving Canada if they could qualify according to the same criteria as were being used abroad.

4. Right of appeal to the newly established Immigration Appeal Board was provided to everyone who had been ordered deported from Canada, for sponsored immigration cases that had been refused, and for people facing deportation who believed themselves to be refugees in accordance with the 1951 Geneva Convention.

5. Annual intake volumes would be adjusted to labour market conditions and moved up or down accordingly by changing the weight of immigrant selection factors (points) and by varying the pass mark.

This plan was more permissive and reactive in terms of changing the ethnic mix in the immigration intake than it was deliberate or proactive. There were minor improvements to the network of visa offices abroad to give some substance to the policy changes. Every country was given a designated visa office to which their citizens could apply. For example, an office was established in Beirut to cover all of the Middle East and Africa (excluding Egypt, which already had a visa office). Port of Spain in Trinidad was established to serve the Caribbean (excluding Jamaica, which got its own visa office), as well as the entire Central and South American region. A central processing centre was set up in Ottawa to cover those parts of Asia not already served by Hong Kong, New Delhi, and Manila.

A regional office was also established in Geneva to provide itinerant service to countries in Eastern Europe other than Yugoslavia, which received its own office, to deal with those clients in the family and assisted relative categories whose security screening could be carried out based on their family connections in Canada. No independent immigrants would be selected through this process.

There was greater efficiency in these measures, but nothing that would level the playing field for non-European applicants. Applications in the large processing centres often languished, as increasing demand and appallingly bad communications prevented timely delivery of visas to those who qualified.

It was not until 1973 that measures were introduced to rectify the glaring inequalities in service to applicants in areas outside of Europe. I had been assigned to the operational planning function at immigration headquarters and was immediately confronted with having to justify a resource base that was producing fewer and fewer immigrants due to the precipitous drop in interest in northwestern Europe. At the same time, data from area offices such as Beirut, Port of Spain, and the central processing office in Ottawa, indicated important sources outside of Europe had no resident visa facilities. My group put together a proposal to senior management to rationalize underutilized resources in Europe and open new facilities in those places where there was growth. We enunciated the principle that productive demand should be served from within those countries where the demand arose. The decision to proceed was taken without cabinet consultation, nor was there much interdepartmental dialogue. An exchange of

letters between the ministers of Immigration and External Affairs set the wheels in motion that over time would produce the 180-degree shift in the ethnic composition of the annual intake of immigrants—and it was done with no new resources nor direction from the government.

The department, which was by then called the Department of Manpower and Immigration, opened more than 20 new visa offices in the 1973–1975 fiscal years. In addition to improving access to immigration services to applicants from outside of Europe, these measures also wiped out the advantage enjoyed by American applicants, who until then had still been able to apply at the border. In addition to offices that had promoted immigration to Canada from the United States in places like New York, Chicago, and San Francisco, more than 10 new offices were opened in the U.S. to ensure program continuity. At the same time, the network in northwestern Europe was rationalized, with the closure of some 15 offices in the U.K., Scandinavia, and Germany. This rearrangement of the overseas network of visa offices set the stage for the gradual shift in the composition of the annual immigration intake from European to non-European. There were no quotas nor country preferences. The only factor that influenced the speed with which an application could be completed was the capacity of the immigration office to receive the application and make a decision on it.

When legislation finally came, it ratified these developments; it did not precede them. The impetus for modernization of the *Immigration Act* to conform to the earlier modernization in selection policy came in 1973, with the complete breakdown of the immigration enforcement system resulting from the appeal provisions the Tom Kent reforms had provided for individuals facing deportation. The assumption proved to be unfounded that those who applied to immigrate to Canada while here as a visitor would leave if they failed to meet immigration selection requirements. Most of these people ended up having to be ordered deported after refusing to leave voluntarily, and while they could not appeal their failure on selection, they could appeal against deportation, even if the grounds for appeal were not strong. The Immigration Appeal Board had a statutory limit of 10 judges and was unable to keep pace with the scale of removals being ordered. By the early 1970s, anybody wanting to achieve de facto permanent residence had only to seek to appeal from a removal order to be added to the IAB backlog, which at its worst even then extended into the 21st century. Minister of Immigration Bryce Mackasey's apparent lack of concern over loss of control of the border provoked a revolt by immigration enforcement officers, who refused to clear aircraft inbound to Canada with would-be immigrants seeking to exploit the appeal loophole.

The immediate effect was the dismissal of Mackasey and the appointment of Robert Andras and Alan Gottlieb as minister and deputy minister respectively to put the house in order and fix immigration. Andras and Gottlieb not only pushed through adjustments to the immigration regulations to close the appeal loophole and regain control of the border, but they seized the opportunity to launch a broad consultation with Canadians through the publication of a Green Paper that elicited Canadians' views on immigration. They also modernized the Act, which had remained essentially untouched since 1952.

What became the *Immigration Act* 1976 essentially caught up with the selection principles championed by Tom Kent in 1966-1967, in effect for almost ten years. It reinforced the cornerstone of the policy flowing from the 1966 White Paper on alignment with the labour market, but it also highlighted the principal objectives of family reunification and resettlement of refugees. The 1976 Act was more important for modernizing the prohibited classes, detention, and removal powers. Although it was essentially myopic on the issue of refugee claims in Canada, it did provide for protection of refugees via the Immigration Appeal Board that would review administrative decisions by the minister on recommendations from the newly established Refugee Status Advisory Committee. It introduced the concept of planned levels of immigration, compulsory approval of annual levels by the cabinet, and mandatory consultations with the provinces (section 91 of the British North America Act gave all provinces shared jurisdiction with the federal government over immigration). It also sought to develop a national demographic policy that would give immigration planning a more solid base, to which annual levels planning could be referenced.

While the 1976 Act did little to alter immigrant selection and practice, another major step in 1981 affected the delivery network and access to Canada by intending immigrants. In that year, the immigration delivery system was transferred to External Affairs from Employment and Immigration. Immigration services became a business line of the Department of External Affairs, and that department became accountable for the achievement of the annual intake level approved by parliament. Establishment of new visa offices in embassies, consulates, and high commissions became much simpler, and budgeting became much less complex. It was in this period that the immigration program delivery system became global. Visa services were expanded in Latin America, Asia, Africa, and the Middle East, and more points of service were set up in eastern Europe after the fall of the Berlin Wall. At the same time, office coverage in the United States was sharply rationalized when the demand for migration services from U.S. residents declined. Nevertheless, those visa offices near the border (Buffalo, Detroit, Chicago, and Seattle) continued to serve temporary workers, who, being manifestly settled in Canada, needed an easy way to change status to become permanent residents.

The Federal Court Act of 1971 was also a watershed, but it affected immigration enforcement practices in Canada more than selection practices abroad. The Federal Court from its inception became heavily involved in overseeing the treatment of non-residents in Canada who had become implicated in the immigration enforcement system. Parliament probably did not foresee what would happen when it gave oversight of all federal government decisions to the Federal Court, but by the early 1980s, the immigration caseload of the court's Trial Division exceeded 80 percent of its cases and caused long queues of cases seeking judicial review. Cynical observers pointed out that a motion to the court was sufficient to stave off the execution of immigration enforcement action for months if not years, regardless of the case's merit or lack thereof. In immigrant selection, the Federal Court intervened on the margins of selection practices in ways that probably embedded principles of procedural fairness and transparency in decision making that have now become routine. Court

surveillance has also been the root cause of the curtailment of subjectivity in personal assessment awards by immigrant selection officers and the use of discretion by such officers to reverse a pass or fail based only on points.

In the landmark *Singh* decision in 1985, the Supreme Court of Canada ruled that the Immigration Appeal Board's practice of deciding the merit of claims to refugee status without a hearing involving the claimant constituted a denial of fundamental justice because the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights* guaranteed due process. The Immigration Appeal Board, which still had a statutory limit of 10 judges, overnight found itself in charge of an oral hearing backlog which completely overwhelmed its capacity, The resulting inability of the immigration department to remove anyone in the refugee claims backlog endured for more than five years and led to two different amnesty programs: Immigration Minister Walter McLean's Administrative Review of the 25,000 cases backlogged prior to *Singh*; and an additional 125,000 cases that accumulated between *Singh* and the coming into effect of the reformed refugee determination system enacted through Bill C-55 in 1989. Through these measures to address immigration backlogs, large-scale intakes came from countries such as Sri Lanka, Somalia, Trinidad, Portugal, Turkey, and El Salvador. The first boat landings on Canadian shores by immigrants from the Indian state of Punjab also exploited the stalled refugee determination system to effect de facto immigration to Canada. Most of these people were able to settle in Canada as immigrants without passing through the selection process.

The resulting amendments to Canada's asylum system in 1988–1989 and subsequent revisions to it, gave Canada the most generous refugee claims system in the world and thereby provided access to other non-European groups in large numbers who would not have made such a rapid impact on the immigration mosaic had they had to comply with more conventional forms of selection.

What is most interesting about this evolution of immigration policy was the almost total lack of debate about either the size or composition of the immigration flow and its long-term impact on what Canada would become over time. There was political consensus on objectives such as family reunification, assistance to refugees, and supply of needed skills to the labour market. Beyond that, there was a very passive, perhaps laissez-faire, attitude where no substantive debate took place. Some political parties proposed the notion of an intake of one percent of the Canadian population annually, but that idea never really captured the public's imagination. No discussion occurred about race or ethnic origin. In the initial drafts of the 1973 Green Paper that led to the *Immigration Act* of 1976 there were timid references to visible minorities and the rate of change in the ethnic composition of Canadian society, but the reaction to early drafts from a select audience of academics and members of the Immigration Bar was so shrill that the draft was personally edited by Deputy Minister Alan Gottlieb before sign-off by Minister Robert Andras.

Similarly, attempts to link immigrant intake to an overall demographic policy for Canada sputtered to collapse when, after several years of federal efforts to begin a dialogue with the provinces, it turned out that there was no support among provinces

to set growth objectives for the country. The futility of using immigration to iron out demographic imbalances across the country became more and more evident when it was realized that because of mobility rights enshrined in the Charter, immigrant selection based on destination could not be enforced either directly or indirectly.

What my 34 years in the immigration program were witness to was a process in which the policy makers laid down some basic general principles and then let the public service, supervised by an activist Court, get on with the job. Despite interludes of anarchy, settlement data bear witness to what was a successful match of the immigrant flow to opportunity in the labour force. At the same time, the pace of change of the ethnic composition of the immigration flow was sufficiently gradual that there was no significant pressure on political leaders to slow it down or stop it altogether. Immigration created the diversity that is Canada today and will continue to make our society more diverse as we move into the future. Contrary to the views of skeptics who opined that the government approved the universal approach to immigrant selection in the 1960s in the belief the Public Service would find a way to defeat it, the Public Service championed the change and became part of it in the process. It is a lesson for us all and an example for the future.