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**Provincial Involvement in Canadian  
Immigration Policy Making:  
The Case of Ontario**

*Diplomová práce*

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## **Abstrakt**

Kanadský federální systém se od ostatních liší svou asymetrií a převahou výkonné moci na úkor moci zákonodárné – v této souvislosti se mluví o tzv. asymetrickém a exekutivním federalismu. V důsledku toho jsou provincie nuceny vyjednávat s federální vládou o řadě otázek, o přistěhovalecké politice nevyjímaje. Abychom porozuměli současné veřejné debatě o přistěhovalectví a mohli zhodnotit přínos většího zapojení provincií, musíme pochopit, co motivuje provincie k vyšší aktivitě ve vytváření přistěhovalecké politiky. Ontario je zajímavým příkladem provincie, která na poli přistěhovalecké politiky ponechávala federální vládě dominantní postavení, zatímco v současné době se snaží asertivně prosazovat své cíle. Tato diplomová práce analyzuje motivy, které vedly Ontario ke změně postoje. Pomocí rešerše literatury věnující se danému tématu a rozhovorům s klíčovými aktéry autorka dochází k závěru, že Ontario reagovalo na ekonomické, demografické a politické změny, které doprovázely pokles postavení této provincie v rámci Kanady.

## **Abstract**

Asymmetry and executive federalism are two unique features that dominate the Canadian political landscape. As a result, federal and provincial governments are in direct negotiations over many current public policy issues, immigration policy notwithstanding. In order to understand the current immigration debate and to evaluate the benefits of greater provincial involvement, it is first necessary to comprehend what motivates provinces to be active in immigration policy-making. Ontario presents an interesting example of a province that used to be quite content with leaving the federal government dominant in the immigration arena but that has recently changed its attitude completely: Ontario is now much more assertive in presenting its demands. Through a

comprehensive literature review and a series of interviews of key immigration policy figures, this study analyzes the main motives of Ontario with respect to immigration policy. It finds that they were primarily of economic, demographic, and political nature and that they were mainly connected to the relative decline of Ontario's position within Canada.

### **Klíčová slova**

Kanada, Ontario, přistěhovalecká politika, asymetrický federalismus, exekutivní federalismus, teorie her dvou rovin, vyjednávání provincií a federální vlády.

### **Keywords**

Canada, Ontario, immigration policy, asymmetric federalism, executive federalism, two-level game theory, federal-provincial negotiations.

**Rozsah práce: 152 497 znaků**

## **Prohlášení**

1. Prohlašuji, že jsem předkládanou práci zpracovala samostatně a použila jen uvedené prameny a literaturu.
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V Praze dne 10. prosince, 2012

Olga Georgievová

## **Poděkování**

Na tomto místě bych ráda poděkovala své vedoucí práce, Mgr. Ing. Magdaleně Fiřtové, Ph.D, za její cenné rady a za čas, který mi během psaní této práce i během mého studia věnovala.

# Institut mezinárodních studií

## Teze diplomové práce

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### **V čem se oproti původnímu zadání změnil cíl práce?**

Hlavním cílem práce již není rozebrat fungování kanadského federalismu v rámci imigrační politiky a jeho možného použití ve Spojených státech. Federalismus se v obou zemích od základu liší a kanadský model je z politických a historických důvodů ve Spojených státech nepřijatelný. Práce se proto zaměří pouze na Kanadu a na koncept asymetrického federalismu a pokusí se najít odpověď na to, proč a jak se jednotlivé provincie zapojují do utváření imigrační politiky.

### **Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu?**

Za nejvýznamnější změnu považuji nové teritoriální vymezení tématu: práce se bude zabývat pouze imigrační politikou a federalismem v Kanadě a oproti původnímu návrhu nebude obsahovat komparaci se Spojenými státy. K tomuto rozhodnutí jsem dospěla z obavy, že takové srovnání by bylo příliš povrchní nebo by naopak zabíralo příliš prostoru na úkor detailní analýzy kanadského modelu. Z tohoto důvodu se práce bude zabývat pouze Kanadou.

Druhou výraznou změnou je skutečnost, že se práce bude vedle imigrační politiky věnovat i politice integrační, která má za úkol urychlit začlenění nových přistěhovalců do kanadské společnosti. Imigrační a integrační politika se v mnoha dílčích oblastech překrývá či na sebe úzce navazuje, a proto se nabízí se věnovat oběma z nich. Vládní integrační programy jsou navíc udávány za jeden z důvodů, proč je kanadská imigrační politika považovaná za relativně úspěšnou. Z těchto důvodů by rozbor integrační politiky v této diplomové práci neměl chybět.

Velký důraz bude kladen na detailní popis různých forem asymetrického federalismu a ostatní modely federalismu budou zmíněny jen okrajově. Termín asymetrický federalismus je často používán při snaze vystihnout zvláštnosti kanadského federalismu. Různí autoři však vnímají asymetrický federalismus odlišně a jeho definice je nejednotná, v některých příkladech až značně chaotická. I přesto je použití tohoto termínu vhodné (zvláště v případě imigrační politiky).

Časové vymezení tématu zůstává zachováno: práce se bude věnovat období od konce 70. let do současnosti s hlavním důrazem na současnou situaci.

### **Jak se proměnila struktura práce? (vyjádřete stručným obsahem)**

1. Úvod
2. Teoretická část

- 2.1. Teorie her
- 2.2. Asymetrie v kanadském federalismu
- 2.3. Historický vývoj kanadské imigrační a integrační politiky
  - 2.3.1. Do 70. let 20. století: Převaha federální vlády
  - 2.3.2. Od 70. let 20. století: Zapojení provincií
3. Analytická část – Současné zapojení provincií do imigrační politiky
  - 3.1. Motivační faktory provincií
  - 3.2. Faktory úspěšnosti
4. Závěr

### **Jakým vývojem prošla metodologická koncepce práce?**

Původní záměr práce bylo rozebrat kanadský model a následně ho porovnat s modelem americkým. Tato komparace bude ale vypuštěna a prostor bude věnován detailnímu rozboru toho, jak jednotlivé kanadské provincie spolupracují s federální vládou na poli imigrační politiky. Práce bude vycházet ze zásad teorie her. Jednotlivé provincie a federální vláda se během vzájemných vyjednávání chovají jako racionálně uvažující hráči, kteří volí jen takové strategie, jenž jim přinesou ten největší užitek. Racionalita je jedním z klíčových konceptů teorie her. Proč se některé provincie snaží s federální vládou vyjednat zisk větších pravomocí v imigrační politice? Teorie her říká, že se tak chovají, protože věří, že možnost vytvářet svá vlastní imigrační pravidla jim přinese větší užitek: budou moci například snadněji přilákat pracovní sílu (Alberta) či chránit svou jedinečnou kulturu a jazyk (Quebek).

### **Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce?**

Diplomová práce bude čerpat z těchto primárních pramenů:

Zákon o Britské Severní Americe z roku 1867, Zákon o přistěhovalectví z roku 1967, Zákon o přistěhovalectví z roku 1978, Lang-Cloutierova dohoda z roku 1971, Andreas-Bienvenuova dohoda z roku 1975, Cullen-Couturova dohoda z roku 1978, Kandsko-Quebecká dohoda o přistěhovalectví z roku 1991, statistické údaje a dokumenty dostupné na webových stránkách Citizenship and Immigration Canada ([www.cic.gc.ca](http://www.cic.gc.ca)) a Statistics Canada ([www.statcan.gc.ca](http://www.statcan.gc.ca)) a další.

Mimo sekundární literatury uvedené v projektu diplomové práce, bude práce čerpat z následujících zdrojů:

Bakvis, Herman; Skogstad, Grace (eds.): Canadian Federalism. Performance, Effectiveness, and Legitimacy. Oxford University Press: Oxford, 2002.

Dixit, Avinash; Skeath, Susan: Games of Strategy. 2nd Edition. W. W. Norton and Company: New York, 2004.

Kelley, Ninette; Trebilcock, Michael: The Making of the Mosaic. A History of Canadian Immigration Policy. University of Toronto Press: Toronto, 1998.

Lower, A.R.M.: Theories of Canadian Federalism – Yesterday and Today. In Lower, A.R.M.; F.R. Scott, et al.: Evolving Canadian Federalism. Duke University Press: Durham, 1958.

Lynch, James P.; Simon, Rita J.: Immigration the World Over. Statutes, Policies, and Practices. Rowman and Littlefield Publishers: Lanham, 2003.



Reeve, Iain W.: Under Pressure – Atypical Asymmetry in Canadian Immigration Policy. Canadian Political Science Association [online] 2011 <[www.cpsa-acsp.ca/papers-2011/Reeve.pdf](http://www.cpsa-acsp.ca/papers-2011/Reeve.pdf)> Retrieved on January 24, 2011.

Scott, F.R.: French-Canada and Canadian Federalism. In Lower, A.R.M.; F.R. Scott, et al.: Evolving Canadian Federalism. Duke University Press: Durham, 1958.

Ve výše uvedených sekundárních zdrojích figuruje několik titulů, které jsou při psaní této diplomové práce obzvláště přínosné a které proto stojí za přiblížení. Prvním z nich je text Iaina Reevea Under Pressure – Atypical Asymmetry in Canadian Immigration Policy, který obsahuje velice užitečnou klasifikaci asymetrického federalismu. Tato diplomová práce bude, až na určité výjimky, z této klasifikace vycházet. Sborník Canadian Federalism. Performance, Effectiveness, and Legitimacy editorů Hermana Bakvise a Grace Skogstadové obsahuje několik textů, které detailně popisují současnou podobu kanadského federalismu. Informace nabyté z těchto textů budou použité především v teoretické části o federalismu. Stěžejním dílem v oblasti dějin imigrační politiky Kanady je kniha The Making of the Mosaic. A History of Canadian Immigration Policy autorů Ninette Kelleyové a Michaela Trebilcocka. Tato kniha je hlavním zdrojem při popisu historického vývoje imigrační politiky.

**Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech).**

Základní proměny práce jsou popsány v předešlých částech tohoto dokumentu.

Od zadání projektu jsem se věnovala především dalšímu rozboru zdrojů a jejich následnému zpracování. Prostudovala jsem několik knih věnující se tématu kanadského federalismu a imigrační politiky, které mi pomohly lépe porozumět daným tématům.

# Obsah

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## List of Abbreviations

AMO – Association of Municipalities of Ontario

BNA Act – British North America Act

CAPE - Council for Access to the Profession of Engineering

CASIP – Consortium of Agencies Serving Internationally-trained Persons

CBSA – Canada Border Services Agency

CCCBET – Canadian Coalition for Community-Based Employability Training

CIC – Citizenship and Immigration Canada

CISSA – Canadian Immigrant Settlement Sector Alliance

ESL – English as a second language

FSWP – Federal Skilled Worker Program

IRBC – Immigration and Refugee Board of Canada

IRCI – Integration Resources Canada Inc.

IRPP – Institute for Research on Public Policy

MCI – Ontario Ministry of Citizenship and Immigration

OCASI – Ontario Council of Agencies Serving Immigrants

OCISO – Ottawa Community Immigrant Services Organization

ONESTEP – Ontario Network of Employment Skills Training Projects

PNP – Provincial Nominee Program

PROMPT – Policy Roundtable Mobilizing Professions and Trades

PS – Public Safety Canada

## Introduction

Due to a unique form of Canadian federalism, the federal government and individual provinces are in frequent negotiations over different policy areas. Game theory tells us that they all act as rationally thinking players that choose only such a strategy that brings them (or their citizens) the most utility. As a result, some provinces attempt to negotiate devolution of power over certain areas of immigration policy because they believe that they could benefit from doing so: be it by attracting more skilled workers (Alberta) or by protecting their unique culture and language (Quebec).

While it is relatively easy to determine what motivates the above two provinces to demand more power in the immigration arena, there are provinces where it is not that clear at first. One such province is Ontario, which serves as an interesting example due to its recent shift in attitude towards immigration policy making. This paper will try to answer the following question: What were the motivating factors that caused Ontario to change its approach? The author will argue that the main cause of the shift is a decline of Ontario's position within Canada and will analyze the current state of negotiations and Ontario's future prospects. Even though every province or state is unique, the author believes that the lesson learned from the example of Ontario might be useful even in the current debate over immigration policy in the United States and Europe.

Since the topic of immigration policy is a very broad one, it is necessary to define the limits of this paper in bigger detail. The paper will first focus on the immigration policy in Canada as a whole and then concentrate on Ontario. It will do so by analyzing the development since the 1970s and addressing the current situation. Even though integration and settlement policies are both closely connected to immigration policy and are certainly one of the key reasons why the Canadian immigration system is considered to be relatively successful, the paper will touch upon these only in cases when they constitute an integral part of federal-provincial immigration negotiations.

The Canadian immigration system categorizes newcomers into three main streams: economic class (Federal Skilled Worker Program, Provincial Nominee Programs, etc.), family class, and refugees. This paper will mainly concentrate on the first group – immigrants that come because of economic reasons and who are admitted

in order to fill gaps in Canadian labor market. It will focus only on legal permanent immigrants and will disregard temporary and undocumented ones. The main emphasis will be on the Provincial Nominee Programs as they constitute one of the main points of federal-provincial immigration negotiations.

This research paper, as originally proposed, was supposed to include a comparison of the US and Canadian federal model in immigration policy. It was to study the Canadian example, which is by many considered as relatively successful, in order to determine if some of its features are applicable in the United States. While such a comparison would undoubtedly be quite interesting, it would require a very demanding analysis which would not be in scope of one paper. The author instead chose to concentrate on one particular province, Ontario, in order to allow for a more detailed analysis.

The main research technique employed is a comprehensive critical literature review. Both primary and secondary sources were consulted to provide supporting evidence for this thesis. Primary sources used include official documents (federal-provincial agreements, governmental reports to Parliament, laws, and official statistics) from websites of the following institutions: Government of Canada, Citizenship and Immigration Canada, Ontario Ministry of Citizenship and Immigration, Statistics Canada, Department of Justice, Department of Finance, etc. A small number of key informant interviews were conducted in order to fill in information that could not be gained from traditional channels. Government officials from federal and Ontario Ministry of Citizenship and Immigration were approached, as well as several immigration experts from the academia and the non-profit sector; the author tried to find individuals who have considerable experience with immigration policy-making and with federal-provincial negotiations. These interviews were conducted either by phone or by e-mail and addressed recent developments in Ontario and the federal government.

The secondary sources come from many different channels: reports and research papers published by prominent non-governmental organizations (Institute for Research on Public Policy, Maytree, Ontario Council of Agencies Serving Immigrants, Mowat Center, Canadian Employment Research Forum, and others), books, collections of essays, newspaper articles, and academic papers (from Ryerson University, Canadian Political Science Association, and others).

The most valuable resource for the section on federalism was Richard Simeon's book entitled *Federal-Provincial Diplomacy. The Making of Recent Policy in Canada*. Despite being originally written in the 1970s, it has proved to be one of the key works on Canadian federalism as Simeon's conclusions remain useful even today. In his book, the author describes the underlying mechanics behind policy negotiations and uncovers the sources of intergovernmental conflict. While he does not use the term *executive federalism* itself, he is quite precise in describing the executive nature of Canadian politics. Simeon argues that this particularity is a result of the lack of a political institution where intergovernmental conflicts could be resolved. It is in light of Simeon's conclusions that this paper views Canadian federalism. Several other works on federalism were also quite helpful, even though they matched Simeon's work neither in depth nor in accuracy: namely *New Trends in Canadian Federalism* (editors Francois Rocher and Miriam Smith) and *Evolving Canadian Federalism* (editor F. R. Scott). To capture the unique nature of Canadian federalism, two other papers were used: Iain W. Reeve's *Under Pressure – Atypical Asymmetry in Canadian Immigration Policy* and Ronald L. Watts's *Executive Federalism - A Comparative Analysis*.

The section dealing with game theory used Nolan McCarthy and Adam Meirowitz's book *Political Game Theory* as the main point of reference for general matters and Robert D. Putnam's famous article *Diplomacy and Domestic Politics: The Logic of Two-Level Games* for information regarding the two-level theoretic approach. According to Putnam, any negotiation between two liberal democratic countries should be analyzed both from *international* and *intranational* perspective. This thesis uses this approach and applies it to Canadian federal-provincial negotiations.

In order to describe the history of Canadian immigration and immigration policy, the following works were consulted: Ninette Kelley and Michael Trebilcock's *The Making of the Mosaic. A History of Canadian Immigration Policy*, Freda Hawkins's *Critical Years in Immigration. Canada and Australia Compared*, and Valerie Knowles's *Strangers at Our Gates. Canadian Immigration and Immigration Policy 1540-2006*. These three books form the key works on the history of immigration policy and are crucial if one is to gain deeper understanding of underlying mechanics of Canadian immigration politics.

The current state of the Canadian immigration debate is discussed in works of immigration policy experts, such as Naomi Alboim (a professor at Queen's University and an active public policy consultant in the realm of immigration policy), F. Leslie

Seidle (research director of IRPP's Diversity, Immigration and Integration program), Joan Andrew (a former Ontario Deputy Minister of Citizenship and Immigration, now a professor at Reyrson University), Ather Abkari (an economist who focuses on the economic impact of immigration), and Will Kymlicka (a professor at Queen's University who studies multiculturalism related issues).

The paper is organized into three main sections: The first part focuses on the theoretical framework employed. It starts by describing the unique asymmetric and executive nature of Canadian federalism and explains how it led the author to realize that it might be beneficial to view the interaction of the federal government and individual provinces through the lenses of game theory. It goes on to explain the theory in bigger detail, especially its two-level mutation as it was originally developed by Robert D. Putnam. Despite the two-level game theory being only applied to international negotiations, the paper will argue that its approach is quite valuable while analyzing federal-provincial negotiations.

The second part is dedicated to immigration policy, because it is in this area of public policy that the federal-provincial relations and interactions are examined. First, the section describes the federal immigration policy and its core principles. It lists the main immigration acts and regulations since the 1970s and explains how they influenced the current state of things. Since there are multiple players involved in formulating the policy, the paper addresses the most important ones and attempts to capture their motives and goals. Next, the provincial involvement is discussed and provincial immigration players described.

In the third section, the province of Ontario and its approach towards immigration policy is explored. As in the previous part, it lists all the major provincial actors involved in immigration policy-making and describes their aspirations. A two level game theory analysis is used to explain the current state of intergovernmental affairs. This is the key chapter of the paper as it brings all the previous parts together and uses the game theory to explain the shifting attitude of the province.

Finally, a concluding chapter summarizes the main findings of the thesis paper and includes a discussion about immigration policy in the European Union and the United States.

# 1. Theoretical Perspective

## 1.1 Federalism

Federalism, as a political system, is an institutional and legal framework which combines aspects of a unitary state and a confederation. It divides power between different levels of government, usually between a federal and several regional (or state, provincial, cantonal, land, etc.) governments. The power is derived from both levels and neither federal nor regional level is superior to the other. They are each ultimately autonomous within their own spheres of influence, yet they are also “in a mutually dependent political relationship.”<sup>1</sup> Specific provisions of such federal frameworks are described in the constitution, which allocates powers to each level of government and sometimes allows for shared responsibility over certain areas. There are two sets of institutions and party systems: federal and regional. As each constitution is unique, so is the institutional make-up of each federation: some might allow one level of government to be more powerful while others meticulously stress the equality of both levels. Even though federations use their constitutions as the primary source of authority, constitutional interpretation might change considerably over time thus resulting in shifts in relative power. Consequently, the everyday functioning of a federation might change and lean more towards a unitary state or a confederation. Some authors even go as far as comparing federalism to a living organism that is never at rest. This changing nature is evident in almost all federations: Canada, for example, witnessed the rise of provincial governments in recent decades while the federal government in the United States has much broader powers now than a century ago.

This constitutional/institutional definition is, however, only one of several possible ways to view federations. Some authors stress other aspects of federalism, such as its cultural and sociological underpinnings and public sentiments. William S. Livingston argues that it is the society itself (and not the constitutional or institutional structure) that forms the essence of federalism.<sup>2</sup> Authors like Livingston stress the philosophical foundations of this political system: different groups willingly come together to form a union while preserving their distinct characteristics. This results in a

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<sup>1</sup> Vile, M.J.C. *The Structure of American Federalism*. London: Oxford University Press, 1961. Page 199.



somewhat split national identity as people not only feel like citizens of the federation, but also like citizens of the particular region in which they live. The example of Quebec shows how fragile this balance is and how detrimental it can be when people lose their sense of belonging to the federation.

Creating one generic definition that would fit all federations is evidently quite problematic. Each federation has slightly different constitutional, institutional, cultural, and sociological foundations and also differs in the way it evolved over time. Brazil, India, Germany, Australia, Spain, Canada and the United States are all examples of democratic states with federal structure, yet they vary considerably in their everyday functioning. It is therefore crucial to describe in detail the particular federation that will be the object of this study: Canada.

### 1.1.1 The Unique Nature of Canadian Federalism

The current federal make-up of Canada has its roots in the second half of the 19<sup>th</sup> century. In 1867, the British Parliament enacted The British North America Act (BNA Act),<sup>3</sup> which created a federal dominion by uniting three existing colonies: the Province of Canada, the Province of New Brunswick, and Nova Scotia. In the preamble, the provinces express their “desire to be federally united into one dominion under the Crown (...), with a constitution similar in principle to that of the United Kingdom.”<sup>4</sup> There was no sharp break from the political system of the United Kingdom, so Canada profited from the long tradition of British constitutional law that dates back all the way to the Magna Charta.

Some authors, however, view this strong political link between the United Kingdom and the newly-born federation as a source of many current problems. Arthur R. M. Lower points to the lack of theory during the drafting of the BNA Act: “Since no one was interested in drawing fine distinctions or enunciating mere theory, everyone was willing to confine himself to practical points.”<sup>5</sup> The contrast with the development in the United States could not be more distinct. While the constitutional debate in the 1780s United States was fierce and involved many current political thinkers who

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<sup>2</sup> Simeon, Richard. *Federal-Provincial Diplomacy. The Making of Recent Policy in Canada*. Toronto: University of Toronto Press Incorporated., 2006. Page 6.

<sup>3</sup> This Act later became part of the Constitution of Canada and is therefore now referred to as the Constitution Act of 1867.

<sup>4</sup> „Constitution Act, 1867.“ 29th March 1867. *Department of Justice*. 13th August 2012. <<http://laws-lois.justice.gc.ca/eng/Const/page-1.html>>.

published their views in print media, the debate over the BNA Act in Canada was almost nonexistent. The United States placed great emphasis on what the real source of political power was: the people (organized in states) who came together and gave themselves the constitution that was to govern their new country. In contrast with the United States, the institutional framework for Canada was designed by political elites without much public participation. Since Canada was still just a colony, no philosophical debate on similar issues took place and power was derived from the Crown.<sup>6</sup>

The BNA Act created a political system that combined aspects of both a British model (a unitary state) and that of the United States (a federation). In the United Kingdom, the legislative and executive powers are concentrated in an elected parliament. The system of government is based on parliamentary accountability and is often referred to as *responsible government* (the executive branch accountable to the parliament). The fundamental principle of the American model is strict separation of powers. The Founding Fathers in the United States feared concentration of power and strived to limit and disperse it as much as possible. The concepts of federalism and the separation of executive, legislative and judicial branch were therefore seen as inherently bound together. Canada took the existing British political institutions and used them in a new federal environment. By combining these two models, Canadians created a new form of federalism: power was divided between federal and provincial governments but within each government the executive and legislative were fused in the parliamentary institutions.<sup>7</sup>

The structure of federal government closely influences where the interaction of federal and regional units will take place. In the United States, interests of individual states are expressed and dealt with *within* the central government (the Senate). Canada lacks a similar type of institution, because the Parliament has proved to be ineffective in dealing with provincial demands. As a result, the adjustment process between the two governmental levels has developed outside traditional institutional forms and federal-provincial matters are resolved in direct negotiations *between* the levels.<sup>8</sup>

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<sup>5</sup> Lower, A. R. M. „Theories of Canadian Federalism - Yesterday and Today.“ In: Scott, F. R. *Evolving Canadian Federalism*. Durham: Duke University Press, 1958. Page 23.

<sup>6</sup> This proved problematic during the 1980s debate over the repatriation of the Canadian Constitution and particularly in regard to the so called amending formula.

<sup>7</sup> Watts, Ronald L. *Executive Federalism - A Comparative Analysis*. Ontario: Queen's University Kingston, 1989. Page 3.

<sup>8</sup> Simeon, page 25.

The above described particularities gave rise to two distinct features of Canadian political system: executive and asymmetric federalism. The term executive federalism refers to the processes of intergovernmental negotiation which have been dominated by the executives of the different governments within the federal system.<sup>9</sup> As most fields of public policy in Canada are currently managed by both federal and provincial governments, this sort of intergovernmental interaction is necessary in order to effectively conduct certain policies.<sup>10</sup> The concept was first described in late 1960s by Donald V. Smiley who also coined the term for it. Executive federalism takes form of direct, often quite confrontational, negotiations between governments during frequent meetings of the executives. These meetings range from First Ministers Conferences, where the heads of executives meet to discuss grand political issues, to committee meetings of purely administrative nature, where provincial officials work out details of certain policy. This general description nevertheless does not capture all the variations of executive federalism as not all authors agree upon it. Some authors, such as Kathy Brock, argue that executive federalism is one of the most characteristic features of the political system in Canada that has been present ever since the passage of the British North America Act of 1867. Others, however, argue that the term executive federalism can only be applied to the period starting with the 1970s. It was during this time that the Premiers and the Prime Minister started to organize First Ministers Conferences on a regular basis and many official bureaus of intergovernmental affairs both within the provincial and federal government were created. As Stefan Dupré points out, the executive federalism has also often been called “summit federalism” or “functional federalism,” referring to the numerous meetings of members of the executive and to the new institutions.<sup>11</sup> No matter what definition one decides to adopt, it is evident that executive federalism has been an important element of the Canadian political landscape. It is, however, seen by many as a deficit of democracy due to the deals reached behind closed doors without any consultation of the public. Some critics also stress that this type of federalism is very confrontational and, instead of bringing national unity, it often results in various quarrels among the provinces.<sup>12</sup>

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<sup>9</sup> Ibid. page 3.

<sup>10</sup> Malcolmson, Patrick and Richard Myers (eds). *The Canadian Regime: An Introduction to Parliamentary Government in Canada*. Peterborough: Broadview Press, 2002. Page 205.

<sup>11</sup> Brock, Kathy. „Executive Federalism - Beggar Thy Neighbour?“ Rocher, Francois and Miriam Smith (eds). *New Trends in Canadian Federalism*. Peterborough: Broadview Press, 2003. Page 68.

<sup>12</sup> A quote by Garth Stevenson from Malcolmson, page 206.

The second distinct characteristic of Canadian federalism is its asymmetry. A certain level of so called circumstantial or selection asymmetry is inevitably present in every federation, but it is the formal asymmetry that is so unique for Canada.<sup>13</sup> This type of asymmetry is entrenched in formal measures such as constitutional sections, bi- or multi- lateral agreements, statutes, or regulations.<sup>14</sup> Consequently, different provinces possess different powers and some enjoy more autonomy in certain domains than others. Examples of this asymmetry can be found in many different areas: in the Senate and Supreme Court representation, the 2004 federal-provincial health care agreement, funding of denominational schools, constitutional provisions regarding the use of English and French, etc.<sup>15</sup> As is the case with executive federalism, asymmetry has both its proponents and critics. Many Canadians have criticized asymmetric federalism for violating one of the fundamental principles of a modern state: liberal equality. Clyde Wells, the Premier of Newfoundland during the Meech Lake debates at the Government Conference Center in June 1990, summarized these concerns in the following statement:

“In every federal state there are two equalities: the equality of citizens and the equality of the component parts of the federation. A constitutional provision which accords a special legislative status to one of the component parts of the federation, a status that the other component parts do not have, upsets the essential balance of the federation.”<sup>16</sup>

On the other hand, there exist also numerous exponents of asymmetry who emphasize the flexibility and diversity it embodies. A Quebec’s Minister of Intergovernmental Affairs and Aboriginal Affairs Benoît Pelletier once wrote that asymmetry “is the only efficient way to endorse and promote the true values of federalism.”<sup>17</sup> Asymmetric federalism used to be mostly discussed in regard to Quebec and its unique position within the federation. It is not therefore surprising that a substantial number of its

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<sup>13</sup> Circumstantial asymmetry is caused by differences in geographic size and features, natural resources, population, economy, presence of majority/minority cultures and linguistic groups, etc. Selection symmetry occurs when there is symmetry of rules, but asymmetry of outcome; i.e. when the central government makes particular arrangements available to all provinces but some of them decide not to participate.

<sup>14</sup> Reeve, Iain W. "Under Pressure - Atypical Assymetry in Canadian Immigration Policy." 2011.

*Canadian Political Science Association*. 24<sup>th</sup> January 2011. <[www.cpsa-acsp.ca/papers-2011/Reeve.pdf](http://www.cpsa-acsp.ca/papers-2011/Reeve.pdf)>.

<sup>15</sup> For example section 93 and 133 of the Constitution Act, 1867 and section 23(1a) of the Canadian Charter of Rights.

<sup>16</sup> James, Patrick. *Constitutional Politics in Canada After the Charter: Liberalism, Communitarianism, and Systemism*. Vancouver: UBC Press, 2010. Page 120.

proponents come from that particular province. It has also, however, been supported by scholars from outside Quebec, notably by Will Kymlicka, who is known for his work on multiculturalism. According to Kymlicka, not only Quebec but also English-speaking provinces can profit from asymmetry to pursue their interests and identities.<sup>18</sup> Asymmetric federalism is gaining popularity and is increasingly viewed as something relevant to all provinces and not solely to Quebec.

Executive and asymmetric federalism both play an important role in the Canadian political landscape. They go hand in hand with another important trend – the growing assertivity of Canadian provinces. Even though the BNA Act envisioned the federal government to be the dominant player in Canadian politics, the development in the second half of the 20<sup>th</sup> century suggests that provinces have gained considerable power at the expense of the central government. The Ottawa-led country has been transformed into a newer model in which provinces claim equal partnership with the federal government. This has also led to growing interprovincial coordination – provincial premiers now meet on an annual basis (if not more often) to discuss provincial matters and settle disagreements among themselves without the presence of the federal government.<sup>19</sup> In 2003, the creation of the Council of the Federation was announced by the premiers to provide an official platform for these meetings. Provinces have thus embraced the principles of executive and asymmetric federalism and continue to exploit their benefits to the fullest extent possible. They adapted to the new environment and act in such a way as to maximize their citizens' well-being. When studying specific Canadian policies, it is useful to view provinces in this manner. To do so, a game theory seems particularly effective. This theoretical framework will be discussed in greater detail in the following chapter.

## **1.2 Game Theory**

Game theory is the study of how rational individuals make strategic decisions. The main theoretical framework was originally developed in the 1940s and was further

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<sup>17</sup> Pelletier, Benoît. "Asymmetrical Federalism : A Canadian Reality." 8<sup>th</sup> November 2004. *Secrétariat aux affaires intergouvernementales canadiennes*. 12<sup>th</sup> August 2012.

<[http://www.saic.gouv.qc.ca/centre\\_de\\_presse/lettres\\_ouvertes/2004/saic\\_lettre20041108\\_en.htm](http://www.saic.gouv.qc.ca/centre_de_presse/lettres_ouvertes/2004/saic_lettre20041108_en.htm)>.

<sup>18</sup> Kymlicka, Will. „Multinational Federalism in Canada: Rethinking the Partnership.“ *Policy Options* March 1998. Page 8.

elaborated during the following decades. Even though game theory was initially used only in economics, other social sciences, including political science, soon found it useful to analyze various issues. Its main assumption is *rationality*: game theory conceives people as rational, utility-maximizing actors who strategically pursue their goals though subject to constraints imposed by physical resources as well as the expected behavior of other actors.<sup>20</sup> If one presumes that all actors act rationally, then it is possible, in some cases, to compute which decisions will bring the most utility and thus predict the actors' future behavior.<sup>21</sup>

Game theory models use several well-defined objects: a specific number of players (rational individuals), a set of strategy profiles (a list of all possible combinations of strategies), and pay-offs for each strategy (how much utility will the strategy earn them). In the most basic games, all players know all available strategy profiles and their respective pay-offs; thus, each player has perfect and complete information about the game. There are, however, few real-life situations that this model can be applied to as players quite often have imperfect or asymmetric information or play under uncertainty. All these complications make the game models more difficult, causing players to struggle in choosing the best strategy with certainty. Games with imperfect information are games in which players are unsure which steps their rivals took in the previous rounds. This situation occurs, when some moves are either not observed or are taken simultaneously.<sup>22</sup> In games with asymmetric information one player has more information available to him than to the others.<sup>23</sup> When players play under uncertainty, they do not know the exact consequences of their actions because actions and outcomes are linked probabilistically, rather than deterministically.<sup>24</sup>

Games can be further divided into those with a single interaction (in which only one action is taken by each player) and those with multiple interactions. The second type of games is also known as *extensive form games*: players take turns in choosing

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<sup>19</sup> Simeon, pages 215-225.

<sup>20</sup> McCarthy, Nolan and Adam Meirowitz. *Political Game Theory*. Cambridge: Cambridge University Press, 2007. Page 6.

<sup>21</sup> The outcome of a particular game can be predicted by finding so called solution concept (the most commonly used concept is a game equilibrium).

<sup>22</sup> Examples of games with imperfect information: A politician must decide whether to conduct oversight of a bureaucrat's actions not knowing, what the bureaucrat did or did not do.

<sup>23</sup> Examples of games with asymmetric information: A nation may know more about its own military capacity than its rivals. Candidates running for a political office may know more about their own political views and policy preferences than voters.

<sup>24</sup> Examples of games under uncertainty: A colony that declares independence may not know for a certainty whether the mother country will respect that decision or declare war.

their best strategy which is an action to be taken in each interaction as a function of what happened in previous stages.<sup>25</sup> Extensive form games are often graphically represented by so called *game trees* which consist of *nodes* representing all previous decisions. At each node, there are several *branches*; the number of branches depends on the number of possible actions a player can take. The end of the game is represented by terminal nodes that numerically express pay-offs of all players. If there is perfect information and all pay-offs are known, it is possible to solve the game by using so called backward induction: by reasoning backwards in time, a sequence of optimal actions for each player is determined and equilibrium is found.

One can also distinguish between different types of games based on how much utility a player gains relative to other players. The two main types are zero-sum and non-zero-sum games. In zero-sum games, a gain of utility by one player is exactly balanced by the utility loss by other players and vice versa. A suitable example from the world of politics might be budget allocation: if one department gets a large amount of financial resources, the amount available to other departments decreases proportionally. The aggregate gains and losses of all players always equal zero. By contrast, in non-zero-sum games the aggregate is more than or less than zero. The most commonly discussed example is a win-win situation in which all players gain some utility from playing the game. Any voluntary mutually beneficial international cooperation is a good example of such a game.

### 1.2.1 Two-Level Games

Game theory is useful when analyzing a variety of political situations. Be it a presidential campaign, coalition formation, or peace negotiation, all these can be (at least partly) explained by game theory. It is, nevertheless, always necessary to choose a level of analysis for the given situation. Based on Kenneth Waltz's classification, there exist three different levels: international, domestic, and individual. Each of these levels perceives politics (and international relations in particular) quite differently. The international level of analysis views nations as individual actors and concentrates on how they interact in the international arena. It completely ignores any intra-national politics. The second approach, the domestic level, focuses on the political system of the given country. It explains the decision-making of its leaders as a result of domestic

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McCarthy, page 27.

<sup>25</sup> Ibid, page 90.

pressures exerted by various political institutions and interest groups. Finally, the individual level of analysis stresses the importance of individuals, how they interact and what choices they make. It focuses on heads of states, their political advisors, negotiators and other individuals involved.<sup>26</sup> The three levels are used by political scientists as lenses through which they look at political situations and analyze them.

There are, however, certain political episodes which cannot be successfully analyzed by focusing exclusively on one of the levels as there are many cases of spillovers, overlaps, and externalities. Domestic and international politics are often entangled and purely domestic or purely international analysis cannot fully explain them. This is the case of many international negotiations, such as the Versailles Peace Treaty negotiations. Robert D. Putnam therefore suggested to employ a two-level analysis – one that would take into account both domestic and international factors. In his famous paper *Diplomacy and Domestic Politics: The Logic of Two-Level Games*<sup>27</sup>, Putnam develops a theoretical framework for two-level games. Even though he focuses solely on international negotiations, his approach can also be (with a few changes) used for analyzing provincial-federal negotiations in Canada. The following paragraphs explain two-level games as originally defined by Putnam and then specify the particularities of using the approach for analyzing negotiations within a federation.

During every international negotiation process, both national and international pressures influence its outcome. Based on these pressures, the process can be divided into two levels: Level 1 game (international bargaining which leads to a tentative agreement) and Level 2 game (ratification process of the Level 1 agreement). The ratification may consist of a formal voting procedure or just an informal consent of the public. Each level has a different game table and different players: Level 1 players are usually national leaders, diplomats and advisors while Level 2 players come from a variety of domestic groups such as political parties, parliamentary institutions, interest parties, unions, etc. The two levels are linked together by a chief negotiator who appears at both game boards and whose ultimate goal is to satisfy both tables. If he does not satisfy the international players, no agreement is reached; if he does not satisfy the domestic players, he may lose his seat and/or the agreement is not ratified. The simplest two-level game models assume that the chief negotiator has no political preferences of

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<sup>26</sup> Waltz, Kenneth N. *Man, the State, and War. A Theoretical Analysis*. New York: Columbia University Press, 2001. Page 230.



his own and that he simply strives to get a deal that would bring the most utility to his constituents. This assumption is, however, not always true and the ulterior motives of the chief negotiator must sometimes be taken into account. In such a case, the principle-agent theory and its findings are often employed in the analysis.<sup>28</sup>

An agreement can be reached and successfully ratified only if win-sets of both domestic and international players overlap. A win-set is a set of all possible agreements that would win a player's approval. This has two important implications: /1/ larger domestic win-sets make Level 1 agreement more likely (the larger the domestic win-sets, the more likely they will overlap and therefore the more likely an international agreement will be reached) and /2/ the relative size of the respective Level 2 win-sets affect the Level 2 bargaining power of the chief negotiator. This means that a small domestic win-set might be a bargaining advantage because the negotiator might claim that he would love to accept the opponent's proposal but he cannot because it would never get ratified. There is one more important principle that relates to the size of a win-set and to defection. There are two types of defection: voluntary and involuntary. Voluntary defection occurs when a negotiator decides not to honor promises he made in the agreement (usually because the agreement is not enforceable). Involuntary defection happens when the negotiator is unable to deliver on his promises because of a failed ratification (because the domestic win-set was too small). This implies that the smaller the domestic win-set, the greater the opponent's concerns of the negotiator's delivery ability.<sup>29</sup>

The size of a win-set is determined by three different factors. Firstly, it is influenced by the distribution of power, preferences, and possible coalitions among Level 2 constituents. Interests of the constituents might either be homogeneous or heterogeneous. When they are homogenous, all constituent groups agree with the agreement but they might disagree about the cost of no-agreement.<sup>30</sup> The public is therefore divided into *hawks* and *doves*. This is quite advantageous for the chief negotiator. Simply put, some groups view the agreement as going too far while others

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<sup>27</sup> Putnam, Robert D. "Diplomacy and Domestic Politics: The Logic of Two-Level Games." *International Organization* summer 1988. Pages 427-460.

<sup>28</sup> Ibid. pages 434 and 456.

<sup>29</sup> Ibid. pages 438-440.

<sup>30</sup> The lower the cost of no-agreement (of not ratifying the tentative agreement reached during the Level 1 negotiations) to constituents, the smaller the domestic win-set.

view it as not going far enough. The chief negotiator is then caught up between two opposing opinions and it is very difficult for him to accommodate them.<sup>31</sup>

The second determinant of the win-set size is the make-up of the Level 2 political institutions and particularly of the ratification procedures. If the international tentative agreement is to be ratified by a simple majority vote, the win-set is larger than if it was to be ratified by a two-thirds vote. The ratification itself does not, however, have to be a formalized process (as it is in the United States). In some instances, it can be quite informal.<sup>32 33</sup>

Thirdly, strategies of the Level 1 negotiators also have significant impact on the size of a win-set. Each chief negotiator wishes to maximize the domestic win-set of his opponent because that would increase the opponent's deliver ability and hence make the agreement more likely. By contrast, negotiators are caught in tactical dilemma regarding their own domestic win-set: they can either attempt to expand it (thus making the Level 2 ratification more likely) or reduce it (thus strengthening their bargaining position in Level 1 negotiations). The most common tool used for expanding the domestic win-set is the use of side-payments.<sup>34</sup>

The two-level game approach has been widely used by political scientists for analyzing various international interactions. It might, however, be quite useful also for negotiations within a federation. As there are two levels in an international negotiation (international and domestic), there are analogously two levels in a federal negotiation. Putnam's concepts can therefore be (with some changes) applied to issues related to Canadian federalism. The following paragraphs explore some differences between two-level game theory used in the international and in the federal arenas.

When using the two-level game theory for analyzing federal-provincial negotiations, one must realize that some players have vested interests at both tables. At the domestic and international tables, for all practical purposes, we find mutually exclusive stakeholders who are linked together by the chief negotiator.<sup>35</sup> On the other hand, the federal and provincial tables might have stakeholders who may appear at both

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<sup>31</sup> Ibid. page 443.

<sup>32</sup> A suitable example of informal ratification can be found in Japan. The fact that ratification process is informal does not, however, imply that it is easier to get the tentative agreement ratified.

<sup>33</sup> Ibid. page 449.

<sup>34</sup> Ibid. page 450.

<sup>35</sup> There exist, of course, certain exceptions to this rule – for example members of international non-profit organizations might sit at both tables (Representatives of a domestic chapter of the organization sit at the domestic table and representatives of the international headquarters of the organization sit at the international table.)

tables simultaneously. Let's consider an example of unions: since they have both federal and provincial chapters, they can actively influence the policy-making at both federal and provincial level. This means that the one player is present at both game tables. Unions, political parties, non-profit organizations, tax-payers, etc. – all these can be at two different tables in any federal two-level game. This is especially true in federations such as the United States – many state and federal organizations overlap to such a degree that it is sometimes difficult to distinguish between state and federal interests. One could therefore argue that using two-level game approach in this case would not yield any reasonable results because the two levels are sometimes so entangled that using only one level theory would make more sense. Canada is, however, quite unique in a sense that federal and provincial systems are “to a high degree separate and distinct, with few connecting links.”<sup>36</sup> As Simeon points out, provincial and national politics are distinguished from each other by different political leadership (there is little mobility between federal and provincial governments), political parties, electoral behavior, and overall political traditions and culture.<sup>37</sup> This means, that there are fewer links connecting the two levels in Canada than in any other federation, thus making the two-level approach more applicable.

Second issue connected with the entanglement of the two tables is that it is important for us to establish from which perspective the negotiations are being analyzed. While it is obvious that in international negotiations of two independent countries, the game theory interprets the interaction from the point of view of one of these countries,<sup>38</sup> it might become slightly more confusing in federal-provincial negotiations. In federal-provincial negotiations, the two sides are the federal government and the province (provided that we are not analyzing multilateral negotiations in which multiple provinces are involved). The two chief negotiators (one representing the federal government and one representing the province) meet during the Level 1 game. If a tentative agreement is reached, each chief negotiator moves to the Level 2 game in which he must win approval of his constituents. The provincial chief negotiator must get the agreement ratified on the provincial level and the federal chief

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<sup>36</sup> Simeon, page 34.

<sup>37</sup> Ibid., page 34.

<sup>38</sup> For example, when analyzing the Versailles Treaty negotiations, one can choose to do so from the perspective of the United States (Woodrow Wilson is the chief negotiator and his win set is determined by the public opinion in the US and by the composition of the Congress). If one were to choose to analyze the negotiations from some other perspective, some other country's leader would become the chief negotiator and the analysis would concentrate more on this country's win-set determinants.

negotiator on the federal level. It is crucial not to think of the federal government as superior – during this two-level game analysis, the federal government and the province chief negotiators are two equal and rational players. Furthermore, it is useful to establish whether we are analyzing the negotiations from the provincial or from the federal point of view in order to know if the Level 2 game analysis should address the federal or the provincial ratification process.

As with any other theory, game theory has its limits. While it is useful while analyzing certain situations, those using it will encounter numerous problems. Firstly, the model (which assumes all players act rationally) does not always reflect the reality and therefore makes the analysis less precise. Secondly, if one is to attempt to predict or explain players' behavior by evaluating the expected pay-offs, he must have access to all the information available to individual players. In other words, the person conducting the analysis should know everything about the particular negotiation: not only the official negotiation process, but also everything there is to know about the unofficial behind-the-closed-door bargaining. Furthermore, one should also know the win-set size of the two chief negotiators, the pressure groups influencing them, the side payments they might use to increase the win-sets, their personal preferences, etc. Knowing all these details is crucial – the more information one knows, the more precise the game analysis is. This implies that the game theory requires that the researcher has access to those directly involved in the negotiations and can conduct detailed interviews with them.

## 2. Understanding the Context - Immigration Policy in Canada

### 2.1 Federal Immigration Policy

All groups of individuals who have chosen to live in a state of civil society are sooner or later confronted with a basic question of who will be allowed to become part of the group and who will be left out. In other words, each society must be able to define and justify the conditions of community membership. When deciding on who will become a citizen and who will remain a stranger, two fundamental values are at play: *liberty* and *community*. According to the principles of liberal theory, all individuals are equal and should be treated the same. No distinction should therefore be drawn between citizens and aliens. On the other end of the philosophical spectrum stands community. Scholars studying the values connected to community stress the fact that “[c]ontrolling which strangers might enter is a powerful expression of a nation’s identity and autonomy – in other words, its sovereignty.”<sup>39</sup> Viewed through a lens of community, there are almost no limitations on entry that a state can choose to adopt. Liberty and community are hence the two core ideas that each policy maker must consider while designing a country’s immigration policy.<sup>40</sup>

Compared to other industrialized nations, Canada has a relatively open immigration policy and has embraced the ideas of liberalism. According to the 2006 Census data, the foreign-born population<sup>41</sup> in Canada was 6,186,950, which corresponds to 19.8% of the total population – the highest proportion in 75 years. When compared internationally, it is higher than in the United States (where the proportion of foreign-born population is 12.5%) but lower than in Australia (22.2%). Canada is also exceptional in terms of high naturalization rates: around 85% of the foreign-born who were eligible for Canadian citizenship in 2006 had become naturalized. Canada

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<sup>39</sup> Kelley, Ninette a Michael Trebilcock. *The Making of the Mosaic. A History of Canadian Immigration Policy*. Toronto: University of Toronto Press, 1998. Page 7.

<sup>40</sup> Ibid, pages 3-8.

<sup>41</sup> Foreign-born population (also known as the immigrant population) is defined in the 2006 Census as persons who are, or who have been, landed immigrants in Canada. In this analysis, the foreign-born

welcomes approximately 250,000 permanent residents and additional 200,000 temporary foreign workers and international students each year.<sup>42</sup>

Historically, Canada has always been open to immigration as Canadian leaders were well aware of its importance to the nation's growth. The large territory that Canada occupies needed to be settled to insure sustainable economic and population growth and immigration therefore became one of the central features of the National Policy. Immigration was basically free in the three decades after the BNA Act of 1867, but the turn of the century witnessed more and more restrictions. First, people with physical and mental disabilities or with moral character flaws were barred from immigrating. Later, the immigration policy was gradually redesigned in a way as to favor people of British origin, effectively preventing almost all non-white would-be immigrants from coming to Canada.<sup>43</sup> The goal of such a discriminatory policy was to populate Canada without changing the make-up of its population. During the 1960s, the general attitude towards immigration shifted to a racially non-discriminatory immigration policy. Even though no new immigration act was passed at the time, the White Canada discriminatory immigration policy was abolished through a mere set of ministerial regulations in 1962.<sup>44</sup>

The years 1966 and 1967 proved to be one of the critical periods for Canadian immigration policy. Almost everyone realized that a complex review of immigration policy was necessary as old discriminatory selection criteria were still, even though only formally, part of the system and no new criteria had been chosen. As part of this review, several papers and reports were published, all striving to influence the nature of a new policy. The White Paper, issued by the government, recognized the importance of immigration and its "contribution to the national objectives of maintaining a high rate of population and economic growth."<sup>45</sup> It was largely viewed as a defense of existing policy; one of its recommendations that was later embodied in the new policy was

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population does not include non-permanent residents, who are persons in Canada on employment or student authorizations, or are refugee claimants.

<sup>42</sup> Chui, Tina, Kelly Tran and Hélène Maheux. *2006 Census: Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Findings*. 29 August 2012. <<http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/index-eng.cfm>>.

<sup>43</sup> This has always been viewed very negatively by the French Canadians because they perceived immigration as "an Anglophone plot to overwhelm their distinctive language and culture with numbers." Kelley, page 20.

<sup>44</sup> The regulations were implemented by Ellen Fairclough, the Minister of Citizenship and Immigration from 1958 to 1962.

<sup>45</sup> Knowles, Valerie. *Strangers at Our Gates. Canadian Immigration and Immigration Policy 1540-2006*. Toronto: Dundurn Press, 2007. Pages 204 - 205.

tightening of the sponsorship program.<sup>46</sup> A new department, the Department of Manpower and Immigration, was created. This move signaled that the government recognized the importance of immigration to the labor market and that it could use it as a tool to resolve the lack of workers.

This gave rise to a completely new and revolutionary selection system – one based on points that prospective immigrants could collect in several categories (education, employment opportunities in Canada, age, English and French language skills, etc.). Those immigrants with more points were given preference over those with less points, 50 (out of 100) points being the minimum to “pass.” Even though this system was modified several times (to include new categories, to raise the minimum number of points necessary to be accepted, or to rearrange the number of points for each category), the fundamental principle has remained the same: Immigrants were to be chosen not based on their country of origin (or their race, sex, religion, etc.), but based on their individual qualities and on the needs of the Canadian labor market. Since its adoption, the point-system has formed the backbone of Canadian immigration system.

The Canadian immigration laws were revised considerably in the second half of the 1970s. The 1976 Immigration Act was a result of a nation-wide public debate on what the goals of immigration and population policy should be. Summarizing the most important conclusions of this debate, a somewhat controversial Green Paper was published. First and foremost, it showed how difficult it is to reach consensus in the field of immigration. It questioned the advantages of high rates of population growth, and consequently also advantages of high levels of immigration.<sup>47</sup> Minister of Manpower and Immigration Bob Andras therefore initiated the creation of a Special Joint Committee that would examine the Green Paper and propose specific immigration policy provisions. In the end, the 1976 act was greatly influenced by recommendations of the committee. Firstly, the act clearly stated that one of the major principles of immigration policy would be non-discrimination, along with family reunion, humanitarian concern for refugees, targeted economic development, and others. It established three classes of immigrants admitted to Canada: family class, refugees, and independent applicants that would be selected on the basis of the point system. The last

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<sup>46</sup> Sponsorship program is a system that allows Canadian citizens and residents to sponsor a family member to immigrate to Canada. It used to apply to spouses, parents, children, siblings, and even more distant family members such as cousins, aunts and uncles. It was, however, later redesigned to only include immediate family members.

<sup>47</sup> Knowles, page 206.

category also included so called assisted relatives, relatives that had previously been allowed to be sponsored by a relative living in Canada but now did not meet the criteria of the family class (e.g. distant relatives, children who were not dependent on their parents, grandparents below the age of 60, etc.). The act also required the Minister to announce annually in Parliament the number of immigrants that the government intends to admit the following year. He was to do so after consulting the provinces and “such other persons, organizations, and institutions as he deems appropriate.”<sup>48</sup> As a result, an Annual Report on Immigration has been tabled by the Minister every year since the act came into effect in 1978.<sup>49</sup>

Over the next years, a few amendments and regulations were adopted to face current problems related to immigration. The two main changes occurred in the refugee determination system and in the point system. The 1980s immigration scene was dominated by the refugee question as soaring numbers of individuals claimed refugee status.<sup>50</sup> Even though Canada was praised internationally for its “major and sustained contribution to the cause of refugees,”<sup>51</sup> the refugee question has whipped up many controversies and refugee-related problems even resulted in harsher attitudes towards asylum seekers.

Another area that has been changed substantially over the years was the point system used to select economic immigrants. This was due to the changing nature of Canadian immigration: more and more people applied through the family class than through the independent economy class. While the family class immigrants constituted only 27% of all immigrants in 1971, this number rose to 55% in 1983. The rise in family class went hand in hand with a decline in the independent economy class: from 72.6% to 30%.<sup>52</sup> These trends resulted in the shift in immigration emphasis: both conservative and liberal governments in the 1990s tried to encourage economic immigration. Due to low fertility levels, Canada experienced low annual rate of population growth and aging of the population. To increase the rate of growth of the

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<sup>48</sup> "Immigration Act." 31 December 2000. *Asylumlaw*. 30 August 2012.

<[http://www.asylumlaw.org/docs/canada/canada85\\_immigrationact.pdf](http://www.asylumlaw.org/docs/canada/canada85_immigrationact.pdf)>. Page 10.

<sup>49</sup> Hawkins, Freda. *Critical Years in Immigration. Canada and Australia Compared*. 2nd edition. Montreal: McGill-Queen's University Press, 1991. Pages 70-72.

Annual Reports on Immigration from years 2004-2011 are available in an electronic form on the Citizenship and Immigration Canada website <http://www.cic.gc.ca/english/resources/publications>

<sup>50</sup> The international refugee system found itself in crises: the numbers of world refugees rose from 1.2 million in the early 1960s to 14.9 million in 1989. Knowles, page 221.

<sup>51</sup> Knowles, page 223.

<sup>52</sup> Knowles, page 230.



Canadian labor force, the federal government decided to encourage higher economic immigration. The point system was revised to increase the maximum of points awarded for a suitable job qualification and to decrease the maximum of points for having a relative in Canada. New classes of immigrants were added: besides the refugee, family and independent economic class (currently processed under so called Federal Skilled Worker Program), there now existed special classes for self-employed people, for entrepreneurs, and for investors.

The last major review of Canadian immigration law happened at the turn of the century. A three-member advisory panel appointed by the Liberal government in the late 1990s released a report that closely examined Canada's immigration policy. In the report entitled *Not Just Numbers*, the committee urged for an adoption of a simpler, but tougher, immigration policy hoping that it would restore public confidence in the system. As a result of this report, a new immigration bill was introduced in 2001. After being modified several times, it became law in June 2002 as the Immigration and Refugee Protection Act.<sup>53</sup> One of the key provisions of the act was the establishment of a new independent quasi-judicial body - the Immigration and Refugee Board of Canada (IRBC). The specific function of the IRBC and its cooperation with other immigration related agencies will be discussed further. The act also changed policies regarding refugees (better protection for refugees and higher penalties for human trafficking) and immigrants in the economy class. Due to the fast-changing nature of current labor market, the federal government realized that it cannot efficiently match foreign workers to vacancies. It therefore amended the point system so that workers are now selected not based on their intended occupation but rather on their flexibility and adaptability.

In 2008, the Action Plan for Faster Immigration made yet another change in the selection process of foreign workers. Due to a large backlog of 900,000 applications and waiting times up to six years, the selection system was not responsive enough. The plan introduced a new rule according to which only those applications that met certain requirements would be processed – the rest would not even be considered. The necessary requirements can be summarized in three conditions: an applicant must either /1/ have an arranged employment, or /2/ have lived legally in Canada for at least 1 year (as a temporary worker or an international student), or /3/ have experience in one or

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<sup>53</sup> "Immigration and Refugee Protection Act." 22nd August 2012. *Department of Justice*. 5th September 2012. <<http://laws-lois.justice.gc.ca/eng/acts/I-2.5/index.html>>.

more of the desired occupations.<sup>54</sup> Two other sets of ministerial instructions were issued in 2010 and 2011, both with a goal to reduce the foreign worker backlog. The new selection mechanism helped the federal government to cut the backlog by 50%. As a result, it is now able to respond to the needs of Canadian labor market more quickly.<sup>55</sup>

The following years (2008-2012) witnessed many changes in immigration policy. Even though no new comprehensive immigration bill was passed, the federal government introduced several new regulations and initiatives. A new study published by Maytree foundation attempts to describe the changes and analyzes their potential individual and cumulative impact.<sup>56</sup> It argues, that while a few changes will have a positive impact, most of them will be negative. The authors criticize the federal government for concentrating too much on short-term economic needs of Canadian labour market, for giving priority to temporary workers (while making it the immigration process more challenging for economic immigrants, sponsored family members, and refugees), for not focusing on nation building, and, most importantly, for the lack of policy coherence, consistency and predictability. But since not enough time has passed to allow for a more detailed evaluation, it remains to be seen what direction the federal government will follow in terms of its immigration policy. The most important changes, especially those related to federal-provincial interaction, will be discussed later in this paper.

In the new millennium, immigration remains a heated issue as many of the old problems persist: Huge numbers of self-selected refugee claimants continue to flood Canada. The refugee determination system is struggling under a massive case backlog. Ottawa fails to locate and deport undocumented immigrants. General public perceives immigration levels to be too high. And terrorism and other security-related issues have started to be discussed in connection to immigration.<sup>57</sup> Despite these issues, Canada has remained true to its liberal tradition of admitting more immigrants (and especially refugees) than most other countries around the world. Around 250,000 newcomers are admitted to Canada every year and this number is not expected to change in the near future.

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<sup>54</sup> "Action Plan for Faster Immigration." 28th November 2008. *Citizenship and Immigration Canada*. 6th September 2012. <<http://www.cic.gc.ca/english/department/media/backgrounders/2008/2008-11-28.asp>>.

<sup>55</sup> "Annual Report to Parliament on Immigration, 2011." *Citizenship and Immigration Canada*. 29 August 2012. <<http://www.cic.gc.ca/english/pdf/pub/annual-report-2011.pdf>>. Page 9.

<sup>56</sup> Alboim, Naomi and Karen Cohl. "Shaping the Future: Canada's Rapidly Changing Immigration Policies." October 2012. *Maytree*. 10th November 2012. <<http://maytree.com/wp-content/uploads/2012/10/shaping-the-future.pdf>>.

### 2.1.1 Immigration Players on the Federal Level

There is a number of institutions that are involved in formulating and in administering Canadian immigration policy and even more of those that attempt to influence it. Federal government is not one homogenous individual; it is rather composed of many different agencies, each of which has its specific agenda and responsibilities. There are three main governmental institutions that are part of Canadian immigration system: the Citizenship and Immigration Canada, Immigration and Refugee Board of Canada, and Canada Border Services Agency.

Citizenship and Immigration Canada (CIC) is a department of the federal government that has an overall responsibility for immigration and refugees. It is in charge of programs and services connected to immigration, settlement, resettlement, citizenship, and multiculturalism. CIC determines refugee claims made abroad, selects immigrants, issues visitors' visas, and grants citizenship. Created in 1994, it consolidated immigration agenda that was previously administered by several departments, mainly by the Department of Manpower and Immigration. It is headed by the Minister of Citizenship and Immigration. It is the Minister that is a dominant actor in federal immigration matters and who acts as a chief negotiator in any federal-provincial negotiations.

The Immigration and Refugee Board of Canada (IRB) is an independent administrative tribunal that helps the CIC decide on issues related to immigration and refugees. The main responsibility of the IRB is to decide on refugee claims made by those already in Canada, to hear appeals on certain immigration matters, and to conduct admissibility hearings and detention reviews. The IRB reports to the Parliament through the Minister of Citizenship and Immigration.

The Canada Border Services Agency (CBSA) is responsible for enforcing functions related to immigration and refugee matters, such as detention, removals, investigations, and intelligence and immigration control overseas. It also provides integrated border services, such as managing, controlling and securing borders. CBSA is part of Canada's public safety portfolio<sup>58</sup> and reports directly to the Minister of Public Safety Canada.

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<sup>57</sup> Knowles, page 247.

<sup>58</sup> Together with the Canadian Security Intelligence Service, the Correctional Service Canada, the Parole Board of Canada, and the Royal Canadian Mounted Police, the CBSA forms the core of the Department of Public Safety.

These three agencies administer immigration policy; they are not, however, responsible for formulating it. The power to make immigration laws is vested in the Parliament of Canada. Some work on immigration policy is done in individual committees, especially in committees of the House of Commons. The principal committee responsible for matters of immigration is the Standing Committee on Citizenship and Immigration.<sup>59</sup> Immigration related issues are also discussed in other committees, for example in Standing Committee on Foreign Affairs and International Development (and in its Subcommittee on International Human Rights), Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Standing Committee on Justice and Human Rights, Standing Committee on Public Safety and National Security, and others. As the functioning of Canadian political system is specific due to executive federalism, the Parliament has relatively minor role in immigration. While it has the power to make laws regarding immigration, it has a very small influence in many immigration matters. The CIC being a dominant player and having power to formulate many regulations and conduct negotiations with provinces, the Parliament can be viewed as somewhat secondary. The lead position of the CIC was reinforced by the 2008 and 2012 Budget Bills that amended the Immigration and Refugee Protection Act to enable a minister to issue so called Ministerial Instructions to immigration officers. This gave the CIC a power tool allowing it to fundamentally alter immigration policies without having to go through the parliamentary process.<sup>60</sup> As a result, the Minister's decision-making authority has expanded substantially over last few years.

Besides governmental institutions, there are numerous non-governmental immigrant-serving organizations all over Canada. More than 235 of such organizations concentrate mainly on facilitating the settlement and labor market integration of immigrants. They play an important role in immigration analysis, advocacy and policy dialogue and work in partnership with governments, regulatory bodies and other community agencies.<sup>61</sup> Even though most of them have a regional focus, there are some that are active nationally. The Canadian Immigrant Settlement Sector Alliance (CISSA) is an umbrella organization representing immigrant and refugee settlement agencies

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<sup>59</sup> Standing committee is a permanent committee that has been established by Standing Orders of the House of Commons.

<sup>60</sup> Alboim, Cohl, page 3.

from across Canada. It was formed in 2005 to represent the immigration sector and to “bring the sector’s expertise to bear on public policies and programs (...).”<sup>62</sup> The CISSA’s main activity is publishing opinion and research papers aimed at influencing public policies. Another influential nation-wide umbrella organization is the Canadian Coalition for Community-Based Employability Training (CCCBET). The principal aim of the CCCBET is to enhance the labor market participation of immigrants in Canada.<sup>63</sup>

Associations of internationally-trained individuals constitute another considerably powerful immigration player. A common problem that immigrants all across the globe have to face is the lack of recognition of their foreign credentials and work experience. Even though the Canadian point system has always emphasized education and job experience when evaluating applicant’s adaptability to the Canadian labor market, the government could not guarantee that private companies would respect the applicant’s foreign experience and offer him fair and equitable access to his licensed profession. As a result, a number of associations have been formed in order to represent the interests of internationally-trained professionals. These organizations are likely to encourage governments to invest in projects that strive to remove barriers to employment and generally support open immigration policy. Besides numerous provincial associations, there exist three with nation-wide focus: The Council for Access to the Profession of Engineering (CAPE), Integration Resources Canada Inc. (IRCI), and the Policy Roundtable Mobilizing Professions and Trades (PROMPT).

Various labor and business groups are also often involved in immigration-related issues. Business groups, that represent the interests of employers, are generally likely to support a permissive immigration policy as it relieves shortages in supply of both skilled and unskilled workers. Labor groups are usually against admitting labor in sectors where immigrants would be competing for jobs with native-born workers.<sup>64</sup> On the other hand, they often also work for the benefit of immigrants, especially when it comes to applying pressure for justice in the workplace.

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<sup>61</sup> "Immigrant Serving Agencies and Other Non-Profit Organizations." n.d. *The Alliance of Sector Councils*. 7th September 2012. <<http://www.councils.org/gateway/who-does-what/immigrant-serving-agencies-and-other-non-profit-organizations/>>.

<sup>62</sup> Burstein, Meyer. "Reconfiguring settlement and integration." 2010. *Three Source*. Canadian Immigrant Settlement Sector Alliance. 7th September 2012. <[http://www.threesource.ca/results.aspx?ac=qbe\\_query&tn=ESPCCat&qy=find+%28RecordID+=3879%29&RF=WebFull&BU=](http://www.threesource.ca/results.aspx?ac=qbe_query&tn=ESPCCat&qy=find+%28RecordID+=3879%29&RF=WebFull&BU=/)>.

<sup>63</sup> "Discover the CCCBET." 2008. *The Canadian Coalition of Community-Based Employability Training*. 7th September 2012. <<http://www.savie.qc.ca/Ccocde/An/AccueilPublique.asp>>.

<sup>64</sup> Kelley, page 9.

There are a great many multicultural organizations that represent various ethnic groups living in Canada. Chinese Canadian National Council, India Canada Association, and the United Indonesian Canadian Society are just few examples. These groups give voice not only to recent immigrants but also to foreign-born individuals that have been living in Canada for many years. They are likely to support open immigration policy, especially one that favors family reunification.

Last but not least, tax-payers (and public opinion in general) represent an important player in all areas of public policy, with immigration policy not being an exception. If tax-payers, as a group, acted rationally, they would support a policy that would impose the fewest demands on the public budget, i.e. a policy that would give preference to productive immigrants contributing more than the cost they impose.<sup>65</sup> Two major studies on the economic impact of immigrants on Canada's treasury confirmed that immigrants do not pose any economic burden and are, by contrast, profitable.<sup>66</sup> Even though public opinion is influenced by many different factors, public perception of immigration actually corresponds with the findings of the two studies. The majority of Canadians agree with the annual number of immigrants coming to Canada and feel that immigrants have a positive impact on the Canadian economy.<sup>67</sup> Overall, the Canadian public seems to embrace the ideas of liberalism and has a tendency to just live and let live.

All these above mentioned entities are in some way involved in Canadian immigration policy and can therefore be considered as game theory players in federal-provincial negotiations. This chapter has summarized the main points of Canadian immigration policy on the federal level and discussed the major players involved. The following chapter will concentrate on the other side of the coin: the provincial involvement.

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<sup>65</sup> Ibid. page 10.

<sup>66</sup> Akbari, Ather H. "The Benefits of Immigrants to Canada: Evidence on Tax and Public Services." *Canadian Public Policy* 1989. Pages 424-435.

Akbari, Ather H. "The Impact of Immigrants on Canada's Treasury, circa 1990." DeVortez, Don J. (ed.) *Diminishing Returns. The Economics of Canada's Recent Immigration Policy*. Toronto: Renouf Publishing Company, 1995. Pages 113-127.

<sup>67</sup> Soroka, Stuart and Sarah Roberton. "A literature review of Public Opinion Research on Canadian attitudes towards multiculturalism and immigration, 2006-2009." March 2010. *Citizenship and Immigration Canada*. 11th September 2012. <<http://www.cic.gc.ca/english/pdf/research-stats/2012-por-multi-imm-eng.pdf>>. Page 28-29.

## ***2.2 Provincial Involvement in Immigration Policy-Making***

Under Section 95 of the Constitution Act of 1867, the federal government and individual provinces are obligated to share responsibility over immigration policy. However, the federal government has historically been a dominant player in immigration and it was not until the second half of the 20th century that provincial governments increased their involvement. The first province to become active in immigration, as in many other areas of public policy, was Quebec. There are three reasons explaining this fact. Firstly, Quebec's distinct culture and language provides for a sense of uniqueness that makes the province stand out. Secondly, beginning with the Quiet Revolution of the 1960s, Quebec has made efforts to exercise authority over all fields in which it has constitutional jurisdiction. Since both federal and provincial governments are called to enjoy concurrent power over immigration, Quebec has decided to seize this opportunity and use it for its advantage. Thirdly, and probably most importantly, the birth rate in Quebec declined sharply in the 1960s and 1970s and Quebec officials saw immigration as a chance to attract those who spoke or were willing to speak French to supplement for the decreasing population size.<sup>68</sup> Having recognized the important role immigration can play in cultural development of the province, Quebec established its own immigration service in 1965. Over the next few years, it became active primarily in settlement services and partly also in immigrant selection process. Two Ottawa-Quebec agreements in the first half of the 1970s (Lang-Cloutier Agreement and Andras-Bienvenue Agreement) strengthened Quebec's position in immigration.

But it was not until after the passage of the 1976 Immigration act that the most apparent changes occurred. The act not only required the federal Minister of Manpower and Immigration to consult provinces regarding the annual immigration levels (Section 7) but also enabled him to enter into agreements related to immigration with a province (Section 109). As a result, the act provided an effective way to involve provinces more closely in immigration planning and decision-making. Quebec was the first province to use the opportunity to seal a Section 109 agreement: The Cullen-Couture Agreement, which gave Quebec a significant immigrant selection power, was signed in 1978. Ever since the agreement came into force, federal and Quebec officials have been jointly

selecting immigrants at overseas visa posts and Quebec acquired the authority to choose successful applicants in the independent class. A new Canada-Quebec Accord was negotiated in 1990 and signed a year later. It affirmed Quebec's control over selection of independent immigrants (federal government can override a selection decision only for serious security or medical concerns) and established that settlement services would fall exclusively within the purview of the province.<sup>69</sup> Quebec is compensated for these services through an annual grant which is calculated according to a formula specified in the agreement and which has grown from \$76 million in 1991 to \$283 million in 2012/2013.<sup>70</sup>

As a result of the above agreements, Quebec occupies a very unique position within the Canadian immigration system. Unlike Quebec, the rest of the provinces have been much more content to leave the federal government dominant in immigration because they do not perceive Ottawa's actions as culturally damaging and see little advantage in entering fully into the immigration arena. The one major exception to this rule has been economic immigration, especially in relation to relieving labor shortages in Canadian labor market. In recent decades, provinces have been increasingly more and more active in this field as they realized that attracting newcomers with desirable occupation skills and experience has its benefits. Even though some provinces signed immigration agreements with the federal government as early as the late 1970s,<sup>71</sup> these agreements were only of a symbolic importance as none of them allowed for provincial involvement in the selection process.

Things started changing at the beginning of the 1990s, when the three Prairie Provinces expressed their concerns about not receiving their appropriate share of immigrants. Led by Manitoba, this movement sought regionalization of immigration so that the selection process for economic immigrants would serve provincial needs for skilled and unskilled workers. The federal government was unwilling to negotiate Quebec-like agreements with every single province and answered to the provincial

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<sup>68</sup> Dirks, Gerald E. *Controversy and Complexity – Canadian Immigration Policy During the 1980s*. Montreal: McGill-Queen's University Press, 1995. Page 98.

<sup>69</sup> Knowles, Valerie. "Forging Our Legacy: Canadian Citizenship and Immigration, 1900–1977." October 2000. *Citizenship and Immigration Canada*. Public Works and Government Services Canada. 11th September 2012. <<http://www.cic.gc.ca/english/resources/publications/legacy/chap-6b.asp>>.

<sup>70</sup> "Government of Canada 2012-13 Settlement Funding Allocations." 25th November 2011. *Citizenship and Immigration Canada*. 12th September 2012. <<http://www.cic.gc.ca/english/department/media/backgrounders/2011/2011-11-25.asp>>

<sup>71</sup> Agreements between the federal government and provinces: Nova Scotia (1978), Saskatchewan (1978), Newfoundland and Labrador (1979), New Brunswick (1979), Prince Edward Island (1979), Alberta (1985).



demands by introducing the Provincial Nominee Program (PNP). This program made it possible for provinces to select and nominate a limited number of economic immigrants. Even though the pilot program allowed for only 1,000 provincial nominees, provinces have seized this opportunity to the fullest extent.<sup>72</sup> A set of federal-provincial negotiations took place resulting in the signing of new immigration agreements. The Table n. 1 summarizes these PNP-related bilateral agreements.

**Table n. 1: Intergovernmental Immigration Agreements Related to PNPs**

Province	Original Agreement Signed	Latest Agreement Signed	Expiry Date	Provincial Government Agency Dealing with Immigration Issues
Manitoba	1996	2003	Indefinite	Ministry of Immigration and Multiculturalism
Saskatchewan	1998	2005	Indefinite	Ministry of Advanced Education, Employment and Immigration
British Columbia	1998	2010	2015	Ministry of Jobs, Tourism and Innovation
Newfoundland and Labrador	1999	2006	Indefinite	Department of Advanced Education and Skills
New Brunswick	1999	2005	Indefinite	Department of Post-Secondary Education, Training and Labour
Prince Edward Island	2001	2008	Indefinite	Immigration Services
Ontario		2005	2010; one-year extension of the agreement expired in March 2011; PNP authority extended to 2015, TFW Annex continues indefinitely	Ministry of Citizenship and Immigration
Nova Scotia		2007	Indefinite	Nova Scotia Office of Immigration
Alberta		2007	Indefinite	Ministry of Human Services

Source: Annual Report to Parliament on Immigration, 2012. *Citizenship and Immigration Canada*. Page 20.

The PNPs signaled a new era of Canadian immigration policy that adopted a more regionalized and market-responsive approach. The goals of the PNPs were twofold: Firstly, the programs provided participating provinces an opportunity to respond to their particular economic needs so that they could effectively react to specific local labor market demands. The focus on labor market needs is obvious even

<sup>72</sup> Seidle, Leslie F. "Intergovernmental Immigration Agreements and Public Accountability." July-August 2010. *Policy Options*. Institute for Research on Public Policy. 12th September 2012.

by looking at which provincial agencies administer the immigration agenda: Most provincial immigration services fall within the jurisdiction of ministries of labor, education, or human services and only few provinces have actual ministries of immigration. Secondly, they helped to spread the benefits of immigration across the whole country by promoting immigration to areas that were not traditional destinations of newcomers.<sup>73</sup> This is demonstrated by the fact that while Toronto, Montreal and Vancouver have traditionally attracted disproportionately high numbers of immigrants, PNPs represent the major source of economic immigration in provinces such as Manitoba (92%), Prince Edward Island (98%), and Saskatchewan (86%).<sup>74</sup> It is very likely that these immigrants would not have settled in these provinces if it were not for the PNPs. Thanks to PNPs, 26% of economic immigrants admitted to Canada are now destined for provinces other than Ontario, British Columbia, or Quebec, compared to just 11% in 1997.<sup>75</sup> Over the years, the objectives of the PNPs have changed from purely economic goals to now include others such as regional development and population growth. The importance of PNPs has increased over the recent years; this is clearly documented by the growing numbers of provincial nominees (see Table n. 2). In 2011, the first nation-wide evaluation of the PNPs concluded that there is a continuing need for such programs and that they proved to be “successful with respect to the objective of regionalizing the benefits of immigration.”<sup>76</sup>

When choosing nominees, provincial governments have considerable flexibility in setting their own criteria. As a result, the PNPs have become highly diverse and vary significantly from province to province which means they can address unique needs of each province. All programs, however, generally consist of five clusters: skilled workers, semi-skilled workers, business/investors, international student graduates, family/community connections, and strategic recruitment.<sup>77</sup> Even though, provinces nominate their prospective immigrants, the CIC still retains the final say in who will be

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<<http://www.irpp.org/po/archive/jul10/seidle.pdf>>.

<sup>73</sup> Annual Report to Parliament on Immigration, 2011. Page 13.

<sup>74</sup> "Provincial Nominee Program." 23rd February 2012. *Citizenship and Immigration Canada*. 12th September 2012. <<http://www.cic.gc.ca/english/resources/publications/employers/provincial-nominee-program.asp>>.

<sup>75</sup> "Canada to welcome record number of immigrants under Provincial Nominee Program." 19th July 2011. *Citizenship and Immigration Canada*. 12th September 2012.

<<http://www.cic.gc.ca/english/department/media/releases/2011/2011-07-19.asp>>.

<sup>76</sup> "Evaluation of the Provincial Nominee Program." September 2011. *Citizenship and Immigration Canada*. Research and Evaluation Division. 13th September 2012.

<<http://www.cic.gc.ca/english/resources/evaluation/pnp/index.asp>>.

<sup>77</sup> Provincial Nominee Program.

admitted and who will be denied access. There is, however, a 97% acceptance rate, so almost everyone who is nominated by a province is later approved by the CIC.<sup>78</sup>

**Table n. 2: New Permanent Residents Admitted to Canada under the Provincial Nominee Programs 2001-2012**

*(The data includes both provincial and territorial nominees)*

	Actual	Projected	
		Low	High
2012	<i>Data not available</i>	42,000	45,000
2011	38,420	42,000	45,000
2010	36,428	37,000	40,000
2009	30,378	20,000	26,000
2008	22,418	20,000	22,000
2007	17,095	13,000	14,000
2006	13,336	9,000	11,000
2005	8,047	8,000	10,000
2004	6,248	3,500	3,500
2003	4,418		
2002	2,127	<i>Data not available</i>	
2001	1,274		

Source: Annual Reports to Parliament on Immigration from years 2005-2012 and Canada Fact and Figures, Immigration Overview Permanent and Temporary Residents, 2010, *Citizenship and Immigration Canada*.

The federal-provincial cooperation is not limited to the PNPs. There exist a variety of other immigration related issues and programs that the two levels of government are involved in. Firstly, the CIC regularly consults provinces on what the appropriate annual immigration levels should be (as required by the current immigration law). This provincial input is then taken into consideration when compiling Annual Reports to Parliament on Immigration. Secondly, active federal-provincial collaboration is underway particularly in settlement and integration services, for example by helping immigrants to have their foreign credentials recognized in the Canadian labor market.

### 2.2.1 Immigration Players on the Provincial Level

Who are the main immigration players on the provincial level? As listed in Table n. 1, each province has a government agency that deals with immigration-related issues. Some have created separate immigration departments; some have incorporated immigration services into departments of labor, education, and/or human services. The ministers of these departments are in charge of negotiations of federal-provincial immigration agreements and represent the given province in all immigration related

<sup>78</sup> Ibid.

matters – they are therefore provincial chief negotiators in any federal-provincial negotiations.

No provincial legislative assembly has a standing committee on immigration. Immigration issues, if they are ever discussed, fall within the purview of various committees, for example a committee on citizen relations, human services, social and economic development, or intergovernmental relations.

Most of the provincial non-governmental players involved in immigration policy-making mirror those at the federal level: non-profit organizations (settlement organizations, associations of internationally-trained individuals, multicultural organizations, etc.), labor and business groups, and tax-payers. Since every single province is quite unique, this paper will not go into detail describing all provincial players. It will rather concentrate on one particular province: Ontario.

### 3. Ontario: A Shift in Attitude

When it comes to Canadian immigration, Ontario is a province like no other. The province is a particularly interesting case and is worth studying for the following three reasons: First, Ontario has traditionally been the top immigration destination among the provinces and now receives about half of all immigrants entering Canada. In 2010, Ontario admitted over 118,000 permanent residents. This number represents more immigrants than those who landed in the next two largest-receiving provinces combined: British Columbia and Quebec together received only a bit over 98,000.<sup>79</sup> Second, Ontario drives the Canadian economy: it generates around 37% of the national GDP<sup>80</sup> and produces around 46% of total manufacturing exports.<sup>81</sup> Furthermore, 31% of those employed in Ontario are immigrants,<sup>82</sup> which further illustrates how important immigration is for the economy of both Ontario and Canada as a whole. Third, Ontario was one of the last provinces to sign an immigration agreement with the federal government and is also currently the only one without an agreement (after a one-year extension, the original agreement expired in March 2011). The following paragraphs will explore the reasons for this anomaly and will describe the state of current relations between Toronto and Ottawa in regards to immigration.

Even though some provinces signed immigration agreements with the federal government in as early as the 1990s, Ontario was one of those that did not express a keen interest in striking a similar bargain. This is probably due to the constant flow of immigrants to Ontario. The province never had to worry much about attracting newcomers – they simply came by themselves in sufficient numbers without Ontario making any significant effort. The majority of economic immigrants coming to Ontario

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<sup>79</sup> Annual Report to Parliament on Immigration, 2011. Page 25.

<sup>80</sup> "Gross domestic product, expenditure-based, by province and territory." 8th November 2011. *Statistics Canada*. 27th October 2012. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/econ15-eng.htm>>.

<sup>81</sup> "Economic indicators, by province and territory (monthly and quarterly) - Canada." 23rd October 2012. *Statistics Canada*. 27th October 2012. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/indi02a-eng.htm>>.

"Economic indicators, by province and territory (monthly and quarterly) - Ontario." 25th October 2012. *Statistics Canada*. 27th October 2012. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/indi02g-eng.htm>>.

<sup>82</sup> "Ontario Labour Market Statistics for January 2012." February 2012. *Ontario Ministry of Training, Colleges, and Universities*. Research and Planning Branch. 27th October 2012. <<http://www.tcu.gov.on.ca/eng/labourmarket/currenttrends/docs/monthly/201201.pdf>>. Page 13.

go through the Federal Skilled Worker Program.<sup>83</sup> Ontario officials therefore probably did not feel the need for a provincial nominee program or any other immigration selection program. There were also political reasons. Although devolution was offered to Ontario during the Program Review in the mid-1990s, the Conservative government led by Mike Harris was not interested and even cut spending on some of the settlement services that the Ontario government was providing at the time.<sup>84</sup>

Furthermore, one could argue that Ontario did not pursue devolution of immigration policy-making to provinces because it realized it could destabilize the federal government. F. Leslie Seidle, a research director of Diversity, Immigration and Integration program at the Institute for Research on Public Policy, suggested that Ontario felt devolution would “significantly reduce the role of the federal government in nation-building,”<sup>85</sup> with the two biggest provinces (Ontario and Quebec) running their own immigration programs. There was a risk that if the largest immigrant receiving province took over its immigration policy, the overall consistency of the Canadian immigration system would not be guaranteed and the system and rules governing it would become very fragmented.

But something changed. In May 2004, Ontario and the federal government suddenly announced that they would launch negotiations regarding an immigration agreement.<sup>86</sup> If we are to view the federal-provincial interaction as a game, we must assume that the players acted rationally and their each move was well-calculated and had some expected pay-offs. Why did Ontario change its attitude regarding provincial involvement in immigration policy making? Its motives can be summarized in three main points: /1/ the decline in Ontario’s share of immigrants as compared to other provinces and the decline in economic immigration in Ontario; /2/ worsening immigrant outcomes; and /3/ change in political environment.

Firstly, as other provinces increased their efforts aimed at attracting immigrants, more and more people decided to settle outside of Ontario. While the absolute numbers of newcomers to Ontario were on the rise, the share of those who decided to settle there

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<sup>83</sup> "Evaluation of the Provincial Nominee Program." Page 21.

<sup>84</sup> Seidle, F. Leslie. "The Canada-Ontario Immigration Agreement: Assessment and Options for Renewal." May 2010. *Mowat Centre for Policy Innovation*. School of Public Policy and Governance at the University of Toronto. 23rd October 2012.

<<http://www.mowatcentre.ca/pdfs/mowatResearch/12.pdf>>. Page 9.

<sup>85</sup> Seidle, page 1.

Even though Seidle made this remark, he is nevertheless a supporter of greater involvement of Ontario in immigration policy.

<sup>86</sup> Seidle, page 9.

(as opposed to other provinces) decreased. Provinces such as Alberta and Quebec were more successful in bringing in people. Whereas 55.5% of the immigrants prior to 2001 settled in Ontario, only 52.3% did so between 2001 and 2006.<sup>87</sup> Not only did the share of newcomers to Ontario decrease, but their profile changed as well. Less and less economic immigrants chose Ontario as their destination. The decrease in the share of economic immigrants went hand in hand with the increase in share of people arriving in Ontario through the family class and humanitarian streams. These immigrants usually experienced greater difficulty finding employment and needed more support to integrate.<sup>88</sup> As the economic and demographic nature of a province such as Ontario is, to a large degree, influenced by immigration, it was in its best interest to take a more active role in immigration policy-making.

Secondly, those who settled in Canada at the time did not fare as well economically as the previous cohorts of immigrants. While the trend was evident in all provinces, it hit Ontario the most. In fact, between 1980 and 2005, the average income of recent immigrants<sup>89</sup> dropped from 85 to 63 cents for each dollar earned by a Canadian-born worker (a decline of 26%). More and more people began to realize that a better selection and integration system was needed.<sup>90</sup>

Thirdly, such a major shift in approach of Ontario towards its involvement in the realm of immigration policy would not be possible without a change in leadership of the provincial government. While the previous conservative governments showed little interest in federal-provincial cooperation, the election of Dalton McGuinty's Liberal government in October 2003 paved the way to a new round of negotiations. The new Ontario Premier expressed his concern that the federal spending on immigration and settlement services in Ontario had remained unchanged for a long time while spending in other provinces had risen substantially.<sup>91</sup> McGuinty believed that if Ontario is to attract more immigrants in the future, it needed a new approach to immigration. This change in Ontario's attitude led to negotiations with the federal government.

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<sup>87</sup> "2006 Census Highlights: Factsheet 7 - Immigration and Citizenship." 7th October 2009. *Ontario Ministry of Finance*. 27th October 2012.

<<http://www.fin.gov.on.ca/en/economy/demographics/census/cenhi06-7.html>>.

<sup>88</sup> "Immigration in Ontario Fact Sheet." 2009. *Mowat Center*. 27th October 2012.

<[http://www.mowatcentre.ca/general/Immigration%20in%20Ontario%20Fact%20Sheet\\_28052010.pdf](http://www.mowatcentre.ca/general/Immigration%20in%20Ontario%20Fact%20Sheet_28052010.pdf)>.

<sup>89</sup> Those who arrived in the last ten years.

<sup>90</sup> Seidle, page.

<sup>91</sup> Seidle, page 9.

### **3.1 Ontario Immigration Players**

Before we go ahead and analyze the 2005 federal-provincial agreement in more detail, it is important to look at who the Ontario immigration players are. As is always the case in Canada, the most dominant actor is the government immigration agency – namely the Ontario Ministry of Citizenship and Immigration (MCI). Besides citizenship matters (such as promoting social inclusion and civic engagement), the MCI deals with all provincial issues related to immigration, including integration and settlement programs. It has several priority areas of work that cover attraction of skilled immigrants, coordinated settlement services, language training programs, labour market integration, and community and employment engagement. The ministry currently serves two ministers, Minister of Citizenship and Immigration and the Minister Responsible for Women’s issues, who are both members of the Executive Council of Ontario. The Minister of Citizenship and Immigration represents Ontario in any federal-provincial immigration-related negotiations.<sup>92</sup>

The Legislative Assembly of Ontario has no committee whose work would be dedicated to immigration issues. Most work in immigration matters is carried out by the MCI and the role of the legislative assembly is secondary. If need be, the MCI works with the Assembly through the person of a Parliamentary Assistant to the Minister of Citizenship and Immigration who is appointed by the Ontario Premier.

Among the non-governmental organizations dealing with immigration, the Ontario Council of Agencies Serving Immigrants (OCASI) has the leading role. Formed in 1978, it now acts as a collective voice for more than 200 community-based agencies that serve Ontario immigrants. Their members are organizations that provide a wide range of programs designed to help immigrants adapt to life in Ontario. Its mission is to “achieve equality, access and full participation for immigrants and refugees in every aspect of Canadian life.”<sup>93</sup> As such, the OCASI is likely to promote inclusive immigration policy that provides a lot of resources for integration and settlement programs.

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<sup>92</sup> "About the Ministry." 18th February 2010. *Ontario Ministry of Citizenship and Immigration*. 29th October 2012. <<http://www.citizenship.gov.on.ca/english/aboutus/whatwedo.shtml>>.

<sup>93</sup> "Mission Statement." 2012. *Ontario Council of Agencies Serving Immigrants*. 29th October 2012. <<http://www.ocasi.org/mission-statement>>.



There are numerous other organizations dealing with immigration related issues on a regional or community basis. The Consortium of Agencies Serving Internationally-trained Persons (CASIP) is active in the Greater Toronto Area and provides employment services to skilled immigrants and employers. The Ottawa Community Immigrant Services Organization (OCISO) provides comprehensive settlement and integration services to the Ottawa community. The Ontario Network of Employment Skills Training Projects (ONESTEP) is a province-wide umbrella organization for community-based programs offering employment services, such as career counseling, literacy, ESL and numeracy programs, sector-specific training, and job placement. The ONESTEP is a member of the nation-wide CCCBET.

Key Ontario business groups are also involved in immigration policy. For instance, the Ontario Chamber of Commerce (OCC) has partnered with the MCI to assist communities to facilitate bridging between workers and potential employers. Len Crispino, President and CEO of the OCC expressed his support of the program when he stated that it „is one way to assist companies to get the skilled labour they require more quickly and attract investment to the province, both within and outside the Greater Toronto Area."<sup>94</sup> Not only the OCC, but also numerous other business groups are actively involved in Ontario immigration policy-making: Representatives of such organizations as TD Bank Group, Toronto Financial Services Alliance, Royal Bank of Canada, and Health Sciences North have been consulted by the MCI in the past to provide their insight on various immigration-related issues.

Another type of immigration players, whose importance has grown in recent years, are Ontario municipalities. The most significant municipality is obviously the city of Toronto and the surrounding areas (sometimes referred to as the Greater Toronto Area). According to the 2006 Census data, Toronto was home to the largest number of foreign-born people (1.2 out of 2.4 million residents).<sup>95</sup> However, other municipalities surrounding the city had even higher shares of foreign-born residents, even though the absolute numbers were lower: Markham (56.5% of its residents were foreign-born), Mississauga (51.6%), and Richmond Hill (51.5%).<sup>96</sup> Municipalities are represented by the Association of Municipalities of Ontario (AMO). As articulated in the “New Deal

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<sup>94</sup> "McGuinty Government Making It Easier For Employers To Attract Skilled Immigrants." May 24th 2007. *CNW TELBEC*. 12th December 2012. <<http://www.newswire.ca/fr/story/147167/mcguinty-government-making-it-easier-for-employers-to-attract-skilled-immigrants>>.

<sup>95</sup> "Immigration characteristics." n.d. *Toronto*. 30th October 2012. <[http://www.toronto.ca/invest-in-toronto/immigration\\_char.htm](http://www.toronto.ca/invest-in-toronto/immigration_char.htm)>.

for Cities and Communities,” the federal government at the time wanted to enhance engagement with cities and therefore involved the AMO in the immigration discussion and the AMO was therefore an official partner of the federal and Ontario governments during the 2004-2005 immigration negotiations.<sup>97</sup>

### **3.2 The 2005 Canada-Ontario Immigration Agreement**

The immigration agreement was negotiated by the CIC officials (on behalf of the federal government) and by the MCI officials (on behalf of the Ontario government). On the provincial level, additional public service officials from the following agencies were involved in finalizing the agreement: Ministry of Economy, Development and Trade; Ministry of Training Colleges and Universities; Ministry of Intergovernmental Affairs; and Ministry of Community and Social Services.<sup>98</sup> After having agreed on the main point of contention (the specific funding provisions), Canada and Ontario officials signed the immigration agreement on 21<sup>st</sup> November 2005.<sup>99</sup> The result was an agreement quite dissimilar to those signed with other provinces: unlike the agreement with Quebec, it did not grant full control over the selection process and unlike the one with Manitoba and Alberta, it did not even give Ontario autonomy to run its own integration program. Furthermore, its governance mechanisms were quite extensive (at least more than those in other federal-provincial agreements): it created a Joint Steering Committee and a Management Committee. The Joint Steering Committee was to oversee the implementation of the agreement; it would meet once a year and be composed by the Deputy Minister of the CIC and Deputy Minister of the MCI. The Management Committee’s responsibility was to coordinate the implementation; it

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<sup>96</sup> 2006 Census Highlights: Factsheet 7 - Immigration and Citizenship

<sup>97</sup> "Immigration Ministers Sign Letter of Intent for a Canada-Ontario Immigration Agreement." 7th May 2004. *Government of Canada*. 30th October 2012. <[<sup>98</sup> Zammit, Andrea. "Federal-Provincial Immigration Agreements : An Analysis of Québec, Ontario and Manitoba." 1st January 2007. \*Theses and Dissertations, Ryerson University\*. 20th October 2012. <<http://digitalcommons.ryerson.ca/dissertations/343>>. Page 32.](http://news.gc.ca/web/article-eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndVl=&nid=84719&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtVl=&crtr.kw=citizenship&crtr.dyStrtVl=&crtr.aud1D=&crtr.mnthStrtVl=&crtr.yrndVl=&crtr.yndVl=></a>>.</p>
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<sup>99</sup> Joe Volpe (Minister, CIC), Janice Charette (Deputy Minister, CIC), Mike Colle (Minister, MCI), Joan Andrew (Deputy Minister, MCI).

"The Canada-Ontario Immigration Agreement." 21st November 2005. *Citizenship and Immigration Canada*. 31st October 2012. <<http://www.cic.gc.ca/english/departement/laws-policy/agreements/ontario/ont-2005-agree.asp>>.

would meet at least twice a year and be composed by representatives of the CIC and the MCI. Based on the agreement, numerous working groups were created in order to deal with the specifics.<sup>100</sup>

According to an Ontario government official who was actively involved in the negotiations, the key goal of the agreement was to harmonize the immigration services and to create a policy framework for the upcoming years.<sup>101</sup> The central focus of the agreement was clearly on integration and settlement services and the immigration itself (particularly the selection of immigrants) was of secondary importance. The federal government committed to invest the cumulative of \$920 million before 2009-2010<sup>102</sup> – these funds were to enhance funding for integration and settlement services, expand programming and increase professionalization. Unlike other provinces, Ontario did not manage to negotiate unconditional transfers. As a result, the federal government would invest money into programs which the CIC deemed appropriate and Ontario would have no say in the selection of those programs. There were two other commitments not directly connected to integration and settlement – to involve municipalities in future immigration policy-making and to launch a pilot PNP within a year of the signing of the agreement.<sup>103</sup>

The additional agreement regarding the Ontario PNP was indeed signed a year later and the program was launched in 2007.<sup>104</sup> The PNP was in many respects an initiative of the federal government and Ontario supposedly indicated it would agree to launch the program only if the federal government met its demands for settlement funding (which were much higher than what the federal government originally agreed to invest).<sup>105</sup> An Ontario immigration expert confirmed that “[t]he federal selection system was working well for the province” at the time and that the PNP “was seen as costly duplication of the federal role.”<sup>106</sup> The federal government (through the CIC) was therefore greatly involved in the creation of the Ontario PNP and it was more or less a

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<sup>100</sup> Sections 7.1.2 – 7.1.5 of the agreement.

<sup>101</sup> Government Official, Ontario Ministry of Citizenship and Immigration. Phone interview with Olga Georgievová. 14th November 2012.

<sup>102</sup> Section 8.1 of the agreement.

<sup>103</sup> Annex C of the agreement dealt with the PNP and Annex F with municipal involvement. A memorandum of understanding (MOU) with the city of Toronto was signed in September 2006 as a direct result of this commitment.

<sup>104</sup> "Ontario Launches New Pilot Provincial Nominee Program." June 2007. *CIC News*. 4th November 2012. <<http://www.cicnews.com/2007/06/provincial-nomination-feature-month-ontario-launches-pilot-provincial-nominee-program-0640.html>>.

<sup>105</sup> Seidle, page 9.

CIC-led program rather than a provincially crafted one.<sup>107</sup> As discussed earlier, the advantages of PNPs are twofold – they allow provinces to effectively react to specific labor market demands and they help to spread the benefits of immigration to areas that have not been a traditional destination. Even though Ontario was a bit reluctant towards introducing its own PNP at first, their officials realized that it could help bring immigrants to areas outside the Greater Toronto Area. According to the 2006 census, four in ten immigrants to Canada settled in Toronto.<sup>108</sup> Ontario officials wanted to reverse this trend as studies had shown that immigrant earnings reached the levels of native-born Canadians faster in small cities and that settlement in “second-tier” cities should be encouraged because immigrants can integrate much faster.<sup>109</sup> The Ontario PNP was therefore seen as an opportunity to, through greater cooperation with municipalities, disperse immigration to other areas of Ontario.<sup>110</sup>

The 2005 immigration agreement and the subsequent PNP agreement can, in many respects, be considered as a *win-win situation*. Both Ontario and the federal government gained some utility from signing it. The federal government realized that if Canada is to have a more labour-market responsive immigration system which includes at least some employer-driven programs, it cannot do it without close cooperation with provinces.<sup>111</sup> The provincial nominee programs allow provinces to select desirable economic immigrants in a much shorter time frame than the federal government would. In 2007, the average processing period for federal economic immigration application was 67 months whereas the average for provincial nominees was only 11 months.<sup>112</sup> Furthermore, the integration of provincial nominees is much faster than of those who come through the federal economic stream because provincial nominees already have an arranged employment and therefore do not use as many programs designed to help find

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<sup>106</sup> Andrews, Joan. Department of Politics and Public Administration at Ryerson University. Interview with Olga Georgievová. 5th December 2012.

<sup>107</sup> Pavlova, Radostina. "Provincial Immigration Policies: The Case of Ontario." 1st January 2008. *Ryerson University - Theses and dissertations*. 31st October 2012. <<http://digitalcommons.ryerson.ca/dissertations/118>>. Page 55.

<sup>108</sup> "Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Portraits of major metropolitan centres." 11th November 2009. *Statistics Canada*. 31st October 2012. <<http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/p24-eng.cfm>>.

<sup>109</sup> Laryea, Samuel A. "The Performance of Immigrants in Selected Canadian Cities." May 2002. *Canadian Employment Research Forum*. 31st October 2012.

<<http://www.cerforum.org/conferences/200205/papers/samuel.pdf>>. Page 15.

<sup>110</sup> Government Official, Ontario Ministry of Citizenship and Immigration. Phone interview with Olga Georgievová. 14th November 2012.

<sup>111</sup> Pavlova, page 1.

<sup>112</sup> "Evaluation of the Provincial Nominee Program." Page 58.

a job and settle in the new country.<sup>113</sup> Ontario also profited: the new PNP program constituted a useful tool that would help the province to attract immigrants with desirable skills and spread the benefits of immigration to more rural areas of Ontario. Even though the Ontario PNP program was quite modest in size at first, the federal-provincial ties have been established and future expansion made possible.

### 3.3 Ontario Immigration After 2005

Over the next few years, the PNP program, entitled *Opportunities Ontario*, grew in size and in importance. While the province received only 684 provincial nominees in 2007, this number grew almost three times to 1,708 in 2011. The program grew in size also relative to other streams of economic immigration to the province: from initial 1.27% to 3.32% of total Ontario economic immigrants. The table n. 3 summarizes the numbers of economic immigrants admitted to Ontario. When compared to other provinces, Ontario nevertheless attracts just a relatively small share of provincial nominees. In 2011, 38,420 individuals were admitted to Canada through provincial programs and Ontario nominees constituted only 4.4% of them.<sup>114</sup> This demonstrates that while *Opportunities Ontario* makes a significant contribution to Ontario, PNPs in other provinces are even more important.

**Table n. 3: Economic Immigrants Admitted to Ontario, 2007-2011.**

Year	Provincial Nominees	Total Economic Class (including dependents)	% of Provincial Nominees (out of Total Economic Class)
2007	684	53,687	1.27%
2008	1,097	59,137	1.85%
2009	1,271	54,838	2.32%
2010	1,528	69,505	2.20%
2011	1,708	51,403*	3.32%

Source: Annual Reports to Parliament on Immigration, 2008-2012. *Citizenship and Immigration Canada*.

\* This dramatic decrease in total number of Economic Class immigrants admitted to Ontario is due to the decrease of Federal Skilled Workers between 2010 and 2011. This also explains the increase in the percentage of the provincial nominees (from 2.20% to 3.32%).

<sup>113</sup> Government Official, Ontario Ministry of Citizenship and Immigration. Interview. with Olga Georgievová. 14th November 2012.

<sup>114</sup> "Annual Report to Parliament on Immigration, 2012." 31st October 2012. *Citizenship and Immigration Canada*. 4th November 2012. <<http://www.cic.gc.ca/english/pdf/pub/annual-report-2012.pdf>>. Page 21.

Another important factor to consider when evaluating the success of a PNP is the retention rate – how many of those admitted to the province as provincial nominees actually settled there. As guaranteed by Section 6 of the Canadian Charter of Rights and Freedoms, immigrants are free to take up residence in any province and are not limited to the province that nominated them. It is therefore not unusual for an immigrant to move to a different province. Unfortunately, the retention data concerning Ontario is not available yet because *Opportunities Ontario* is a relatively new program. What is, however, known from data from other provinces is that Ontario is the most frequent destination for those provincial nominees not intending to settle in their province of nomination. In 2008, there were 1,415 of such immigrants in Ontario.<sup>115</sup>

As the PNP constituted just a relatively small part of the Canada-Ontario Immigration Agreement of 2005, other factors significantly influenced how the federal-provincial relations over immigration policy evolved over time. There were numerous problems that exposed the deterioration of mutual rapport, namely /1/ the lack of follow-through on federal spending commitments, /2/ the lengthy and overly bureaucratic CIC processes, and /3/ the problematic cooperation of the three levels of government (municipal, provincial, and federal).

The first and the most problematic issue was the fact that the federal government failed to deliver what it had promised to in the 2005 agreement. Even though the Section 8.1 clearly committed the federal government to invest the cumulative of \$920 million (over the next five years), almost one-third of the funding was yet to be spent in mid-2010. Ontario officials expressed their disappointment with the pace of the spending on several occasions and Eric Hoskins, the Ontario Minister of Citizenship and Immigration, stated that “[t]he federal government has in [his] view not lived up to its funding commitment.”<sup>116</sup> The fact that such a big amount of money was not invested in Ontario as it was expected was even more puzzling considering that the federal government has always delivered on its promises when it came to other provinces, such as Manitoba and British Columbia.<sup>117</sup>

Second, some people argue that the CIC administrative processes are too lengthy and too rigid. Given that it is the CIC, and not the MCI, that approves which integration

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<sup>115</sup> "Evaluation of the Provincial Nominee Program." Page 53-54.

<sup>116</sup> Brennan, Richard J. "Ottawa short-changing Ontario immigrant programs: province." 7th April 2010. *The Star*. 6th November 2012. <<http://www.thestar.com/news/canada/article/791932--ottawa-short-changing-ontario-immigrant-programs-province>>.

<sup>117</sup> Seidle, page 12.

and settlement programs will get the federal funding, it is imperative that the CIC can respond to funding request in a timely manner. But that has not been the case. Some officials stated that too much time is spent on reviewing proposals and getting approvals from headquarters before taking decisions.<sup>118</sup> This has been heavily criticized by Ontario officials.

Third, the cooperation with municipal governments has not been as simple and productive as some had hoped. Even though the objective of the Memorandum of Understanding (signed as a direct result of the 2005 immigration agreement) was to involve Toronto in integration and settlement programs, the three levels of government (municipal, provincial, and federal) have not signed an agreement dealing with the administration and funding guidelines. Even though the CIC provides funding to local immigrant-serving agencies under the Canada-Ontario Immigration Agreement, no further collaboration has taken place.<sup>119</sup>

These problems were not, nevertheless, what caused the relations between Ontario and the federal government to deteriorate. They were its result, rather than the cause. The real source of the overall negative atmosphere can be traced to the changing nature of Canadian politics and particularly to the decline of Ontario, a once dominant province which now receives much less attention than in the past. Let us now explore this shift in bigger detail.

Ontario was traditionally the most dominant province in Canada, not only economically but also politically and culturally. Until very recently, the history of the province was closely linked with the history of the whole country and Ontario greatly profited from having such a prominent position. It has never really had to work hard on its image and promote its interests as it most often achieved what its leaders wanted without any significant effort. In his lecture *Collapse of the Laurentian Consensus*, John Ibbitson articulated a thesis according to which the direction of Canada was determined by the political, cultural, business, media, and artistic elites in Toronto, Ottawa, Montreal and other cities of the Saint Lawrence River and its watershed. For most of the Canadian history, the federal government was dominated by this Laurentian Consensus and looked upon the western provinces as “semi-colonial possessions,” depriving them of the control over their resources and refusing to grant them the same representation

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<sup>118</sup> Ibid., page 13.

<sup>119</sup> Zammit, page 36.

within the federal political institutions.<sup>120</sup> Consequently, more and more westerners felt that the Laurentian elite do not adequately represent their interests and that their voice is not heard.

The economic nature of Canada has been slowly changing, partly in response to the developments of global economy. The relative economic power of Europe has diminished while Asia's has been on the rise. As a result, the ties within the Pacific region are now more economically significant. When you couple this along with the burgeoning Alberta oil industry boom, it is easy to see the dramatically increased the economic importance of western provinces and a deteriorating effect on eastern provinces. Consequently, Ontario has not fared as well economically as the western provinces recently and some of its sectors were especially affected.

The provincial economy has traditionally been dominated by manufacturing. In general, while almost all developed countries have experienced the decline of industrial, especially manufacturing, sector, Ontario has undergone this change later than most. As a result, the slump is being felt now.

The relative economic decline of Ontario is obvious when looking at three indicators: GDP growth, unemployment rate, and funds appropriated through equalization payment. The average annual growth of Ontario economy between 2001 and 2010 was only 1.5% - by far the lowest in the country. For comparison, the western provinces<sup>121</sup> grew on average by 2.16% per year.<sup>122</sup> The transformation of Ontario economy had a negative impact on unemployment as well: While the unemployment rate in Ontario and the western provinces was roughly the same at the turn of the millennium, it has since grown apart. By 2011, 7.8% of Ontario labor force was unemployed whereas the figure for western provinces was only 5.85%.<sup>123</sup> The equalization payments tell a similar story.<sup>124</sup> Even though Ontario had always been a "have" province and the money transfers had always been from Ontario to other less economically strong provinces, the crisis of the manufacturing sector caused the

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<sup>120</sup> Ibbitson, John. "Collapse of the Laurentian Consensus." 5th December 2011. *TVO*. 6th November 2012. <<http://ww3.tvo.org/video/169387/john-ibbitson-collapse-laurentian-consensus>>.

<sup>121</sup> Manitoba, Saskatchewan, Alberta, and British Columbia.

<sup>122</sup> Calculated by the author based on data available at: "Real Gross Domestic Product, Expenditure-based, by Province and Territory ." 8th November 2011. *Statistics Canada*. 11th November 2012. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/econ50-eng.htm>>.

<sup>123</sup> Calculated by the author based on data available at: "Labour Force, Employed and Unemployed, Numbers and Rates, by Province ." 6th January 2012. *Statistics Canada*. 11th November 2012. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/labor07a-eng.htm>>.

<sup>124</sup> The equalization payment program ensures that richer provinces provide funds to poorer provinces so that they can provide basic government services.



province to become one of the “have-nots.” In 2012/2013, there were six provinces that received these unconditional payments with Ontario collecting the second largest amount of money (after Quebec).<sup>125</sup>

Canadian demographics have changed in recent years as well. Ontario is now facing some tough problems because western provinces attract more and more people (including immigrants). While the rate of population growth increased in all provinces between 2006 and 2011, Ontario’s declined slightly to its lowest level since the 1980s. In 2011 the population share of the Prairie Provinces and British Columbia combined exceeded for the first time that of the Atlantic Provinces and Quebec combined (a little above 30%).<sup>126</sup> And even though 60% of all immigrants to Canada settled in Ontario ten years ago, the number has now fallen to 40%.<sup>127</sup> Metaphorically speaking, immigrants vote with their feet and settle in the province that seems to provide the most benefits. Ontario is thus facing serious demographic problems and will need to invest more effort into attract immigrants. If it fails to do so, additional pressures will arise as the mean age of Ontario population will increase.

It should come as no surprise that these economic and demographic changes went hand in hand with new trends in political climate. Ibbitson stresses the historical significance of the federal election of May 2<sup>nd</sup> 2011 as it signaled the collapse of the Laurentian consensus – the consensus of Laurentian elites that until then had governed Canada. It was based on the results of these elections that Steven Harper was able to form a majority government, one that was fully western: A conservative coalition whose leadership was western, whose values were western, and whose supporters were western.<sup>128</sup> The federal government is now turning its attention to the west more than ever. Ontario (and its interests) is no longer in the center of federal focus.<sup>129</sup>

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<sup>125</sup> "Equalization Program." 19th December 2011. *Department of Finance Canada*. 11th November 2012. <<http://www.fin.gc.ca/fedprov/eqp-eng.asp>>.

<sup>126</sup> "The Canadian Population in 2011: Population Counts and Growth." 30th May 2012. *Statistics Canada*. 10th November 2012. <<http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-310-x/98-310-x2011001-eng.cfm>>.

<sup>127</sup> Ibbitson.

<sup>128</sup> Ibid.

<sup>129</sup> This however does not mean that the federal government has allowed the western provinces to be more involved in certain policy-making decisions. The contrary is true: in April 2012, the federal government informed Manitoba and British Columbia that it would reassume responsibility for the management of federally funded settlement programs. This was a unilateral decision and was announced without any prior consultation. More on the issue:

Alboim, Naomi and Karen Cohl. "Shaping the Future: Canada’s Rapidly Changing Immigration Policies." October 2012. *Maytree*. 10th November 2012. <<http://maytree.com/wp-content/uploads/2012/10/shaping-the-future.pdf>>. Page 21.

As a result, the once smooth relationship between Ontario and the federal government has changed. Ontario feels that it must promote its interests much more aggressively now than in the past because it feels the federal government does not always have Ontario's best interests in mind. This change of a climate is evident in most federal-provincial negotiations but has been especially apparent in the realm of immigration policy. As an Ontario immigration expert pointed out, the recent federal immigration policy does "not reflect the needs of Ontario's economy but reflect[s] more the needs of western Canada."<sup>130</sup> While the 2005 agreement is regarded by many as a win-win situation, the subsequent development of the federal-provincial relationship has rather been one of a conflict.

The original immigration agreement was due to expire in 2010. Provincial and federal officials managed to negotiate a one-year extension to March 2011 but Ontario is currently the only Canadian province without an immigration agreement. Not all provisions of the original agreement have, however, expired: the authority of Ontario over its PNP program was extended to 2015 and the Temporary Foreign Worker Annex continues indefinitely.

Ontario however has not been idle. It has spent some time reflecting on what role the province should play in immigration policy-making: In spring 2012, Charles Sousa, the Ontario Minister of Citizenship and Immigration, announced that an expert roundtable was created in order to develop Ontario immigration strategy. This move was in a way unprecedented as it signaled that the province would be much more active in the immigration arena in the years to come. The roundtable met four times over a period of three months and was composed of leaders from private sector, the settlement service sector, academia, and the non-profit sector. Furthermore, other key figures (such as Canada's leading economists, immigration researchers, and senior members of the public service from the Governments of Ontario and Canada) were consulted which insured that all stakeholders were involved in formulating the strategy.

In October 2012, the roundtable published its final report. It represented the best advice of the roundtable for developing a strategy that would align immigration to economic and social development goals of the province. The report now constitutes the best statement of Ontario's attitudes and expectations and signals the future direction of

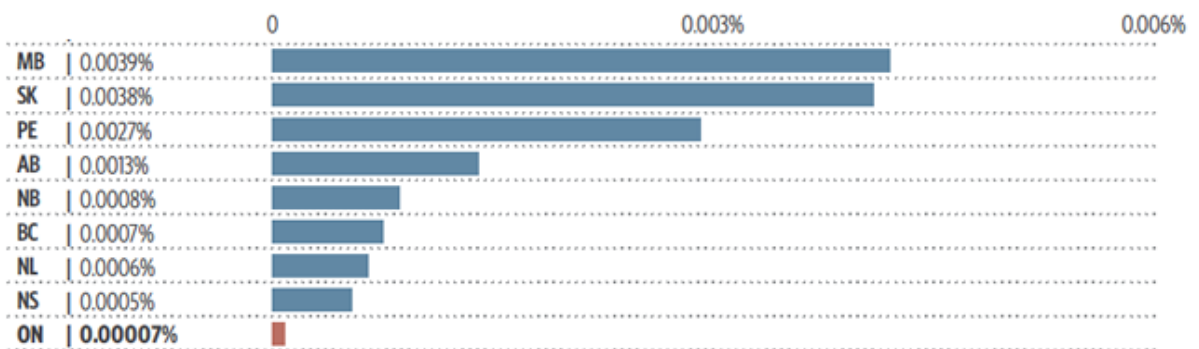
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<sup>130</sup> Andrews, Joan. Department of Politics and Public Administration at Ryerson University. Interview with Olga Georgievová. 5th December 2012.

negotiations with the federal government. Entitled *Expanding Our Routes to Success*,<sup>131</sup> the report contains 20 program recommendations regarding immigrant selection and 12 regarding settlement and integration (See Appendix n. 1 for a complete list of these recommendations). By looking at the list, it is evident that Ontario intends to put more emphasis on economic immigration - it would like to increase the annual level of immigration to at least 1% of its population (135,000 people) while ensuring that at least 65 – 70% of them are economic immigrants. Currently, a total of 99,458 immigrants coming to Ontario in 2011 but only 51.6% of them were economic immigrants.<sup>132</sup>

Two of the recommendations (#10 and #11) address Ontario provincial nominee program. The report stresses the importance of the PNP and argues that it should be used to respond to specific occupational shortages and to the needs of communities. Even though a revamped Federal Skilled Worker program should remain the main source of economic immigrants, the strategy recommends raising the cap on Ontario's PNP<sup>133</sup> to 5,000 people per year. The increase should be done in conjunction with an overall increase in immigration levels and should not result in a decrease in family or humanitarian immigrants. "Given that other provinces are now attracting a greater share of immigrants, the rationale for keeping Ontario's provincial nominee cap relatively low has disappeared," the report says.<sup>134</sup>

**Figure n. 1: PNP Cap as a Percentage of Population, by Province (2012)**



Source: *Expanding our Routes to Success*, page 28.

<sup>131</sup> "Expanding our Routes to Success: The Final Report by Ontario's Expert Roundtable on Immigration." September 2012. *Ontario Ministry of Immigration and Citizenship*. 27th October 2012. <[http://www.citizenship.gov.on.ca/english/keyinitiatives/imm\\_str/roundtable/index.shtml](http://www.citizenship.gov.on.ca/english/keyinitiatives/imm_str/roundtable/index.shtml)>.

<sup>132</sup> Annual Report to Parliament on Immigration, 2012, page 22.

<sup>133</sup> When introduced as a pilot program in 2007, the Ontario PNP had an annual target of 500 nominees. This cap was later increased to 1,000.

<sup>134</sup> *Expanding our Routes to Success*, page 28.

The report also emphasizes the need for a renewed partnership between the federal and provincial governments. But despite criticizing the fact that immigration policy at the federal and provincial levels has been shaped independently for too long, it also makes sure not to forget to remind everyone that “Ontario is the largest provincial recipient of immigrants“ and therefore the „federal immigration policy must work for Ontario or it is not working for Canada.“<sup>135</sup> This clearly shows that Ontario is willing to re-open the negotiations with the federal government but it will not compromise on its most important demands. The province will work towards the common federal goal of attracting more economic immigrants while continuing to support family reunification and providing safe haven for refugees, but it will not give in on the key requirements articulated in the report.

### ***3.4 Current situation – A Two-Level Game Perspective***

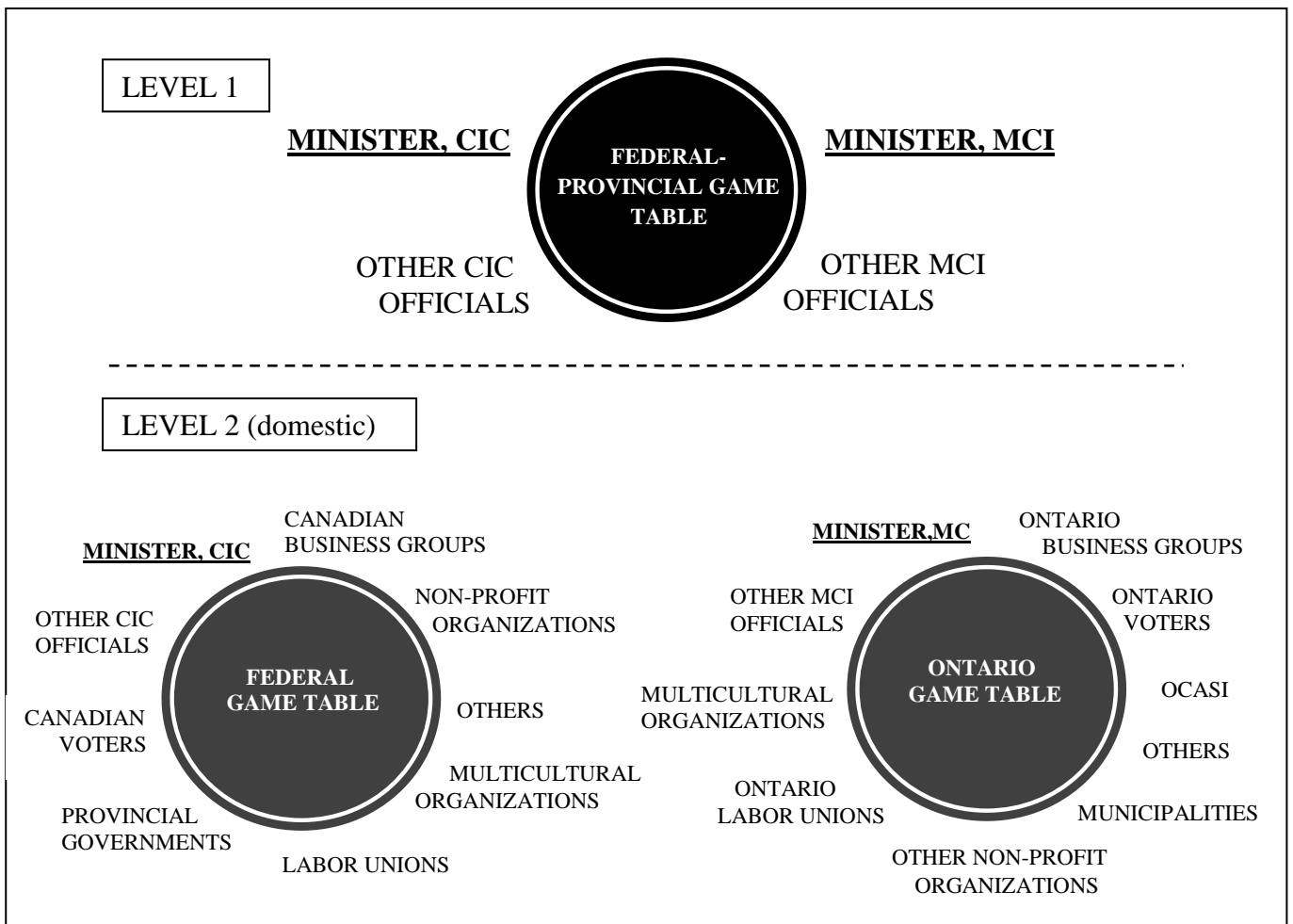
While currently not in active negotiation, both the federal and Ontario government realize that a new agreement must be reached in the near future in order to ensure the integrity of the immigration system. It would therefore be useful to look at the current situation from a game theory perspective and analyze the initial position of Toronto and Ottawa. This will be done by describing chief negotiators and their win-sets and how they need to take into account the goals of individual players present at the domestic tables.

Even though there will most definitely be many different players involved in the negotiations (as described in the previous chapters), the two most important figures will be the federal Minister of Citizenship and Immigration (currently Jason Kenney) and the Ontario Minister of Citizenship and Immigration (currently Michael Chan; the previous Minister, Charles Sousa, resigned on 9<sup>th</sup> November, 2012). These two ministers will most likely act as chief negotiators and will therefore each sit at two game tables at a time.

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<sup>135</sup> Ibid, page 43.

**Figure n. 2: Two-Level Game – Canada-Ontario Immigration Agreement Negotiations**



As with any two-level game, the process of reaching a new immigration agreement can be divided into two stages: Level 1 and Level 2 negotiations. During Level 1 negotiations, the two chief negotiators will meet at a federal-provincial game table and, together with their advisors, will try to reach a tentative agreement. During Level 2, each chief negotiator will have to defend whatever he negotiated in Level 1 and get it approved by his constituents. While Level 2 does not usually start until Level 1 is over, the two levels in this particular federal-provincial game will most likely take place simultaneously. This is due to the fact that there is no requirement of a formal ratification process; if Ontario and the federal government officials reach a new immigration agreement, it does not have to be ratified by provincial or federal legislatures. The Level 2 phase will nevertheless take place because each chief negotiator must win his constituents' approval, otherwise he risks losing his seat or not being reelected. This approval can be as informal/seemingly indirect as a public

opinion poll or the results of the next election. Ratification is hence very informal, yet necessary. In this game, there is one Level 1 table, and two Level 2 tables (one for a “domestic” Ontario game and one for a “domestic” federal game).

Let us now analyze win-sets of the Level 2 players involved. Players at the Ontario table are relatively homogenous as they are all likely to promote an immigration policy that would attract the most immigrants, especially the economic ones. Since there is a recognized need for skilled workers, both Ontario labor unions and business groups would support such a policy (see the section on Ontario immigration players). Various non-profit and multicultural organizations would join them. The players would also support a certain degree of devolution of immigration policy-making. The AMO keeps promoting greater municipal involvement and stressing the advantages of devolution of some immigration services to the municipal level.<sup>136</sup> A study of public opinion in 15 second and third-tier municipalities in Ontario confirmed high levels of municipal interest in the attraction, retention, and settlement of immigrants.<sup>137</sup> Similarly, the provincial government has also expressed its support of municipal involvement in immigration policy.<sup>138</sup> The greater involvement of municipalities will most likely result in demands for increased funding from the federal government (as the Canada-Ontario Immigration Agreement does not allow unconditional transfers, the final decision on all financial matters is Ottawa's). Ontario players all more or less agree on the direction immigration policy should follow; they might, however, disagree on the cost of a non-agreement (i.e. how strongly they want to pursue their goals). Some may want to advocate devolution more than others – in this case, players would be divided in *hawks* and *doves*.

By contrast, players at the federal game table will probably be quite heterogeneous which will make it much more challenging for the chief negotiator to satisfy all of them as their win-set will be relatively small in size. This table includes representatives of all Canadian provinces and since every single province has different

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<sup>136</sup> Since the success of integration of immigrants largely depends on their ability to find employment, to find housing, and to integrate in their new community, the AMO stresses the importance of delivering services that help immigrants deal with these types of issues on local level. Jacek, Michael and Sumeeta Kapur. "Municipal Perspective on the Ontario Immigration Strategy." 2012. *Association of Municipalities Ontario*. 13th December 2012.

<sup>137</sup> Tossutti, Livianna and Victoria: Esses. "Local Perspectives on Immigration and Diversity in 15 Ontario Municipalities." 16th May 2011. *Canadian Political Science Association*. 18th November 2012. <<http://www.cpsa-acsp.ca/papers-2011/Tossutti.pdf>>. Page 11.

<sup>138</sup> Government Official, Ontario Ministry of Citizenship and Immigration. Interview. with Olga Georgievová. 14th November 2012.

economic and demographic needs, they will most likely all have different win-sets. Even though they would probably agree on the general principle of attracting more economic immigrants (while maintaining high levels of family class immigrants and refugees), their opinion on specific provisions might differ. The federal government might also be afraid that if it promises increased funding to one province, all other provinces will demand the same. Such was the case after the 2005 Canada-Ontario agreement: A number of provinces were not content with their allocations remaining the same while Ontario's have increased considerably. Several ministers therefore made their case about "fair share" to the federal government. As a result of this pressure, the Harper government was forced to increase the CIC's budget in the following years.<sup>139</sup> This is a good example of one of the less bright sides of asymmetric federalism as it is quite challenging for a federal government to escape the spiral of increasing provincial demands. If a program is offered to one province, it is very likely that other provinces will insist on the same or better conditions thus forcing the federal government to think twice before offering a similar deal again in the future.

Besides the provincial governments, there are several other players at the Level 2 federal game table: labor unions, non-profit organizations, multicultural organizations, business groups, tax-payers, and others. They are all likely to have different win-sets as they represent a variety of interests from all across the nation. Even though the public opinion (which reflects the opinion of tax-payers) was historically quite favorable towards increased levels of immigration, the most recent opinion polls do not match this trend: Nearly three quarters of Canadians now oppose increasing immigration levels.<sup>140</sup> The attitudes of labor unions towards immigration are quite mixed. Some unions think that immigrants are taking away the jobs of local people while others are making an effort to unite immigrants, improve their labor conditions and ensure that they are given their rights.<sup>141</sup> The opinion of labor unions is likely to fluctuate slightly with changing economic conditions of the nation.

Due to these heterogeneous approaches, the size of the resulting win-set of the federal chief negotiator (the Minister of Citizenship and Immigration) will be quite

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<sup>139</sup> Seidle, page 11.

<sup>140</sup> They still, however, believe that immigration has more of a positive impact than a negative one on Canada. "Nearly Three Quarters of Canadians Oppose Increasing Immigration Levels." 5th July 2012. *CICS News*. 18th November 2012. <<http://www.cicsnews.com/?tag=public-opinion>>.

<sup>141</sup> "Fresh immigration in Alberta opposed by Labour Unions." 22nd May 2012. *Canada Updates*. 25th November 2012. <<http://www.canadaupdates.com/content/news-labour-union-alberta-are-against-more-immigrants-coming-18233.html>>.

small. This will make it more challenging to reach an agreement during the Level 2 negotiations but will, on the other hand, constitute a bargaining advantage. The resulting approach of the federal government will most likely be one promoting either a status quo or some kind of enhanced pan-Canadian immigration framework. The author bases this assumption on several pieces of evidence:

Firstly, the federal government has recently revoked certain sections of the Manitoba and British Columbia immigration agreements related to integration and settlement services. Furthermore, there were also changes in the federal funding of provincial immigration programs in these two provinces. Manitoba Premier Greg Selinger, together with other provincial officials, was angered by this decision and stated that “without funding from that agreement, the province's highly-successful Provincial Nominee Program (PNP) is dead.” On the other hand, the former federal immigration minister Jason Kenney argued back that this move would not affect basic funding at all and that it only meant the Government of Canada is “bringing these programs in line with every other province and territory outside Quebec.”<sup>142</sup> Since not enough time has passed to allow for deeper analysis, it remains to be seen how exactly this change will affect the provincial programs. Secondly, in 2010 the federal government announced that the PNPs would be capped at their then current levels in order to allow for more federal skilled workers. This move was viewed as detrimental by many provinces.<sup>143</sup> Thirdly, during an interview with the author, an Ontario government official from the MCI revealed his belief that the federal government will attempt to carry out its proposal of creating a pan-Canadian approach to immigration system.<sup>144</sup>

The approach of the current Conservative government is in direct contrast to the one held by previous administrations and to the development of immigration policy since the 1970s. While the Harper's government is generally supportive of devolution, this is not the case when it comes to immigration policy. What are the main reasons for such an anomaly? Firstly, over the last few years, Conservatives have been trying to expand their voter base by courting ethnic communities, hoping to win support of new Canadians. The effort paid off during the 2011 federal elections and since then the

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<sup>142</sup> "Manitoba Angry about Federal Immigration Changes." 13th April 2012. *CBC News*. 25th November 2012. <<http://www.cbc.ca/news/canada/manitoba/story/2012/04/12/mb-immigration-services-changes-manitoba.html>>.

<sup>143</sup> Alboim, Cohl, page 14.



Conservative Party has enjoyed the support of various immigrant groups.<sup>145</sup> This is why it is important for the federal government to remain a dominant player in immigration policy: If the devolution of immigration policy continues, the party might not be as attractive for this particular group of voters anymore and might lose this election trump card. Secondly, Conservatives generally put emphasis on security issues and they regard the control over immigration policy as a matter of national interest. Stephen Harper made it clear that to him immigration policy is closely linked to national security; he also articulated his concern about the refugee determination system (and the state it was in prior to his election in 2006) when he stated that it “threatens the integrity of the immigration system, it threatens national security.”<sup>146</sup> Under Jason Kenney, the CIC has made substantial changes to the refugee system; some claim that these changes victimize vulnerable people in need of Canadian protection and create a negative image of refugee claimants in general.<sup>147</sup> The CIC has also teamed up with Public Safety Canada in order to take action against human smuggling.<sup>148</sup> It is therefore obvious that for Conservatives, immigration policy is closely linked to the security portfolio.

After looking at the Level 2 win-sets and learning more about the pressures chief negotiators face at their domestic tables, let us now move to the Level 1 negotiations. During this part of the game, the federal pan-Canadian approach to immigration will probably stand in direct opposition to Ontario’s demands for an increased annual provincial nominee cap. Increasing the annual level for PNPs could cause further fragmentation of the immigration system. Since the federal government does not wish to devolve any more powers over immigration to provinces, it will be very difficult, if not impossible, for Ontario to negotiate their PNP cap to be raised.

The Ontario and federal ministers will have to negotiate an agreement that would satisfy both of their win-sets (see Figure n.2). Since the federal win-set is smaller than Ontario’s, the federal minister might use this as a bargaining advantage and manage to negotiate a new immigration agreement that would reflect the federal wishes. There is,

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<sup>144</sup> Government Official, Ontario Ministry of Citizenship and Immigration. Interview. with Olga Georgievová. 14th November 2012.

<sup>145</sup> Freisen, Joe and Julian Sher. "How courting the immigrant vote paid off for the Tories." 3rd May 2011. *The Globe and Mail*. 14th December 2012. <<http://www.theglobeandmail.com/news/politics/how-courting-the-immigrant-vote-paid-off-for-the-tories/article578608/>>.

<sup>146</sup> Healy, Teresa. *The Harper Record*. Ottawa: Canadian Center for Policy Alternatives, 2008. Page 152.

<sup>147</sup> Alboim, Cohl, page 31.

<sup>148</sup> "Harper Government takes action against human smuggling." 5th December 2012. *Citizenship and Immigration Canada*. 16th December 2012. <<http://www.publicsafety.gc.ca/media/nr/2012/nr20121205-1-eng.aspx>>.

however, a slight chance that the win-sets are so small that they will never overlap. In that case, no immigration agreement will be reached (see Figure n.3). Since we do not have perfect information about each win-set, we cannot say for a certainty which one of the cases is more probable.

Figure n. 2: Level 1 negotiations diagram: An agreement is reached

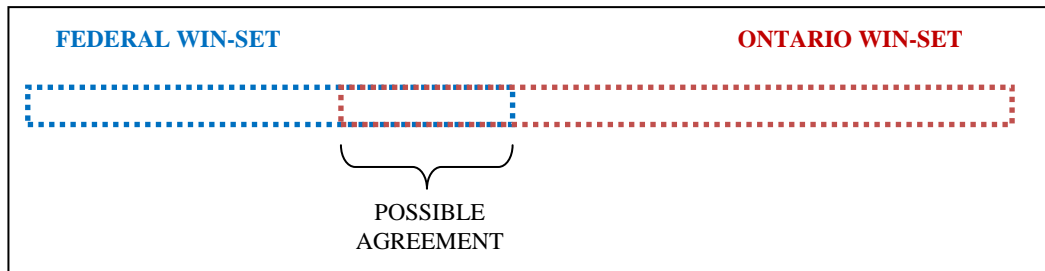
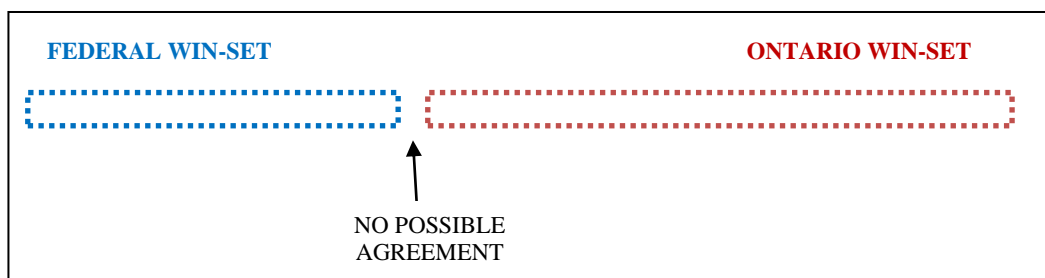


Figure n. 3: Diagram Level 1 negotiations diagram: No agreement is reached



Another interesting factor that could prove influential during the Level 1 negotiations is the political affiliation of the chief negotiators (and of the federal and provincial government in general). During the successful 2005 negotiations, both Ontario and the federal government were headed by a Liberal Party. This situation lasted only one year, when Stephen Harper was elected and formed a conservative federal government. As described earlier, the relationship between the two levels has not been as productive since. While Leslie Seidle attaches at least some importance to this political aspect,<sup>149</sup> others (especially government officials) view this as secondary.<sup>150</sup> It is however quite unlikely, that government officials (mostly civil servants) would admit this publically, even if they did feel the political divide between Conservatives and Liberals. As the conservative Harper government concentrates more on the western provinces, finding a political consensus with a liberal Ontario government might prove quite difficult. The following chart summarizes the governments of the past few years:

<sup>149</sup> Seidle, page 9.

<sup>150</sup> Government Official, Ontario Ministry of Citizenship and Immigration. Interview. with Olga Georgievová. 14th November 2012.

**Figure n. 4: Recent Ontario Premiers and Canadian Prime Ministers and their immigration ministers.**

	ONTARIO	CANADA	
1996	Progressive Conservative Premier Mike Harris (1995 – 2002) <i>Marilyn Mushinski 1995-1997</i> <i>Isabel Bassett 1997-1999</i> <i>Helen Johns 1999-2001</i> <i>Cam Jackson 2001-2002</i>	Liberal Prime Minister Jean Chrétien (1993 – 2003) <i>Sergio Marchi 1994-1996</i> <i>Lucienne Robillard 1996-1999</i> <i>Elinor Caplan 1999-2002</i> <i>Denis Coderre 2002-2003</i>	
1997			
1998			
1999			
2000			
2001	Progressive Conservative Premier Ernie Eves (2002 – 2003) <i>Carl DeFaria 2002-2003</i>	Liberal Prime Minister Paul Martin (2003 – 2006) <i>Judy Sgro 2003-2005</i> <i>Joe Volpe 2005-2006</i>	
2002			
2003	Liberal Premier Dalton McGuinty (2003 – incumbent) <i>Marie Bountrogianni 2003-2005</i> <i>Michael Colle 2005-2007</i> <i>Gerry Phillips 2007</i> <b><i>Charles Sousa 2007-incumbent</i></b>		Conservative Prime Minister Stephen Harper (2006 – incumbent) <i>Monte Solberg 2006-2007</i> <i>Diane Finley 2007-2008</i> <i>Jason Kenney 2008-2012</i> <b><i>Michael Chan 2012-incumbent</i></b>
2004			
2005			
2006			
2007			
2008			
2009			
2010			
2011			
2012			

*Note: The names of Ontario and federal Ministers of Citizenship and Immigration are shown in italics.*

As discussed in previous chapters, it is reasonable to view the 2005 immigration agreement as a win-win situation. The negotiations leading to a new agreement might not, however, be the same case. Since the aspirations of both Ontario and the federal government are somewhat opposing, it will probably not be easy to reach an agreement without giving something up. The aggregate gains of all players will most likely be more than a zero, but it will probably not constitute a typical win-win situation.

To summarize the above analysis, it is obvious that the upcoming federal-provincial negotiations regarding immigration policy will not be as smooth as they used to be in previous years. This is due to the fact that the goals of the two sides stand in opposition to each other: the federal government wishes to take a pan-Canadian

approach and keep the PNP levels as they are, while the Ontario strategy pushes for the PNP expansion and for unconditional transfers for integration and settlement programs. The relative size of Ontario and federal chief negotiators' win-sets will determine if a new immigration agreement can be reached. If the win-sets do not overlap, no agreement is possible; if they do overlap, an agreement is feasible. Since the above analysis is not, in any respect, a precise mathematical prediction, it remains to be seen which one of these two options will become reality. Based on the interviews conducted with immigration experts, the author leans towards the first scenario: the federal win-set is so small that it will not overlap with the Ontario one. As a result, an immigration agreement that would satisfy all of the provincial demands will be non-negotiable. Ontario will then stand in front of a choice: to either relax its requirements and negotiate an agreement less favorable to Ontario or insist on its requirements and remain without a federal-provincial agreement on immigration as a consequence.

## Conclusion

As we have seen, immigration-related issues are subjects of heated public debates in Canada. The Constitution Act of 1867 defines immigration as a joint responsibility of provinces and the federal government. With Canada stretching over such a large territory and being composed of different peoples, it is not at all surprising that different jurisdictions have different views regarding the nature of the immigration system. Federal and provincial governments all have diverse attitudes towards immigration policy and try to set up such a system that would most benefit their citizens and would uphold the ideals of liberalism. The interaction of the two levels of government occurs within the unique Canadian federal framework – one that combines the principle of responsible government and the federal concept of separation of powers. The resulting model of asymmetric and executive federalism influences many areas of public life, immigration policy notwithstanding. The recent decades have witnessed the devolution of powers from the federal government to provinces. Due to the above described particularities of Canadian federalism, the devolution was often quite asymmetric and applied only to selected provinces. It is therefore quite interesting to observe how individual provinces interact with the federal government and how vigorously they demand devolution.

Ontario was one of the few provinces that did not call for devolution of immigration policy at first. Since the province has traditionally been the number one destination for newcomers, it did not feel the need to demand more power over immigration policy making. This has, however, changed in recent years and Ontario is now much more actively involved. There were three main reasons for this shift in attitude: economic, demographic, and political developments in Canada and the overall decline in Ontario's position they signified. Ontario is no more a prominent province in the center of federal focus and needs to actively promote its interests. The upcoming federal-provincial negotiations over Canada-Ontario immigration agreement will shed more light on the future of immigration in the country. The agendas of the two governments are somewhat contradicting which will make the negotiations quite challenging.

The nature of executive federalism makes these federal-provincial negotiations the only way provinces can voice their demands. Due to the lack of an institution similar to the United States Senate or the judicial review, the division of power over Canadian immigration policy making is decided through a series of formal and/or informal agreements. As every province negotiates with the federal government by itself, asymmetry arises. Asymmetry in immigration policy has both its advantages and disadvantages. The benefits of devolved immigrant selection system are mainly connected to the fact that every region has unique economic and demographic needs and immigration therefore takes on different roles in different communities. Involving provinces and municipalities is regarded as especially effective in integration and settlement policy as they can better work with newcomers and help them with the challenges they are facing (finding housing, employment, integrating in the community, etc.). Furthermore, they are more likely to counter any possible anti-immigration moods in certain communities. On the other hand, devolution in an asymmetric federal system can lead to fragmentation and to immigrants being treated completely differently depending in which province they reside. Asymmetry also leads to increasing provincial demands: if a province gets something that is seen as a preferential treatment, other provinces will demand the same. It is therefore necessary to find the right balance between a completely devolved versus a completely centralized immigration system. In this respect, Ontario can be viewed as a breakpoint: if a province of this size receiving this many immigrants is allowed to determine its own immigration policy, the whole federal immigration system might collapse. Despite not being articulated publically, this may be the major reason the federal government is reluctant to increase the annual cap of Ontario PNP.

An important message the story of Ontario tells us is that immigration policy might be viewed as a tool to counteract various difficulties provinces are facing, be they of economic, demographic, or political nature. This new understanding might be quite useful even in the current debate over immigration policy in the United States and Europe. Even though these two regions have to cope with certain problems that are not as worrisome in Canada, such as high numbers of undocumented immigrants, some aspects of the debate are the same: in all three regions, discussion is underway as to what the most effective division of power over immigration policy is. Some argue that a centralized system yields the most benefits while others argue for more devolution in order to allow for greater diversity.

In the United States, some states have expressed their desire to impose their own immigration regulations. States such as Arizona, Alabama, Indiana, Georgia, and South Carolina blame the federal government for not having their best interest in mind and their legislatures have passed immigration-related laws that were mainly targeting undocumented immigrants. But due to the fact that the power over immigration is vested solely in the federal government, some of these state laws have been declared unconstitutional by the Supreme Court while others are still waiting to be reviewed by the judiciary. The distribution of power between states, the federal government, and municipalities remains a controversial issue, and only the future will tell if a certain degree of devolution is a feasible option in the United States. The example of Ontario teaches us that if a province is in an economic, demographic or political decline, it might want to assume more power over immigration to offset it. But since the recent decades have witnessed centralization of federal power in the United States, devolution is politically very controversial and it is not going to happen overnight, if it is going to happen at all. Furthermore, a lack of formal asymmetry in the United States might be another drawback as it prevents any possible diversity in the immigration arena.

The situation in the European Union is somewhat similar: some states receive disproportionately more immigrants than others and therefore place a higher priority on immigration policy. Since the adoption of Lisbon Treaty, some aspects of immigration policy are decided centrally but member states still retain quite a lot of power. The future direction of the European immigration system is, however, not yet set in stone and it is to be decided on in the near future. Unlike the United States, the European Union allows for more asymmetry which might make it easier to reach a consensus regarding immigration policy.

The main theme repeats itself in Canada, the United States, and the European Union alike: Different regions have different economic, demographic, and political aspirations and therefore have very differing (if not competing) ideas of what the goals of immigration policy should be. Some may prefer restrictive policy while others may prefer policy aiming to attract immigrants with specific skills. One thing is certain: If a region feels its needs are not fulfilled by federal immigration framework, it will attempt to assume more power over immigration policy making and formulate such a strategy that would benefit it most.

## Resumé

Diplomová práce se zabývá přistěhovaleckou politikou kanadské provincie Ontario. Kanadská ústava v přistěhovalecké politice svěřuje rozhodování společně federální i provinčním vládám. Historicky byla federální vláda v otázce přistěhovalectví dominantní a jednotlivé provincie se postupně začaly zapojovat až koncem 70. let 20. století. Specifičnost kanadského federalismu (především jeho asymetrie a převaha exekutivy) způsobila, že v současnosti se rozdělení pravomocí řídí přistěhovaleckými dohodami, které federální vláda uzavřela s jednotlivými provinciemi. Některým provinciím se podařilo vyjednat relativně velká devoluce, zatímco jiné se spokojily s dominantním postavením federální vlády. Ač bylo a stále je Ontario provincií, která ročně přijímá nejvyšší počet přistěhovalců, řadilo se spíše ke druhé skupině. Ontarijská vláda však v posledních letech začala měnit postoj a nyní se důrazněji snaží prosazovat své zájmy a vyjednat převzetí více pravomocí v přistěhovalecké politice. Diplomová práce zkoumá motivy, které vedly Ontario ke změně přístupu.

Práce je rozdělena do třech hlavních částí. První část je teoretická. Popisuje jedinečnost kanadského federálního modelu a vysvětluje, proč je vhodné danou problematiku posuzovat z pohledu teorie her: Jednotlivé provincie a federální vláda se během vzájemných vyjednávání chovají jako racionálně uvažující hráči, kteří volí jen takové strategie, jenž jim (a jejich obyvatelům) přinesou největší užitek. Následně se práce věnuje detailnějšímu popisu tzv. „teorie her dvou rovin“ (tak jak ji popsal Robert D. Putnam) a upřesňuje podmínky, za kterých je možné ji použít při analýze vyjednávání federální vlády a provincií.

V druhé části se autorka věnuje kanadské přistěhovalecké politice: nejdříve na federální a poté na provinční úrovni. Popisuje, jak se přistěhovalecká politika vyvíjela od 70. let 20. století a jakým způsobem jednotlivé provincie začaly prosazovat svůj vliv. Poté vyjmenovává nejdůležitější hráče, kteří se podílejí na utváření přistěhovalecké politiky: ministerstva, parlamentní výbory, městské rady, neziskové organizace, odbory, daňové poplatníky, aj.

Třetí část pojednává o provincii Ontario, o jejích hlavních hráčích a o jejím měnícím se přístupu k přistěhovalecké politice. Analyzuje motivy Ontaria, které ho vedly ke změně názoru, a pomocí teorie her dvou rovin mapuje výchozí pozici dvou hlavních vyjednávačů před začátkem nového vyjednávání.



V závěru práce autorka shrnuje své poznatky: Ontario změnilo svůj přístup k přistěhovalecké politice - nyní ji vnímá jako účinný nástroj k posílení svého klesajícího významu v rámci Kanady, ke kterému došlo v minulých letech důsledkem ekonomických, demografických a politických změn.

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## Appendices

### *Appendix n.1:*

#### ***Program Recommendations of Ontario's Expert Roundtable On Immigration***<sup>151</sup>

##### **Program recommendations: SELECTION**

1. Over the long-term, the level of immigration to Ontario should be increased to at least one per cent of its population, or 135,000 people per year. At least 65 to 70 per cent of these immigrants should be economic class immigrants.
2. Selection processes should be fair, transparent, and facilitate diversity in the mix of immigrant source countries.
3. Economic immigrants should be selected based on criteria that emphasize human capital, rather than current occupation.
4. A revamped Federal Skilled Worker Program should continue to be the main source of economic immigration to Ontario.
5. The priority occupations list for the Federal Skilled Worker Program should be eliminated.
6. The Governments of Canada and Ontario should work in partnership on the design and operation of the new Expression of Interest (EOI) model.
7. The Government of Ontario needs to engage employers and municipalities in identifying labour market needs and challenges.
8. Efforts should be made through the Canadian Experience Class program to retain individuals who have experience working and studying in Ontario.
9. Selecting economic immigrants based on occupational and other narrow criteria should be done only on a limited basis.
10. Ontario's Provincial Nominee Program should be used to respond to specific occupational shortages and to the needs of communities, including Francophone and rural communities.
11. The Government of Canada should raise the cap on Ontario's Provincial Nominee Program from its current level of 1,000 to 5,000 people per year.
12. The Federal Skilled Worker Backlog Reduction Pilot should be extended to 2014 and expanded.

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<sup>151</sup> "Expanding our Routes to Success: The Final Report by Ontario's Expert Roundtable on Immigration." September 2012. *Ontario Ministry of Immigration and Citizenship*. 27th October 2012. <[http://www.citizenship.gov.on.ca/english/keyinitiatives/imm\\_str/roundtable/index.shtml](http://www.citizenship.gov.on.ca/english/keyinitiatives/imm_str/roundtable/index.shtml)>. Pages 20-40.

13. The Federal Temporary Foreign Worker Program should focus on recruiting high-skilled workers and workers in the skilled trades and facilitating the rapid filling of temporary vacancies.

14. Ontario should make better use of the Temporary Foreign Worker Agreement to accomplish its objectives under recommendation #13.

15. Ontario needs more information about temporary foreign workers.

16. Protections for temporary foreign workers should be strengthened to prevent abuse and unsafe working conditions.

17. The issue of undocumented workers should be addressed by both the Governments of Ontario and Canada.

18. The Government of Canada should maintain and strengthen the Live-In Caregiver Program.

19. Ontario should attract and retain more international entrepreneurs.

20. The Government of Ontario should develop a marketing and promotion strategy to attract immigrants with high levels of human capital to the province.

### **Program recommendations: SETTLEMENT AND INTEGRATION**

21. A one-window, client-centered, "no wrong door" approach should be developed for all government services important to immigrants.

22. Pre-arrival information and services should be expanded.

23. Programs that target immigrants' networks to enable the effective integration of new immigrants - particularly family, friends, and faith groups - should be supported in Ontario.

24. Criteria for accessing settlement and integration programs should be coordinated across funders and service providers to ensure that temporary foreign workers, foreign students, refugee claimants, and new Canadian citizens can access these services.

25. Mentorship, internship, and bridge training programs should be expanded in Ontario.

26. Settlement and integration services should be measured and assessed based on immigrant outcomes.

27. Employers and communities need to be champions in the integration of immigrants.

28. Federal and Ontario government supports for refugees should reflect the need to provide longer-term services to many within this group.

29. The Government of Canada should continue to honour its traditional commitment to refugee claimants, including continuing to fund the Interim Federal Health Program.

30. The Ontario government should continue to work with professional regulatory bodies to improve the assessment and recognition of immigrants' qualifications, including academic credentials, practical training, and experience.

31. The Government of Ontario should ensure that aggrieved applicants for licensure have appropriate recourse.

32. The federal and Ontario governments should work together to ensure that the new federal credential and language assessment system is aligned with licensing bodies and not misconstrued as licensure.