

Investment Migration Working Papers

The Re-Invention of Investment Immigration in Canada and Constructions of Canadian Citizenship

Miriam Cohen

IMC-RP 2017/2

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The Re-Invention of Investment Immigration in Canada and Constructions of Canadian Citizenship

Prof. Miriam Cohen¹

ABSTRACT: This article discusses the evolution of investment immigration in Canada and its impacts upon constructions of Canadian citizenship. Canada has led the way in providing permanent residency to foreign individuals in exchange for an investment. While investor immigration programs in Canada have gone through some changes over the years since it was first established in 1986, foreign investors have always had to meet certain economic criteria; the common denominator has always been a large sum of investment in exchange for the right to reside in Canada, and eventually become a Canadian citizen. There have been some recent developments in investment immigration in Canada which bring to the fore important questions, including how investment immigration is construed in Canada, how it impacts Canadian citizenship values, and ultimately how immigration laws and policies will shape the future of Canada's economy and society. While investment immigration has existed in Canada for some time—and is now a global phenomenon—the topic remains under-theorised and understudied in Canada. In light of changes to investment immigration in Canada, this paper examines the circumstances under which investor-type immigration is justifiable, and ultimately desirable, in the Canadian context. Through an examination of the historical evolution of investment immigration in Canada and interdisciplinary scholarship, this article questions the phenomenon and argues that this kind of immigration devalues Canadian citizenship by construing it as a commodity to be traded for the right amount of investment.

KEYWORDS: Migration; investment immigration; Canadian citizenship; permanent residency; investor-type immigration; Immigrant Investor Venture Capital; pilot programme

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1. Introduction

Canada has led the way in providing permanent residency, which may eventually lead to obtaining Canadian citizenship to foreign individuals seeking to immigrate to Canada in exchange for investment.² While investor immigration programmes in Canada have gone through some changes over the years since it was first established in 1986, foreign investors have always had to meet certain economic criteria; the common denominator has always been a large sum of investment in exchange for the right to reside in Canada, and eventually the ability to become a Canadian citizen. With some recent changes to investment immigration in Canada, the time is ripe to engage with Canadian investment immigration policies and ask whether investor-type immigration is justifiable in the Canadian context.

Immigration is part of the fabric of Canadian society and is a crucial topic in Canadian politics. Having been a pioneer in investment migration globally (where foreign investors immigrate through financial contribution),³ the Canadian Federal Government has recently implemented a new pilot programme for immigration through investment, the ‘Immigrant Investor Venture Capital (IIVC) Pilot Programme’ (the ‘Programme’ or the ‘IIVC Programme’).⁴ The IIVC Programme has made significant changes to previous investment immigration rules, including the total amount of investment required and the timeframe that the investment is locked in for. Through the IIVC Programme, investors with a net worth of CAD 10 million or more, and who

² Distinct from other countries, Canada’s investment immigration is not a citizenship-through-investment programme; investor immigrants can become permanent residents and may later apply for citizenship following the same process as other permanent residents.

³ See David Ley and Audrey Kobayashi, ‘Back to Hong Kong: Return Migration or Transnational Sojourn?’ (2005) 5(2) *Global Networks*, 111–27.

⁴ See s. 12 *Immigration and Refugee Protection Act*, SC 2001, c 27; *Ministerial Instructions Respecting the Immigrant Investor Venture Capital Class*, 14 January 2015. At the time of writing in 2017, the application period for the pilot IIVC Programme is closed and it is not accepting applications. It is unclear when or if the pilot Programme will be reopened.

are willing to make ‘an at-risk investment which is not guaranteed of CAD 2 million in the Immigrant Investor Venture Capital (IIVC) Fund’, can apply to become permanent residents.⁵ Thus, under certain circumstances, foreign investors can effectively immigrate to Canada in exchange for a fee, an investment. But should Canadian citizenship be for sale? How is investment immigration related to constructions of Canadian citizenship? These recent developments bring to the fore important questions, including how investment immigration is construed in Canada, how it impacts Canadian citizenship values, and ultimately how immigration laws and policies will shape the future of Canada’s economy and society. While investment immigration has existed in Canada for some time (and is now a global phenomenon), the topic remains under-theorised and under-studied in Canada. With the recent changes to the Federal investment immigration programme, this is a crucial time for further analysis to inform future developments.

In light of these questions, this paper has the object of tracing the evolution and recent changes in investment immigration in Canada. The backdrop of this paper is an inquiry into whether Canadian citizenship should be a commodity essentially traded for an investment. Drawing on comparative and interdisciplinary research in this field, this paper analyses critical accounts of investment migration in the literature and traces the rationale for the IIVC Programme. Through an examination of the historical evolution of investment immigration in Canada and interdisciplinary scholarship, this article argues that investment immigration devalues Canadian citizenship by putting a price tag on it, and construes Canadian citizenship as a commodity ready to be traded for the right amount.

Part 2 of this paper provides an overview of the Canadian immigration legal framework which will serve as the background for the analysis that will follow. Part 3 reviews the evolution of Canadian investment immigration laws, juxtaposing the new and old Federal Programmes to

⁵ It is important to note that having permanent resident status is not equivalent to being a Canadian citizen. One of the main differences is that permanent residents do not have the right to run for political office, nor do they have the right to vote in elections. Furthermore, permanent residents have ‘the right to enter and remain in Canada, subject to the provisions of the [IRPA]’. Interestingly, Canada’s constitution does not contain a definition of citizenship and it does not provide for the means by which citizenship may be acquired or lost. Significantly, although it is necessary that an immigrant become a permanent resident prior to applying for Canadian citizenship, there are a number of additional requirements that must be met. These include, but are certainly not limited to, passing the citizenship test, taking the citizenship oath, demonstrating adequate knowledge of English or French, and meeting the residency requirements.

the Quebec Programme. Part 4 looks at the global investment migration phenomenon and juxtaposes the Canadian Federal IIVC Programme with its counterparts in other countries. Part 5 looks at some of the legal issues raised by the Programme in the context of a broader discussion of immigration policies.

2. Canadian Immigration Legal Framework: Different Categories of Immigrants and the Economic Immigrant

Immigration is a cornerstone of Canadian society: not only does it populate a country with a vast land mass and resources, but it also brings diversity and prosperity into Canada.⁶ Immigration has always been part of Canadian history and immigrants contribute to the multicultural society that Canada is today. Given Canada's stated goal to honour its humanitarian traditions as well as its aspiration to foster a stronger economy, immigration will undoubtedly play a fundamental role in shaping the Canadian ethos in years to come.⁷

The Canadian immigration legal system is far from straightforward, however. Its intricacies stem from the Canadian Constitution Act of 1867,⁸ section 95 of which provides that jurisdiction over immigration should be shared among the federal, provincial and territorial governments.⁹ That said, authority over immigration is not distributed equally: a provincial or territorial law related to immigration deemed to be 'repugnant to any Act of the Parliament of Canada' has no force or effect.¹⁰ Additionally, section 91(25) of the Act extends legislative power over 'naturalization and aliens' to the Federal Government. Although the Canadian judiciary is still filling out the exact contours of this phrase, it is clear that the federal government has jurisdiction, *inter alia*, over the process of citizenship.¹¹ In this respect the

⁶ Ronald G. Atkey, *Canadian Immigration Law and Policy: A Study in Politics, Demographics and Economics* (1990) 16 *CAN.-U.S. L. J.* 59, 60–65.

⁷ Chris Alexander, 'From Supply to Demand-driven in Immigration', *Policy – Canadian Politics and Public Policy* November 2014) 34, 35 <http://policymagazine.ca/pdf/10/PolicyMagazineNovember-DecemberAlexander-14.pdf>.

⁸ 30 & 31 Victoria, c. 3 (UK) ('the Act').

⁹ Jamie Chai Yun Liew and Donald Galloway, *Immigration Law*, 2nd ed (Toronto: Irwin Law, 2015) at 32.

¹⁰ *Ibid.*

¹¹ *Ibid* at 33, 34.

Federal Government has ultimate responsibility for immigration matters, though the provinces undoubtedly have an appreciable influence.

Perhaps the clearest manifestation of this coexistent jurisdiction over immigration is the dual system which exists between the province of Quebec and the Federal Government. The Federal Government and the Province of Quebec signed in 1991 the *Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens*¹² which gives Quebec the exclusive responsibility for selecting immigrants to the province.¹³

Canada's immigration legal framework is dictated primarily by the *Immigration and Refugee Protection Act* ('IRPA').¹⁴ In 2002 this statute replaced the former *Immigration Act*, altering various aspects of Canada's immigration system such as the composition of the Immigration and Refugee Board and the configuration of the points-based screening system.¹⁵ Although the general structure of Canada's immigration scheme has remained unchanged since the implementation of the IRPA, many of the programmes which serve as a gateway to Canada have been subject to extensive revisions.¹⁶ This is exemplified in part by the numerous changes that Canada's Federal Immigrant Investor Programme has undergone since its inception, as will be detailed in Part II.

The overall purpose of the IRPA – operating in conjunction with the *Immigration and Refugee Protection Regulations* ('Regulations') – is to regulate who can come to Canada and under what immigration status. This entails the delineation of the administrative process for decision-making pertaining to immigration and deportation.¹⁷ It includes an explanation of the rights and obligations bestowed upon immigrants.¹⁸ The IRPA also creates a number of immigration-related offences, such as people smuggling and passport fraud, and outlines enforcement

¹² Hull, Québec: Employment and Immigration Canada, 1991. Print.

¹³ This unique relationship will be explored further in the following sections of this paper.

¹⁴ S.C. 2001, c. 27.

¹⁵ Catherine Dauvergne, 'Evaluating Canada's New Immigration and Refugee Protection Act in its Global Context' (2003) 41 *Alta L. Rev.* 725, at 726.

¹⁶ Naomi Alboim and Karen Cohl, 'Shaping the future: Canada's Rapidly Changing Immigration Policies' (October 2012) *Maytree* 1, at 2.

¹⁷ *Ibid.* at 38-40.

¹⁸ Lynn Fournier-Ruggles, *Canadian Immigration and Refugee Law for Legal Professionals*, 2nd ed (Toronto: Emond Montgomery, 2013), at 23.

procedures. Additionally, section 12 of the IRPA establishes three overarching categories by which a candidate may be chosen to immigrate to Canada as a permanent resident.¹⁹ The IRPA *Regulations* build upon this and set out a number of discrete subcategories (i.e. specific immigration programmes).

The first category is commonly referred to as the family reunification class. This programme allows Canadian citizens and permanent residents to sponsor family members to come to Canada. In order to immigrate under the family class, there is an application process which must be successfully completed by both the sponsor and the foreign national. For the sponsor, proof of financial stability is required.²⁰ Other restrictions are also imposed on sponsors; for example, residency requirements and an absence of certain prior criminal convictions.²¹ For the foreign national applicant, the legal definition of ‘a member of the family class’ as contained in the IRPA *Regulations* must be met.²²

The second category is the refugee/humanitarian route. Essentially, Convention refugees or those in similar circumstances may be permitted to immigrate to Canada under this category.²³ A number of requirements for successful immigration are detailed by section 139 of the IRPA *Regulations*.²⁴ For example, there must be no reasonable prospect ‘of a durable solution in a country other than Canada’.²⁵ Also, the ‘foreign national must have an approved sponsorship application, be included in a governmental resettlement programme or have sufficient funds to provide’ for their own needs.²⁶

The third category is the economic stream, under which there are a number of immigration programmes, including the investment immigration programmes. The IRPA explains that this class is designed for those who have the ‘ability to become economically established in

¹⁹ Lorne Waldman, *Canadian Immigration & Refugee Law Practice* (Markham: LexisNexis Canada, 2012), at 64.

²⁰ Lynn Fournier-Ruggles, *Canadian Immigration and Refugee Law for Legal Professionals*, 2nd ed (Toronto: Emond Montgomery, 2013), at 164.

²¹ *Ibid.* at 164, 165.

²² *Ibid.* at 171.

²³ *Ibid.* at 76.

²⁴ *Ibid.*

²⁵ *Ibid.* at 77.

²⁶ *Ibid.*

Canada’.²⁷ There are several subcategories within the economic class, including skilled workers, provincial nominees, the Canadian experience subcategory, and business immigrants.

Importantly, the business immigrant subcategory is itself divided by the IRPA *Regulations* into further subcategories. These include self-employed persons, entrepreneurs and investors.²⁸ The central requirement for those applying to the self-employed class is that they have experience in cultural activities, athletics or farm management. They must also intend to contribute in one of these areas upon settling in Canada.²⁹ In 2014 the Federal Government terminated both the Immigrant Investor Programme and the Entrepreneur Programme. Similarly, the Start-Up Visa Programme replaced the Entrepreneur Programme in 2013. To qualify for the Start-Up Visa, an applicant must have a ‘viable business proposal’ and secure approved funding.³⁰

Citizenship and Immigration Canada (‘CIC’) releases statistics capturing the number of permanent residents who immigrate to Canada annually. Since 2005, Canada has admitted between 236,753 and 280,687 immigrants each year. In 2014 a total of 260,404 permanent residents were permitted to enter Canada. This included 66,661 immigrants in the family category, 165,089 economic immigrants, 23,286 refugees, 5,367 other immigrants, and 1 for which the category was not stated.³¹ As can be gleaned from these numbers, the majority of immigrants who settle in Canada do so under one of the economic immigration programmes.

²⁷ *Immigration and Refugee Protection Act*, SC 2001, c 27, s. 12.

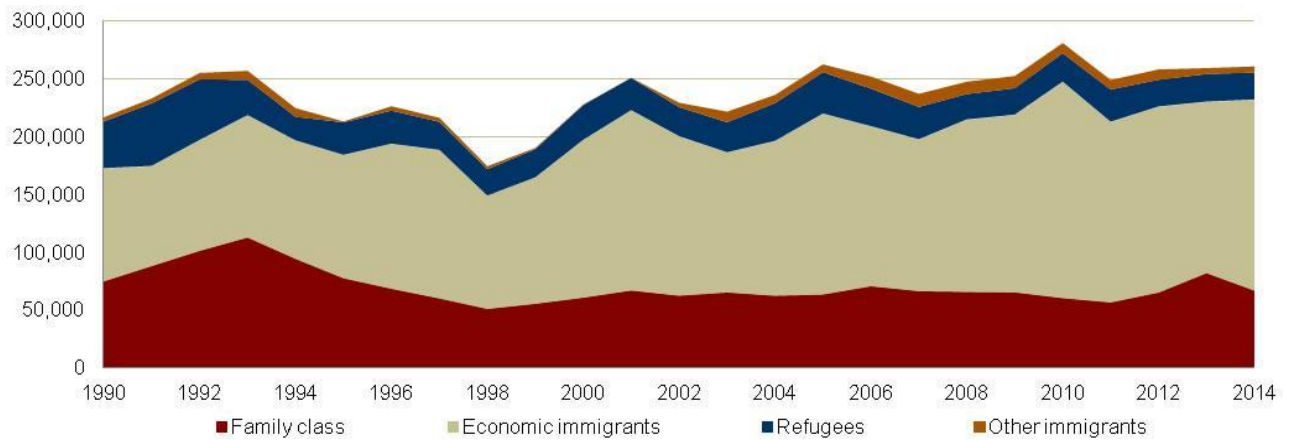
²⁸ *Supra* note 13 at 70.

²⁹ Emily Carasco et al., *Immigration and Refugee Law* (Toronto: Emond Montgomery, 2007) at 352.

³⁰ *Supra* note 2 at 36.

³¹ <http://www.cic.gc.ca/english/resources/statistics/index.asp>

Table 1: Permanent residents by category from 1989–2014³²



3. The Evolving Faces of Investment Immigration in Canada

Immigration policy has historically been economically driven.³³ This has not changed much – a recent report states that economic immigrants account for the majority of the immigrants who come to Canada every year.³⁴

In 1976 the *Immigration Act* set Canada's Business Immigration Programme in motion.³⁵ The purpose of this enactment was to generate an influx of business immigrants in the hope of accelerating economic growth across Canada.³⁶ Initially, the Business Immigration Programme included only two categories of immigrants: entrepreneurs and the self-employed.³⁷

³² CIC, *Facts and Figures 2014 – Immigration Overview: Permanent Residents*, available at: <http://www.cic.gc.ca/english/resources/statistics/facts2014/permanent/01.asp>

³³ Alan G. Green and David E. Green, 'The Economic Goals of Canada's Immigration Policy: Past and Present' (1999) 25(4) *Canadian Public Policy – Analyse des Politiques* 425.

³⁴ *Supra* note 31.

³⁵ James DeRosa, 'The Immigrant Investor Programme: Cleaning Up Canada's Act' (1995) 27 *Case W Res J Intl L* 359, at 359.

³⁶ Hugh Grant and Ronald Oertel, 'Diminishing Returns to Immigration? Interpreting the Economic Experience of Canadian Immigrants' (1998) 30(3) *Can Ethnic Studies* 56, at 67, 68.

³⁷ Lloyd Wong, 'Canada Business Migration to Australia, Canada and the United States: State Policy and the Global Immigration Marketplace' (2003) 12(3) *Asia Pac Migration J* 301, at 311.

In 1986 the investor category was added, seeking to draw significant investment capital to Canada,³⁸ though it was not until 1993 that the investor class ‘was formalized by way of regulations’.³⁹ Prior to this, the programme did not have a statutory underpinning.⁴⁰ In essence, the regulatory modifications made in 1993 sought to make existing guidelines pertaining to the programme enforceable.⁴¹ Certain forms of real estate investment were also restricted.⁴² Furthermore, some attempt was made to overcome the flaws in government monitoring practices related to the programme.⁴³ For example, penalties for fund managers who did not comply with the *Immigration Act* were prescribed.⁴⁴

In its early years, the Federal Investor Immigrant Programme required applicants to have a net worth of at least CAD 500,000, obtained by the immigrant investor’s own endeavours.⁴⁵ A minimum investment of CAD 250,000 for three years (five years after 1990) was also mandatory. However, it should be noted that a three-tiered investment structure was in effect at this time.⁴⁶ As such, the precise amount required to be invested was contingent upon which province the money was being invested into. Applicants were also required to have successfully operated, controlled or directed a business or commercial venture.

From 1 April 1999, fairly significant changes to Canada’s Federal Immigrant Investor Programme came into effect.⁴⁷ The purpose of these changes was, *inter alia*, to augment the economic gain for Canada while simultaneously reducing fraud and the operating expenses associated with carrying out the programme.⁴⁸ Additionally, it was desired that the provinces should have more autonomy over how to utilise the investment money.⁴⁹ The specific changes to the programme included an increase in the minimum amount required to be invested (i.e.

³⁸ *Supra* note 23 at 351.

³⁹ David Taniguchi, ‘Buying or Bringing in Talent’ (1994) 19 *Law Now* 13, at 14.

⁴⁰ *Supra* note 30, at 384.

⁴¹ *Ibid* at 363.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid* at 386.

⁴⁵ *Supra* note 34, at 359–370.

⁴⁶ *Ibid* at 370.

⁴⁷ Martin Berger, ‘Canadian Immigrant Investor Programme’ (2000) 25 *Intl Leg Practitioner* 27.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

CAD 400,000 for all investors, regardless of province or territory of investment).⁵⁰ Additionally, the minimum net worth for investors increased to CAD 800,000.⁵¹ Changes were also made to how investment money was collected and held.⁵² Rather than investing in a venture capital fund administered by the provincial government, ‘a single federal window’ administered by the CIC was established.⁵³

More changes were made to Canada’s Immigrant Investor Programme in 2010. The purpose of these changes was to make Canada more competitive with other countries offering similar programmes.⁵⁴ Specifically, applicants were required to have a legal net worth of at least CAD 1,600,000 and invest CAD 800,000 for five years.⁵⁵

Finally, in 2014 the Federal Immigrant Investor Programme was terminated and replaced by the IIVC Programme.⁵⁶ As a result, an amendment to the IRPA on 19 June 2014 (s. 87(5)(1) IRPA) ‘terminate[d] all visa applications by foreign nationals under the investor [...] class which had not met certain requirements by February 11, 2014’. This was certainly a radical move which led to some cases before the Federal Courts challenging the constitutionality of this amendment.⁵⁷

Given the novelty of the Programme, it has received very little scholarly attention to date. Under the Programme, an applicant must allocate CAD 2 million to the Immigrant Investor Venture Capital Fund for approximately 15 years.⁵⁸ From there, the money is invested in ‘innovative Canadian start-ups with high growth potential for the benefit of Canada’.⁵⁹ BDC Capital (the investment arm of the Business Development Bank of Canada) is responsible for

⁵⁰ *Ibid.*

⁵¹ *Supra* note 23, at 351.

⁵² *Supra* note 46, at 27.

⁵³ *Ibid.*

⁵⁴ <http://www.cic.gc.ca/english/department/media/backgrounders/2010/2010-11-10a.asp>.

⁵⁵ *Supra* note 11, at 218.

⁵⁶ Catherine Costigan, Sabine Lehr and Sheena Miao, ‘Beyond Economics: Broadening Perspectives on Immigration to Canada’ (2016) 48(1) *Can Ethnic Studies* 19 at 21.

⁵⁷ See e.g. *Dhaliwal v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1010; *Jia v Canada (Minister of Citizenship and Immigration)*, 2014 FC 596, Cf. *Tabingo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 377.

⁵⁸ IRPA, *Ministerial Instructions Respecting the Immigrant Investor Venture Capital Class*, 14 January 2015.

⁵⁹ *Ibid.*

managing the fund. Significantly, the investment that applicants must make is ‘at-risk’ and ‘non-guaranteed’.⁶⁰ This means that because the proceeds received from the fund are contingent upon its performance, an applicant could lose some or all of their investment.

In addition, the Programme requires applicants to have a net worth of at least CAD 10 million. Importantly, the applicant’s wealth must have been ‘acquired through lawful business or investment activities’.⁶¹ If an applicant proceeds to the second stage of review, they will be required to obtain a due diligence report from an acceptable service provider (to confirm the legitimacy of their net worth). Furthermore, candidates applying to the new investor programme must reach a specified level of proficiency in English or French. The Canadian Language Benchmarks (CLB) is the ‘Canadian standard used to describe, measure and recognize [...] [the] language ability of [...] immigrants’.⁶² Investor immigrants are required to attain at least Canadian Language Benchmark 5 in English or *Niveau de compétence linguistique canadien 5* in French.⁶³ Finally, applicants to the Programme must have a ‘Canadian post-secondary degree, diploma or certificate of at least one year, or the foreign equivalent as validated by an Educational Credential Assessment (ECA)’.⁶⁴ Importantly, those who can demonstrate a net worth of at least CAD 50 million may be exempted from this requirement.⁶⁵

It is apparent from all the different versions described above that the federal investment immigration programme in Canada has been reinvented many times since its inception in 1986. The newest face of federal investment immigration has, however, multilevel requirements which were not part of previous versions. Simply from this brief description, it is apparent that there are many hoops to jump through before an applicant can qualify as an investor immigrant. This new version of the federal programme is not in line with other investment immigration programmes around the world or within Canada (in Quebec), as it sets out a complex scheme

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.* See also, http://www.cic.gc.ca/english/helpcentre/glossary.asp#canadian_language_benchmarks.

⁶³ *Ibid.* See also, <http://www.cic.gc.ca/english/immigrate/business/iivc/eligibility/language-testing.asp>.

⁶⁴ *Ibid.* See also, <http://www.cic.gc.ca/english/immigrate/business/iivc/assessment.asp>.

⁶⁵ According to the CIC website, applications for the Immigrant Investor Venture Capital Pilot Project are not being accepted by the Department at the time of writing. No further details are provided. <http://www.cic.gc.ca/english/immigrate/business/iivc/apply.asp>.

which makes it less competitive in the market. The next section overviews investment migration globally to compare and contrast with the IIVC Programme to set the context in which it exists and operates.

4. The Global Investment Migration Phenomenon and the Demise of the Canadian Federal Programme

While Canada led the way in investment migration globally in 1978, there are currently numerous investment immigration programmes worldwide. Although, as explained above, the federal IIVC Programme is still in its ‘pilot’ stage, it is already apparent that it has not been attractive to potential investors. The reported expectation was to select sixty from the pool of applicants; however, it is claimed that there were less than ten applications processed.⁶⁶

Part of the reason for this is competition from other investment immigration possibilities: with other programmes available, investors are tempted to select other destinations with more appealing conditions (e.g. climate, economics, residency requirements, etc.). In this light, in order to assess investment immigration in Canada, and the IIVC more specifically, it is relevant first to discuss some of the main characteristics of other selected investment immigration programmes.

4.1 The global trend of investment migration

Investment migration has become a global market, with many countries having some kind of investment immigration programme, trading either residency or citizenship for an investment sum. Investors can now select where to invest in and immigrate to from a wide range of options, on the basis of the requirements of the specific programme and the advantages of investing in the host country. Investment immigration has become a global market, and a competitive one, with countries looking around to assess how their immigration programmes compare.

⁶⁶ Colin Singer, ‘Canada Losing Wealthy Immigrant Investors’, Keynote Speech, Immigration Summit, Ottawa, April 5, 2016.

The models of investment immigration vary depending on the country, at two ends of a spectrum: from directly granting citizenship in exchange for investment, to granting residency with a required minimum presence before eligibility for citizenship. The types of investments required also vary from: a lump-sum payment to the Government (for example in Caribbean Islands such as St. Kitts and Nevis, Dominica and more recently in Malta), a low interest or zero interest government bond (such as Canada's former federal programme), and ordinary interest-bearing government bonds (New Zealand and Australia).⁶⁷ There are also programmes in which investors may qualify by making an investment in private sector businesses. Such programmes include the Netherlands, Singapore and the United States.⁶⁸ The aim of such programmes is usually to boost the economy by creating jobs. Since the economic crisis in late 2000, some countries such as Spain, Portugal and Latvia have even started to accept investments in real estate as qualifying for immigration.⁶⁹

The requirements also vary significantly depending on the host country. Some countries have an age limit for investors and a minimum residency requirement. There are however countries that impose very minimal residency requirements, which raises the question of whether investors are indeed immigrating to the host country.⁷⁰ The competition also comes from within Canada.

4.2 Competition from within: the Quebec investment immigration programme

As explained above, under the new IIVC Capital Pilot programme, an applicant must devote CAD 2 million to the Immigrant Investor Venture Capital Fund for approximately fifteen years. From there, the money is invested in 'innovative Canadian start-ups with high growth potential for the benefit of Canada'. Significantly, official sources clearly state that the investment is 'at-risk' and 'non-guaranteed'. In contrast to the previous investment immigration programme as well as the Quebec investment programme, the pilot IIVC Programme is highly risky, with the

⁶⁷ Madeleine Sumption and Kate Hooper, 'Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration', *Migration Policy Institute*, October 2014, at 6–11.

⁶⁸ *Ibid.*

⁶⁹ Visas for sale.

⁷⁰ *Ibid.*

potential for investors to lose their entire investment capital. On the flip side, it is also unpredictable how well the Capital Fund may perform. This means that because the proceeds received from the fund are contingent upon its performance, applicants could lose some or all of their investment.

When the Federal government terminated Canada's Immigrant Investor Programme in 2014, Quebec's Immigrant Investor Programme was not affected due to the Canada-Quebec Accord discussed above. To immigrate under the Quebec Immigrant Investor Programme, application must be made to the Quebec government for a certificate of selection (*Certificat de sélection du Québec*). If this certificate is successfully obtained, then an application for permanent residence must be submitted to Citizenship and Immigration Canada (CIC).

There is a distinction to be made between selection and admission. Simply put, Quebec is responsible for selection, Canada is responsible for admission. Someone wishing to immigrate to Quebec must be selected *and* admitted. Responsibility for selection means that Quebec gets to establish the criteria for choosing applicants. Responsibility for admission means that the Federal Government has the final say on whether someone can come to Canada (i.e. by carrying out security/health checks, etc.).

In order to apply under the Quebec Immigrant Investor Programme, an applicant must have 'net assets of at least \$1,600,000'. These assets may belong solely to the principal applicant or they may be held with an 'accompanying spouse'. The wealth must not have been acquired illegally. Furthermore, any donations received 'less than six months before the date on which the application was filed' are excluded from the count. Quebec's Immigrant Investor Programme also requires applicants to 'sign an agreement to invest \$800,000 with a financial intermediary (broker or trust company) authorized to participate in the Investor Programme'. Unlike Canada's IIVC Programme, the investment (CAD 800,000) that applicants must make (for a five-year term) 'is *guaranteed* by the Gouvernement du Québec'. The investment money is 'used to finance two Québec business assistance programmes, [the] Business Assistance-Immigrant Investor Programme and [the] Employment Integration Programme for Immigrants and Visible Minorities'. Once the five-year term is completed, the investor is reimbursed the

amount they invested. Significantly, no interest is accrued on the invested capital during the five-year term.

Applicants to Quebec's Immigrant Investor Programme must also have 'experience in management'. Other factors taken into consideration during the assessment of each application (for a certificate of selection) include the applicant's age, and the nature and duration of their professional training and language skills. Last but not least, applicants must also plan to reside in Quebec.

Unlike the federal IIVC Programme, which is currently not accepting applications (in 2016), Quebec's investor programme is planning to accept 1900 applications beginning on 30 May 2016. A distinction is made for applicants who 'have advanced intermediate knowledge of French demonstrated by a standardized test recognized by the Ministère', who are not subject to the 1900 applicant cap. Furthermore, these particular applicants have an extended deadline (i.e. they can apply at any time until 31 March, 2017). They will also receive priority when applications are evaluated.⁷¹

On the note of applicant caps, it is worth noting that the Quebec Immigrant Investor Programme limits the number of applications from certain geographical areas. More specifically, no more than 1300 applications (out of 1900 total available spots) may be accepted during the coming intake period 'from foreign nationals from the People's Republic of China, including the administrative regions of Hong Kong and Macao'.⁷²

Quebec's current Immigrant Investor Programme is very similar to the former federal Immigrant Investor Programme (which was terminated in 2014). Both the personal net worth and investment dollar amounts appear to be identical.

The Table below summarises the main characteristics of the Quebec programme as compared to the new IIVC Federal Programme and the previous federal investment programme. It seems

⁷¹ Cf. Government of Quebec, Investor Programme, available at: <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/>

⁷² Cf. Government of Quebec, Investor Programme, available at: <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/>

clear that investors wishing to immigrate to Canada will have a less risky and less complex path through Quebec than via the Federal Programme. The Quebec Investment Immigration Programme requires applicants to intend to settle in Quebec,⁷³ though the *Canadian Charter of Rights and Freedoms* guarantees mobility rights to all permanent residents and citizens.⁷⁴ Thus, investors who immigrate through the Quebec programme are in effect immigrating to Canada and have freedom of movement in the whole country.

	IIVC Federal Programme⁷⁵	Quebec Programme⁷⁶	Former Federal Programme⁷⁷
Investment amount	CAD 2 million.	CAD 800,000 (invested with a financial intermediary authorised to participate in the programme).	CAD 800,000.
Term	15 years at risk (non-guaranteed) investment.	5 years without interest.	5 years without interest.
Type of investment	Investment into the IIVC fund. These funds will be invested in innovative Canadian-based start-ups with high growth potential. The IIVC Fund will work the same as a typical venture capital investment. Immigrant investors could receive proceeds over time, or at the end of the investment term. Proceeds will depend on the fund's performance and will be	Brokers and trust companies offer the possibility of financing the investment. Revenues generated by the applicant's investment will be used to finance two Québec business assistance programmes. At the end of the five-year term, the broker or trust company will reimburse the applicant.	Investment is guaranteed. CIC will return it, without interest, about five years and three months after payment. Investment divided between participating provinces and territories. Investment used for projects to develop their economies and create jobs for five years.

⁷³ Cf. Government of Quebec, Investor Programme, available at: <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/>

⁷⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Section 6(2) reads as follows: '(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.'

⁷⁵ Government of Canada, CIC, *The New Immigrant Investor Venture Capital Pilot Program*, <http://news.gc.ca/web/article-en.do?nid=915049>

⁷⁶ Government of Quebec, *Investor Program*, <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/>.

⁷⁷ Government of Canada, CIC, *Investors*, <http://www.cic.gc.ca/English/immigrate/business/investors/index.asp>.

	based on its gains or losses and the net of expenses and fees incurred to manage it.		
Eligibility	Proven language proficiency in one of Canada's official languages; Education credentials: a Canadian post-secondary degree, diploma or certificate, or proof of a completed foreign education credential and an equivalency assessment from a designated organisation; Proven business experience.	Demonstrate management experience. Other health and security checks. Other factors such as age, nature and duration of professional training and language skills are taken into account.	Demonstrate business experience. Other health and security checks.
Net worth	At least CAD 10 million derived from lawful, profit-making business activities, which will be verified by a designated due diligence service provider	At least CAD 1,600,000 acquired legally.	At least CAD 1,600,000 acquired legally.

5. Assessing Federal Investment Immigration in Canada

Having overviewed the immigration framework in Canada, both at the federal and provincial levels, this paper now focuses on a scholarly assessment of Canada's investment immigration policy, which raises the question at the heart of this paper: should permanent residency (which can lead to Canadian citizenship) be traded in for some capital?

5.1 A critical outlook on Canada's recent investment immigration policy

The comparative analysis above indicates that the new, reinvented Canadian Programme is lacking competitiveness in the market. It is reported that rather than attracting 500 applications (the maximum number of applications which would be accepted) in the limited period it was open for applications (originally only for two weeks, but later extended), it attracted seven

applicants.⁷⁸ This data alone should raise some questions about the basic attractiveness of the IIVC Programme to foreign investors and give the Federal Government pause.

The precise reason for abolishing the previous federal investment immigration programme was to bring a significant benefit to the economy and to remain competitive in light of other investment immigration programmes. It appears that due to the strict requirements of the IIVC Programme – such as mandatory language testing – potential investors are looking elsewhere. The phenomenon of investment immigration globally has created a reality of ‘host country shopping’, where potential investors can shop around different host countries to invest their capital, considering the investment conditions and requirements.

I argue however that the problem goes beyond purely market competition; it is rather more fundamental. When we look at the forest (which is composed of the many overlapping investment immigration programmes) rather than focusing solely on the tree (the federal investment immigration policy), it appears arguable that Canada should not be in the business of investment immigration as it is currently conceived.

Immigration forms the building blocks of a country’s society, identity, culture and economy. Allowing an investor to become a resident of Canada simply due to his or her net worth poses a number of challenges. While the global trend in this domain is to encourage investors to immigrate to host countries, I argue that Canada should move in the opposite direction and step away from its current investment immigration policy.

Research has demonstrated that the investment made by potential immigrants is not always beneficial to the economy in the long term.⁷⁹ The Government of Canada stated in 2014 that ‘[r]esearch shows that immigrant investors pay less in taxes than other economic immigrants, are less likely to stay in Canada over the medium to long term, and often lack human capital

⁷⁸CBC, ‘Millionaire immigrant investor program lures only 7 instead of 60’, 22 January 2016, available at: <http://www.cbc.ca/news/politics/immigration-investor-pilot-program-1.3331204>. See also Colin Singer, ‘Why Canada’s Immigrant Investor Programme Will Fail’, 13 February 2015, available at: <http://www.mondaq.com/canada/x/374660/general+immigration/Why+Canadas+Immigrant+Investor+Program+me+Will+Fail>

⁷⁹ Government of Canada, ‘Annual Report to Parliament on Immigration’, 2014, at 4.

qualities – including official language proficiency – to integrate as well as other immigrants from the same countries’.⁸⁰

Investment immigration should be taken as integral to Canada’s broader immigration policy and priorities. The current version of the investment immigration programme in Canada is not delivering on the stated objective of boosting the Canadian economy. In fact, drawing from scholarly analysis, Professor Kristin Surak states that:

[while] the Canadian Federal Immigrant Investor Program and its Entrepreneur Program, which ran from 1986 to 2014, were by far the largest of their kind, with over 190,000 principal applicants and family members acquiring permanent residence visas between 1994 and 2013 alone [...] [t]he direct contribution to the Canadian economy, however, was far less. Early reports by Ernst and Young and PriceWaterhouse found that only one-third of the businesses were profitable, and that only two-thirds of the new jobs claimed were actually created [...] A World Bank auditor described the program in 1999 as a ‘massive sham’, and by 2014 it was suspended due to little evidence of significant economic return’.⁸¹

This raises the question as to whether any further immigration resources should be spent on the IIVC Programme, and for that matter, on investment immigration in Canada.

As discussed above, the rationale for terminating the former investment immigration programme in 2014 was that ‘[t]he government [would] replace these programmes with more focused and effective pilot programmes that [would] ensure that immigrants who come to Canada deliver meaningful benefits to [the Canadian] economy’.⁸² This purpose statement also

⁸⁰ *Ibid.*

⁸¹ Kristin Surak, ‘Global Citizenship 2.0: The Growth of Citizenship by Investment Programs’, Investment Migration Working Paper No. 3/ 2016, at 18-19, citing David Ley, ‘Seeking Homo Economicus: The Canadian State and the Strange Story of the Business Immigration Program’ (2003) 93 (2) *Annals of the Association of American Geographers* 426–41; David Ley, *Millionaire Migrants: Trans-Pacific Life Lines*, 2010, Chichester: Wiley-Blackwell; Andrew Mitrovica, ‘Immigrant Investor Plan Denounced as “Massive Sham”’, 15 September 1999 *Globe and Mail*.

⁸² Government of Canada, ‘Building a Fast and Flexible Immigration System’, 11 February 2014, available at: <http://news.gc.ca/web/article-en.do?nid=814939> (last accessed on 18 May 2014).

implies that the former investment programme did not bring the benefits expected for the Canadian economy.

Looking back further than the IIVC Programme, in 2014 the Federal Government Budget critically concluded that on the basis of research, investor immigrants make minimal contributions to Canadian society and economy:

For decades, [investment immigration] has significantly undervalued Canadian permanent residence, providing a pathway to Canadian citizenship in exchange for a guaranteed loan that is significantly less than our peer countries require. There is also little evidence that immigrant investors as a class are maintaining ties to Canada or making a positive economic contribution to the country. Overall, immigrant investors report employment and investment income below Canadian averages and pay significantly lower taxes over a lifetime than other categories of economic immigrants.⁸³

The reality of investment immigration in Canada is far less glorified and beneficial to Canada as a whole than may be perceived. The issues described in these various reports have given rise to a review of federal investment immigration policies and led to the creation of the new IIVC Programme, with the hope of attracting a smaller pool of ultra-high net worth investors.

Nevertheless, alas, the revamped IIVC Programme has also been met with fierce criticism. The new Programme imposes mandatory language testing – a requirement which did not exist previously in Canada and one that no other country has adopted. The trouble is that, unsurprisingly, ultra-high net worth investors can easily select other destinations that do not require this additional hurdle. Further fuelling criticism of the IIVC Programme, such language and education requirements, if met, would mean that the potential investors could meet the requirements of other categories of immigration which do not require a highly risky investment for an extended period, as is required of the investor category.

⁸³ *Government of Canada*, “Federal Government Budget” (2014), at 81.

Beyond the lack of economic benefits to the country, another criticism of Canada's investor immigration policy was – until the new IIVC Programme was launched in 2014 – the long waiting periods for applications to be processed. The entire process was heavily backlogged and applicants were often forced to wait four to five years. To make matters worse, when the previous investment immigration programme was terminated in 2014, pending applications were also terminated, as discussed above. The long waiting periods in previous application cycles may make new potential applicants wary of submitting an application to the IIVC Programme.

Beyond the specific challenges to the revamped Canadian investment immigration programme, legal and interdisciplinary scholarship has focused on some challenges and criticisms of investment immigration more generally. While there is not much in the literature critically analyzing investment immigration in Canada, a review yields some overarching criticism of the idea of trading visas or citizenship for money.⁸⁴

5.2 Scholarly critique of investment immigration in Canada

While the driving force for establishing immigration by investment is to boost the economy and to bring economic benefits to the country as a whole, there are some crucial (if not existential) questions for this form of immigration. Some of these criticisms shed light into the challenges of investment migration, specifically as applied to the Canadian context.

One important critique concerns the potential of greater disparity between developed countries and countries under development. It is submitted in this regard that 'unless in clear surplus, [migration of the] elite may consequently create an enormous vacuum draining the sending country of its driving force for development and well-being'.⁸⁵

Thus, if an investor who would have otherwise helped establish infrastructure and employment in his/her home country is enticed to migrate to a developed nation, the development of the

⁸⁴ The criticism refers to investment immigration generally rather than focusing on the IIVC Programme more specifically.

⁸⁵ Arno Tanner, 'Brain Drain and Beyond: Returns and Remittances of Highly Skilled Migrants' (2005) 24 *Global Migration Perspectives*, at 3.

investor's home country is likely to be impeded. This criticism is augmented by a discussion of the likelihood of elite migrants returning to their home countries and the developmental effect of remittances to the sending country. In short, it is suggested that migrants of this nature are unlikely to return permanently to their home countries.⁸⁶

There is also some evidence that remittances may actually serve as catalysts 'for further emigration and brain drain'.⁸⁷ This is because when residents from the home country see the wealth that is being sent to them, they too want to migrate to a country which provides opportunities to generate wealth. In this regard, some scholars have gone as far as to call Canada's immigrant investor programme (and related policies) a form of 'capital robbery'.⁸⁸

It has also been observed that many people feel the immigrant investor programme simply provides wealthy people with a means of buying 'their way into Canada without providing a corresponding benefit to Canada as a whole'.⁸⁹ The commodification of immigrant visas is problematic because it runs counter to 'the democratic and egalitarian notions on which [Canada] is based'.⁹⁰ In a similar vein, 'to the degree that citizenship becomes a commodity, its intrinsic value may be diminished'.⁹¹ This is a problem because it could eventually play out to the point where the entire notion of citizenship is called into question, ultimately 'lessening the legitimacy of the state'.⁹² Investment immigration creates a situation where citizenship is construed on a dollar amount.

Importantly, there are also a number of concerns about the economic impact of Canada's policies on investment immigration. Apparently, Canada's investment immigration programme has yielded far fewer jobs than was originally expected. This is due to the fact (at least in part) that in the early years of the programme (before certain types of investments were restricted)

⁸⁶ *Ibid.*, at 5–7.

⁸⁷ *Ibid.*, at 10.

⁸⁸ Lloyd L. Wong, 'Chinese Business Migration to Australia, Canada and the United States: State Policy and the Global Immigration Marketplace' (2003) 12(5) *Asian and Pacific Migration Journal*, at 15.

⁸⁹ David Taniguchi, 'Buying or Bringing in Talent – Business Immigration' (1994–1995) 9 *LawNow*, at 13.

⁹⁰ *Ibid.*, at 15.

⁹¹ Trevor Harrison, 'Class, Citizenship, and Global Migration: The Case of the Canadian Business Immigration Programme' (March 1996) 22(1) *Canadian Public Policy/Analyse de Politiques*, 7–23, at 19.

⁹² *Ibid.*, at 7, 19.

many investors became involved in projects which were non-labour intensive (e.g. real estate ventures).⁹³ Similarly, one scholar noted that as of 1998, there has been no ‘compelling evidence that business immigrants have made a significant contribution to capital formation or employment creation’.⁹⁴ In sum, the original goal of Canada’s investment immigration (i.e. attracting ‘capital, innovation, and jobs through high-technology firms and businesses’) has not been substantially realised.⁹⁵

Additionally, one major issue is how many investor immigrants actually stay in Canada once they obtain Canadian citizenship, which can certainly lead to the questioning of long-term benefits of granting citizenship to investor immigrants. It has been observed that many immigrant investors will choose not to conduct their business in Canada despite having obtained permanent resident status in Canada ‘because they are less governed by geographical boundaries in a globalized economy’.⁹⁶ If their business is not carried out in Canada, then Canada is missing out on the associated economic benefits.

It has further been claimed that various promotion initiatives directed towards migrant investors have ‘been less than scrupulous’.⁹⁷ This has damaged Canada’s reputation as a whole, especially in certain parts of Asia. In fact, it is reported that ‘a forensic auditor hired by CIC [has] claimed [that] corruption [exists] not just in specific cases but [is] endemic throughout the programme’.⁹⁸

Additionally, Canadian investment immigration is based upon the assumption that success in one geographic location is probably transferable to another location. This is problematic because entrepreneurial success is not automatic in all places across the globe, where there may be different social and economic circumstances impacting entrepreneurial success.⁹⁹

⁹³ *Supra* note 88, at 15.

⁹⁴ Hugh M. Grant and Ronald R. Oertel, ‘Diminishing Returns to Immigration – Interpreting the Economic Experience of Canadian Immigrants’ (1998) 30(3) *Canadian Ethnic Studies Journal*, at 71.

⁹⁵ Sharon Jones, ‘Canada and the Globalized Immigrant’ (2004) 47(10) *American Behavioural Scientist*, at 1263, 1270.

⁹⁶ *Ibid.* at 1270.

⁹⁷ *Supra* note 88, at 15.

⁹⁸ David Ley, ‘Seeking *Homo Economicus*: The Canadian State and the Strange Story of the Business Immigration Program’ (2003) 93 *Annals of the Association of American Geographers*, 426–441, at 43.

⁹⁹ See Daniel Hiebert, ‘The spatial limits to entrepreneurship: Immigrant entrepreneurs in Canada’ (2002) 93(2)

6. Investment Immigration in Canada: The Road Ahead

The data provided above indicates that investment immigration in Canada has not yielded the positive results aimed for. The reinvention of investment immigration with the introduction of the new and bold IIVC Programme has proven problematic thus far. It has not attracted nearly as many interested investors as originally anticipated, and it is still too soon to assess whether it may indeed boost the economy. Nevertheless, in any event, the investment plan is somewhat obscure as to how it would benefit the economy in concrete terms, and in the long run.

Importantly, it is also not evident whether, even if the IIVC Programme does succeed in attracting the number of applications hoped for, it will actually benefit the Canadian economy. Research from previous investment immigration programmes does not support the conclusion that, in the long-term, investor immigrants are beneficial to Canada as a whole. The new IIVC Programme does not answer this existential question satisfactorily.

Canadian immigration policy has been described as an ‘individually-oriented class system’ which is ‘increasingly focused primarily on economic considerations’; an excessive emphasis on economic benefit leads to an implicit disregard for the ‘important contributions that immigrants make to Canada’s multicultural society’.¹⁰⁰ These may be in the form of sports, arts or culture, which form the multifaceted mosaic that is Canadian society. As a corollary, it is suggested that perhaps a nation’s prosperity should not be judged solely (or even primarily) in terms of its economic success, especially when the extent to which investors bring lasting economic prosperity to Canada is debatable.¹⁰¹

Another issue is that holding the investor category of immigration in high regard tends to lead to an implicit discounting of the important ‘contributions made by newcomers to Canada from other immigration classes’ (e.g. family class immigrants).¹⁰² This, as I understand it, can lead

Tijdschrift voor economische en sociale geografie, 173–190, at 173.

¹⁰⁰ Catherine Costigan, Sabine Lehr and Sheena Miao, ‘Beyond Economics: Broadening Perspectives on Immigration to Canada’ (2016) 48(1) *CES*, at 36.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

to skewed data, which may in turn lead to the creation and implementation of immigration policies which do not correspond with reality. Furthermore, it may lead to problematic assumptions/prejudice directed towards other categories of immigrants, such as refugees, for example.

In this respect, this paper argues that rather than using resources to craft an investment immigration policy that will indeed benefit Canada as a whole, more focus should be devoted to other categories of immigration, which instead of bringing fast money, bring in lasting skills and the likely desire to set roots in Canada and thus to contribute in the long-term to the economic prosperity of the country. Immigrants will likely become Canadian citizens – thus, while not directly trading in citizenship for an investment, this is the ultimate outcome of an investment immigration policy. Constructions of Canadian citizenship should not be monetised as dollar amounts. Investing in human capital might well bring more benefits, such as building the Canadian identity as a country of innovators and business people who will achieve success within Canada.¹⁰³

Another important consideration is to look at Canadian immigration priorities. With the election of the new Liberal Government in 2015, some immigration priorities were announced, including immigration policies in relation to refugees. In his first ‘Report on Plan and Priorities 2016-2017’, then Minister of Immigration, Refugees and Citizenship John McCallum stated the priorities of the new Department of Immigration, Refugees and Citizenship Canada.¹⁰⁴ No concrete plans were announced in relation to the investor immigration programme, only a restatement of the pilot IIVC Programme. On the other hand, priorities in the area of refugee settlement and family reunification were clearly announced. For instance, the Government announced that it ‘will continue to work with other levels of government and partners across

¹⁰³ See in this regard, *Chinese Business Migration to Australia, Canada and the United States: State Policy and the Global Immigration Marketplace* (2003), which claims that there should perhaps ‘be a greater emphasis on recruiting businesspersons who have the potential to achieve success, rather than on those who have already had success’ (p. 328).

¹⁰⁴ *Government of Canada*, ‘206-2017 Report on Plans and Priorities for the Department of Immigration, Refugees and Citizenship Canada (IRCC)’ available at: <http://www.cic.gc.ca/english/resources/publications/rpp/2016-2017/>

the country in order to help Syrian and other refugees successfully integrate into Canadian society'.¹⁰⁵

It is no longer 1986 and Canada is as multicultural as ever. Immigration policies affect not only the Canadian economy but also Canadian society, and weave together the fabric of Canadian identity. All this demands that investment immigration in Canada be seriously reconsidered: immigration, in all its categories, should go beyond pure economics, and mirror the values upon which the Canadian society is built.

¹⁰⁵ *Ibid.*, 'Minister's Message'.

Publications in the Investment Migration Working Papers

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