

Is Canada a Country of Exception for Immigrants and their Families?

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Both its significant immigrant population (people born in a different country - 18.4% - or of immigrant ancestry) and its positive image with regards to the immigration management process have long been the hallmarks of Canada's reputation in the world. Toronto is a city, whose population is 44% immigrant; Vancouver 46% and both cities are well ahead of Miami (40%), L.A. (31%), New York (24%) and Sydney (31%). Another highly publicized fact has been the progressive increase of 'non-Europeans', although the total population (29 million in 2001) is still mainly composed of people of 'European' ancestry. In 2001, the percentage of persons from 'non-European' ancestry, also known as 'visible minorities' stood at 13.4%, which is a threefold increase since 1981.

Canada's reputation is largely based on the immigration management methods the country prones: immigrant reception programs, strong annual influxes (230,000 per year), quasi-identical rights for immigrants and citizens,¹ a higher level of acceptance of refugee claims² than elsewhere and multiculturalism programs. Without denying the inventiveness of other governments, Canada is different from other immigration host countries. Management of migration flows is facilitated through the ease of controlling its borders and the equitable treatment afforded to immigrants due to the weakness of Canada's representation as a national entity.

Double Assets

Borders that are easy to control

Access to the three shores of Canada is difficult, if not impossible in the North. The single land border is shared with the United States, but has never been an important point of entry for the population. To the contrary, Canada tends to have a negative flow, as it loses its residents, who head southwards. In addition, the regular annual flow of about 10,000 refugee claimants, who arrive via the U.S., has been slowed down since the safe third country accord was signed in December 2002 and came into force at the end of December 2004.

There are consequences to these features. 1) Illegal immigration is less of a problem in Canada than it is in the European Union (800,000 illegal immigrants per annum) or the United States (1 million illegal immigrants per annum) and the number of

¹ Except in four areas in accordance with the Charter: the right to vote (S. 3), of admissibility (S. 3), the right to enter and remain in the country (S. 6) and the right to be educated in one of the 2 minority languages (S. 23)

² Despite the sharp drop of 84% approval in 1984 to 40% in 2004.

clandestine immigrants is estimated at 200,000. 2) Immigrant selection is an important factor in immigration management. As selection criteria apply to almost half of all newcomers to Canada, the immigrants selected represent the most educated category in the country. In 2001, 40% of all immigrants had a university degree, as compared to only 23% of all native residents and only 10% of immigrants did not speak one of the official languages. 3) The debates about our 'open' borders and the illegal immigrant invasion have not been issues that have monopolized public attention for very long period of times, even if over the last thirty years, about one-third of all Canadians are opposed to the levels of immigration that have been set by the Federal Government.

History of Nationalist Struggles and Pluralist Society

The weakness of presenting Canada as national entity, particularly when compared to countries in the European Union or even in the United States, is partly due to our history of colonization. At the time of the conquest by New France, it involved an 'internal' colonization or the occupation of Aboriginal lands by French colonists and then the occupation of other lands and territories by new colonists at the time of the English conquest. This created a heritage of nationalist conflicts and antagonism and any discourse alleging the existence of ONE Canadian Nation is severely impaired by Aboriginal and French Quebec claims.

Treatment which is less and less based on the principle of equality

Struggle against Discrimination and the Promotion of Cultural Pluralism

In terms of protection against discrimination and the respect for cultural and religious diversity³ Canada possesses an array of tools that are often considered to be remarkable.

Given that it is difficult to represent Canada in terms of a united cultural entity, the multicultural program, first adopted in October 1971 as a result of pressures exerted by Ukrainian, German, and Hungarian groups, defined Canada as a land for individuals and groups of every racial, cultural, national and ethnic origin. The program was implemented to facilitate the social and cultural integration of all immigrants by fighting against racism. Its goal was to debunk all ideologies based on the cultural, social, economic or political supremacy of either of the two official majority groups (*charter groups*), French or English, and to expedite the communalization of ethnic groups, by way of providing funding to their cultural associations and encouraging their involvement in public institutions and inter-ethnic contact (Helly and Mc Andrew, 2004). The spirit and the objective of the program have been embraced by provincial governments, municipalities and school boards (two provincial jurisdictions).

Canada is a land of immigration for populations that in the last twenty years have come mostly from East Asia, although nearly all countries in the world have contributed to Canadian immigration. In 1982, Canada adopted a Charter of Rights that was enshrined in the Constitution to guarantee the fundamental rights and freedoms of its

³ This aspect has gained in importance, given the rise of evangelical Churches among the immigrant population and the increased influx of adherents to non-Christian religions (Islam, Hinduism, and Sikhism).

citizens. The Charter⁴ guarantees freedom of conscience and religion (S. 2⁵) and prohibits discrimination based on race, colour, ethnic origin, religion, age, gender, sexual orientation, or disability, and such rights apply not only to fundamental rights and freedoms but also to political, judicial, social and economic rights. The Charter defines four forms of the right to equality: equality under the law, with respect to the enforcement of the law, protection by the law and equal enjoyment of the benefits of the law. The purpose of this last concept is meant to protect against a certain formalistic notion of equality, because identical treatment for everyone under the law can lead to a type of inequality. Thus the Supreme Court recognizes indirect discrimination as "discrimination by adverse effect" which is why it created the obligation of reasonable accommodation, which applies in cases of conflicts over cultural and religious conflicts (*Ontario Human Rights Commission v. Simpson Sears Ltd* [1985] 2 S.C.R. 536)⁶. By virtue of this obligation, measures must be implemented to allow the expression of minority practices, as long as such solutions are reasonable, i.e. do not engender excessive costs or major inconveniences and do not reduce security standards or individual rights. Last but not least, Section 27 of the Canadian Charter of Rights states that interpretation of the Charter must take into account Canada's multicultural heritage, thus leading to the abrogation of historical cultural practices based on the majority.

In the area of employment, which is central to social equality, a law was adopted in 1986 to create the Employment Equity Program for visible minorities. The purpose of this program was to increase the presence of visible minorities in the federal civil service and in companies that receive contracts from the government. It has not however had very great success and the private sector has objected to the adoption of any similar measure that would affect it. Some large corporations such as the major banks, Bell, and TV networks, have promoted respect for cultural diversity and have trained their staff to do so as well, but nothing is being done in the larger sector of small and medium sized businesses. The only sectors that have proven to be true cultural mosaics in the private sector are the technology and high tech sectors. At the provincial and municipal levels, police corps and school boards have achieved fairly significant results in this area.

All of these tools together do not eliminate discrimination. They create a normative social climate based on cultural diversity, enable persons from 'ethnic' groups

⁴ It governs the relations between individuals and governments, not between individuals and individuals. Civil law is a provincial jurisdiction and private individual relationships fall under the provincial charters of rights. The Canadian Human Rights Act applies to relationships between individuals that fall under federal jurisdiction (crown or public corporations) and governs issues related to discrimination.

⁵ The proclamation begins with: "In the Year of the Lord..." and the preamble refers to God ("Whereas Canada is founded on principles that recognize the supremacy of God and the rule of law."). The Supreme Court has never invoked the supremacy of God in its judgements.

⁶ This case involved an employee who was a member of the Seventh Day Adventist Church and who wanted to maintain his full time job without having to work on Sundays, which had been opposed by Simpsons Sears Ltd. The Supreme Court ruled that accommodation was necessary to reduce the discrimination based on religious belief.

to file human rights claims and ensure remedies for those who are victims of discrimination. However, further changes have ensued since the 1980s and 1990s.

Lower Social Economic Performance of Non-Europeans

The budget of the multiculturalism program was cut in half in the last half of the 1990s, before any federal institutions were able to ensure the continuity of its interventions. Its work of bringing ethnic groups into mainstream society and of helping institutions adapt to cultural diversity and to new trends in immigration was seriously undermined.

Immigrants, half of whom are chosen based on their level of education, suffered a reduction in their economic performance, a loss of their occupational status, and a higher level of unemployment than native born Canadians. The highest levels were among the Arabs and Asians in first place, followed by Blacks and Latin Americans. In 2000, men who had been in the country for a year, were earning 63.1 cents for every dollar paid to native born workers, which proportion has been decreasing over the last twenty years (63.4 cents in 1990; 71.6 cents in 1980). Women were earning 60.5 cents compared to 70.5 cents in 1990. More disturbing still was the fact that immigrants who had been in the country for at least ten years, which was historically the length of time needed to catch up to the average wage, were losing ground.

There are four structural factors at play: the increased levels of immigration (increased from 200,000 to 230,000 per year), which were set in terms of long term demographic objectives and not in terms of the capacity of the labour force to absorb them; the protectionism practised by professional corporations (physicians, engineers, high school teachers) which makes it difficult to recognize degrees obtained in non Western countries; the transformation of the labour market, which reduces the number of non qualified jobs, while almost half of all immigrants are not selected based on strict criteria (sponsored or refugee claimants); and systemic discrimination.

'Visible minorities' are subject to a wage differential of 8% compared to 'Europeans', which fact can only be explained by the discriminatory acts of employers (Pendakur, 2000). A recent *Study on Ethnic Diversity* demonstrates the frequency of racial and cultural victimization⁷ in the labour market more than in any other sphere. Non-European physical features, the inability to speak an official language or an accent are frequent causes of discrimination in Canada (Bourhis, Helly, Montreuil and Jantzen, 2005). Muslims are more particularly affected by religious ostracism (Helly, 2004).

Infringement on Rights and Freedoms

Another change since the 1990s has been the decrease in the equitable processing of immigration applications by newcomers and foreigners. There is a very long backlog in the processing of applications, which totalled 110,000 in 2005.⁸ The right to immigrate is a privilege, but this cannot be used to justify the wrongs caused to individuals who

⁷ 36 % of the respondents belonging to visible minorities stated that they had been victims of ethnic or cultural discrimination.

⁸ The government announced on April 18 2005 an additional budget allocation in order to reduce the backlog. A similar announcement was made on April 25 2004.

have paid the fees required by the authorities to process their applications. The government has also cut back in host programs for new arrivals to the country, including the language courses (*ESL, English as a Second Language*). The waiting time to enrol in such a program is often six months or longer, despite the fact that outside of Quebec knowledge of English is fundamental to integration into the labour market and into society in general. The arbitrary process of recognition of foreign degrees has led highly qualified immigrants, such as doctors and lawyers, to seek non qualified jobs in Canada. At present, only the government of Quebec has signed agreements with the professional orders to reduce the level of professional corporate protectionism (www.micc.gouv.qc.ca).

The Canadian Charter of Rights protects the human rights of foreigners. But on two recent occasions, the Supreme Court of Canada had to remind the government of its obligations in terms of justice to foreigners⁹ under the 1951 Geneva Convention on the Status of Refugees and under the Convention against Torture. In order to manage the immigration flow, Canada uses immigration officers abroad, who process thousands of cases but who are rarely subject to Canadian courts or the authority of the Charter. Under the safe third country accord, which came into force in 2004, Canada sends refugees, whose claims are rejected, back to the United States.¹⁰ The latter country grants them no legal assistance, usually holds them in detention, denies them equal rights, selectively applies the right to asylum¹¹ (Crépeau, 2004: 38) and often expels them to countries that use torture. In such cases, Canada becomes an accomplice to acts of torture.

Under the Immigration and Refugee Protection Act, adopted in June 2001, government authorities may issue security certificates which make it legal to detain without disclosure of evidence or trial persons, who are considered to be a threat to national security. The Antiterrorist Act, adopted in December 2001, grants the same rights to the police with regards to citizens. The Criminal Intelligence Service of Canada collaborated in the expulsion in September 2002 of Maher Arar, a dual Canadian and Syrian citizen who was deported by the American government to Syria where he was tortured. He was finally repatriated in 2003 after a long pressure campaign. Both these measures have been criticized for their breach of fundamental human rights and because of the way they have been used to target individuals of Middle Eastern, Pakistani or North African origin. The arrests that have been made under these measures are being contested in legal battles that have not yet been settled.

Compared to the treatment and performance of immigrants in other Western countries, these shortcomings in terms of integration and breaches of fundamental rights may be considered minor. They nonetheless contradict Canada's image as an exceptional country for immigrants and their families.

⁹ Being a drug dealer is not grounds for the denial of fundamental rights or of the protection against being expelled, when there are risks of torture: Suresh affair, 2002; the decision to expel a foreigner who is a parent of a Canadian child must take into account the interest of the child: Baker affair.

¹⁰ The expulsion system was not very effective according to the Auditor General's report in 2003; 30,000 expulsions never took place due to lack of detention space and inadequate data banks.

¹¹ Recognized for example for Cubans but rarely for citizens from Guatemala or Salvador during the 1980s

References

Bourhis, Richard, Denise Helly, Annie Montreuil and Lorna Jantzen (2005). "Discrimination experienced by ethnolinguistic minorities in Quebec and the ROC: Some results from the 2002 Ethnic diversity Survey (EDS)", Communication, *The Ethnic Diversity Survey and the Future of Ethnic Identification in Canada*, Association des études canadiennes, Toronto, mars.

Crépeau, François (2004). "L'étranger est-il justiciable", *Vivre Ensemble*: 37-38.

Helly, Denise (to be published in 2005). "La gestion de la diversité religieuse au Canada et le cas de l'islam", *Revue marocaine d'études internationales*. Spanish Version IN Enrique Raya, *Islam y Laicidad*, Granada, Editorial Maristan.

Helly, Denise in conjunction with Marie McAndrew and Judy Young (2004). "Le financement des associations ethniques par le Programme du Multiculturalisme canadien". In Altay Manço, Joseph Gatugu and Spyros Amoranitis (dir.) (2004). *La vie associative des immigrants : quelles valorisations politiques ? Perspectives européennes et canadiennes*, Paris, L'Harmattan.

Helly, Denise (2004). "Are Muslims discriminated against in Canada Since September 2001?" *Journal of Canadian Ethnic Studies*. XXXVI (1) : 24-47. French Version: "Le traitement de l'islam au Canada. Tendances actuelles", *Revue Européenne des Migrations Internationales* 20 (1) : 47-71.

Pendakur, Ravi (2000). *Immigrants and the Labor Force. Policy, Regulation and Impact*, Montreal-Kingston, McGill-Queen's University Press, p. 248.