

IMMIGRATION: THE CANADA–QUEBEC ACCORD

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INTRODUCTION

On 5 February 1991, the Honourable Barbara McDougall, federal Minister of Employment and Immigration, and Madame Monique Gagnon-Tremblay, Quebec’s ministre des Communautés culturelles et de l’Immigration, signed the Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens. It came into force on 1 April 1991. The agreement came on the heels of the failure of the Meech Lake Accord and largely accomplished what would have taken place in the area of immigration had Meech Lake passed. The Canada-Quebec Accord is not a new type of agreement, however. Canada and Quebec have had immigration agreements since 1971. The first agreement, the Lang-Cloutier Agreement (1971), was followed by the Andras-Bienvenue Agreement (1975), and the Cullen-Couture Agreement (1979), which was replaced by the Canada-Quebec Accord (1991). This paper provides an overview of the contents of the Canada-Quebec Accord.

PROVINCIAL JURISDICTION OVER IMMIGRATION

Section 95 of the *Constitution Act, 1867* gives the federal government and the provinces concurrent legislative powers over immigration. The provinces are limited in that any laws they may pass must not be “repugnant to any Act of the Parliament of Canada.”

The principal federal legislation governing immigration is the *Immigration and Refugee Protection Act*, which permits the minister of Citizenship and Immigration to enter into agreements with the provinces. All provinces have entered into one or more agreements with the minister, but the Canada-Quebec Accord is by far the most extensive of such agreements.⁽¹⁾

* The original version of this document was prepared by Margaret Young, formerly of the Library of Parliament.

(1) Each of the other provinces and the Yukon Territory have entered into one or more agreements with the Minister of Citizenship and Immigration. As a consequence, they all (other than Quebec) now have “provincial nominee programs” under which the province or territory nominates candidates for permanent residency. For a copy of the provincial agreements, see Citizenship and Immigration Canada, *Federal-Provincial/Territorial Agreements*, <http://www.cic.gc.ca/EnGLIsh/departement/laws-policy/agreements/index.asp>.

OUTLINE OF THE ACCORD

A. General

The initial sections of the Accord state its contents and objectives. Section 1 sets out the four areas covered by the Accord:

- the selection of persons coming permanently or temporarily to Quebec;
- their admission into Canada;
- their integration into Quebec society; and
- the determination of levels of immigration to Quebec.

In section 2 of the Accord, an important new objective for Quebec was introduced: to preserve Quebec's demographic weight within Canada and to integrate immigrants to the province in a manner that respects the distinct society of Quebec. This objective was to be achieved primarily by Quebec's formal role in advising about the number of immigrants it wishes to receive, the attempt to ensure numbers of immigrants proportional to the population of the province, and Quebec's assumption of all integration services, with a particular emphasis on providing permanent residents with the means to learn the French language.

Canada remains responsible for national standards and objectives relating to immigration, the admission of all immigrants and the admission and control of visitors. Admission in relation to immigrants means the application of the criteria relating to criminality, security and health, in addition to the administrative processing of applications and physical admission to Canada at ports of entry. Quebec is responsible for the selection, reception and integration of immigrants to Quebec. Canada commits itself not to admit any independent immigrant or refugee into Quebec who does not meet Quebec's selection criteria (except for adjudicating refugee claims from within the country).

B. Immigration Levels (Sections 5–8)

The Canada-Quebec Accord incorporates the Meech Lake Accord commitment that Quebec should receive the same percentage of the total number of immigrants admitted to Canada as is its percentage of the Canadian population, with the right to exceed this figure by

5%, for demographic reasons. The troublesome word “guarantee” contained in the Meech Lake Accord was dropped. Instead, both parties undertake to pursue policies to achieve that goal. Although the Accord itself is silent on the matter, for Canada, such policies could include providing sufficient resources abroad to process immigration applications, particularly in Francophone countries, and setting higher processing targets for those posts.

Canada remains responsible for establishing levels of immigration annually, taking into account Quebec’s advice on the number of immigrants that it wants to receive. For the first time, a formal timetable for consultation was set out in the Accord whereby Canada informs Quebec by 30 April of each year of the options being considered with respect to future immigration levels, broken down into the various immigration classes.⁽²⁾ Quebec, in turn, informs Canada before 30 June of the number of immigrants it wishes to receive in the coming year or years, also broken down into classes.⁽³⁾ Following this process, the *Immigration and Refugee Protection Act* requires the federal Minister to table an annual report in each House of Parliament by 1 November of each year, if Parliament is then sitting, or otherwise within 30 days of the resumption of sitting by either House. This report contains details of immigration levels for the coming year.

Another provision introduced in the Accord commits Quebec to receive, out of the total number of refugees received by Canada, a percentage at least equal to the percentage of immigrants that it has undertaken to receive.

C. Family Reunification (Sections 13–16; 21)

Family class members are not “selected” in the same sense as other immigrants. If selection criteria were desired in the future, the Canada-Quebec Accord provides that Canada would have sole responsibility for establishing them; Quebec would be responsible for the application of these criteria to immigrants destined to that province. In section 18 of Annex A, Canada commits itself to facilitating interviews of family class applicants where Quebec so

(2) The *Immigration and Refugee Protection Act* also requires that the minister consult with the governments of provinces on the number of immigrants expected in each class and their distribution in Canada, taking into account regional and demographic requirements and settlement issues.

(3) These provisions appear in Annex A, Section 11, of the Accord. The four annexes of the Accord are explicitly made part of it.

desires, and Quebec commits itself to ensuring that the processing of those applicants will take place during the normal time period.

Federal legislation requires that family class applicants be sponsored by a permanent resident or citizen of Canada. For such applicants destined to Quebec, that province administers sponsorship undertakings and sets the financial criteria for sponsors.

D. Refugees (Sections 17–20)

Canada is solely responsible for processing refugee claims made by people already in Canada. With regard to refugees and others in similar circumstances selected abroad, Canada determines which individuals qualify in these categories and Quebec chooses from among them the individuals it feels are best able to settle in Quebec. The Accord includes an explicit veto for Quebec on refugee admissions: "... Canada shall not admit a refugee ... who is destined to Quebec and who does not meet Quebec's selection criteria."

As noted above, Quebec also commits itself to taking its appropriate share of refugees and persons in similar circumstances selected abroad.

E. Visitors (Section 22)

Quebec's prior consent is required for the admission to that province of three types of visitors: foreign students,⁽⁴⁾ temporary foreign workers, and foreign visitors entering to receive medical treatment. It should be noted that it is current federal policy and practice to seek the consent of all provinces before admitting foreign students and foreign visitors entering to receive medical treatment.

F. Reception and Integration (Sections 24–29; Annex A, Sections 24–25; Annex B)

As would have been the case had the Meech Lake Accord been ratified, Canada commits itself in the Canada-Quebec Accord to withdraw from the delivery of services for the reception and linguistic and cultural integration of permanent residents in Quebec, as well as from a program for the counselling and placement of immigrants. Canada provides compensation to Quebec for such services, as long as they correspond to those offered by Canada in the rest of the country and as long as all permanent residents of the province, whether they

(4) Quebec's consent is not required for students chosen under a Canadian government assistance program for developing countries.

were selected by Quebec or not, can have access to them. This latter requirement reflects the fact, noted in one of the recitals at the beginning of the Accord, that the *Canadian Charter of Rights and Freedoms* guarantees freedom of movement to all permanent residents in Canada. Any permanent resident, therefore, may move to Quebec from any province and be eligible for services on the same basis as immigrants actually selected by Quebec.

Canada alone is responsible for services relating to citizenship, and is not constrained in any way from providing Canadian citizens with services relating to multiculturalism or from promoting multiculturalism.

Section 1 of Annex B lists the settlement and linguistic services from which Canada withdrew; it is a comprehensive list. Appendix B also sets out the compensation to be paid to Quebec in the initial years of the Accord, and beyond, as follows:

\$75 million for 1991–1992
\$82 million for 1992–1993
\$85 million for 1993–1994
\$90 million for 1994–1995.⁽⁵⁾

Total: \$332 million*

* In 1990–1991, direct program expenditures in Quebec by the federal government for the services listed in Appendix B were approximately \$46.3 million. Expenditures for 1991–1992 therefore represented an increase of 61.9%.

Since 1990, compensation has been compounded using the base sum of \$90 million multiplied by an escalation factor.

In a year following Quebec's taking a proportion of immigrants that is lower than its proportion of the population of Canada, the escalation factor is related to the increase in total federal expenditures (excluding debt service payments) plus any increase in the number of non-francophone immigrants to Quebec.⁽⁶⁾ This no doubt reflects the fact that language training is the most expensive aspect of integration.

In a year following Quebec's taking a proportion of immigrants that is equal to or greater than its proportion of the population of Canada, the escalation factor is related to the

(5) These numbers represented an annual average increase of 6.3% and was not connected to actual immigration levels.

(6) If there was no increase or a decrease in non-francophone immigrants to Quebec, the escalation factor would simply be related to the increase in government spending generally (excluding debt service payments).

increase in total federal expenditures (excluding debt service payments) plus the proportional change in Quebec's share of immigrants over the previous year.

It is not readily apparent why the most accurate indicator of settlement needs in Quebec, the inability of an immigrant to speak French, was not used for both situations.

The amount of money paid to Quebec for settlement and language services cannot diminish under the formulas established under the Accord (although it could be changed by mutual agreement). This means that if the amount of money available for settlement generally were to decrease (or increase less than general government expenditures), Quebec would continue to be guaranteed its base sum of \$90 million, as increased by the escalator clause. The 2006–2007 grant to Quebec under the Accord was \$193.9 million.⁽⁷⁾

G. Administration of the Accord (Annex A)

The Accord established two committees to implement the Accord, the Joint Committee and the Implementation Committee. The Joint Committee is required to meet at least once a year and, among other things, approves joint directives, ensures the exchange of information and promotion of joint research projects relating to migration flow, and discusses Quebec's sponsorship criteria. Since the introduction of the Accord, the Joint Committee's mandate has included monitoring the speed of processing immigrants destined to Quebec, providing an opinion on any changes Canada might wish to make to the definition of classes of immigrants and the inadmissibility criteria, and studying annually the reception and integration services offered by both Canada and Quebec. The Accord states that "a representative of the Department of External Affairs and International Trade" was to be a member of the Committee, a formalization of past practice; however, this would seem to be redundant since Citizenship and Immigration Canada assumed responsibility for overseas processing.

The Implementation Committee meets twice a year, or more often as necessary. Its mandate is to coordinate the ongoing implementation of the Accord and develop the necessary terms and conditions for the operation of the Accord. The federal and Quebec governments use the Implementation Committee to discuss proposed changes to their policies and legislation, and to update joint operational guidelines governing the immigration program.

(7) Citizenship and Immigration Canada, 2006–2007 Departmental Performance Report, Ottawa, p. 55, <http://www.tbs-sct.gc.ca/dpr-rmr/2006-2007/inst/imc/imc00-eng.asp>.

It is interesting to note that the Accord contains a mechanism for its amendment, but not for its termination. A termination clause is a common feature of agreements such as this and was found in the Accord's predecessor.⁽⁸⁾ Section 33 of the Accord, however, merely states: "This Accord may be re-opened at the request of either party with prior notice of six months. Failing agreement on amendment, the Accord continues in force." It may be presumed that the clause was drafted in that way because the Accord was originally intended to be entrenched in the Constitution following the passage of Meech Lake. In that form, the Accord would not have been subject to termination by either party at will, merely on the giving of notice. It remains to be seen what would happen if, at some point in the future, one party were to become dissatisfied with the Accord and no agreement could be reached.

(8) Part V, section 6 of the Cullen-Couture Agreement stated: "This Agreement is concluded for a period of three (3) years from the date of its signature. It may, however, be terminated at the request of either party on receipt of written notice at least three (3) months before the expiration of this period of three (3) years. This Agreement will be renewable, on its expiry, by tacit understanding, except that either party may then seek its termination by giving the other a written notice of six (6) months."