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Viewpoint: Is Canada signalling a possible interest in a new Immigrant Investor Program? Good policy, or the resurrecting of a bad idea?

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As every sailor knows, when the weather turns foul and the seas especially choppy, it's time to start seeking a safe harbor. Especially if your ship is laden with treasure.

Some harbors are more accommodating than others. In this period of increasing economic and political uncertainty, businesspeople in particular settings are warily reviewing their current circumstances and prospects.

Some are casting their eyes about for possible new places of residence for themselves, their family, and their wealth, seeking abodes that could provide sanctuary and haven. In this environment, a surprising beacon of welcome in one of the world's most desirable ports-of-call may tentatively have begun to flicker.

Conscious of this growing interest and potential among this nervous global monied class, Canada is, just perhaps, cautiously considering the re-introduction of a controversial immigration program specifically aimed at high net-worth foreign nationals. The immigrant investor program, which Canada shuttered in 2014, is being given a re-think, at least according to an internal Memorandum prepared in 2020 by the federal Immigration, Refugees and Citizenship Canada ("IRCC") to the Minister of Immigration, an excerpt of which was subsequently shared on LEXBASE earlier this year.

With conscious understatement, the IRCC sought "proposals from stakeholders that offer solutions to program pitfalls while obtaining economic benefit to Canada...to receive input and review ideas" about advancing such a program. Contemplation of the scheme is sure to bring back concerns about such "pitfalls" as fraud and money laundering. Yet in the global war for talent, a fresh path for candidates able to

make immediate, lucrative financial contributions to the Canadian economy is being given a cautious re-think.

Background

Canada settled more than 400,000 immigrants in 2021, the highest number in its recent history, if lower than the 430,000-target set by the federal government. On 1 November 2022, the Immigration Minister Sean Fraser announced Canada would seek to admit or "land" 465,000 permanent residents in 2023, 485,000 in 2024, and fully 500,000 in 2025. In sum, these targets are an objective that represents yearly growth approaching a remarkable 1.5% of the current Canadian population. These levels, on a per capita basis, are amongst the highest stated goals of other immigrant destination nation in the world. For example, for the United States, the total number of lawful permanent residents admitted in 2021 was approximately 245,000, out of a population of approximately 332 million persons, representing an influx of less than a 10th of one percent of the total population.

Even so, there has been a call for a re-evaluation of Canada's immigration program. Not, as some might expect, of the targets themselves; almost unique among developed nations, the Canadian public remains largely in favor of maintaining high levels of net migration, with recent opinion polls pegging the national level of support at well over 70%. Rather, new consideration is being given to the makeup of the program itself. Reflecting the globally competitive struggle for talent, an enhanced focus may soon be placed on that valued commodity: high net worth business applicants.

Two reasons drive this exercise.



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First, the COVID-19 lockdowns and related staffing erosions in the responsible department have played havoc with the backlog in Canada's immigration system. During the pandemic lockdowns, more than 1 million applications were in processing limbo, awaiting some determination. As of the end of September 2022, however, some 47% of the 614,600 permanent resident applications pending were being processed within "service standards", or so we are advised. Even so, at least some 325,000 applications for PR applications are currently floating outside such standards. And if we also include temporary residence applications (visitors, students, workers, etc.), about 888,000 of all broadly current applications within the Ministry's purview, or about 54% of all case types, are taking longer to complete than service standards propose. In consequence, the lingering uncertainty in processing timeframes have undoubtedly obliged many meritorious candidates to look elsewhere than Canada.

Second, a review by government officials as to the *kind* of applications awaiting processing has revealed the overwhelming number of the submissions are in just two categories: family class (sponsorship from family members already settled in Canada) and skilled workers (individuals with work experience in trades or select professions deemed to be in demand by the federal government). What is notably lacking are applications from entrepreneurs seeking to create new businesses and new jobs in Canada. The new levels for 2023, 2024 and 2025 referred to above indicate that so-called Start Up Visa and Self-Employed applicants represent at most 1% (4,000), 2% (7,000), and 2% (8,000) of these planned levels, respectively.

In other words, entrepreneurs and other classic "self-starting/self-financing" business applicants are not represented well in overall federal targets.

A Possible Way Forward

Upon reflection, this development may be disappointing, but it is not surprising.

In the past decade, Canada's federal government has devolved much of the responsibility for selecting new permanent residents with experience or high demand qualifications to the country's ten provinces and three territories. Quebec has long held almost exclusive say in applicants to be accepted for residence in that province, with fluency in French a determining factor. But the transfer of a significant say in selection criteria to these authorities, through an initiative called the Provincial Nominee Program (the "PNP"), is relatively new in the rest of the country. Since first introduced in Manitoba in 1996, and only begun in Ontario in 2007, it has become clear that an over-riding priority for these local governments, particularly when selecting business applicants, has been to expand regional development within their jurisdictions.

Premium is given to applicants willing to settle outside of established metropolitan centers, or to develop long-term businesses that might serve only distinctly provincial interests. Moreover, the PNP process involves approval from regional or provincial, and finally federal authorities before status is granted. Average processing times for these applications have increased tremendously over the past five years or so. Satisfying all the various stages and different interests could mean a business applicant might wait 3 or even 5 years to gain their permanent residence status in Canada.

Criticism of these delays and the narrowness of the processing qualifications has been impactful. Allocated spaces for traditional business applicants make up, at most, only a very small niche in each province's allocations for their PNP selections. Several commentators suggest the combination of these factors threatens Canada's hard-won reputation as the settlement of choice, at least among the global business class. With these influences seemingly in mind, Canada's federal immigration authorities are just possibly toying with the re-introduction of an exclusively business-centric program. Purposefully structured outside the PNP--or so the public musing goes--it would be wholly designed to attract and expedite processing of high net-worth foreign nationals with proven business experience and a substantial net worth--and who would be willing to invest a stated amount in Canada in exchange for immigration status.

What net worth would be the threshold, or how much money a successful applicant would have to pony up, has not been specified. The now-cancelled Immigrant Investor Program had a minimum net worth of from \$800,000 to \$1.6 million, and a minimum investment of \$400,000 to \$800,000. The now-also-cancelled Immigrant Investor Venture Capital Pilot Program had a minimum net worth requirement of \$10 million, and a minimum investment of \$2 million for at least 15 years. The question therefore becomes: is this a good policy which should be encouraged, or a regressive step inviting elitism which should be scorned?

The internal Memorandum to the Minister of Immigration provided insights into the federal IRCC's thoughts on reinstating the immigrant investor program. While not actively consulting or soliciting feedback from stakeholders at present, IRCC may still be open to "proposals". It would be a "re-introduction", as Canada had a robust immigrant investor system from 1986 until it was shuttered by the former Conservative government in 2014. A contemporaneous government study concluded there were "limited long term positive economic benefits" arising from the program, which also exhibited "integrity issues and lower socio-economic outcomes".

That's putting it mildly.

A separate academic study subsequently concluded the program exhibited substantial and endemic challenges "in verifying legality and provenance of applicants' funds and business documentation; and, compared to Canadian born nationals, investors had lower investment income, and paid less in taxes (even when compared to federal skilled workers and live-in caregivers). They

also had the lowest official language knowledge/ability of any immigrant category and were less likely to stay in Canada in the medium to long-term.”

Resisting such concerns, the temptation to institute some form of permanent residence pathway for wealthy individuals appears to be widespread among many governments. A 2014 Migration Policy Institute Report reported that over 100 countries offer some form of immigrant investor program. Even here, it was acknowledged there was “an overall struggle with how to achieve economic benefit from these programs while still maintaining a high level of program integrity” while (in a telling turn of phrase) “entirely addressing” fraud concerns.

Some countries offering such a program, including Malta, Cyprus, Portugal, and the Maldives may, it could uncharitably appear, struggle less with the concerns of veracity than others. Such investor programs are the only path to status in such countries and have proven popular with oligarchs and princelings alike. They are also significant sources of local new cash infusion, regardless of its providence.

Other countries, on the other hand, are resisting the lure of such offerings. The United Kingdom, in the wake of “Londongrad” criticism that it was an easy mark for billionaires, recently cancelled its similar program as part of a wave of soul-searching and handwringing following Russia’s invasion of the Ukraine. The principal reason for such program retreats is the broad perception that, in effect, offering nationality for sale undermined the perception of program integrity in their country’s immigration programs.

Even Canada, in announcing its openness to reconsidering the immigrant investor program, sheepishly acknowledged that a review of the current global landscape of such programs uncovered evidence of “a ‘race to the bottom’ with many countries imposing very few requirements with regard to applicants’ human capital or where the funds are to be invested.”

The chest-thumping about the inherent moral turpitude of such programs may be overblown. Not all or even most potential high net worth business applicants are fraudsters or beneficiaries of ill-gotten wealth. Establishing an ethical, transparent, and verifiable pathway for successful businesspeople to gain status abroad has merit. The stench attached to investor programs frequently arises less from the concept itself than its execution. Turning a blind eye to sources of funds, to the true nature of the business acumen of the applicant, or to enforcing ongoing commitments to complete the pledged full investment suggests a lack of oversight rather than a corruption of the concept itself.

Yet the IRCC has ample reason to approach this concept with caution. Fraud and misuse have too often been rampant. Verification of information submitted by applicants in documents respecting bank accounts, holdings in corporations, directorships and the like can be difficult. Accommodation of the interests of the wealthy investors and the funds they promise to bring has often overwhelmed the diligence which ought to be brought by immigration program officers. Independent, disinterested, and forensic consideration of such applications must be an integral element of any proposed program. Despite IRCC’s reservations that acknowledge this, the lure of establishing a sound, assured investor pathway may be too strong to resist. A program which permits truly qualified and unblemished business applicants an opportunity to speedily relocate to Canada has momentum. It is an objective that appears to compliment and amplify broad government priorities, including supporting Canada’s recovery from COVID-19, a possible recession, and a long-term focus on economic growth. In addition, a credible business program focused on high-net-worth business applicants serves to re-balance the intake makeup of the annual immigration targets.

Still, Canada has reason to be vigilant. Examining the background and qualifying documentation of many of such applicants can be extremely difficult. Opportunities for fraud can be rampant. Verification of overseas documentation purporting to represent bank accounts or corporate holdings has often proved bogus. Money laundering has been a particular specter, as ill-gotten gains from abroad can be purified through domestic investment projects, serving to fund a new sanctuary for the felonious. For these reasons and more, a disinterested, forensic examination of submissions before they pass muster should be a processing hallmark.

The government of Canada appears to acknowledge these challenges. Resurrecting the immigrant investor program could, its officials recognize, “impact program integrity (and) increase fraud risks.” Nonetheless, as in the past, the lure of establishing a new, fast-tracked investor pathway may be too strong to resist. A program which facilitates qualified business applicants relocating speedily to Canada may have value. One that provides only a shoddy delivery of unmeritorious businesspeople does not.

If this program is pursued, authorities must be mindful of not losing the support of many Canadians who applaud the objectives of its overall immigration program. Eroding that confidence, regardless of the temptation of interest-free booty from abroad, would be a price too high.

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