

Framing Families: Neo-Liberalism and the Family Class within Canadian Immigration Policy

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qui définit les immigrants appartenant à la catégorie du regroupement familial comme « suspects » et « criminels ».

Abstract

This paper examines the implications of changes to the family class category under Canada's *Immigration and Refugee Protection Act* and in particular the introduction of Conditional Permanent Residence (CPR) for sponsored spouses. It raises questions about the extent to which gender mainstreaming as an approach within immigration policy making can actually challenge recent developments, which are animated by familiar neo-liberal rationales but also gesture to a discourse that constructs family class immigrants as "suspicious" and "criminal."
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Résumé

Cet article examine les répercussions des modifications apportées à la catégorie du regroupement familial en vertu de la *Loi sur l'immigration et la protection des réfugiés* du Canada et en particulier l'introduction de la résidence permanente conditionnelle (RPC) pour les conjoints parrainés. Cela soulève la question de savoir dans quelle mesure l'intégration de la dimension de genre comme approche au sein de la politique d'immigration peut en fait remettre en cause les récents développements, qui sont animés par des logiques néolibérales familières, mais invoquent aussi un discours

We've also brought in new measures in recent years to deter foreign nationals entering into marriages of convenience to gain permanent resident status in Canada. This includes two-year conditional permanent resident status for certain sponsored spouses and of course, this builds on all the work we're doing in Canada in our immigration programs and around the world to ensure that forced marriage is less and less a phenomenon...

-Chris Alexander, Minister of Citizenship and Immigration. Keynote Address in Honour of International Women's Day, 2014.

Introduction

The Organization for Economic Co-operation and Development (OECD) (2015) recently noted that restrictions to family migration policies were a significant trend across member countries (47). Such restrictions included changes to marriage requirements, age, income, and language. Canada is no exception to the trend. The Conservative Government (2006-2015) enacted a series of sweeping changes to redesign Canada's family class category. In 2011, the government temporarily stopped accepting applications for parents and grandparents to address the immigration backlog. In place of sponsorship applications for this group, it introduced a super visa for parents and grandparents allowing multiple entry into the country over a 10-year period. More recently, there have been moves to increase sponsorship requirements—including higher minimum income thresholds, longer periods of sponsorship responsibility, and changes to dependents' age. Some analysts have linked the changes to the family reunification category to the broader Conservative agenda to extend and deepen a neoliberal project. Within this project, the potential short-term economic benefit of immigration is emphasized (Bragg and Wong 2016; Chen and Thorpe 2015; Root et al. 2014).

One key reform to the family class category was the introduction of Conditional Permanent Residence (CPR) for sponsored spouses. This change was implemented in 2012 and, according to the government, was a necessary measure to deter "marriages of convenience" and combat "marriage fraud." These imperatives triumphed over longstanding concerns expressed by civil society organizations that sponsorship entrenched dependency and exacerbated existing vulnerabilities and that the CPR further intensified these possibilities. In

this paper, I use Citizenship and Immigration Canada's (CIC) legislated requirement to conduct a gender-based analysis (GBA) of the impact of the *Immigration and Refugee Protection Act* as a starting point to consider the introduction of CPR. The paper proceeds in three sections. First, it outlines the broader neoliberal context against which changes to the family class have taken place. Second, it briefly sketches out an intersectional approach to policy analysis as a counterpoint to the more familiar gender mainstreaming approach that has been promoted in Canada and that finds expression within Immigration Canada's *Annual Report to Parliament*. These two sections frame the last portion of the paper, which focuses on the CPR and its implications. In doing so, the paper raises questions about the extent to which gender mainstreaming as an approach within immigration policy making can actually challenge recent developments, which are animated by familiar neo-liberal rationales but also gesture to a discourse that constructs family class immigrants as 'suspicious' and "criminal."

Neoliberal Projects, Immigration and Family Sponsorship

The connection between changes in Canadian immigration policy and neo-liberalism were apparent prior to the introduction of the 2002 *Immigration and Refugee Protection Act* (IRPA):

Canadian immigration policy...has emphasized the need to attract high-skilled, well-educated, flexible workers as prospective citizens, to compete in a rapidly changing global economy. This construction of the model citizen tends to favour male applicants from countries with extensive educational and training opportunities. (Abu-Laban and Gabriel 2002, 96)

This remains true today and, if anything, the figure of "*homo economicus*" has become more pronounced. On the one hand, the Harper administration maintained that: "The Government of Canada is committed to family reunification and Canada has one of the most generous family reunification programs in the world" (CIC 2013, 17). But, on the other hand, it continued to shift the balance between immigration categories—the family class has declined significantly while the economic category has increased.¹ In 2012, of the

257,887 new permanent residents admitted to Canada, 62.4% were in the economic category (includes spouses/partners and dependents), 25.2% were family class, and 12.4% were protected persons and others (CIC 2013, 13). From 2003 to 2012, women dominated the numbers of family class entrants with “female spouses accounting for the largest single group of sponsored family class entrants” (CIC 2013, 34). Consequently, changes to the category disproportionately affect women.

Relatedly, as Jessica Root et al. (2014) observe, the state’s embrace of an austerity paradigm has provided the incentive for the federal government to expand and further entrench a neoliberal project. The market driven economic growth promoted by austerity policies is “predicated on a highly-flexible labour force with abundant competitively-priced human capital assets” (15). Within this logic, the economic focus within immigration policy is emphasized. As many scholars have noted (see Abu-Laban 1998; Kraler et al. 2011, 14), within a neoliberal context, immigration policy constructs the family class as especially problematic for a variety of reasons, including “assumptions that ‘dependent’ family members lack skills and are unproductive, and that people of the ‘wrong’ origins make excessive use of the family reunification program” (Creese, Dyck, and McLaren 2008, 270). On another scale, the division between those immigrants selected through the economic class and those who enter through the provisions of the family class mirrors the division between production and social reproduction. The economic class includes the principal applicant *and* spouses and dependents of the applicant if they migrate together. However, the principal applicant is the public face of this category—a selected individual who through their human capital and ability to contribute to Canada’s global competitiveness is valorized (Abu-Laban and Gabriel 2002; Li 2003). Human capital rationales, a market orientation, and a short-term focus on the economic bottom line have become more prominent as evidenced by recent changes to Canadian immigration policy. This “just in time economic focus” has come at the expense of the family and humanitarian categories (Alboim and Cohl 2012, 61). Yet the productive and reproductive realms, as feminists have long argued, are intimately connected. Further, insofar as value is related to an individual’s contribution to the economic realm, the many other contributions that family members make are overlooked (Bragg and

Wong 2016; VanderPlaat, Ramos, and Yoshida 2012). As Gillian Creese, Isabel Dyck, and Arlene Tigar McLaren (2008) argue, families play an important role in immigrant decision making to migrate and family relations are often central in immigrant integration and participation in the labour force.

The valorization of the economic class results in the concomitant marginalization of the family class. For example, as Root et al. (2014) note, trends identified in Europe also find expression in Canada. Family migration has been associated with three problems:

First, abuse of the immigration system through marriages of convenience or so-called bogus marriages; second, welfare state burdens as a result of low rates of labour market participation by marriage migrants; and, third, a perception of the ‘migrant family’ as a patriarchal institution in which unequal gender roles, forced marriages and gender-based violence are prevalent. (Root et al. 2014, 16 citing Hampshire 2013, 78-79)

The changes enacted by the Conservative government, including the case of the CPR discussed below, were framed by these concerns. Further in employing the use of terms such as “bogus” and “fraudulent,” government officials associated some groups of immigrants with crime and consequently framed them as “less desirable.”

Family Migration and Sponsorship

Scholars have distinguished between three forms of family migration. These include:

- (1) family reunification involving family members separated by migration;
- (2) whole family migration in which different members of the family (nuclear or otherwise) migrate jointly; and
- (3) family formation, including marriage migration, in which a migrant joins a settled migrant or non-migrant to form a family usually though not necessarily through marriage (Kraler and Kofman 2009, 2).

Regulatory changes in Canada have impacted all forms of family related migration but the primary focus of this article is on family formation.

The 1976 *Immigration Act* set out categories of immigrants, including the ‘family class.’ It also outlined

the objective of family reunification: “to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives abroad.” In the 1970s, the family class stream dominated total immigration to Canada accounting for 40-50% of the total flow (DeShaw 2006, 10). The subsequent 2002 *Immigration and Refugee Protection Act (IRPA)* also contained provisions for family reunification. Sponsors must meet eligibility criteria set out by IRPA and must sign an undertaking whereby they promise to provide for the sponsored person for a set period. “This means that the sponsor agrees to provide for the basic requirements of the sponsored persons and his or her family members who accompany him or her to Canada, (food, shelter, other health needs not provided by the public health care etc.). The sponsor also promises that their family members will not need to apply for social assistance” (Deshaw 2006, 12).

The spousal sponsorship provisions associated with the family class have been the subject of longstanding criticism. The National Association of Women and the Law (NAWL) 2001 brief on the proposed *Immigration and Refugee Protection Act (Bill C-11)* pointed out:

In the context of a conjugal relationship, when a woman is sponsored by her husband the legal bond of dependency that is created by the sponsorship undertaking unbalances the power relations between the spouses in such a way as to exacerbate existing patterns of inequality in marriage. (NAWL 2001, 15)

The group further pointed out that the sponsorship undertaking itself amounted to a “de facto privatization of basic social security on the part of the federal government,” which further threatened immigrant women’s equality rights (15). A study funded by Status of Women Canada (SWC) also reported that:

The testimony of the sponsored women taking part in this research project has clearly shown that sponsorship often creates a demeaning situation that restricts or eliminates their personal autonomy, endangers their safety and undermines their self-esteem. Many women described how marginalized they felt. They have been marginalized and diminished by the sponsorship regime, which reinforces stereotypes of feminine depen-

dency and second-class status...Many of them said they regarded sponsorship as discriminatory. (Côté, Kérisit, and Côté 2001, 143)

In sum, concerns by groups such as the National Association of Women and the Law and feminist scholars revolve around: the impact of entry category to access public goods and language or labour market training; precarious status and potential for illegality because legal status and the ability to remain in the country are dependent on a third party (Goldring, Berinstein, and Bernhard 2009, 240-241); and the exacerbation of spousal vulnerability in cases of abuse and neglect. As constructed in immigration architecture, relations of dependency underpin the family class sponsorship and this has been a significant issue for a wide range of feminists, including academics, legal activists, and members of non-governmental groups.

Approaches to Policy: Intersectionality and Gender Mainstreaming

My analysis of changes in family class migration and the use of gender mainstreaming (GM) in Canadian immigration policy is informed by feminist scholarship on intersectionality. The analytical concept of intersectionality emphasizes the need to be attentive to how multiple axis of difference intersect to produce complex forms of inequality (Crenshaw 1989). An intersectional approach, according to Helma Lutz, Maria Teresa Herrera Vivar, and Linda Supik (2011), “serves as an instrument that helps us to grasp the complex interplay between disadvantage and privilege” (8). Nira Yuval-Davis’s (2011) approach to intersectionality refines the concept further when she calls for a recognition of the analytic distinction between different aspects of social analysis: “that of people’s positionings along socio-economic grids of power; that of people’s experiential and identificatory perspectives of where they belong; and that of their normative value systems. These different facets are related to each other but are also irreducible to each other” (158). These insights are an important corrective insofar as social relations, including gender, sexuality, and race, have often been sidelined in many migration studies (Manalansan IV 2006; Nawyn 2010), yet gendered and racialized assumptions and norms underwrite the differing migration experiences of men and women (Piper 2006).

These insights have also prompted an interest in applying an intersectional perspective to studies of public policy and policy analysis (Hankivsky and Cormier 2011; Hankivsky 2012). Such an analysis, according to Olena Hankivsky and Renee Cormier (2011), have the potential to reveal the deficiencies of traditional policy approaches because it “recognizes that to address complex inequities, a one-size-fits-all approach does not work” and it rejects focusing on single identity markers because its key premise is “people’s lives, their experiences and subject positions vis-à-vis policy are created by intersecting social locations” (218). An intersectional method also moves beyond policy approaches that address diversity from one vantage point, such as gender, and then adds others on. GM typifies the latter tendency insofar as it addresses differential effects of policy on men and women and pays insufficient attention to differences among men and women. Consequently, Hankivsky and Cormier (2011) argue:

What an intersectionality perspective does for public policy analysis is that it encourages a different way of looking at all aspect[s] of policy: how problems are defined, how solutions are developed and implemented and how policy is ultimately evaluated. This is because an intersectionality analysis encourages looking beyond the most clearly visible dimensions of inequality to recognize multiple and intersecting disadvantages underlying the construction of subject positions. (219)

This said, they acknowledge that there are considerable challenges attendant in implementing this approach into many policy areas due, in part, to the fact that research design and method remain somewhat underdeveloped. Further, they assert that, even when the importance of an intersectional perspective is recognized, the tendency remains to use one-dimensional approaches such as GM or GBA. There are concerns as to whether these can be adapted to accommodate multiple inequalities (Hankivsky and Cormier 2011, 220). In sum, intersectional policy analysis may have the potential to produce better policy outcomes for those positioned on the margins but its uptake in Canada has been slow.

Gender Mainstreaming and its Limits

Citizenship and Immigration Canada (CIC) is

the only federal department that has a legislative requirement to undertake an annual gender-based analysis (GBA) of the impact of the Canadian *Immigration and Refugee Protection Act*. At the centre of feminist interrogations of gender mainstreaming is the disjuncture between theoretical conceptualizations of policy analysis and how gender analysis is actually practiced. GM is an approach to policy development and analysis that challenges conventional accounts that public policy is gender neutral. According to the United Nations Economic and Social Council (ECOSOC), gender-based analysis involves:

Assessing the implications for women and men of any planned action, including legislation, policies and programmes, in any area and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality. (cited in the House of Commons, Report of the Standing Committee on the Status of Women 2005, 1)

There has been considerable debate among feminist scholars about the potential of GM to promote gender equality (Bacchi and Eveline 2010; Hankivsky 2005; True and Mintrom 2001; Meier and Celis 2011). Particularly germane to the discussion of CPR are concerns regarding gender mainstreaming’s emphasis on process, its ex-post nature, and the singular focus on gender. Taken together, these criticisms raise questions about the ability of the model to promote wider social transformation.

Substantive vs. Procedural

Petra Meier and Karen Celis (2011) have argued that the ill-defined goals associated with GM compromise its efficacy. From the start gender mainstreaming’s goal was to enhance gender equality. However, what is neglected is that there is no consensus on the meaning of the term equality even among those organizations mandated to promote GM policies (471). Consequently,

[i]t is precisely the unspecified intention of gender mainstreaming, which assumes that the gender-mainstreaming

strategy will adopt substantive aims when implemented by regular policy actors, that opens the door for policies with limited ambitions that do not aim at gender equality as defined, for instance, by feminist scholars. (472-473)

Further, it is through the rational logic that underpins the strategy that GM runs the risk of becoming a formal exercise. There is an assumption that intentions can be translated into practice by techniques of measuring, reforming, and evaluating the policy cycle. This assumption, combined with a lack of definition of substantive goals, runs the “risk that gender mainstreaming will be reduced to a means of producing specific output through the use of these instruments, instead of forming an integral part of a global policy strategy aimed at realizing gender equality” (473).

Ex-Post Approaches

There are various formulations of GM. According to Carol Bacchi and Joan Eveline (2010), the dominant approach used in many western democracies is an “idealized rational model” derived from a conventional policy development framework (50) in which policy follows a set of logical steps. They characterize the approach as an “ex post form of analysis,” which reviews current or proposed policy initiatives to assess their impact on women and men that makes it difficult to question rationales and goals of the policy being considered—whether these are neo-liberal or otherwise (52). They write:

Two things are missed here. Firstly, the way/s in which policies or policy proposals constitute or give shape to problems is not considered. Secondly, this understanding of policy fails to identify or address the ways in which policies encourage and hence produce particular social relations...this explains the lack of attention in dominant gender analysis frameworks to the ways in which policies produce women as ‘consumers’ or as ‘individual workers’ with goals similar to men, subject positions that fit neoliberal agendas. (52)

Carol Bacchi (2010) further argues that the dominant model “makes a case for policy to *respond* to ‘gender difference,’” rather than interrogating the ways in which gender is constituted by unequal relations within different sites such as household/family, state, market, and community. She writes: “Identifying

the state as one institution involved in the production of unequal gender relations constitutes public policy as a *gendering process* rather than a ‘response’ to assumed static ‘differences’ between women and men. Policy does not just ‘act upon’ people; it is itself active in ‘creating’ people” (26). In addition to the reactive nature of the model, there are other issues associated with an idealized rational model.

The goal of this framework is to identify differential outcomes for men and women at each stage of the process to mitigate the negative outcomes for women. Here, as Stephanie Paterson (2010) writes, “the cause of the ‘problem’ is not patriarchal structures or institutions, or even analysts and their frameworks... Rather, the cause of the ‘problem’ is limited information. With ‘better’ information—information that is ‘sex disaggregated’—analysts will be better equipped to make informed decisions to minimize differential impacts” (402-403). Within this representation, she argues, the broader context in which gender analysis is conducted—structures, institutions, and processes—is effectively sidelined. Other assessments of the dominant variant of gender mainstreaming have highlighted that “gender experts” are frequently privileged over civil society actors (Paterson 2010; Rankin and Wilcox 2004). Within these variants, bureaucrats are tasked with conducting gender impact analysis following the stage sequence. As such, Paterson (2010) characterizes the framework as an “expert-bureaucratic” approach, which introduces gender perspectives into existing policy models without necessarily interrogating them (397). GM, Paterson argues, constructs a “new form of worker: the gender expert” who is then given authority to analyse, monitor, and suggest interventions based on “expert analysis” (395).

Problematizing and Privileging of Gender

According to Status of Women Canada’s 1996 *Gender-Based Analysis: A Guide Policy-Making*:

Gender is the culturally specific set of characteristics that identifies the social behaviour of women and men and the *relationship* between them. Gender, therefore, refers not simply to women or men, but to the relationship between them, and the way it is socially constructed. Because it is a relational term, gender must include men *and* women. (SWC 1996, 3)

This is a useful starting point insofar as it embraces a relational understanding. However, the focus of the Canadian model of gender-based analysis has largely been on sex-disaggregated statistics (Bacchi 2010, 27; Hankivsky 2005; Paterson 2010). The measurement techniques and tools associated with gender mainstreaming, such as training manuals, equality indicators, impact assessments, centre on a very simplistic dichotomy between women and men (Hankivsky 2005, 986). Hankivsky (2005) points out that this accounts for “the ability of GM to cohabit with liberal political and economic structures, and its inability to provide the radical critique of existing power relations necessary for social justice” (986).

Relatedly, as many have observed, dominant models of gender mainstreaming prioritize gender over other social relations (Siltanen 2006; Hankivsky 2005). Consequently, other social relations such as race, class, and ability are “added” to the stable, unitary category of gender. The Canadian framework for gender equality highlighted the importance of diversity by recognizing:

...the many different realities for women in Canada. These realities are the outcome not only of gender, but also of age, race, class, national and ethnic origin, sexual orientation, mental and physical disability, region, language and religion. Equality...can be achieved only by valuing this diversity. (SWC 1995, i)

Janet Siltanen (2006) has observed that the idea that diversity was critical for gender-based analysis was present within federal government departments. But in practice, she charges that gender-based analysis was “more often than not limited to an analysis of inequalities between men and women as distinct and undifferentiated groups” (99).

In 2013, Status of Women Canada rolled out a new GBA+ approach, which attempts to address diversity and thus gestures to intersectionality:

Gender-based Analysis Plus (GBA+) is an analytical tool the federal government uses to advance gender equality in Canada. The ‘plus’ in the name highlights that Gender-based Analysis goes beyond gender, and includes the examination of a range of other intersecting identity factors (such as age, education, language, geography, culture

and income). GBA+ is used to assess the potential impacts of policies, programs or initiatives on diverse groups of women and men, girls and boys, taking into account gender and other identity factors. GBA+ helps recognize and respond to the different situations and needs of the Canadian population. (SWC 2013, n.p.)

This is a relatively recent development and it remains to be seen how well this tool is adopted and whether it conforms to an additive approach or to a more intersectional approach.

In sum, GM is the strategy associated with the promotion of gender equality in Canada. In focusing on some of the critiques feminist scholars have made of gender mainstreaming, I am not suggesting that it should be abandoned or that those who promote it are wrong. Rather, I am of the view that it would be more prudent to consider carefully the context in which GM is promoted, who is calling for it, and what it means in practice. These questions can also be applied to intersectional approaches should they be adopted more fully in policy making.

Gender Analysis and Canadian Immigration Policy: Conditional Permanent Residence for Sponsored Spouses

In this section, I focus on one recent direction within the family class—the introduction of the conditional permanent residence (CPR) for sponsored persons. I refer to the GBA section within CIC’s Annual Reports (2010-2013) to illustrate some aspects of the nature of gender mainstreaming at CIC. The GBA section is important insofar as it provides a public record of the results of legislated provisions to conduct a gender analysis. But the GBA section of the report is relatively short and I am not claiming to provide a comprehensive account of the history and scope of the implementation of gender analysis within CIC. Further, while this portion of the *Annual Report* only captures a part of the work CIC’s gender-based analysis unit is engaged in, the section is nevertheless useful insofar as it provides a window on what issues are prioritized, what is sidelined, and what is completely left out.

In Canada, the legislative commitment to report on gender impacts dates to the debate on the 2002 immigration legislation. Within each *Annual Report to Parliament on Immigration* since 2005, there is a section called “Gender-Based Analysis of the Impact of

the Immigration and Refugee Act.” Within the 2010-2014 reports, the family class is discussed briefly under permanent immigration and, to some extent, changes and proposals are flagged within the GBA section. The 2014 report highlights that the gender gap in the Federal Skilled Workers Program may be closing as women’s human capital is being recognized:

CIC monitors trends in entry to ensure that males and females are both able to access permanent residency as principal applicants. Overall, a greater proportion of males are admitted as principal applicants and a greater proportion of females are admitted as sponsored dependents. Over the last 10 years, the Federal Skilled Workers (FSW) Program, CIC’s flagship economic program, has experienced a narrowing of the gender gap... This suggests that Canada’s FSW Program has been successfully recognizing the skills and experiences of women, as reflected through admissions. (CIC 2014, 24)

And yet what does gender parity mean vis-à-vis immigration categories themselves? For example, ensuring that equal numbers of men and women are present as sponsored dependents would not change the problematic nature of the program itself. Within the reports, the category of family class, however, remains unquestioned and its role in constituting unequal gender relations is largely ignored. In this sense, GM at CIC would appear to typify Bacchi and Eveline’s (2010) contention about idealized rational models and the limits of the ex-post models to question the logics, rationales, and goals of government policy. What is required, Bacchi and Eveline argue, is an ex ante (42) model of GM that can “critique the frameworks of meaning that underpin policies and to identify how policies produce particular kinds of subjects” (53). Thus, starting points for a more robust analysis of the conditional permanent residence for sponsored spouses would include revisiting the category of sponsorship and the nature of familism within neo-liberal inspired immigration policy as well as indicating how the regulatory change itself is underpinned by a set of problematic gendered and racialized assumptions.

The *Annual Report to Parliament on Immigration 2008* seemed to gesture to an intersectional-based policy analysis:

Gender impact analysis focuses on important social and economic differences between men and women, and between different groups of men, women, including variables such as age, race, sexual orientation, ethnicity, religion and culture over their life cycles. It seeks to examine existing and proposed policies, programs and legislation to ensure that they are having their intended effects and producing fair results. (CIC 2008, 44)

This conception of gender-based analysis outlined above draws attention to “differences” between groups of men and women. However, this remains somewhat unaddressed in subsequent reports. In 2010, the report notes: “To understand the gender impacts of CIC’s programs and policies, it is important to see the distribution of arrivals by gender across all immigration categories” (CIC 2010, 26). On the one hand, sex disaggregated statistics are important. However, on the other hand, the emphasis on statistics draws attention to men and women without contextual information and, as a result, tends to sideline more complex intersections. The focus remains on undifferentiated categories of men and women. We are also left with questions such as why do women predominate in the family class category or the Live-in-Caregiver program and why are some categories dominated by particular racial groups? Further, and somewhat ironically given this is Citizenship and Immigration, there is no reference in this type of definition to how immigration/entry status itself can be deeply implicated in social and economic differences (see Goldring, Berinstein, and Bernhard 2009).

Conditional Permanent Residence for Sponsored Spouses

The issue of marriage fraud had been on the government agenda as early as 2008 (Gaucher 2014). However, in 2010, following media reports and lobbying by a group called Canadians Against Immigration Fraud, the Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, launched a public consultation consisting of an online survey and three town hall meetings in Toronto, Vancouver, and Montreal. Those participating online were asked to read a short background document and then answer a 15-minute survey. CIC (2011b) reported that it received 2,431 responses, including 2,342 from the general public and 89 from stakeholder organizations. According to CIC:

- Overall, respondents indicated that fraudulent marriage is a threat or problem to Canada's immigration system, with three-quarters (77%) who reported it to be a *very serious* or *serious* threat.
- A strong majority (nearly 90%) of respondents felt that a sponsor should bear either *a lot* (65%) or *a moderate* (24%) degree of personal responsibility for ensuring that they are entering into a genuine relationship.
- The most frequently mentioned [actions to address marriages of convenience] were measures related to the punishment of fraudulent applicants and/or sponsors (including stricter enforcement of laws, deportation of fraudulent spouses and the introduction of financial penalties). (CIC 2011b, n.p.)

In 2011, the government presented amendments to IRPA regulations and introduced a two-step process into the sponsorship category:

Under the family class or the spouse and common-law in Canada class, a spouse or a common-law or conjugal partner who is in a relationship of two years or less with their sponsor at the time of sponsorship application would be subject to a period of conditional permanent residence. The condition would require that the sponsored spouse or partner remain in a bona fide relationship with their sponsor for a period of two years or more... Only cases targeted for fraud would be reviewed during the conditional period. Permanent residence could be revoked (leading to initiation of removal) if the condition of remaining in a bona fide relationship was not met. (*Canada Gazette* 2011, n.p.)

The provision did not apply if the spouse has children with the sponsor. Additionally, the government also introduced a measure prohibiting sponsored spouses from sponsoring a new spouse unless five years have passed since the time they received permanent resident status. According to the government, these measures were necessary to maintain the *integrity* of the immigration system and deter marriages of convenience (*Canada Gazette* 2012). It is unclear what role GBA played in the definition of the policy problem or what concerns it brought to the table.

The regulatory change was justified by the government's stated concern with marriage fraud. Consequently, one of the outcomes of the discourse and de-

bate around CPR was to link sponsored spouses with a set of undesirable associations, including fraud. These implications were flagged by the Metropolitan Action Committee on Violence Against Women and Children (METRAC) (2012):

The proposed conditional residence will foster negative stereotypes and discrimination against immigrants to Canada. Many immigrants—family-sponsored immigrants in particular—constitute a group already at risk of facing stereotypes and discrimination. Creating a class of conditional permanent residents will create a sub-group of partner-sponsored immigrants who will likely be pre-judged as 'frauds'—and 'who take advantage of the system.' (3)

The Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, also relied on a series of negative tropes to justify the introduction of the regulation. For example, in his speech introducing changes to spousal sponsorship, he referred to "the abuse of Canadians and our immigration system by foreigners seeking to use marriage illegitimately as a tool to get into Canada" and asserted that Canadian were "being lied to and deceived" and scammed. He went on to say: "We must also not forget that, when a foreigner commits marriage fraud, it is not only the sponsor who suffers, but also our taxpayer benefits such as health care are also affected by these people who cheat their way into Canada" (Kenney 2012a, n.p.). CIC subsequently launched an ad campaign advising Canadians not to become victims of marriage fraud as part of its March 2013 Fraud Prevention Month (Mehta 2013). These negative tropes linking sponsored spouses to marriage fraud served to construct the family class as a source of a major problem.

The amendment was also justified in terms of policy harmonization. Other countries, notably United States, United Kingdom, and Australia, had adopted similar measures to the CPR. According to CIC, the adoption of CPR "would result in Canada no longer being regarded as a 'soft target' by those who might otherwise consider using a marriage of convenience to circumvent Canada's immigration laws, and provide another means for enforcement action in instances of marriage fraud" (*Canada Gazette* 2012, n.p.). The Canadian Bar Association, among others, called on the government to undertake a more detailed review of initiatives in oth-

er countries to determine the efficacy of such measures in preventing marriage fraud and whether such measures “have been successful in addressing risks created by conditional status for vulnerable persons, including victims of domestic violence” (Arsenault 2011, 3).

How were these changes treated in the *Annual Report to Parliament* GBA section? All reports between 2010 and 2013 note that women make up the largest proportion of the family class. The government’s notice of intent to file the CPR is briefly flagged in the 2011 *Report* (CIC 2011a, 8). The 2013 report details that the conditional permanent residence (CPR) regulatory amendments were the subject of a gender-based analysis and notes: “In 2009, 61 per cent of all overseas sponsored spouse/partners and 57% of all inland sponsored spouses were female” (CIC 2013, 37). Importantly, what is evident just from these statistics is that the CPR for sponsored spouses disproportionately affects women. A more robust assessment would have raised questions about the benefit of pursuing this measure at the cost of deepening existing vulnerabilities. As noted above, there were longstanding concerns about the sponsorship regime by civil society groups.

The CIC GBA reports did not present any specific information about scope of marriage fraud such as evidence to show the extent of the problem. This is not surprising since the government itself was also somewhat ambiguous on this point. The Minister of Citizenship, Immigration and Multiculturalism spoke of the “thousands” of stories of marriage fraud when announcing changes to sponsorship (Kenney 2012a, n.p.) and later asserted that “there are countless cases of marriage fraud across the country” (Kenney 2012b, n.p.). According to the *Canada Gazette* (2012), “While firm figures on the extent of relationships of convenience are not available, out of 46 300 immigration applications for spouses and partners processed in 2010, approximately 16% were refused. It is estimated that most of these cases were refused on the basis of a fraudulent relationship” (n.p.). These figures have been the source of some controversy. Some have argued that the front end screening of overseas spousal sponsorship applications is already rigorous and will identify out marriage fraud (Hrick 2012, 24; Macklin 2014, 6). Others have noted that the numbers presented are inconsistent. For example, Megan Gaucher (2014) points out that the CIC website claimed “1,000 fraudulent marriages are reported

annually, challenging CBSA [Canadian Border Services Agency] claim of 200 reports of marriage fraud over two years. Concrete rates of incidents of marriage fraud put forth by then Minister Kenney, CIC and CBSA have been varying at best” (195).

The differential positioning of country of origin is also at play in the debate on CPR. The Minister of Citizenship, Immigration and Multiculturalism visited India in 2010 and raised the issue of immigration fraud, including marriage of convenience with his counterparts (Torobin 2010). China and India have been discursively constructed as “countries of suspicion” (Gaucher 2014, 199) and identified as producing more marriages of convenience than others by CIC and the Minister of Citizenship and Immigration despite the fact that there was little evidence to support this claim. Gaucher (2014) goes on to state that arranged marriages may be the subject of heightened scrutiny as a result of this discourse (200-201). Furthermore, some racialized minorities would be disproportionately affected by this initiative. The top three countries with the largest number of sponsored spouses under the CPR measure (2012-2014) were India, China, and the Philippines (Migrant Mothers Project 2015). This is not well addressed in the GBA section of the reports. Additionally, civil society organizations pointed out that marriages and common law relationships among Canadian citizens are also not always successful and “to hold sponsored immigrants to a punitive standard and more rigorously scrutinize their relationships is inappropriate and discriminatory” (Immigration Legal Committee 2011, n.p.). Under CPR, for example, CIC can initiate an “investigation and request evidence of compliance because there is ‘reason to believe’ that the sponsored spouse or partner ‘is not complying or has not complied’ with the condition (e.g. as a result of a complaint, tip or other information)” (Po 2013, 9).

Legislated Exception

A range of civil society organizations opposed the introduction of the two-year CPR. The Canadian Council for Refugees (CCR), for example, characterized the regulation as “a major step backwards in Canadian immigration policy” and argued that it “increases inequalities in relationships between spouses, and puts women in particular at heightened risk of violence” (CCR n.d.). Pam Hrick (2012), in her assessment of the

proposed regulation, pointed out that it was especially important to consider some of the dynamics that contribute to the vulnerability of immigrant women to domestic abuse and play a role in their decision to leave or remain in an abusive relationship. In particular, lack of “language skills, perceptions of law enforcement and fear of deportation contribute to creating a sense of isolation or dependency that leaves immigrant women more vulnerable to abuse than many other groups in Canadian society” (3-4). This critique was very similar to concerns about the sponsorship regime raised during the IRPA debate. Soon after the policy announcement, eighty organizations signed a joint statement prepared by CCR opposing the CPR measure as “an unnecessary and dangerous measure” and arguing that the policy would exacerbate domestic violence by “concentrating power in the hands of a sponsoring spouse or partner” (Bhuyan et al. 2014, 32).

The GBA unit played a role in addressing stakeholder concerns.² Following the 2012 announcement, consultations were held with provincial and territorial levels of government and other federal departments, including Canadian Border Services Agency, Status of Women Canada, and the RCMP. According to the 2013 *Annual Report to Parliament on Immigration*'s GBA section, “CIC built an exception into the regulations that allows newly sponsored persons who are impacted by the conditional permanent residence measure and who are victims of abuse or neglect to come forward without having to worry they might face enforcement action” (CIC 2013, 37). Additional guidelines were also developed to train officers processing requests (38). Here is an attempt to be responsive to a real concern but it comes after the measure is announced. It is not clear how far or whether these measures will address the issues raised.

For example, the exception may be difficult to realize in practice. Audrey Macklin (2014), in her testimony before the House of Commons Standing Committee on Citizenship and Immigration, focused on the exception's constraints for sponsored individuals:

The first is that she has to physically leave the house, leave the relationship. So she already has to initiate the separation—which could lead to her removal from Canada—without any assurance, of course, that she will be believed in her account of being abused.

Secondly, the requirements for demonstrating to the satisfaction of a Citizenship and Immigration Canada official that the woman is indeed subject to abuse are fairly strict and seem to rely heavily on forms of documentary evidence that may be difficult to obtain...court documents, protective orders, bail orders, letters from shelters or family services clinics, statements from medical doctors...police or incident reports, photos showing the victim with injuries...

Macklin goes on to point out that the difficulty in obtaining this type of proof affects whether a woman's claim is seen as legitimate. Without the evidence, a woman may not be believed and be put at risk of removal. Here is an instance, according to Macklin, “of how immigration laws in place do not alleviate, but rather exacerbate, the vulnerability of women to experiencing domestic violence” (Macklin 2014, 3). More recently, the CCR (2015) surveyed 140 cross-country settlement organizations, legal clinics, and women's shelters. Their findings indicate many organizations are not aware of all of the implications of the CPR and are unaware of or have incorrect information about the exception for women in vulnerable positions. Moreover, “the process of applying for the exception has sometimes resulted in re-traumatization, due to reported lack of sensitivity training of CIC officials, and long delays in processing.” Their findings led them to conclude that the CPR has “increased the vulnerability of many sponsored newcomers, particularly victims of domestic violence” (n.p.).

The government's stated rationale in introducing the CPR was to address fraud and to ensure the integrity of Canada's immigration system. However, the evidence to support the fraud charge is somewhat ambiguous and the efficacy of the policy to actually address and deter fraud is not clear either. However, the problematic nature of the sponsorship category and its potential to put women in risk has been the subject of considerable scholarship and grassroots activism long before the introduction of the CPR. Despite this the government chose to embark on CPR—a measure that further exacerbated and entrenched the existing tendencies within the sponsorship regime.

Conclusion

Within a neoliberal context, family migration is

particularly politicized as it is constructed as a problem because family members are seen as dependent, lacking the requisite human capital, and as a possible drain on the system. As this article has demonstrated, the introduction of the CPR for spouses by the Harper administration needs to be placed against this context. The provision ostensibly to address marriage fraud—whose scope remains undefined and efficacy unclear—raises real concerns about its potential to increase vulnerability and precariousness of those sponsored. As one collaborative research project put it, it does so by placing immigrant women “under the control of both their spouse/partner and the Canadian government” (Bhuyan et al. 2014, 32).

The introduction of the CPR also raises concerns about gender mainstreaming within immigration policy and how gender equality is defined in immigration policy making. On the one hand, the GBA requirement in the Immigration Act did provide the disaggregated statistics necessary to demonstrate that women would be disproportionately impacted by the measure. Importantly, it also provided a space that helped to frame and channel stakeholder concerns that ultimately permitted an ‘exception’ in cases of abuse and neglect to be included in the provisions. This said, and despite the stated concern for ‘different groups of men and women,’ there was little attention within the GBA section of each *Annual Report to Parliament on Immigration* to the multiple and intersecting axes of disadvantage that the CPR was implicated in—namely which families were rendered suspect or problems. But perhaps, most importantly, as an ‘ex-post’ practice, gender analysis in this case proved limited in addressing the way in which the policy problem was conceived or the manner in which the family category was characterized within a neoliberal discourse that prioritized individualized conceptions of human capital.

Postscript

In October 2015, the Liberal Party under the leadership of Justin Trudeau came to power. The Prime Minister’s mandate letter to John McCallum, the new Minister of Immigration, Refugees, and Citizenship outlined a number of priorities. Among them: “Bring forward a proposal regarding permanent residency for new spouses entering Canada” (Office of Prime Minister 2015). In February 2016, McCallum indicated that

changes to the provision were underway (Rana 2016).

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Endnotes

¹ This is a longstanding trend that predates the Harper administration. CIC (2003) figures capture the shift: in 1980, the family category comprised 35.9% of permanent residents and the economic category accounted for 34.9%. By 2000, these figures had changed to family category 26.7% and the economic category 59.9%.

² CIC’s GBA unit outlined this at “GBA+: From Research to Policy to Measurement,” National Arts Centre, Ottawa, ON, May 7, 2014.

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