

INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

ProQuest Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600

UMI[®]

**Field Officer Discretion in the Implementation Process: Immigration Policy in
Canada, Quebec and the United States**

By

GENEVIÈVE BOUCHARD

A Dissertation
Submitted to the School of Graduate Studies
in Partial Fulfilment of the Requirements
for a Ph.D. in Political Science
McMaster University

© Copyright by Geneviève Bouchard, December 2000

Field Officer Discretion in the Implementation Process

DOCTOR OF PHILOSOPHY (2000)
(Political Science)

McMaster University
Hamilton, Ontario

TITLE: Field Officer Discretion in the Implementation Process: Immigration Policy in Canada, Quebec and the United States.

AUTHOR: Geneviève Bouchard, B.Sc. (Université Laval), M.A. (Université Laval)

SUPERVISOR: Barbara Wake Carroll

NUMBER OF PAGES: vii, 256

Abstract

Immigration is a policy area that is becoming increasingly relevant among researchers in international relations and comparative politics as they address the difficulty advanced industrialized countries have in controlling their borders. Most research on immigration policy examines this issue by focusing on external and macro level internal factors which influence policy choices and policy outcomes. While these explanations are useful, they neglect the manner into which policy choices are translated at the implementation stage by officers in the field.

This dissertation suggests that field officers have a great impact on policies and on their outcomes as they are the ones who are responsible for interpreting and implementing the policies designed by policy makers. It is argued that a micro approach utilizing interactive theories of public policy and public administration which takes into consideration the discretion of the individual civil servant is a useful supplement to macro and meso theories about immigration.

This conclusion is reached by a study of two countries (Canada and the United States) and one province (Quebec). The dissertation considers the external selection process and examines the circumstances under which field level discretion is exercised. Its conclusion is that Canadian officials operate with a higher level of discretion than their US counterparts, while Quebec agents enjoy an even higher level of discretion. These differences, it is suggested, are explained by variations in political institutions, organizational structure, organizational resources and the degree of importance attached to some overriding goal - in this case the concern for social and cultural integration in Quebec.

Acknowledgments

The completion of this dissertation within five years would not have been possible without the great support that I received from within the academic community and from family and friends. First, I would like to thank Professor Barbara Wake Carroll who did a wonderful job of supervision. Professor Carroll was always available when I needed her advice or comments throughout my Ph.D. studies. I would especially like to thank her for her genial and incisive support throughout the writing stage of this dissertation. She never hesitated to provide me with both the academic and the emotional support a student needs to realize such a long project.

Second, I would like to thank Professor William Coleman, Professor Gerald Dirks and Professor William Chandler. They helped me to improve the quality of my work with a wealth of insightful comments. I am particularly thankful to Professor Coleman who supported me throughout my studies and who understood the extra difficulty of doing a Ph.D in a second language.

I am also thankful to immigration agents from Citizenship and Immigration Canada, the ministère des Relations avec les citoyens et de l'Immigration and the State Department. These organizations gave their time in interviews and responded with alacrity to my research queries. I am also thankful to the province of Ontario for financial support through its Ontario Graduate Scholarship.

Finally, I would like to thank my parents, Brigitte Fortin and Gilles Bouchard and my life partner Eric Montpetit for their incommensurable support and love. There is no doubt in my mind that this project would not have been realized without their presence in my life.

Geneviève Bouchard

Table of Content

Chapter 1: Introduction.....	1
Chapter 2: Methodology.....	25
Chapter 3: The Management of the External Immigration Process.....	55
Chapter 4: A Look at the Exercise of Street Level Discretion Authorized by Immigration Laws and Administrative Procedures in Canada and in Quebec.....	97
Chapter 5: The United States: The Immigration and Nationality Act and the Foreign Affairs Manual.....	155
Chapter 6: How Street Level Discretion Is Exercised in Field Offices: A Discussion of the Interviews Conducted with American, Canadian and Quebec Officers.....	176
Chapter 7: Explaining Field Level Discretion.....	210
Chapter 8: Conclusion.....	238
Bibliography.....	250

List of Tables, Figures and Appendix

Table 1.1: Politicization Patterns.....	5
Figure 1.1: The United States and the Provinces of Quebec in Relation with the Concept of Discretion.....	19
Table 2.1: Interviewees; Where they Work, Sex and Experience.....	29
Figure 2.1: Immigration in the United States and in Canada by Region of the World.....	34
Appendix 2.1: Letter Sent to the Interviewees.....	42
Appendix 2.2: Questionnaires in French and in English Used for the Interviews with Immigration and Visa Officers.....	44
Figure 3.1: Organizational Chart: Citizenship and Immigration Canada.....	57
Figure 3.2: Organizational Chart: Ministère de l'Immigration et des Relations avec les Citoyens.....	75
Figure 3.3: Organizational Chart: Department of State of the United States.....	83
Appendix 3.1: List of Offices Which Constitute the International Region.....	91
Table 4.1: Selection Criteria.....	111
Table 4.2: Employment Training Factor.....	113
Table 4.3: Experience.....	113
Table 4.4: Age.....	115
Appendix 4.1: Some Definitions.....	144
Appendix 4.2: Language Assessment Guide.....	145
Appendix 4.3: Preliminary Selection Grid of EMP Workers.....	146
Appendix 4.4: Selection Grid for Skilled Workers.....	147

Appendix 4.5: Selection Grid for Business Immigrants.....	148
Table 6.1: Forms of Procedural Discretion; their Availability and their Use in Immigration and Visa Officers' Jobs.....	186
Table 6.2: Comparison Factors in Selection Grid for Skilled Workers - Canada and Quebec.....	198
Table 6.3: Comparison of Discretionary Factors in Selection Grid for Entrepreneurs - Canada and Quebec.....	199
Table 6.4: Comparison of Discretionary Factors in Selection Grid for Self-Employed - Canada and Quebec.....	201
Table 6.5: Types of Discretion and their Availability in Canada, Quebec and the United States.....	203
Appendix 6.1: Figure Representing the Units of Assessment Granted Under the Criteria Called Aptitudes for Realizing a Business's Project.....	204
Table 7.1: Four Variables and their Impact on Field Level Discretion in Immigration.....	232

Chapter One

Introduction

Immigration has become an increasingly important area of public policy. But it is an area which has traditionally been studied from the perspective of international relations or comparative politics, not public administration. This dissertation looks at immigration policy from this perspective. In particular, it considers the role field level officials have in the immigration process in the United States, Canada and the Canadian province of Quebec. The thesis of the dissertation is that implementation is affected by the degree of administrative discretion which field officers have and the degree of administrative discretion varies systematically based upon variations in political institutions, organization structures, the availability of resources and the concern for integration.

1.1 Why is it important to study immigration policy?

It appears that over the years, liberal states have faced rising difficulty in controlling their borders. Writers such as Wayne A. Cornelius, Philip L. Martin and James F. Hollifield have observed a growing gap in major industrialized countries “...between the goals of national immigration policy (laws, regulations, executive actions etc.) and the actual results of policies in this area (policy outcomes)...”.¹ This gap, according to the same authors, is producing “...greater public hostility toward immigrants in general ...” leading, in turn, to the adoption of more

restrictive policies by political actors who feel this growing public pressure.²

The media have also played an important role in alerting the public to the difficulties that states are experiencing in trying to control the flow of immigration. In Germany, France, the United States and even Canada, people frequently hear disturbing stories about illegal immigration, the high cost of immigration due to housing, education, and social welfare, weak control systems and so forth. Recently, in Canada, we have been witnessing the arrival on our coasts of asylum seekers and public reaction that is far from being mild.³ Certain Canadians have expressed their dissatisfaction toward illegal or self-selected newcomers, some of them even suggesting that our officials act more firmly in using, for instance, our "... naval power to turn back human-cargo ships..."⁴

If the media contributes to the perception that more people, today, try to enter open-door countries such as Canada and the United States, this impression is incorrect. As a matter of fact, humanity has always migrated, whether from valley to neighboring valley or from continent to continent. The pressure of seeking out more commodious habitation sites, whether by nomadic people in ancient times or by white-collar professionals today, is a process well known to students of human behavior. Throughout history, humanity has demonstrated nomadic, restless characteristics. No single factor explains this migratory urge. Rather, a complex assortment of motives and circumstances account for this persistent trait of human kind. In general, people have migrated through the ages because of dissatisfaction with prevailing conditions, coupled with a somewhat inexplicable sense of optimism that suggests more favorable circumstances can be found elsewhere.

In the last third of the twentieth century, however, the prospects for would-be migrants

have radically deteriorated. What fundamentally distinguishes this era from earlier ones is that the supply of willing receiving states has fallen far behind the demand. Other than Canada, today only the United States, Australia, New Zealand and Israel are considered to be countries of immigration. Unlike only a few decades ago, when immigrants could choose among possible states of destination, these remaining few receiving countries have now adopted legislation and implemented regulations intended to significantly restrict the types and number of newcomers welcomed into their midst. Contemporary would-be migrants, however, frequently view their prevailing living conditions to be intolerable and are prepared to adopt whatever means are available to circumvent entry controls implemented by destination countries.

The relative flow of migrants across state boundaries in the 1980s and 1990s may not be any greater than that during the late nineteenth and early twentieth century. What has changed is the extent to which the desire to migrate has deepened, the enormous number of people exhibiting this desire, and the erection of legislative and other barriers aimed at limiting or even preventing diversity of immigrants and massive, unwanted, self-selected international migration. Rather than meaningfully addressing the multiple, complex causes giving rise to cross border and intercontinental migration from the lesser developed countries (LDC), developed states are establishing controls to regulate and even prohibit the entry of aliens. It is not clear that governments and their public, or even experts for that matter, grasp the fundamental complexity of the motives impelling societal migration. There is a general agreement, however, on the most common causes for human population movement which are conventionally divided, somewhat simplistically, into push and pull forces with the decision of migrants being influenced by a combination of these.

Among the push factors, in addition to population pressure, are the absence of employment opportunities, non-existent or inadequate public services such as health care and schools, environmental degradation, and finally, state-directed or state-condoned political persecution, oppression and even genocide. Among the pull factors, the most common is the belief that a better way of life is possible somewhere else. This is closely followed by and related to socialization--the desire to live within one's own social network--which produces large scale migration of particular groups to single places. Since the early 1960s in western Europe, and over a still longer time in the United States, Canada and Australia there have been enough examples of available employment to fuel the aspirations of would-be migrants from the LDCs.

Some European and North American countries had extensive 'guest worker' schemes under which hundreds of thousands of foreign laborers were formerly welcomed. In the years when their economies were buoyant, governments of receiving countries took little if any action against illegal entrants, which potential migrants took as a signal to follow peers and relatives some of whom were asylum seekers who had made claims for refugee status. Many of those claims were found to be fraudulent, yet little action was taken to deport the now illegal migrants. Certain menial jobs were open to them in agriculture, child care, custodial and cleaning sectors and other small enterprises willing to employ these illegal migrants at low wages within the 'underground' economy.

Today, the legacies of those guest worker programs and the lack of past governmental actions to prevent or to stop illegal entrants are among the factors that contribute to difficulties in slowing down immigration. In those countries facing migration pressures, there is a wide range of responses to the problem depending on the saliency of the issue, the degree of polarization and the

symbolic character of the issue. All of these factors tend to influence the extent to which there is an open informed debate about the issue. Figure 1.1 provides a comparison of these patterns. It summarizes the relative politicization patterns of the immigration in two countries: Canada and the United States.

Table 1.1
Politicization Patterns

	Salience	Polarization	Symbolic/Emotive Character
Canada	Low salience in the past. It increases with the growth of non-traditional immigration	Limited, a submerged issue but basis of support for Reform Party	National Unity debate monopolizes symbolic aspects
The United States	Low salience in the past. It is much higher now and specially in big cities affected by non-traditional immigration (mostly from Mexico).	limited or none	Fear of losing control of the borders (esp. with the Mexican illegal immigration)

Canada and the United States are similar, with respect to immigration, since they belong to the same category of countries, the *English-speaking settler societies*.⁵ They are both nations of immigrants and they still have “open door” policies which foster and invite newcomers to settle permanently into their land. In the past, immigration and citizenship had produced only limited controversy and had remained matters of low salience. However, in the 1980s, the Canadian refugee backlog of some 100,000 cases and the illegal immigration crisis in the United States tended to raise concerns about immigration in both countries. Moreover, the saliency of this issue is much higher in specific areas such as the states of California, Texas, New York, Illinois, and

Florida as well as in large Canadian cities such as Toronto and Vancouver in which anxiety about immigration, particularly from non-traditional source countries, is especially high.

In the United States, illegal immigration is a bigger problem than in Canada. The number of illegal aliens entering the United States each year is estimated to be 500,000.⁶ At the beginning of the 1980s, alarmed by this massive illegal influx, the American government and the general public felt that the United States was losing control of borders. The Immigration and Refugees Control Act (IRCA) was passed by the Congress in the mid-80s in order to try to solve this problem. This legislation established new sanctions on employers, it increased border enforcement and it provided a one time amnesty for 2.6 million unauthorized aliens. If IRCA had a positive effect for the first few years, by the late 1980s illegal immigration began to rise again.

Despite those problems, immigration has not yet been a significant political concern in Canada nor in the United States. As Freeman in his study of immigration in liberal democratic societies has concluded: "Political parties in the settler societies rarely attack immigration as a means of appealing for votes. Instead, there is a marked tendency to develop an interparty consensus (almost always expansionary, sometimes status quo) in order to take immigration out of politics".⁷ The Reform Party of Canada is the most significant exception. In 1993, this party, which espouses highly critical views on immigration, won an important bloc of seats in the Canadian parliament (52 seats out of 295).⁸ Nevertheless, in the 1997 election campaign, the Reform Party stressed its opposition to distinct society for Québec rather than its hostility towards immigrants.⁹ In short, even though immigration has become, through the years, a bigger concern for Americans and Canadians who are increasingly uneasy with the arrival of newcomers and particularly if they are "visible" and not "traditional" immigrants from Europe, political parties did

not make room for the immigration policy issue into their party platform in either of these countries.

However, although Canada and the United States, compared to some European countries such as France and Germany, have been somewhat more moderate toward the issue of immigration, a potential for a serious crisis in those countries remains a possibility to the extent that there are serious economic problems, or increased fear of loss of benefits for the 'owner' group.¹⁰

1.2 How do academics study immigration?

So far, there has been a considerable number of studies which discuss the idea that immigration and, especially the control of immigration, raise serious problems and questions for both the present and future stability of the state. Most of these, however, look at macro-political institutional factors as well as at external factors and are mainly concerned with the following questions: Which factors can explain how liberal states deal with the issue of immigration? and how and why it is that political elites of industrialized countries seem to have lost control of immigration and immigrant policy? There is a contemporary debate within the international relations and comparative politics literatures between those who think that external factors better explain migration policy and those who argue that internal or domestic factors are the key to explaining how liberal states deal with immigrants.

The first perspective focuses on external factors and is represented by David Jacobson (1997). Jacobson argues that the world system is shifting from state sovereignty to international rights and he suggests that this situation explains the rights and privileges that foreigners obtain

today from a country even if they are not citizens.¹¹ In most liberal states, the growth of the importance and acceptance of international human rights has the effects of devaluating citizenship and giving more rights to foreigners. As an illustration, Jacobson discusses the European Convention on Human Rights which allows aliens to “[...] make claims on citizenship and immigration laws on the basis of Article 3 (inhuman and degrading treatment), Article 5 (liberty of person), Article 6 (fair and public hearing), Article 8 (respect for private and family life), and Article 12 (right to marry)”.¹²

If the rise of the importance of human rights explains the expansiveness of liberal states toward immigrants and especially why they accept unwanted immigrants, this does not imply, however, that the role of the state is diminishing. As a matter of fact, Jacobson asserts that international human rights’ instruments and institutions define a new role and new tasks for the state. Rather than shrinking, the state apparatus will expand in order to fulfill its new mandate in promoting human rights. As Jacobson writes:

The state apparatus expands in order to fulfill its mandate to promote and facilitate human rights, particularly positive rights. Negative rights demand the state refrain from interfering in, say, the rights to privacy. Positive rights demand action by the state in, for example, “affirmative action” policies. The state, then, is not anti-thetical to the emerging transnational human rights order but an essential and intrinsic element of that order.¹³

What this means, however, is that now liberal states are required to respect and follow the guidelines of international human rights institutions when they deal with documented or undocumented immigrants and refugees. While this gives more protection to foreigners, it also makes it more difficult to control and, in particular, to slow down the rate of immigration, thus, decreasing to some degree the sovereignty of the state.¹⁴

The second perspective is represented by Gary Freeman (1995) and Christian Joppke (1998), who disagree with the idea that the state's sovereignty is declining because of external constraints such as economic globalization and the rise of an international human rights regime. Instead of arguing that state's sovereignty is globally limited, Freeman and Joppke assert that state sovereignty is self-limited and that this situation would explain better why they accept unwanted immigrants.

Freeman identifies the political process as an important element of self-limited sovereignty. To the popular question of why liberal states accept unwanted immigrants, he proposes the following answer "the benefits of immigration (such as cheap labour or reunited families) are concentrated, while its costs (such as increased social expenses or overpopulation) are diffused".¹⁵ Therefore, it is easier for beneficiaries of immigration (employers or ethnic groups) to organize themselves and work toward a more expansive policy than it is for the majority population which assumes its cost. Freeman contends that immigration policy in liberal states is "client politics... a form of bilateral influence in which small and well-organized groups intensively interested in a policy develop close working relationships with officials responsible for it".¹⁶ As a result, sovereignty is limited by these aspects of the political process. To illustrate his thesis, Freeman uses the case of illegal immigration in the United States and demonstrates that the state was unable to stop undocumented immigration because of the pressure of domestic groups.¹⁷ The failure of the US Immigration and Refugee Control Act then can be seen as the result of the coalition of civil rights groups, Hispanics and employers who pressured the government to soften the initial piece of legislation which was presented in Congress.

Finally, Freeman argues that the expansive behaviour of states toward immigrants can also

be explained by what he calls the “antipopulist norm”. This norm is preventing political elites from using races or ethnic groups while discussing immigration and its composition. As Joppke explains this antipopulist norm : “ its most potent expression is the principle of source country universalism in the classic settler nations, which no longer screen potential immigrants for their ethnic or racial fitness”.¹⁸

Joppke offers two important modifications to Freeman’s explanation of the expansiveness of states vis-a vis unwanted newcomers. First, he suggests that academics should take into account the legal process when studying immigration policy. This factor, he argues, reveals why European states, despite zero-immigration policies enacted in the early 1970s, still accept newcomers into their midst. The courts which have often based their decisions on “... statutory and constitutional residence and family rights for immigrants ”¹⁹ have allowed, through the years, guest workers to turn into settlers and to bring their family in. France and Germany are both good examples of this phenomenon.²⁰ Both countries tried, without success, to close their doors to immigrants after having facilitated and solicited their entry for many years.

The second modification suggested by Joppke refers to the considerable variations among states’ behaviour when dealing with unwanted immigrants. Joppke suggests that it is important to distinguish guest-worker immigration from postcolonial-based immigration and this distinction becomes clearer by looking at two European countries such as Germany and Britain. In the past, Germany actively solicited foreigners to come to work within its borders and is now morally refrained from closing its doors completely. In contrast, a postcolonial regime such as Britain which never actively invited newcomers and for which immigration, at no point of its history, has been wanted but only tolerated, can be firmer toward immigrants. This explains, for example, why

Britain was able to prevent Hong Kong residents from migrating despite the fact they were considered to be British citizens. As Joppke puts it: “Differently developed moral obligations toward immigrants in both regimes (among other factors) help explain variations in European states generosity or firmness toward immigrants’”.²¹

1.3 Studying immigration differently

A brief look at these perspectives allows to understand that they both offer interesting alternative explanations to the actual problems and questions raised by immigration and its consequences on the stability of the state. They both give some hints on how the immigration control issue can be studied and how it can be understood. Nevertheless, whether the state’s behaviour toward immigrants or, in other words its policy choices, are influenced by the pressure exercised by the international community, pro-immigrants groups or the courts, the role of field officers remains the same. As a matter of fact, immigration field officers are responsible for interpreting and implementing legislation and rules chosen by the state and its legislators. Their actions are, therefore, likely, to have a great impact on the policy itself and its results. I suggest that a more micro approach utilizing interactive theories of public policy and public administration which focuses upon the discretion of the individual civil servant is a necessary supplement to macro or meso theories about immigration.

Furthermore, as Joppke has suggested : “[....] countries are internally, rather than externally, impaired in controlling unwanted immigration” and “ [...] in order to understand migration policy and the differences between nations and their willingness to accept immigrants ... one must distinguish between two separate aspects of sovereignty, formal rule-making authority and the

empirical capacity to implement rules".²² Similarly, both Garcia y Griego and Antony Messina attribute many of the problems of migration policy in both Canada and Western Europe to a problem of loss of control of the administrative process.²³ But none of these authors attempt to explain what part of the implementation or administrative process is at fault, or why. This dissertation focuses upon the capacity to implement rules and suggest that the problem lies in the utilization of policy discretion.

1.3.1 Discretion: A Review

Discretion is a concept that has been discussed for many years in the public administration literature. Classical American authors such as Woodrow Wilson, Leonard D. White, Frank Goodnow and many others suggest that administrators have an important role in policy-making.²⁴ They argue that civil servants, through their administrative discretion, influence considerably the policy-making process. Luther Gulick even maintains that "every act [of the public employees] is a seam less web of discretion and action" and he pursues in explaining that "[a]lthough the amount of discretion varies within agencies, discretion is exercised from the top of the organization to the bottom".²⁵

These authors suggest that this administrative influence can be found within two particular sets of actions. First, White and Paul Appleby recognize the significance of civil servants in the development of policy recommendations. White even asserts that the need for impartiality and for technical skills equips public employees well for making good policy recommendations: "Administration may be the best-equipped branch of government to make genuinely public policy free from overwhelming favouritism to one particular pressure group".²⁶ Second, administrators use their discretion in implementing policies that often need to be adapted to particular

circumstances. They also have to deal with vague or general legislation and thus have to make personal decisions on how they should act.

More recently, public administration analysts argue that field-level discretion is inevitable because laws cannot possibly anticipate all the situations that field level bureaucrats might address. Consequently, civil servants who deliver services and deal with the general public require a certain degree of flexibility if they are to respond to the many and different demands of their clients. Discretion thus permits field-level bureaucrats to tailor their actions or efforts to specific and varying circumstances.

Authors who study field level discretion define it as *the exercise of personal authority*. They also observe that the use of personal judgement to make decisions in public service is usually limited by organizational barriers. Patrick G. Scott and Michael Lipsky acknowledge these organizational restrictions when they define bureaucratic discretion as “a range of choice within a set of parameters that circumscribes the behaviour of the individual service provider”.²⁷ These parameters can take the form of organizational rules, laws, norms or even codes associated with professional practice. Their purpose is to guide civil servants and to teach them what behaviour is acceptable or appropriate.

Barbara Wake Carroll and David Siegel make a useful distinction between policy discretion and administrative discretion. They define policy discretion as: “the ability to adjust programs or policies to suit the circumstances. It is the process by which the administrator is able to use... a judgmental decision strategy to change or alter programs to suit the clients, or in some cases, the administrator”.²⁸ In contrast, administrative discretion takes two distinct forms: “[o]ne is the degree to which the administrators can alter the structure of their day-the ordering of their work-,

the other is the extent to which administrators can define the job itself".²⁹

A distinction is also made in the literature between the forms that bureaucratic discretion can take. According to Michael Brintnall, the exercise of discretion defined as "an initiative by the staff members themselves to treat cases independently of rules and supervisory instructions" can take two specific forms.³⁰ First, civil servants' decisions can be made individually to respond more closely to the needs of each client. This treatment of cases in an individual fashion is likely to provide more personal attention to clients than formal rules require. Second, "attention to cases and clients can be routinized, for example by stereotyping, thus providing less individual attention to cases or clients than formally required".³¹

So far, the literature has placed more emphasis on the study of the second and more negative form of bureaucratic discretion. This emphasis is consistent with the majority of analyses of field-level discretion where it is viewed as a bureaucratic pathology rather than a necessary behaviour found in the administration.³² Lipsky is certainly the author who first popularized this second form of bureaucratic discretion. He argues that street level bureaucrats exercise wide discretion in decisions about citizens with whom they interact in determining the nature, amount and quality of benefits and sanctions provided by their agencies.

Moreover, Lipsky explains that civil servants must engage in coping behaviour in order to deal with the complexity of work tasks and the lack of resources as a matter of survival. If they want to fulfill their functions, public employees must develop routines, shortcuts and simplifications that will reduce the stress in their jobs. Street level bureaucrats will also use such processes as categorization, standardization and creaming. "This latter is the process, found in many social services areas, housing and various types of rehabilitation programs, by which the easy

cases are dealt with first. The “nice” poor people are housed first; the newly or only slightly addicted get treated first”.³³

Janet Coble Vinzant and Lane Crothers understand discretion in a more positive way. In looking at police officers and social service workers, they suggest that discretion can be understood as “the ability to make responsible decisions”, and “the power of free decision or latitude of choice within certain legal bounds”.³⁴ According to them, exercising discretion involves making choices between different alternatives and they argue that what comes into play is the judgment of the choice maker replacing a more mechanistic process. They suggest that because public servants have to make more decisions within more complex situations, discretion becomes a more important and even necessary aspect of their daily work.

Furthermore, they suggest that discretion can take two different forms. First, civil servants can use their judgment to decide what to do. In other words, they will exercise discretion to choose an outcome or objective to pursue. Such discretion is called “outcome discretion”. The second form of discretion is termed “process discretion” and it is the exercise of discretion by civil servants for deciding how to achieve a goal.

In order to use this analysis for the study of discretion by officials selecting immigrants, a few modifications are necessary. Before looking at the “official” and “actual” use of field discretion in both laws and administrative procedures and also through interviews, a definition more adapted to the context of immigration is useful.

1.3.2 Defining Discretion in Immigration Policy

At the beginning of this research project, it was expected that the data would correspond mostly to the second form of discretion defined by Brintnall. However, it appears that in the

external selection process, the first form of discretion, adapting to individual cases, better fit the reality. As it will be demonstrated in subsequent chapters, discretion is often used to decide if an interview will be required, what and how many questions will be asked, if additional documents are necessary and if an applicant deserves a chance even if he does not fit all the legal and administrative requirements.

Therefore, the nature of the external selection process makes agents deal with cases in an individual fashion. This phenomenon can be explained by two realities characterizing the immigration selection system. First, the decisions that immigration and visa officers have to make are complex. For example, their decisions are often based on criteria which are difficult to assess. Chapters Four, Five and Six will demonstrate that criteria of selection such as personal suitability, public charge, experience, knowledge of official language and others are assessed individually. It will be demonstrated that those factors of selection can also leave some room for the exercise of personal and professional judgment. Second, deciding if someone is likely to adapt well to his country of adoption usually has serious implications for both the receiving country and the applicant. This implies that agents must be cautious in their individual assessment of applications for immigration.

Like most writers who discuss the notion of discretion, the use of judgment or the use of personal authority to make a decision is central to my definition. Usually, there are three distinct situations which can guide the field officers's decision process. The first one consists of following step by step the laws and administrative procedures when agents consider they fit well the specificity of the cases processed. The second situation is when officers will decide, for all kind of reasons, to diverge from these prescribed rules. Finally, laws and procedures can allow agents to

choose between different alternatives or to even invent new ones which fit better specific cases. The first and third situations are more common in the external selection process. For example, some American agents pointed out that discretion was used essentially in the evaluation of non-immigrant cases (students and visitors) but not for would-be immigrants. Thus, when evaluating immigrants' files, these officers appear more inclined to go by the rules and a few of them even argued that the Immigration and Nationality Act is clear enough that there is virtually no room left for field-level discretion.

In contrast, several officers from both Canada (Quebec included) and the United States agree on the importance of discretion in their work. They contend that no law makers can imagine the full range of human nature, nor predict every circumstance. Therefore, having discretion is something that is inevitable, and indeed in their work. Many of them maintain that having discretion makes the difference between a good and a bad choice of immigrants. Without discretion, they also argue that their work would become too mechanical and less human oriented.

Drawing from this analysis, I understand discretion as *the use of judgment to evaluate if an applicant meets the criteria or the requirements of the legislation*. Discretion is usually used to interpret "grey areas" of laws that can never be specific enough, leaving some room for personal judgment. For example, several American agents explained that, sometimes, decisions have to be taken without the appropriate information such as the absence of birth certificate or other documents that would help agents to verify the validity of personal and professional candidate's information. Consequently, immigration and visa agents use their personal and professional judgment to refuse or accept applications. Officers have also mentioned the difficulty of evaluating specific criteria such as public charge. As they say: "determining if somebody is likely

to become a public charge for our country is not a white or black issue".³⁵ Furthermore, overseas agents may have a certain degree of flexibility in estimating the settlement capacity of a candidate for immigration. In other words, they use their judgment to decide if a candidate is likely to adapt well in his new country of adoption. Those are good examples of situations where field level discretion is exercised in the selection process. The following chapters will provide us with a more detailed explanation of how discretion is used in this process.

1. 4 Objectives and Plan of the Dissertation

This research project has two main objectives. First, in studying the selection process, I want to acquire a better understanding of the job and the role of field level bureaucrats and more specifically of those who work in the external selection process of newcomers. In fact, the role and the importance of higher civil servants have been studied more extensively by researchers than lower civil servants. Those who spend some time looking at field level bureaucrats have realized, however, the importance of this group of actors in both the implementation and the policy-making processes. My hope is to continue to expand the academic knowledge on this issue.

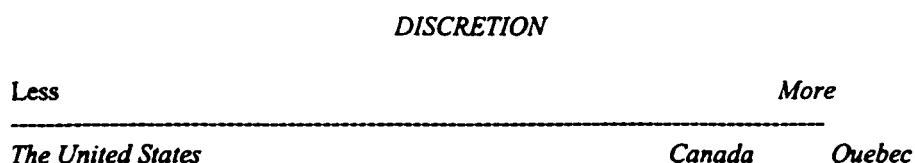
Moreover, studying a body of players such as overseas immigration officers adds to the challenge since those actors have been, in the past, overlooked by researchers on immigration. As noted earlier, those who have studied immigration have adopted a macro or meso approach overlooking the role of immigration officers working at the periphery of the organization.

The second objective of this dissertation is to gain a better understanding of the selection process of newcomers and to comprehend how and where officers' discretion is exercised in this process. In looking at two remaining 'countries of immigration', namely the United States and

Canada, I will consider the selection process and examine the circumstances under which discretion is exercised. I will look at differences and similarities and try to explain them by looking at variables influencing discretion. My analysis suggests that while Canadian officials operate with a higher level of discretion than their US counterparts, Quebec's agents enjoy an even higher level of discretion than their federal colleagues. My intention is, therefore, to explain why I found more discretion in Canada and in Quebec. In this respect, I argue that four specific factors namely, political institutions, organizational structure, organizational resources and a concern for integration explain best those differences. Figure 1.2 illustrates roughly the relationship of the three groups of actors studied with discretion. A more detailed illustration of this relationship will be presented in subsequent chapters.

Figure 1.1

The United States, Canada and the Province of Quebec in Relation with the Concept of Discretion



The dissertation is organized into eight chapters. Chapter two deals with methodology. It begins by talking about the two steps of the data collection, one that consisted of a review of relevant documents and another which involved an organizational survey. It also explains why I choose to do qualitative research and to conduct personal interviews and why I have decided to

work with open-ended questions. This chapter ends with a discussion of why I thought that comparing the United States with Canada would be appropriate and useful and why I have made the choice of focussing on the external selection process instead of studying the internal one.

Chapter three describes how the immigration policy is administered. In other words, it illustrates who is doing what with a special attention given to the role and responsibilities of actors studied namely, immigration and visa officers who are doing the external selection or pre-selection of immigrants. This chapter is divided into three main sections which describe the organization of departments which are responsible for managing the immigration policy in Canada, Quebec and the United States. Among other things, this chapter shows that there are important organizational differences between Canada and the United States. As I demonstrate in Chapters Six and Seven, these organizational differences have a considerable explanatory power with regard to the differences found in the exercise of discretion in both countries.

The fourth chapter of the dissertation discusses the “tools” that are used by immigration and visa officers to make the selection overseas. In looking at laws, administrative procedures and selection grids, I try to understand what room is “officially” left for discretion to external agents. Again, this chapter is divided into two sections in order to differentiate and compare Canada with Quebec. This analysis of formal bodies of rules in Canada and Quebec helps to distinguish the formal use of discretion with the informal one and it also facilitates my understanding of the circumstances under which discretion can be used.³⁶

Chapter Five replicates the same type of analysis for the United States. It looks at the Immigration and Nationality Act and at Foreign Affairs Manuals to understand how American visa agents are supposed to exercise their discretion.

Chapter Six uses my interviews to discuss how field level discretion is used in practice. It presents a classification that distinguishes between three general categories of discretion; procedural discretion, selection's grid discretion and final decision discretion. It is that this classification permits to compare and find interesting similarities but also major differences between the use of discretion in the two countries and the one province which are under study.

In the following chapter, I look for explanations accounting for the differences found in Chapters Four, Five and Six which distinguish the "official" and "actual" practices of Canadian, Quebec's and American officials. I argue that four specific factors explain best both why Canadian agents operate with a more considerable measure of discretion than their US counterparts and why Quebec's agents enjoy a higher level of discretion than their federal colleagues. Those factors are political institutions, organizational design, organizational resources and a concern for integration. Lastly, Chapter Eight summarizes the argument, the findings of this research and its significance for policymaking and implementation.

End notes

1. Wayne A. Cornelius, Philip L. Martin and James F. Hollifield, "Introduction: The Ambivalent Quest for Immigration Control". In *Controlling Immigration: A Global Perspective*, (California: Stanford University Press, 1994), 3.
2. Cornelius, Martin and Hollifield, "Introduction : The Ambivalent Quest for Immigration Control", 3.
3. For more information see Kim Lunman, "More ships feared as officials try to cope; First death among boat people confirmed; middle-age woman died of natural causes", *Globe and Mail*, (Thursday, September 2, 1999); Robert Matas and Kim Lunman, "Migrants rescued from rusty ship; Reform Party demands Parliament be recalled to debate refugee policy. Caplan says there's no rush", *Globe and Mail*, (Wednesday, September 1, 1999); Kim Lunman, "'Ghost ship' dropped off human cargo undetected; first of four vessels arrived in July: RCMP", *Globe and Mail*, (Friday, September 3, 1999).
4. Jane Armstrong, "Ship dumps human cargo; Smugglers leave 150 drenched Chinese on remote B.C. beach; vessel in caught trying to flee", *The Globe and Mail*, (Thursday, August 12, 1999), front page.
5. Gary P. Freeman, "Modes of Immigration Politics in Liberal Democratic States", *International Immigration Review*, 29 (1995), 887.
6. Nicolaus Mills, (ed), *Arguing Immigration: Are New Immigrants a Wealth of Diversity... or a Crushing Burden?*, (New York: Touchstone, 1994).
7. Freeman, "Modes of Immigration Politics in Liberal Democratic States", 888.
8. Neil Nevitte et al, " Electoral Discontinuity: The 1993 Canadian Federal Election", *International Science Journal*, 146 (1995), 589.
9. Genevieve Bouchard and William Chandler, *The Politics of Inclusion and Exclusion: Immigration and Citizenship Issues in Three Democracies*, Prepared for the Second Annual Meeting of the European Community Studies Association, St John's Newfoundland, June 6-8, 1997, 11.
10. Terrance Carroll, "Owners, Immigrants, and Ethnic Conflict". *Ethnic and Racial Studies*, 17 (1994), 301-324.
11. David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship*, (Baltimore and London: The Johns Hopkins University Press, 1997).
12. Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship*, 83.

13. Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship*, 112.
14. Authors such as Heisler (1986), Hollifield (1992) and Soysol (1993) also discuss the importance of liberal values in the fabric of West European societies.
15. Christian Joppke, "Why Liberal States Accept Unwanted Immigration", *World Politics*, 50 (1998), 271.
16. Freeman, "Modes of Immigration Politics in Liberal Democratic States", 886.
17. Domestic groups, interested by the immigration policy in the United States, are mostly represented by a coalition of civil rights groups, Hispanics and employers. Through the years, those domestic groups have developed close relationships with political representatives such as Congressman and with persons responsible for the implementation of the immigration policy.
18. Joppke, "Why Liberal States Accept Unwanted Immigration", 270.
19. Joppke, "Why Liberal States Accept Unwanted Immigration", 271.
20. Hollifield is also an important author who discusses this issue.
21. Joppke, "Why Liberal States Accept Unwanted Immigration", 271.
22. Joppke, "Why Liberal States Accept Unwanted Immigration", 276.
23. Garcia y Griego, "Canada: Flexibility and Control in Immigration and Refugee Policy", in *Controlling Immigration: A Global Perspective*, (California: Stanford University Press, 1994). Anthony M. Messina, "Immigration as a Political Dilemma in Britain: Implications for Western Europe", *Policy Studies Journal*, 23:4 (1995).
24. Frank Goodnow, *Policy and Administration*, (New York: Macmillan, 1900); Leonard D White, *Introduction to the Study of Administration*, (New York: MacMillan, 1948); Woodrow Wilson, "The study of Administration", *Political Science Quartely*, 2 (1887), 197-222.
25. Luther Gulick, "Politics, Administration and the New Deal", *Annals of the American Academy of Political and Social Science*, 169 (1933), 55-66.
26. Paul Appleby, *Policy and Administration*, (Tuscalloosa: University of Alabama Press, 1949),
27. Patrick G. Scott, "Assessing Determinants of Bureaucratic Discretion: An Experiment in Street-Level Decision-Making", *Journal of Public Administration Research and Theory*. 7:1 (1997), 37; Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*, (New York: Russell Sage Foundation, 1980).
28. Barbara Wake Carroll and David Siegel, *Service in the Field: the World of Front-Line Public Servants*, (Montreal and Kingston: McGill-Queen's University Press, 1999), 74.

29. Ibid.

30. Michael Brintnall, "Caseload Performance and Street-Level Bureaucracy", *Urban Affairs Quarterly*, 16:3 (1981), 282.

31. Ibid.

32. R.K. Merton, "the Unanticipated Consequences of Purposive Action, *American Sociological Review*, 1 (1936), 894-904.

33. Carroll and Siegel, *Service in the Field; the World of Front-Line Public Servants*, 73

34. Janet Coble Vinzant and Lane Crothers, *Street-level Leadership; Discretion and Legitimacy in Front-line Public Service*, (Washington, D.C.: Georgetown University Press, 1998), 37.

35. Interview conducted with an American visa officer at the Department of State in Washington, July 7, 1998.

36. If interviews are mostly discussed in Chapter Six, I use few examples coming from those interviews in Chapter Four to illustrate the links between the "formal" use of discretion and the practice. Those illustrations are also useful to understand the content of those laws and administrative procedures.

Chapter Two

Methodology

This chapter outlines the methodology used in this dissertation. The first section explains how the data were collected. Second, it discusses the importance of using qualitative research and conducting face to face interviews. Third, I talk about my choice of comparing two settler countries with contrasting political institutions, namely Canada and the United States. This section also addresses the importance of looking at the province of Quebec when studying the selection process of newcomers in Canada. Finally, I justify my decision of working on the external selection process instead of the internal one.

2.1 Data collection

The collection of the data was carried out in two specific phases. The first step consisted in a review of relevant documents. In order to accomplish this task, a careful look at two different sets of documents was required. First, I considered legislation such as the Immigration and Nationality Act in the United States, Canada's Immigration Law and the Loi sur l'Immigration au Quebec. Second, I examined official documents pertaining to the work of immigration officials, especially administrative procedures. The Foreign Affairs Manual (US), the General Procedural Guidelines (Canada) and the Guide des Procédures d'Immigration (Qc) were particularly useful.¹

These two sets of documents provide a detailed understanding of the Canadian and

American immigration policies. Furthermore, they present a good overview of the selection process. They were particularly useful in identifying zones where discretion is “officially” left to immigration officers. Contrary to more traditional models of bureaucratic organization where there is a minimal use of discretion by street level civil servants, immigration laws and administrative procedures authorize the exercise of discretion more often than might be expected. Finally, academic publications provided me with a background to understand the concept of discretion and its meaning for street level bureaucracy. It also improved my understanding of the context of immigration policy as well as its challenges in two countries and one province.

The second phase of my data collection consisted of an organizational survey. I used the snowball sampling technique to select interviewees. Nicolas Baxter-Moore, Terrance Carroll and Roderick Church define a snowball sample as “a group of research participants gathered by first contacting one member of a target group or population, then asking that person to put the researcher in touch with other members, and so on; this kind of sample is rarely representative of the whole group or population”.² The initial impulse came from letters sent in bulk to civil servants I thought had the capacity to make a contribution to the research.³ Following a reasonable delay, I contacted these immigration officers by phone in order to schedule appointments and to obtain information about potential candidates for interviews. The first calls, however, were made to supervisors to get their authorization for interviewing their subordinates.

To decide how many officers I needed to interview to approach a “representative sample” and principally to make sure that I got all the required information for a solid analysis of the exercise of discretion in the external selection process, I used what Carroll and Siegel call the “theoretical saturation technique”.⁴ This technique consists of ending the interviewing phase when

the researcher hears a lot of repetition and when she considers that she will not increase her knowledge with additional interviews. The researcher can also stop interviewing when she feels that a certain degree of generalization is, at this point, possible.

In total, I interviewed 47 participants. Most of them were coming from three specific organizations namely, Citizenship and Immigration Canada, the Department of State (US) and the Ministère des Relations avec les citoyens et de l'Immigration (Quebec).⁵ I also talked to other individuals who provided invaluable background information, for example, immigration lawyers in both countries, the director of the international office at Duke University who deals with immigration permits, some academics from the Carnegie Endowment for International Peace and a political assistant at the Canadian embassy in Washington. Although immigration and visa officers in the field remain the group of actors which is central to this research, talking with academics and immigration lawyers was also useful. These actors are privileged witnesses of immigration agents' discretion and they provided an interesting and different perspective on its use in the selection process.

I interviewed officers in Washington, Buffalo, Toronto, Niagara and Montreal. It is important to specify that all of those agents I met had occupied more than one position overseas. Consequently, when they were responding to my questions, their answers were influenced not only by their most recent experience but also by their previous ones. For example, when immigration agents were answering my questions, they often made comparisons between the positions they had occupied in different countries.

The interviews allowed me to meet officers who had worked in diverse regions of the globe giving me, therefore, a more general and complete picture of the working of the selection

process. As a result, I was able to identify the differences and similarities of the external selection process among various parts of the world.

I interviewed agents at various career points: some were currently in a foreign country, others were between missions and occupying a position in their respective headquarters and others currently in their home environment but had been abroad. Table 2.1 summarizes the range of experience and gender of the field officers interviewed.⁶ Interviews took place in 6 geographic areas. In brief, even if it was impossible to get a true “representative sample” resulting from the difficulties to access immigration officers, I was fortunate enough to interview agents who had experience in most regions of the world. These interviews helped me to understand how immigration agents executed their functions overseas.

This phase of my research prepared me to compare the “official” selection process with the one “in practice”. In other words, I was able to appreciate the similarities and the discrepancies between how the external selection was supposed to be done according to the government documents and how it was conducted in practice with all of its limits. Furthermore, this stage of the research allowed me to understand how discretion was exercised in the external selection process and how this differs or resembles the official policy in the two countries and the one province I studied.

Usually, we can expect that the exercise of field level discretion will be greater in reality than what is expected or “officially” authorized by laws and regulations. However, the only way to measure the difference between what is allowed and what is really happening in the selection system was to obtain the information from those who are at the center of this process. Conducting interviews with immigration and visa agents seemed to be the best approach to get access to this

kind of information. This concern for comparing the official use of discretion in the selection process with the one in practice is central to this dissertation. Chapters Four, Five and Six specifically focus on this question. Both chapters Four and Five show that, in contrast to the traditional models of bureaucratic organization, immigration laws and administrative procedures leave considerable space for field level discretion.

Table 2.1
Interviewees; Where they Work, Sex and Experience⁷

Organization	Sex	Experience
Immigration Department Canada Border Services Agency	M = 9 F = 10	- Less than 5 years = 3 - 5 to 10 years = 5 - 10 to 15 years = 5 - 15 to 20 years = 5 - 20 years and more = 1
Immigration and Refugee Board Immigration and Refugee Health Services Immigration and Refugee Commission Immigration and Refugee Council	M = 6 F = 3	- Less than 5 years = 0 - 5 to 10 years = 2 - 10 to 15 years = 1 - 15 to 20 years = 2 - 20 years and more = 4
Immigration and Refugee Commission	M = 7 F = 3	- Less than 5 years = 1 - 5 to 10 years = 1 - 10 to 15 years = 5 - 15 to 20 years = 3 - 20 years and more = 0

2.2 Why use qualitative research and personal interviews?

I chose to use face to face interviews⁸ mainly because I thought it was the best way to learn what immigration officers think and how they act when they exercise their functions. Since very little is known about the discretionary power of immigration officers in the external selection

process, my research is exploratory and I felt that personal interviews would be best to get a feel for my interviewees' working environment. As Carroll and Siegel explain, when research is exploratory, "absorbing the feeling of someone's office environment [is] an important part of that research. Sitting in a park ranger's office in New Brunswick after a blizzard is different from talking over the phone or reading someone's responses to a mail survey".⁹ In the same way, interviewing agents in their office gave me the opportunity to understand both the pressure characterizing their work and the satisfaction of fulfilling their functions. Sitting physically in those civil servants' offices allowed me to see the files that they were processing every day, to hear some calls they were receiving from clients eager to receive a response and to have a feel of the kind of relationship they maintain with their colleagues.

Moreover, it was important to conduct face to face interviews as I thought I could learn a great deal from the body language of immigration officers. For example, while interviewing immigration agents in Quebec, I could feel that most of them were in disagreement with the new 1996 selection grid. Their attitudes, and especially their sarcasm, when mentioning this change revealed that they were frustrated because it took out some of their discretionary power in the selection process.¹⁰ A mail survey or a telephone interview would probably not have provided this type of information.

The length of the questionnaire also required personal interviews. It contained thirty-seven open-ended questions. I used this type of question for two main reasons. First, it was important to me that I get ideas and attitudes coming from immigration agents without imposing my own. Second, because my research is exploratory, I wanted to maximize the information I would learn from those interviews and avoid the loss of comments or reflection that could be key

to my research.

Besides, it was almost required that I be there to conduct and direct these interviews as most questions were not answerable by a simple yes or no. Being there with interviewees, when they were responding to the questions, allowed me to repeat questions that I felt were not answered and it permitted me also to adjust some of these questions which needed more precision. This process was especially useful during the first interviews when the questionnaire was tested.

The questionnaire I administered to immigration agents included eight distinct sets of questions. The first grouping was about the personal background of officers. Starting with those questions was strategic as I thought beginning the interview with easy and “non- threatening” questions would help them to open up. The second set interrogates interviewees about their work and their functions. I wanted to determine if policy instructions were clear, unambiguous and inconsistent. I choose to ask those questions because policy instructions that are unclear, ambiguous and non consistent is one of the major causes of discretion discussed by students of bureaucracy. The purpose of this section was also to determine if efforts were taken to assure consistency in the treatment of immigrants. The third and the fourth sections of the questionnaire consisted of questions about the selection process itself and relations between field offices and other levels of the organization. Answers to this bloc of questions helped to improve my understanding of the external selection process and to determine whether distance was an important factor in discretion. With the fifth group of questions, my objective was to learn how immigration agents define discretion, how they conceive it and how they use it in their work. The sixth, seventh and eighth sections of the questionnaire included various questions covering different aspects of the work of immigration officers. I asked questions about levels of difficulties

of their functions , the appeal process for applicants to immigration, the organizational culture, their education and their opinion of what makes a good citizen.

Lastly, I used face to face interviews because I was afraid discretion would be a difficult and delicate topic to discuss with immigration officers as the discourse of political accountability is more popular than the one of administrative accountability, the last one raising a number of important concerns for both the public and the political elite.¹¹ Additionally, for most researchers and for the public in general the notion of discretion has a very negative connotation, certain students of administration even considering it as a form of bureaucratic pathology.¹² Therefore, having interviewees answering a written questionnaire could have allowed them to think and to work or adjust their answers to the public opinion or to departmental policies and this is precisely what I wanted to avoid. It was essential for my research to learn how these civil servants were selecting newcomers in contrast to how they were supposed to make this selection.

2.3 What motivates my choice of comparing Canada with the United States?

Countries differ significantly in their values and approaches to the entry and the ultimate inclusion of foreigners. The first most obvious distinction is between those that take in newcomers from the outside and those that do not. Various patterns of mixed immigration/emigration exist within these two categories. Freeman distinguishes between three national traditions: settler societies (e.g. USA, Canada, Australia), recent mass migration states (e.g. France, Germany and other northern European states) and traditional sending states (e.g.. Italy, Spain, Portugal, Greece), some of which have very recently begun to experience immigration.¹³ For the sake of comparability, I chose to study two settler or open-doors countries which have contrasting political

institutions, namely, Canada and the United States.¹⁴

The United States has a presidential system of government characterized by separation of powers while Canada has a parliamentary system of government which concentrates power. One might suspect members of Congress would be reluctant to leave discretion into the hands of civil servants since, once the laws have been sanctioned, their intervention power into the implementation process is limited. Leaving discretion to bureaucrats in the US amounts to transferring policy authority from the legislative branch to the executive branch.

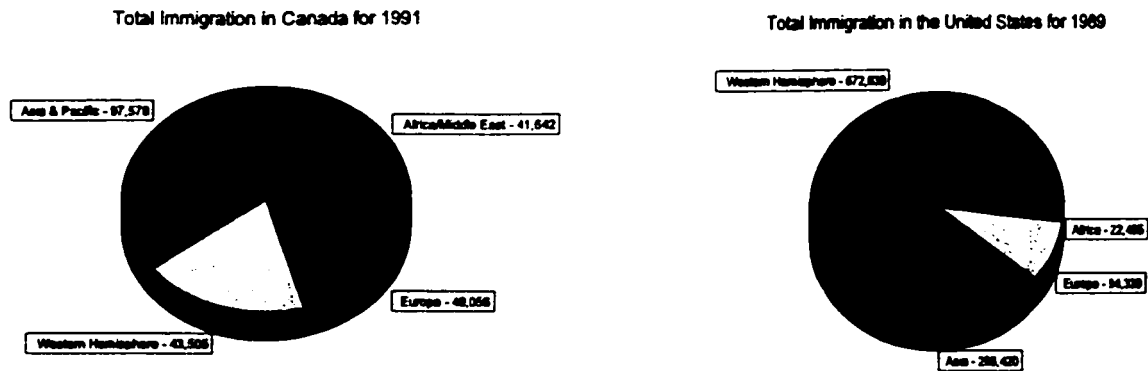
In contrast, the principle of ministerial responsibility in Canada does not allow such a sharp distinction between the executive and the legislative. The Prime minister and ministers tend to control the legislative agenda. Under such circumstances, enacting laws that leave some discretion to bureaucrats might be less problematic than in the United States. It will therefore be important to keep in mind that the institutional differences between the United States and Canada might produce different levels of administrative discretion.

Despite those institutional differences, Canada and the United States have important similarities with regard to immigration policy. Firstly, the two countries have experienced the same trends in the direction of their immigration policy. Both nations have had a racist policy that started at the beginning of the twentieth century and that ended in the 1960s. “In 1962, (in Canada) in the new Immigration Regulations of that year, the Diefenbaker Government abandoned an immigration policy based on racial discrimination in favor of a universal policy based on skills and talents, family reunification and compassionate considerations mainly relating to refugees”.¹⁵ Similarly, the United States, with its Immigration and Nationality Amendments in 1965, “abandoned all efforts to distinguish among immigrants on the basis of their race or their historical

link to America”.¹⁶ The adoption of a non-discriminatory immigration policy in Canada and in the United States resulted in a dramatic change in the patterns of origin of immigrants. In both countries, European immigration decreased sharply and was replaced gradually by Asian and Latino-American immigration. Figure 2.2 illustrates immigration trends in both Canada at the end of the 1980s and in the United States at the beginning of the 1990s.

Figure 2.1

Immigration in the United States and in Canada by Region of the World



Source: Data culled from the INS Statistical Yearbook (1989) and "Facts and Figures: Overview of immigration" by Citizenship and Immigration Canada (1994).

Secondly, the United States and Canada adopted the dominating principle of family reunion in the sixties but they now want to focus more on skilled immigration. Although the United States, through its 1990 Immigration Act, instituted a skill component, it appears that Canada, with its

point system, has experienced much more success in this regard. This new trend toward skilled immigration in those settler countries shows an interesting “[...] contrast with the economically oriented guest worker program for importing temporary workers into Western Europe in the postwar period until the 1970's which led eventually to substantial immigration de facto [...]”.¹⁷

As mentioned in Chapter One, an important element differentiating Canada from the United States is the movement of illegal immigration. Despite the fact that both countries have open-door immigration policies, it is obvious that the problem of illegal immigration is greater in the United States. Its geographical situation and some specific components of its immigration policy such as the “Bracero program”, create incentives for foreigners to come into the United States.¹⁸ The Bracero program is a program that started during WWII and that allowed migrant labor from Mexico to come into the United States to work. This program created a chain migration that still persists today. As a result, American officials have tried, without a great deal of success, to stop or reduce this unwanted movement with pieces of legislation such as the 1986 Immigration Reform and Control Act and the Illegal Immigration and Immigrant Responsibility Act of 1996.

Because of my interest in studying the external selection process, it was important for my analysis to select countries that had a strong tradition of welcoming newcomers and that were still open-door countries. More specifically, I wanted to examine the role of visa agents in the external selection process in settler countries which were still recruiting actively family and independent immigrants.

It is certainly true that countries such as Germany and France do receive an impressive number of newcomers each year. However, they are officially considered as being closed-door states which means that newcomers who enter those countries are mostly refugees, illegal or family

immigrants. In fact, according to Gary Freeman, “since the general immigration halt of 1973-74, asylum has been the only legal means for migrating to Western European states”.¹⁹

Consequently, comparing the external selection process of an open door country with one which has formally closed its doors to immigration would not only be difficult, but also not as useful. The reality that closed doors countries such as France and Germany tend to receive mostly asylum seekers, differentiates considerably their selection process from the one in use in open doors countries. As a matter of fact, the criteria that are used to select refugees and asylum seekers are different from those used to choose family and independent newcomers.

Moreover, in contrast to family and independent immigrants, “states are not perfectly free in the choice of their refugees programs. Refugee selection takes place within the context of a well-articulated international regime of treaties and agreements, backed up by a small but influential bureaucracy located in the United Nations”.²⁰

Thus, the work of overseas agents managing the selection of newcomers in Germany and France is different from their American and Canadian counterparts as they do not deal with the same categories of immigrants. Although I recognize the importance of studying the work of agents in closed-door countries, I think this would constitute a different research topic. To compare an open doors country with one which has closed its doors would change the object of my study.

For all those reasons, I have decided to compare the United States with Canada and to focus on the external selection of two specific categories of immigrants, namely, family and independent. This dissertation will not, therefore, consider refugees, illegal migrants, visitors or temporary workers.

In choosing to study the selection process in Canada, it was also necessary to spend some time looking at the province of Quebec. Studying the selection process of immigrants in the United States does not require particular attention being given to states since the selection responsibility in the U.S. lies solely with the federal government. In Canada, however, the situation is different. Constitutional responsibility for immigration has been divided between the federal and the provincial levels of government since Confederation. Section 95 of the 1867 British North America Act, now the Constitution Act, defines immigration as a concurrent jurisdiction.

Nevertheless, until the early sixties, immigration was considered the primary responsibility of the federal government as the provinces accepted federal pre-eminence in this matter. Then, the situation began to change. After years of passivity, the provinces decided that they had to become more involved in immigration. As Gerry Dirks explains:

During the 1960s, this provincial inaction began to break down as Ontario, British Columbia, and especially Quebec, the provinces receiving by far the most immigrants annually, sought a role for themselves. Quebec established a full-fledged department responsible for culture and immigration while the other leading receiving provinces adopted a variety of approaches and programs, chiefly designed to supplement existing federal and nongovernmental settlement schemes for immigrants. By the late 1980s provincial interest in immigration policy and related regulatory issues had expanded significantly to include business immigrants, labour and manpower planning, international child adoption, and an extensive range of settlement services.²¹

Despite this new implication of Canadian provinces in the immigration field, Quebec is still the only one in the country which has its own selection process for independent immigrants. After years of intergovernmental tensions and negotiations, Quebec obtained, with the Gagnon-Tremblay/ McDougall accord, the full responsibility for the selection of its independent immigrants

and the integration of all categories of immigrants who wanted to settle on its land.²² Accordingly, a researcher who wants to study the external selection process in Canada and who wants to have a complete picture of its working must spend some time looking at the Quebec selection process. For this reason, I have decided to include the province of Quebec in my study and to consider Quebec's agents as a third group of actors independent from their federal colleagues.

2.4 Why study the external selection process instead of the internal one?

After few months of research in the immigration field, I realized that studying both the external and the internal selection processes would be too big an enterprise for a doctoral dissertation. In both countries, there are two sets of bureaucrats involved in the selection process: those who work inside the receiving country and those nationals who work outside in foreign countries.²³ The processes and individuals are very different. Those two groups of officers exercise different functions, they have different training and, in some cases, they even work for different organizations. In the United States, for example, while applications to immigration completed inside the country are processed by agents coming from the Immigration and Naturalization Service, those which are directed toward American embassies and consulates in foreign countries are processed by both officers from the Immigration and Naturalization Service and the Department of State.

As a result, studying both groups of agents would imply conducting two independent studies at the same time. I have realized that it would be more reasonable to choose one group of actors and to save the study of the other for another project. My choice of considering agents who work overseas is based on the difficulty to get interviews in local or regional immigration offices

where the internal and part of the external selection of newcomers is conducted.

There are two reasons for this difficulty. First, this group of civil servants is usually under a lot of pressure especially because of their workload. When I tried to contact those people, most of them told me that they did not have time to answer my questions. Agents who work abroad have also a loaded schedule. They are often in “crisis” situations and have to deal with a long waiting queue of applications to immigration.

Although I have met few agents who were, at the moment of the interview, working abroad and dealing with applicants outside the receiving country, most agents I interviewed were occupying a function at the headquarters. They were either people who had been involved in external selection and now were occupying another function in the organization or people who were in between two missions abroad and who were doing some work at the headquarter but who were going to be involved again in the external selection process.²⁴ The fact that this group of people was concentrated in one place was a great advantage for my research project. It saved me time and money. In addition, immigration officers who work at the headquarters are less in the “action” and their main responsibilities consist of working on policies and directives as well as providing their colleagues abroad with support. As many of them mentioned, working abroad often implies long hours and going back to headquarters usually means a return to a more normal working schedule. Hence, I found that this group of civil servants was more disposed to give their time.

Second, immigration officers are usually not very open to outsiders because of the local media coverage that has rarely been friendly to their work and that had, many times, put them under “fire”. Consequently, because of those extra constraints on interviewing agents who select

newcomers inside the receiving country, I decided to focus strictly on field level officers who are dealing with the selection abroad.

As the following Chapter will demonstrate, one of the most important distinction between Canada and the United States is that while the Canadian selection system is centralized in one organization, the American one is divided between two main organizations and, sometimes, even three. Therefore, one might think that studying strictly the discretion exercised by Department of State agents, who are the field level officers dealing with the selection abroad, does not provide a complete picture of the exercise of field level discretion in the external American selection process. Three main reasons explain why comparing external Canadian immigration officers with Department of State agents is useful.

First, although Department of State officers share their selection responsibility with officers from Immigration and Naturalization Service (and in some cases with Department of Labour's agents), who work inside the United States, and have, therefore, less responsibilities than their Canadian counterparts, they still have a key role in the external selection process. They are the ones who interview would-be immigrants and determine if the information they have on the application form fits with the person they have in front them. In the case they find the applicant does not fit the requirements, they will send the application back to the Immigration and Naturalization Service with some recommendations. Most officers I interview mentioned their recommendations had an important weight in the overall selection process since they are the only ones who physically see applicants who apply from abroad.

Second, it will be shown, in subsequent chapters, that, often, frauds are more easily discovered during interviews and that the latter are more subject to the exercise of discretion than

examinations of documents. Immigration and Naturalization Service agents who deal strictly with documents and who are responsible for determining whether an applicant fits an immigrant status look at documents such as marriage contracts, birth certificates, police reports or diplomas. The evaluation of those documents is usually straightforward and less discretionary than an evaluation of candidate through interviews. The American legislation and administrative procedures are, in fact, quite detailed about how determining whether a candidate can apply as a family immigrant or as an employment based immigrant. Also, in case of doubts, it can happen that Immigration and Naturalization Service officers ask Department of State agents to verify the authenticity of specific information while interviewing candidates.

Lastly, Chapter Three will explain that those Immigration and Naturalization Service officers, who participate to the external selection process, work in centralized bureaucracies located in Vermont, Nebraska, Texas and California. They are not, therefore, considered as being field level officers like Department of State agents who work abroad and are not the subject of this dissertation who deals strictly with field level discretion.

Appendix 2.1: Letter Sent to the Interviewees

August 20, 1998

Ms.
Citizenship and Immigration Canada
Jean Edmonds Tower South
365 Laurier Avenue West, 11th floor
Ottawa, Ontario K1A 1L1

Dear Ms.,

I am a Canadian Ph.D. candidate at McMaster University. I did B.A. and M.A. degrees in political science at Université Laval. I am working on my Ph.D. dissertation which compares immigration policies in the United States and Canada. More specifically, the theoretical aspect of my dissertation focuses on the administrative limitations on immigration policy. I am interested in the administrative capacity of countries to select and control immigrants. In particular, I examine variations in the discretionary power of bureaucrats at the implementation stage of the policy process and unintended consequences of administrative choices on the admission or refusal of immigrants. This question is particularly topical because of the increasing pressures in the world for large mass migration of both economic and political immigrants.

My study will involve interviewing a number of federal and provincial (from the province of Quebec) immigration officers who work at all levels of the organization. Questions will be

asked about their relations with clientele, about the content and the objectives of immigration policies and about the selection process of immigrants. Interviews will require about 60 minutes and take place in the workplace or in some other location of the interviewees' choice. The interviews will not be taped and will be completely confidential.

I appreciate that this project will require a certain amount of your valuable time. However, I feel that this is a very worthwhile project in that it will give more information about the immigration selection process and it will also identify the frequently-overlooked contribution made by field-level employees to the administrative process. Your contribution will assist me greatly. If you have any questions, please feel free to contact me at 306-931-1749 or a member of my committee, Barbara Wake Carroll 905-525-9140 ext: 23700.

Sincerely,

Genevieve Bouchard
(Department of Political Science
McMaster University
bouchag@mcmaster.ca)

Appendix 2.2: Questionnaire in French and in English Used for the Interviews with Immigration and Visa Officers

Questionnaire (Agents d'immigration)

A. Leur “background” personnel

1. Quelles sont les tâches qui sont reliées a votre position?
2. Depuis combien de temps occupez-vous ce poste?
3. Depuis combien de temps travaillez-vous au ministère de l'immigration? Quelles autres positions avez-vous occupées au sein du ministère?

B. Questions sur leur travail. Je désire déterminer si les instructions liées aux politiques sont claires, consistantes et non-ambiguës. Je veux aussi savoir si des actions sont effectuées afin d'assurer une certaine consistance dans le traitement des immigrants.

4. Pourriez-vous me parler de votre travail et comment vous l'effectuer quotidiennement?
 - 4a) Existe-il une liste de procédures formelles que vous suivez normalement? Si oui, quelle est-elle? Quelle sorte de procédures devez-vous suivre? Donnez-moi des exemples?
 - 4b) Quel genre de formation avez-vous? Avez-vous reçu une formation particulière lorsque vous avez obtenu votre position? Si oui, pouvez-vous me décrire brièvement en quoi elle consistait?

C. Questions sur le processus de sélection des immigrants.

5. Pourriez-vous me décrire les étapes que vous suivez lorsque vous rencontrez pour la première fois une personne désirant immigrer au Canada?
 - Les immigrants de la catégorie “famille”?
 - Les immigrants “indépendants” ou “économiques”?
 - Les réfugiés?
6. Est-ce que vous interviewez les personnes qui appliquent pour obtenir un statut d'immigrant? Pouvez-vous me donner des exemples? Est-ce que cela se produit souvent?

7. Quel genre de questions posez-vous lors de ces entrevues?
8. Quels critères utilisez-vous afin d'évaluer si un applicant est apte à recevoir un statut d'immigrant?
9. Dans la grille de sélection canadienne, il y a un critère qui s'intitule "personal suitability" "aptitude personnelle". Comment ce critère est-il évalué?
10. Est-ce qu'un agent d'immigration comme vous avez une certaine discrétion dans ce processus? Si oui, pouvez-vous me dire où vous avez le plus de discrétion? Le moins de discrétion? Est-ce que vous avez une certaine flexibilité dans ce processus?
11. Lorsqu'il y a des changements ou des modifications de politiques, de quelle façon en êtes-vous informé?
12. Si vous avez un problème ou si vous avez besoin d'un conseil pour vous aidez à prendre une décision, que faites-vous?
13. Est-ce que vous discutez de votre travail avec vos collègues sur une base régulière?

D. Questions sur les relations entre les bureaux locaux (ou régionaux) et les autres niveaux d'organisation et le bureau central?

14. Quel est le niveau d'organisation avec lequel vous avez le plus de contacts?
15. Avez-vous des contacts fréquents avec les fonctionnaires de ce département et quelle est la nature de ces contacts?
16. Est-ce que ce département vous demande votre avis sur le fonctionnement des politiques? Est-ce que cette démarche se fait de façon systématique ou d'une façon plus informelle? Si cette démarche est systématique, quelles sont les questions qui vous sont posées régulièrement? Donnez-moi des exemples?
17. Est-ce que vous préparez des rapports ou des compte-rendus pour ce département?
18. Diriez-vous que ces rapports sont pertinents et qu'ils décrivent bien votre travail?
19. Comment votre travail est-il évalué? Et par qui? Est-ce que les évaluations sont fréquentes?
20. Est-ce que vous avez des contacts fréquents avec les fonctionnaires du bureau central et quel est la nature de ces contacts?
21. Est-ce que le bureau central vous demande votre avis sur le fonctionnement des politiques?

22. Préparez-vous des rapports pour le bureau central?

23. Diriez-vous que ces rapports sont pertinents et qu'ils évaluent bien votre travail?

24. Les fonctionnaires dans les bureaux locaux ou dans votre cas à l'étranger se sentent quelquefois déchirés entre les règles spécifiques qui sont adoptées à Ottawa et les besoins particuliers de leurs clients. Sentez-vous ce genre de pression dans votre milieu de travail et si oui comment vous la résolvez?

E. Questions plus spécifiques sur la discrétion.

25. Qu'est-ce que c'est pour vous la discrétion? Comment la décririez-vous?

26. Pourriez-vous me donner des exemples de situation où la discrétion est utilisée dans votre milieu de travail?

27. Est-ce que c'est important pour votre travail d'avoir de la discrétion?

F. Question variées:

28. A votre avis, quelles sont les principales qualités requises pour être un bon Canadien?

29. Si vous hésitez sur un cas particulier dont vous devez vous occuper, que faites-vous? Est-ce que cela arrive souvent?

30. Quels sont, à votre avis, les cas les plus difficiles à traiter? Pouvez-vous me donner des exemples?

31. Si un applicant n'est pas satisfait de votre décision, est-ce qu'il peut faire appel?

32. En plus de vos contacts routiniers avec vos clients, avez-vous des contacts fréquents avec des groupes de pression? Pouvez-vous me donner des exemples? Avez-vous des contacts avec les membres du parlement?

G. Questions sur l'organisation:

33. Y-auraient-ils des changements que vous feriez dans votre organisation qui, selon vous, amélioreraient son rendement? Quels sont-ils?

34. Croyez-vous qu'il y ait une culture d'organisation particulière dans votre bureau?

- Quels sont les principaux traits de cette culture? Comment les décririez-vous?
- Est-ce que cette culture a changé depuis votre arrivée? comment?

Questionnaire (Field-level immigration officers)

A. Their personal background.

(I choose to start with this set of questions because I think that starting with easy questions and non-threatening ones will help me to establish a good contact with interviewees right at the beginning)

1. What are the duties of your current position?
2. How long have you been doing this job?
3. How long have you been working in the immigration department? Which other positions in the department have you had?

B. Questions about their work. I want to determine if policy instructions are clear, unambiguous and consistent. I want to know if efforts are taken to assure consistency in the treatment of immigrants.

(If there is no consistency, it could possibly mean that immigrant applications are handled in a different manner depending on the FLB who is dealing with them. It could also mean that FLB are prone to use their personal judgment to handle cases)

Top-downers (or those who see policy-making as a unidirectional process) often assumed that when there will be a consensus on goals and objectives of a policy, the implementation of it will follow and will be consistent.

4. Tell me about how you do your job?
 - 4 a) Do you have a formal set of procedures that you normally follow? If so, what are they?

4 b) Did you have specific formal training for this job? If so, can you describe for me briefly what that training was?

(This question will determine if immigration officers receive a common training that could encourage or motivate them to act in a certain way - I also want to know if they find training and procedures adequate)

C. Questions about the selection process of immigrants.

5. Can you take me through the steps that you would normally follow when you first meet a person who wants to immigrate to Canada?

- family immigrant?
- skill-worker?
- business immigrant or investor?
- refugee?

6. Do you ever interview the persons who apply to get an immigration status? In which cases? How often does it happen?

7. Can you take me through the kinds of questions that are asked during these interviews?

8. To determine the suitability of an applicant? Can you describe for me how you apply the criteria? Which criteria do you find the most difficult to evaluate? Why?

9. In the Canadian point system grid, there is a criteria that is called “personal suitability”. How is it evaluated?

10. Does an individual officer like yourself have any discretion in this process? If so, can you describe for me where you have the most discretion? The least discretion?

11. When policy changes, how is it communicated to you?

12. If you had a problem or needed advice on a decision or an action that you have to take, what would you do?

13. Do you discuss your work with your colleagues in a regular basis?

(These 2 questions will determine if FLB communicate with or help each other. This will help me to determine if they tend to act in similar ways. If they communicate regularly with each other, this can facilitate or create more consistency in the way they handle immigrant applications)

D. Questions about relations between field offices/other levels of organization and head office/field offices.

(With this set of questions I want to determine how the distance can affect the relation between headquarters and field offices. Also, I want to know how does it affect the role of FLB)

14. What is the next level of organization which with whom you are involved?

15. How frequently do you have contact with people from this (level of organization) and what is

the nature of the contact?

16. Are you asked by this (level of organization) to provide any feedback about how policies are working or what changes could be made in operations? Is this feedback done in a systematic way or more informally? (If systematic) Are there particular forms or questions that you are asked regularly? Can you describe these for me?

17. What sort of reports do you prepare for this level of organization?

18. Do you feel that these reports are relevant and measure what you really do?

19. How is your work evaluated? And by whom? How often does this evaluation take place? Can you describe the process for me?

(This question will help me to determine if the work of SLB is evaluated by the head office. If it is not, it will probably be hard for policy formulators to control policy implementers)

20. How frequently do you have contact with people from the head office and what is the nature of the contact?

(If the contacts are frequent, this could mean FLB are more monitored by head office)

21. Are you asked by the head office to provide any feedback about how policies are working or what changes could be made in operations?

22. What sort of reports do you prepare for the head office?

23. Do you feel that these reports are relevant and measure what you really do?

24. Staff in field offices are sometimes viewed as being torn between the specific rules adopted in head office and the particularities of the applicants they deal with directly. Do you ever feel that sort of pressure? If so, how do you resolve it?

E. Questions more specifically related to discretion itself.

(I want to determine how they define discretion, how they see it [Is it positive or negative? Do they think it is essential for their job] and how they use it).

25. What do you think discretion is? How would you define it?

26. Can you give me examples of when it is used in your office?

27. How important is it to have discretion in your work?

F. Various questions:

28. In your opinion, what are the most important qualities needed to be a good American/Canadian citizen?

29. If you hesitate about a case, what do you do? How often does it happen?

30. What are, in your opinion, the cases that are the most difficult to evaluate or to deal with? Can you give me examples? **(What I could do later is to use these examples for my following interviews and ask my interviewees how would they deal with this example? - This would help me to determine if there is consistency in the treatment of immigrant's applications)**

31. If an applicant is not satisfied with a decision you make, what avenues of appeal would he or she have?

32. In addition to your routine contacts with clients, do you have very many contacts with client groups or pressure groups? Can you give few examples? Do you have any contact with the local member of parliament? **(This question will determine if FLB can be influenced by persons outside the office. If yes, this could impact on their actions and decisions)**

G. Questions about the organization:

33. As you think about this organization and doing your job, are there any changes that you would make to the organization so that you could do your job better?

34. Do you think there is an organizational culture in your office?

- What are the most important aspects of that culture?

- Have any of these aspects changed since you began your work here?

Complementary questions:(if I still have a little bit of time)

35. Have you had any opportunity to work outside the United States/Canada? Where and in what capacity?

36. What is your formal education?

37. Were you born in the United States/ Canada? **(This question can help me to determine if they are predisposed to be sympathetic to certain groups of immigrants)**

End Notes

1. Department of State, *Foreign Affairs Manual*, (Washington: Department of State, 1998) (<http://foia.state.gov/fam/infor.pdf>); Ministère des Relations avec les citoyens et de l'Immigration, *Guide des Procédures d'Immigration*, (Montreal: Les Publications du Québec, 1998); Citizenship and Immigration Canada, *General Procedural Guidelines*; Overseas Processing (Ottawa: Minister of Public Works and Government Services Canada, 2000) (<http://cicnet.ci.gc.ca/manuals/english/OP-e/index.html>).
2. Nicolas Baxter-Moore, Terrance Carroll and Roderick Church, *Studying Politics; An Introduction to Argument and Analysis*, (Toronto: Copp Clark Longman Ltd., 1994), 377.
3. A copy of the letter I sent to the immigration officers and their supervisor can be found in Appendix 2.1.
4. Barbara Wake Carroll and David Siegel, *Service in the Field; the World of Front-Line Public Servants*, (Montreal and Kingston: McGill-Queen's University Press, 1999), 29.
5. See Figure 2.1 for more details on interviewees' characteristics. Interviews were conducted in 1998.
6. This grid does not include other individuals I have interviewed such as lawyers in both countries, the director of the international office at Duke University who deals with immigration permits, some academics from the Carnegie Endowment for International Peace and a political assistant at the Canadian embassy in Washington.
I have conducted all the interviews with Quebec officers and most of those with Canadian federal officers in French. Federal officers are all bilingual and are usually comfortable with both languages. Interviews with American officers were mostly conducted in English although some of them answered my questions in both English and French.
7. The "Experience" is the number of years spend working in the same organization.
8. A copy both in French and in English of the questionnaire administered to immigration officers can be found in Appendix 2.2.
9. Carroll and Siegel, *Service in the Field; the World of Front-Line Public Servants*, 29.
10. I will give more details about this change in chapter six.
11. Most people tend to think that because political representatives are elected by the people, they are the ones who should be accountable. This question is particularly relevant for Canada where the tandem - administrative responsibility versus the ministerial responsibility- raises interesting questions for new reforms. For a discussion of this issue see Sharon Sutherland, "The Al-Mashat affair: administrative responsibility in parliamentary institutions," *Canadian Public Administration*, 34:4 (1991), 573-603.

12. See, for example, R. K. Merton, "The Unanticipated Consequences of Purposive Action", *American Sociological Review*, 1 (1936) and Kaufman, Herbert, "Fear of Bureaucratic: A Ranging Pandemic", *Public Administration Review*, 41 (1981), 1. As mentioned in the introduction, Brintnall and Lipsky talked also about this "negative form of discretion".

13. Gary P. Freeman, "Modes of Immigration Politics in Liberal Democratic States", *International Immigration Review*, 29 (1995), 881.

14. It is particularly notable that all open door countries but the United States have borders which are distant from source of immigration. Therefore, reaching these countries unlike co-terminus countries of Europe involves a major undertaking.

15. Freda Hawkins, "Canadian Immigration and Refugee Policies", in Paul Painchaud ed., *De Mackenzie King à Pierre Trudeau: Quarante ans de diplomatie canadienne*, (Québec: Les Presses de l'Université Laval, 1989), 632.

Note that while the Diefenbaker government in 1962 initiated the movement for a liberal, non-racist immigration policy, it actually awaited the Pearson government's 1966 White paper and 1967 introduction of the point system before noticeable broadening from non-white sources began.

16. Nicolaus Mills, (ed), *Arguing Immigration: Are New Immigrants a Wealth of Diversity... or a Crushing Burden?*, (New York: Touchstone, 1994).

17. Jagdish Bhagwati, "U.S. Immigration Policy", in Duleep and Wunnavu (ed), *Immigrants and Immigrant Policy: Individual Skills, Family Ties and Group Identity*, (London: JAI Press inc., 1996), 324.

18. The growth of legal and illegal immigration, in the United States, has been created mainly by the new amendments of the Immigration and Nationality Act in 1965, the world economic development, major political upheavals, and the termination of the Bracero program.

19. Gary P. Freeman, "Can Democratic States Control Unwanted Migration?", *The Annals of the American Academy*, 534 (1994), 28.

20. Freeman, "Can Democratic States Control Unwanted Migration?", 27.

21. Gerald E. Dirks, *Controversy and Complexity: Canadian Immigration Policy During the 1980s*, (Montreal and Kingston: McGill-Queen's University Press, 1995), 98.

22. I will come back on this matter in Chapter Three in which I will describe how Quebec obtained the full responsibility for the selection and the integration of its newcomers.

23. Employment cases in the United States even involve a third group of bureaucrats which belongs to the Labor department. Chapter three discusses the participation of this group of civil servants in the selection process.

24. Immigration and visa agents who work in embassies and consulates are usually coming back for few years in between two missions abroad. For 3 or 4 years, they will occupy a function at the headquarter and then leave again for another mandate in field offices in foreign countries.

Chapter Three

The Management of the External Immigration Process

This chapter has two main objectives. First, it explains how and by whom immigration policy is administered. It describes the organization and functions of departments and services which play an active role in the management of the immigration policy with special attention given to the external selection process. This should help understand the functions of immigration and visa officers who process applications overseas in order to appreciate their importance and their position in the overall selection process.¹

Second, this chapter outlines the various steps of the selection process. Differences and similarities between Canada, Quebec and the United States are highlighted. An important element of difference between Canada and the United States, it is shown, is the sharing of responsibilities. In the United States, two different organizations are responsible for assessing immigration applications, a difference that it will be later shown has a significant impact on the discretion of external officers. Chapter Seven argues that differences in the organizational structures grant greater discretion to Canadian officials than to their American counterparts.

3.1 The management of immigration policy in Canada

3.1.1 Citizenship and Immigration Canada: Its organization and its functions

In Canada, immigration is the sole responsibility of the federal department, Citizenship and Immigration Canada, except for immigrants who want to settle in Quebec which, in this case,

fall under the control of this province.² Citizenship and Immigration Canada was created in November 1993 by the Liberal government and it recognizes the link existing between the selection of immigrants and the allotment of citizenship.

In the past, immigration had been associated with citizenship in the old department of Immigration and Citizenship of the fifties. In 1966, however, the Canadian Government began to put more emphasis on the economic element of immigration in integrating it into the Department of Manpower and Immigration. This way of looking at immigration, through economic lenses, took precedence over all others until the beginning of the nineties.³

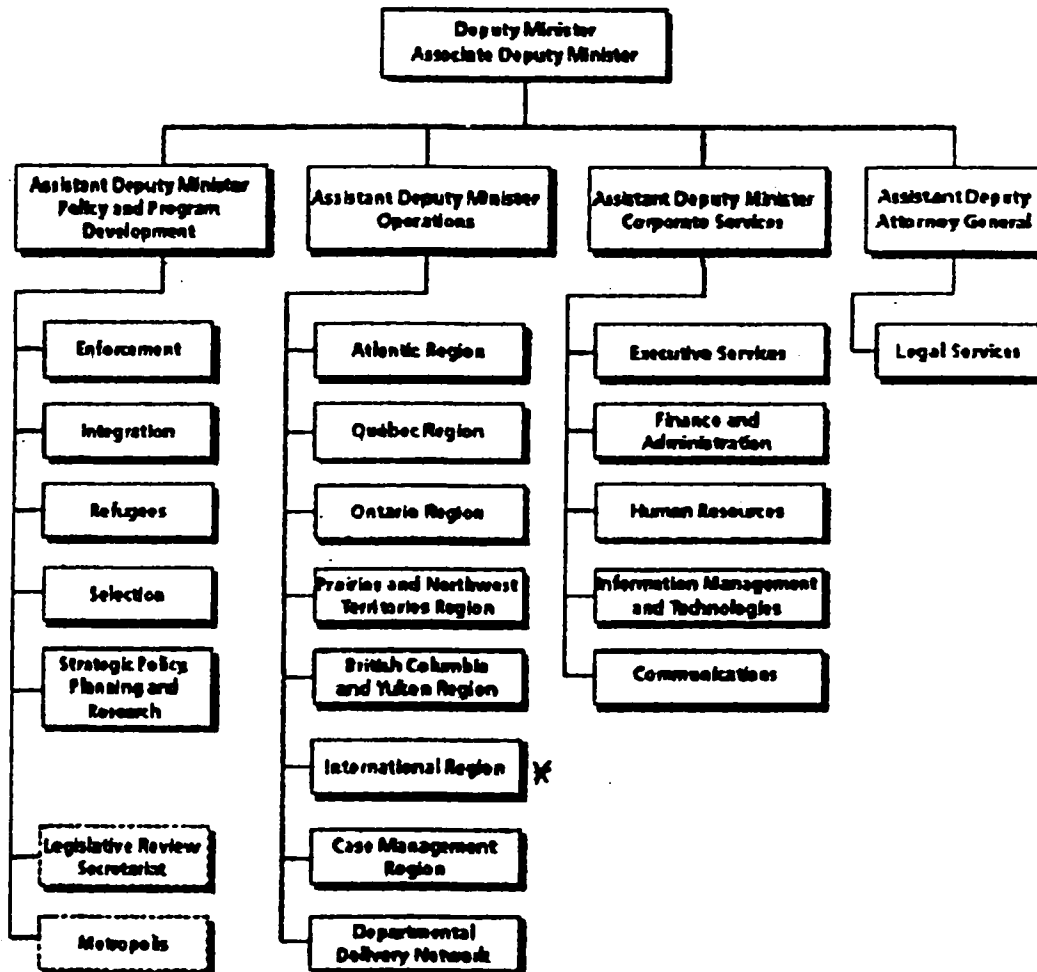
Citizenship and Immigration Canada is responsible for achieving particular goals in the following areas in immigration:

- setting immigration levels and selection criteria
- settlement policies and programs
- federal-provincial relations on immigration matters
- processing immigration applications overseas and in Canada
- processing applications for temporary entry as visitors, students or workers
- processing refugee claims and claimants
- enforcement.⁴

This department is organized into four main divisions all supervised by an assistant deputy minister. As is illustrated in figure 3.1 below, the four principal sections that constitute this department are *Policy and Program Development, Operations, Corporate Services and Attorney General*.⁵

Figure 3.1: Organizational Chart: Citizenship and Immigration Canada

Organization



Policy and Program Development is mainly responsible for drafting new policies, new regulations and new administrative directives in each of the following business lines: enforcement, integration, refugees and selection. *Corporate Services* consists of five branches namely, Executive Services, Finance and Administration, Human Resources, Information and Management Technologies and Communication and it provides administrative and support

services to the department. *Attorney General* is in charge of providing the legal services where it is needed in the department. Legal officers help external immigration agents to interpret and understand old and new legislation as well as court judgments. Lastly, Operations coordinates program delivery in the five domestic regions of Atlantic, Quebec, Ontario, Prairies and Northwest Territories, and British Columbia and Yukon. The *Operations* division, where external immigration officers are located, is also responsible for the International Region which delivers the immigration program at 79 visa offices abroad and for the centralized processing in Canada.

Centralized processing in Canada consists of three National Case Processing Centres (CPCs) which are located in Vegreville (Alberta), Mississauga (Ontario) and Sydney (Nova Scotia). The CPCs in Vegreville and Mississauga deliver immigration services, whereas the one in Sydney handles citizenship applications. Together, those three National Case Processing Centres process about 80 per cent of all applications. More specifically, the CPC in Vegreville handles “the validations for offers of employment, student authorizations and extensions of visitor status [as well as] landings in Canada (including Convention refugees).”⁶ In contrast, The CPC in Mississauga processes all the applications for “sponsorships of family members abroad”.⁷

The International Region manages immigration programs at Canadian missions abroad and its main responsibilities consist of recruiting, selecting, and offering counseling to immigrants and refugees outside Canada.

This involves confirming the identity of the applicant, evaluating eligibility for immigration in accordance with established policies and procedures, assessing the applicant’s potential to successfully settle in Canada, and evaluating any medical, security or criminal risk that the applicant may pose to Canada.⁸

In other words, one of the main tasks of external immigration agents is to verify details of the application for immigration and to decide if the candidate fits their description in their applications. This task is particularly important in countries well known for having a lot of fraud and misrepresentation. According to external officers, those problems are often found in third world countries where the pressure to migrate is stronger.

Staff in the International Region also deal with visitors' applications. Their role is to facilitate the admission of genuine visitors while preventing the entry of fraudulent and unwanted foreigners.

This involves assessing the intentions of visitor visa applicants to return to their country of residence, ensuring that students or workers have sufficient preparation and financial support to be self-sufficient during their stay in Canada, and evaluating any risk that the applicant may pose to Canadians.⁹

Furthermore, the International Region participates in operations of control and enforcement to ensure that illegal migrants are stopped before they enter Canada. There are currently 27 dedicated immigration Control Officers (ICO) stationed in 26 countries.[...] the primary objective of the ICO program is the detection abroad of irregular immigrants, and others who pose a security or criminal risk to Canada. ICOs develop partnerships with local transportation companies and government agencies, provide training to these officials on Canadian Immigration Regulations and documentation, and gather intelligence information on smugglers and counterfeits.¹⁰

In addition to those important responsibilities of recruitment, selection and control, the staff of the International Region spends a considerable amount of time studying trends in international migration, movement of refugees and immigration policy. It also plays a role as adviser to the government in looking at the impact and implications of domestic policies on international migration trends and vice versa. Lastly, the International Region has a key role in preserving contacts with foreign governments, international agencies and non-governmental

organizations such as the United Nations High Commission for Refugees and the International Red Cross.

The International Region includes 279 agents and a thousand additional non-Canadian employees. This local staff is hired by Citizenship and Immigration Canada and the Department of Foreign Affairs and International Trade to assist Canadian external agents in their tasks performed overseas. Both Canadian and non-Canadian agents accomplish their tasks through a network of Regional Program Centres, satellite missions, Full-Service Centres and Specialized Offices.¹¹

Regional Program Centres (RPC) are centralized immigration processing offices dealing with routine applications from beginning to end.¹² However, when a RPC agent decides he needs more information about a particular candidate, which can be obtained through an interview (e.g. check on qualifications, experience, family relationship, personal suitability), he asks the responsible satellite office to do this. The satellite office will either respond to specific instructions given by the Regional Program Center or it will become responsible for the processing of files from the moment of their transfer. The RPC also offers a full range of “non-immigrant services such as interdiction, control, reporting, representation, liaison, promotion and recruitment”.¹³

Satellite offices or what immigration officers like to call “partner offices” also offer non-immigrant services such as issuing visas for tourists, students and temporary workers. In addition to this responsibility, employees, who belong to those satellite offices, have to report on local conditions, to implement some local programs and to control illicit immigration. They are also accountable for cultivating contacts with host country representatives as well as non-

government organizations officials.

Full Service Centres, like Regional Program Centres and satellite offices, offer services to immigrants and non-immigrants. These offices are autonomous entities which either deal with non-routine cases or operate where the workload is heavy. Staff belonging to Full Services Centres usually work with files that cannot be processed elsewhere or where the implementation of the RCP-satellite concept is not possible because of difficult political realities.

Lastly, specialized offices are conceived to “[...] provide additional reporting and liaison activities in key cities where immigration/refugee topics are of continuing interest, and conduct other unique duties”.¹⁴ They may also process applications on an occasional basis.

Immigration officers who deal with applications overseas and who are the subject of this dissertation belong, essentially, to the Operation Division and more specifically to the International Region. Therefore, when I refer to those Canadian external agents, I mean staff who work in Regional Program Centers, satellite offices, Full-Service Centers or specialized offices.

3.1.2 The steps of the selection process

A look at the organization of Citizenship and Immigration Canada helped to understand both the set up and the functions of divisions which constitute this department. Furthermore, it helped to situate external agents in the organization chart and to comprehend their role as well as their responsibilities in the immigration program. The next step is to discuss the process of selection. In other words, I want to explain how an applicant to immigration obtains his immigrant visa from beginning to end and what role external agents play in this process. To explain external selection procedures I need, first, to make a distinction between two categories

of immigrants which are both examined in this dissertation.¹⁵ Those are the category of family immigrants and the one of independent newcomers. This distinction is useful because the selection processes of family and independent immigrants are different.

The first step of the selection of family immigrants is executed by the sponsor who submits a sponsorship's application to the Case Processing Center(CPC) in Mississauga. This form engages the sponsor to take care of the beneficiary for a period of 10 years. "A sponsor must be able to provide for the lodging, care, maintenance and normal settlement needs of the applicant and accompanying dependents for 10 years."¹⁶ Once the sponsorship has been approved by the CPC, the latter will inform the visa office and send an application kit to the applicant.

The applicant has the responsibility to return the filled out application kit as quickly as possible to the CPC in Mississauga and he must also undergo a medical examination. A visa will be issued when all the requirements are met and usually this procedure can be completed, if no problems occurs, within 6 months. The processing of all family applications by the Case Processing Centre has become the norm in the last few years.¹⁷ According to several external immigration officers, this way of doing things saves time and money to the CIC and with the budgets cuts of the last years, what they call "selection on documents" has increased a lot.

Nevertheless, if CPC's agents process most of the family applications from the beginning to end, they do not have the power to refuse an applicant. In the case of a refusal or if CPC's officers have serious doubts about the eligibility of an applicant to immigration, they will send the application form to a mission abroad for further examination.¹⁸ In large missions, the file will go, first, into the hands of a case analyst. This intermediary will examine the file to determine the category in which the candidate should be processed and he will decide if the applicant

qualifies for this category. The case analyst will also do what immigration officers call “paper screening” and he will bring the irregularities of the application to the attention of the immigration agents. In smaller offices, in which the resources are more limited, this first look at the application file will be carried out by the immigration agent.¹⁹

Once the study of the file is completed, the case analyst or the immigration agent will decide if an interview is required. In most cases, a candidate will be called for an interview if the immigration agent has some questions which need to be clarified before he renders a decision. An interview can last between 10 minutes to 1 1/2 hours. The time taken to interview candidates to immigration will depend on many factors such as the complexity of the case and the country of origin of the applicant. External officers mentioned that there are a few areas of the world where fraudulent documents are common. In those cases, agents have to be more vigilant and often they have to ask more specific questions to validate their decisions.²⁰

The main objective of the interview is to verify the relationship between the sponsor and the beneficiary. The immigration officer has, therefore, the responsibility to determine if this relationship is bone fides. After the interview, the agent will communicate his decision to both the applicant and the sponsor. If the agent has serious doubts about the validity of a relationship, he can ask the applicant to pass a DNA test. The last step, before the obtaining of a visa, will be the criminal and medical checks conducted by CSIS agents and approved medical officers.²¹

In contrast to family immigration, the selection of independent immigrants is not conducted by Case Processing Centres’ officers but by external agents in missions abroad. The first step consists of applying to an immigration office outside Canada. Similar to the processing of family cases, in large immigration offices, case analysts will have a first look at applications.

They will verify papers such as passports, diplomas, letters of recommendations and others to establish if the candidate fits the criteria of selection.²² Contrary to family immigration, for which the validation of the relationship is central, case analysts and immigration officers will be preoccupied with the validation of qualifications of independent immigrants. Thus, they will look at the competence of candidates, their experience, their knowledge of languages and their capacity to settle well and quickly in Canada. If an applicant already has an offer of employment in Canada, immigration officers will work conjointly with the department of Human Resources Development Canada which is responsible for validating offers of employment. Human Resources Development's agents must ensure first that, the offer of employment is still valid at the moment of the application for immigration, second that the applicant is qualified to perform the functions this offer implies, and third that no Canadian has the qualifications allowing him to get this job.

Once the verification of papers is completed, case analysts or immigration officers decide if an interview is required. If independent would-be immigrants are more often called in interview than family ones, the "selection on documents" is also a current practice for this category of newcomers. As a matter of fact, several external officers mentioned that, in developed and peaceful countries, the selection on documents has increased significantly. This is not the case for poorer countries troubled by wars and economic problems where agents have to be more vigilant. After the interview, the agent decides if the candidate should obtain his visa. Like family cases, the immigration agent is always the person who makes the final decision. When the answer is positive, medical and criminal checks will be completed and if everything goes fine the applicant will obtain his visa.

The processing times of both family and independent applications will vary. As mentioned above, routine applications by spouses can be processed within six months. Nevertheless, independent and family immigrant cases that are more complex and non-routine can take longer. Among the reasons explaining why a specific case would be considered non-routine we find:

- the need for an interview;
- difficulties in communicating with the applicant due to local communication structures or an inaccurate/outdated contact address provided by the sponsor ;
- lack of cooperation on the part of the applicant providing the visa office with timely information;
- the need for additional medical examinations;
- complications regarding the criminal or security status of the applicant of dependents;
- applicant has difficulty obtaining satisfactory supporting documents;
- problems with the sponsors's ability to fulfil the financial obligations of the sponsorship.²³

3.2 The management of the immigration policy in Quebec

In contrast to the United States, immigration in Canada, like agriculture, is a joint jurisdiction which means that the provinces can play a role in this policy sector. As I have mentioned earlier, Quebec is the only province in Canada which has the exclusive responsibility for selecting independent immigrants and refugees abroad who want to settle on its land. This province is also responsible for cultural, linguistic and economic integration services for permanent residents.²⁴

Before discussing the organization of the main department dealing with immigration in Quebec, as well as the role and responsibilities of external immigration agents in the immigration program, a look at the relationship between the federal government and the province of Quebec

with regard to immigration is useful. Not only will this exercise help to understand a facet of the Canadian history of intergovernmental relations, but it will also demonstrate how Quebec obtained more selection power and what this means for Quebec's external officers.

3.2.1 Immigration; a shared jurisdiction

Section 7 of the *Immigration Act* requires the federal government to announce the number of immigrants and refugees Canada expects to admit over a specified period. It also requires them to consult provinces and appropriate organizations and institutions prior to the announcement of the Immigration Plan.

Section 7(1): The Minister, after consultation with the provinces and such persons, organizations and institutions as the Minister deems appropriate, shall, not later than the prescribed date in each calendar year, which prescribed date shall be no later than November 1, cause the immigration plan for the next calendar year to be laid before each House of Parliament, or, if either house is not sitting on the prescribed date, not later than the fifteenth day next thereafter on which the House is sitting.

Section 7(2): of the Act sets out the information that an immigration plan must provide. It must include an estimate of the total number of immigrants, Convention refugees and others who will be admitted to Canada on humanitarian grounds during the next year. As well, where any province has sole responsibility for the selection of immigrants, Convention refugees or humanitarian applicants, the Plan must also set out, for each class, the number to be admitted for all of Canada, the number for the provinces with sole selection powers and the number for the rest of the provinces. Quebec is the province with sole selection powers.²⁵

Furthermore, section 108 of the same Act "provides a legal basis for the federal government to consult the provinces regarding the distribution and settlement of immigrants."²⁶ This provision permits immigration to meet regional requirements and to make federal-provincial agreements on immigration. Since 1978, seven provinces (Ontario and British Columbia are not

among those provinces) have concluded immigration agreements with the federal government. Most of those arrangements concede specific powers to provinces allowing them to manage some parts of the settlement and business programs.²⁷ Likewise, provinces are still in the process of discussing new or revised immigration agreements as well as other types of working arrangements. The most comprehensive of these agreements is, as I have indicated earlier, the Canada-Quebec Accord of 1991. This agreement gives Quebec exclusive responsibility to select its independent immigrants and its refugees.

This arrangement which gives large responsibilities to the province of Quebec is quite recent. The Canada-Quebec Accord is, in fact, the outcome of a long process of federal-provincial discussions that often created intergovernmental tensions. It was not until the beginning of the 1960s, that authors of the Quiet Revolution in Quebec realized the importance of having some control over immigration. They argued that immigration was a useful and essential tool to develop a new modern, francophone and pluralist society.

[...] c'est surtout à partir des années soixante que le changement se produit. Dès lors, au lieu de craindre les conséquences négatives de l'immigration, ils prennent conscience qu'ils peuvent et doivent la considérer comme un facteur de développement de la société moderne, francophone et pluraliste que les artisans de la révolution tranquille sont alors occupés à bâtir.²⁸

Beginning with this aspiration of creating a new and different society, the government of Quebec had two main goals. First, it wanted to gain the power to select newcomers to ensure the arrival of immigrants on its territory would meet the economic and cultural needs of the post-Quiet Revolution Quebec's society. Second, the government of Quebec aspired to integrate harmoniously the newcomers to the francophone community.

The creation of the immigration Department in 1968 also reflected this desire to be responsible for the selection and the integration of newcomers in the province of Quebec. According to its legislation, the immigration department has “[...] pour fonctions de favoriser l’établissement au Québec d’immigrants susceptible de contribuer à son développement et de participer a son progrès et de favoriser l’adaptation des immigrants au milieu québécois”.²⁹ Thus, the action of the government of Quebec can be summarized by the achievement of these two key objectives.

The desire to obtain power over provincial selection has evinced itself through four intergovernmental agreements determining the responsibilities in immigration of each level of government. The first intergovernmental arrangement, concluded in 1971, was called the Cloutier-Lang agreement. It gave Quebec’s agents a role as information officers in foreign countries. Under this arrangement, Quebec’s immigration officers were given the right to talk to potential candidates for immigration. Thus, they were allowed to provide those applicants with information about the province of Quebec and its specificity within Canada. This role was soon transformed into a role of adviser with the signature of a second intergovernmental agreement in 1975. Under the Bienvenue-Andras Accord, Quebec’s external agents were able not only to talk directly to potential immigrants, but also to advise the federal government on the receivability of candidates in Quebec.

In 1978, the Couture-Cullen accord relating to immigration and the selection of aliens provided the province with a greater role in immigration. In it, Quebec obtained joint powers with the federal government to select immigrants (independent) who wanted to settle there. As section 3.1 of the accord stipulates, “La sélection des ressortissants étrangers qui souhaitent

s'établir en permanence au Québec s'effectuera sur une base conjointe et paritaire, selon des critères canadiens et des critères québécois".³⁰ Thus, with this new arrangement, the province of Quebec was, for the first time, invited to establish its own criteria of selection which meant that, from then on, both parties, the federal and the provincial government, had the rights to select candidates destined for Quebec.

Although this agreement recognizes new powers for the province of Quebec, control of borders, admission, selection on site and the recognition of refugees status remained federal responsibilities. Furthermore, the Canadian and Quebec governments agreed that in exercising its selection power, Quebec would always respect immigration categories defined by the Canadian legislation: "[...] le Canada et le Québec sont convenus que la pratique québécoise de sélection respecterait les catégories d'immigrants indépendants, les membres de la famille et les personnes en situation de détresse."³¹

The most recent Canada-Quebec Accord, also known under the names of its two signatories Monique Gagnon-Tremblay and Barbara McDougall, was concluded in 1991. This agreement is, in fact, an extension of the Cullen-Couture Accord. It provides Quebec with a larger selection power for immigrants and the exclusive responsibility for the integration of its newcomers. Under this new arrangement, while the federal government remained solely responsible for the admission of immigrants in Canada, the province of Quebec had the exclusive responsibility for the selection of its independent immigrants. As provision 12(a) of the Accord specifies: "Le Québec est seul responsable de la sélection des immigrants à destination de cette province et le Canada est seul responsable de l'admission des immigrants dans cette province".³²

Moreover, provisions 12(b) and 12(c) of the accord stipulate that the Canadian government has the obligation to admit all newcomers who fit the Quebec's selection criteria and who want to settle in the province if they do not belong, of course, to an inadmissible class. Furthermore, the federal government cannot admit an immigrant who is planning to settle in Quebec if he does not satisfy Quebec's selection criteria.

In addition, although the federal government remains the level responsible for the selection and the admission of family immigrants, Quebec is responsible for evaluating the financial capacity of those applicants. Thus, a candidate who does not, according to Quebec's judgment, have the financial capacity to settle well or to sponsor a family member in Quebec could be refused. In the same way, the federal government determines who is a refugee and who is considered to be in distress and in need of protection, but it cannot accept a person who does not fit Quebec's criteria.

Therefore, as Carens argues, under the Gagnon-Tremblay/ McDougall agreement, "Québec acquires complete control over the criteria used to select immigrants other than those in the family class and in the assisted relatives class, and even in those cases it gets to determine how Canada's criteria are to be applied to individual cases." In addition, while Canada decides who is a refugee and retains full control over refugees already in Canada, Quebec can "[...] decide which refugees it will take and which it will not take of those applying from abroad".³³

If the Accord of 1991 continues to expand the selection power of Quebec, what distinguishes this agreement from the previous ones the most is that it gives the province the exclusive responsibility for welcoming and integrating permanent residents. With this agreement Canada retired completely from the processing of linguistic, cultural and economic integration of

immigrants destined for Quebec. As provisions 24 and 25 of the Accord specify: "24. Le Canada s'engage à se retirer des services d'accueil et d'intégration linguistique et culturelle qui seront offerts par le Québec aux résidents permanents présents dans cette province. 25. Le Canada s'engage à se retirer des services spécialisés d'intégration économique qui seront offerts par le Québec aux résidents permanents présents dans cette province."³⁴In brief, both the Cullen-Couture and the Gagnon-Tremblay/ McDougall agreements provided the province of Quebec with an extent of powers that no other Canadian provinces, at this moment, have.

3.2.2 The organization of the Ministère des Relations avec les citoyens et de l'Immigration³⁵

Since September 1996, the Ministère des Relations avec les citoyens et de l'Immigration (Department for Relations with Citizens and Immigration) is the new name of the department responsible for immigration in Quebec. As figure 3.2 illustrates, this department consists of three major sectors of activities which are *les Relations civiques* (Civic Relations), *les Relations avec les Citoyens* (Relations with Citizens) and *l'Immigration et l'Établissement* (Immigration and Settlement). Those three sectors are supported by units which directly answer to the deputy minister such as the *Secrétariat général* (General Secretary), the *Direction des communications* (Direction of Communications), the *Direction de la planification stratégique* (Direction of strategic planning) which includes the functions of research, program evaluation and internal verification and the *Direction générale des services administratifs* (General Direction of Administration Services) which groups human, financial, material and information resources. In addition to those units, there is the *Direction des affaires juridiques* (Directions of Legal Affairs) which provides the department with legal services.

l'Immigration et l'Établissement (Immigration and Settlement) is the sector of interest for

this dissertation since it is in charge of the management of the immigration policy and programs. Its mandate is to maintain linguistic and demographic balances as well as to contribute to the economic prosperity and to the opening of Quebec to the world. This sector informs, recruits and selects foreigners who want to immigrate in Quebec in taking into account demographic, economic and sociocultural needs of the province. This sector of activity accomplishes its tasks but also respects those values that constitute the foundation of both the Canadian and Quebec immigration policies such as family reunification and international solidarity. Another major responsibility of *l'Immigration et l'Établissement* (Immigration and Settlement) is to facilitate the settlement of newcomers and their integration into the francophone community.

The sector of *l'Immigration et l'Établissement* (Immigration and Settlement) consists of five central offices, each of them having their own sector of responsibilities. The first one is called “la Direction générale de l’immigration” (General Direction of Immigration) and it is grouping the offices of *politiques et programmes d’immigration* (Policies and Immigration Programs), of *activités à l’étranger* (Activities Abroad), of *services d’immigration au Québec* (Immigration Services in Quebec) and of *aide à l’immigration d’affaires* (Business Immigration Services). This central office is principally in charge of the conception of immigration policies and programs but more specifically of those related to the Immigration Plan, the recruitment and selection of candidates to permanent and temporary immigration, the sponsorship of immigrants, job validation, business immigration and refugees.

The second central office is called “la Direction générale des services régionaux” (General Direction of Regional Services) and it consists of a bureau of regional coordination, a division responsible for equivalences and agreements on social security and six regional offices

in L'Estrie, Laval-Laurentides-Lanaudière, Montérégie, Montréal, Outaouais and Quebec city. Those regional offices manage temporary immigration, job offer validation and the welcoming of newcomers. Agents in regional offices are also responsible for some parts of the integration process of immigrants into both the working market and the French community.³⁶

Besides those two offices, the sector of *l'Immigration et l'Établissement* (Immigration and Settlement) comprises three additional ones. The first one called “Direction des politiques et programmes d'établissement” (Direction of Policies and Settlement Programs) formulates settlement policies and programs and is in charge of supporting the regional offices which implement these policies and programs. The second one called “Direction des politiques et programmes de francisation” (Direction of policies and frenchifying) designs policies and programs to help newcomers integrate into the francophone community. The last one is “la Direction des services centralisés”(Direction of centralized services) and it carries out verifications and investigations on the authenticity of the information contained in customers files. These verifications are conducted to avoid fraud in immigration.

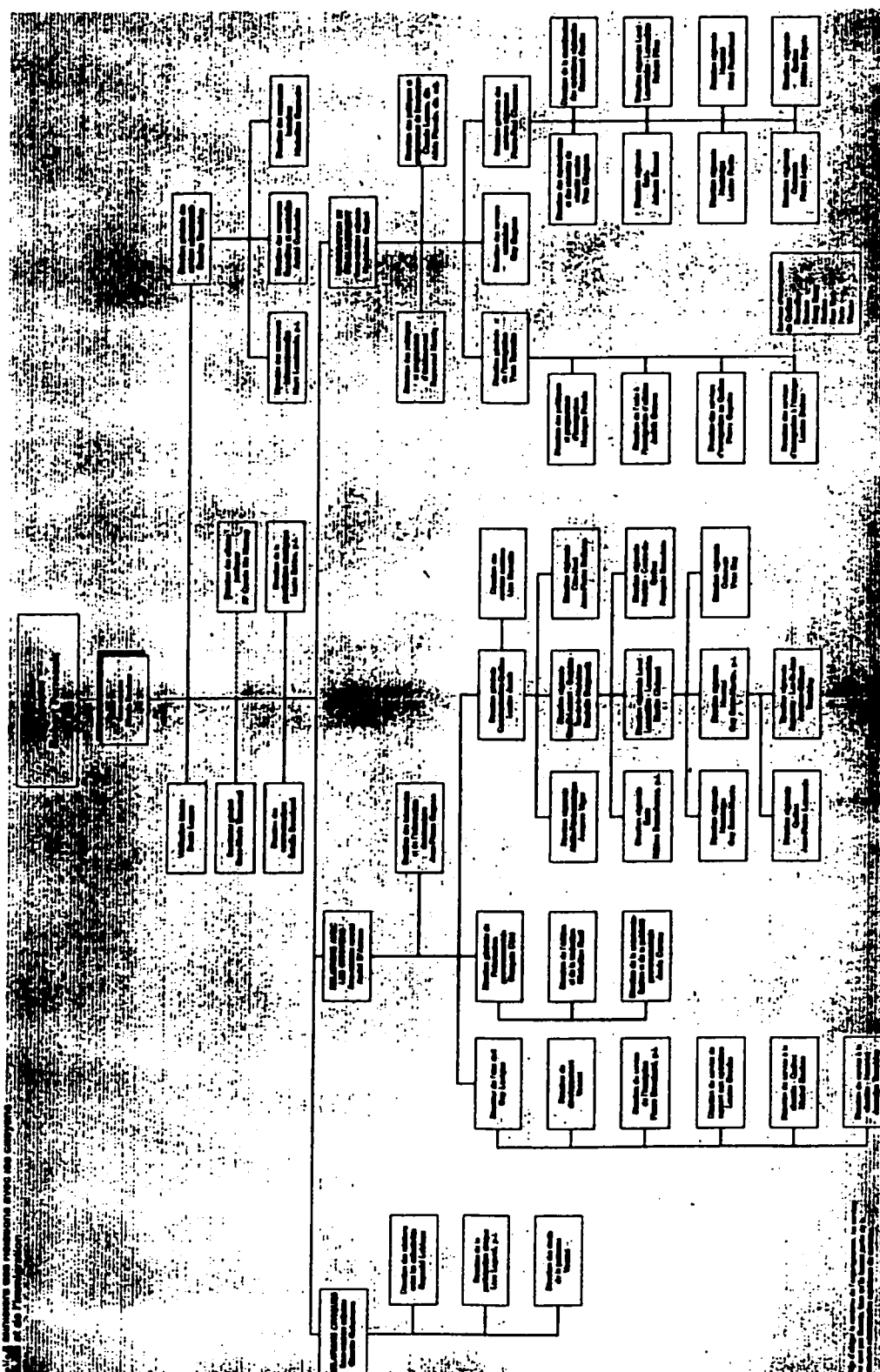
External immigration agents, who are the subject of this dissertation, belong to the “General Direction of Immigration” and more specifically to the office of “Activities abroad” . In total, there are seven offices overseas. Those offices are located in Brussels, Damascus, Hong Kong, Mexico, Paris, New York and Vienna. Agents working in those offices are responsible for the selection of immigrants destined for Quebec. Therefore, their job is to receive the application files of candidates who apply outside Quebec and to evaluate the eligibility of those applicants for immigration. Immigration agents study application files, conduct interviews and deliver “certificat de selection du Québec”(Quebec selection certificate) to those candidates who fit the

selection criteria.³⁷ Like their federal colleagues, external agents will also spend a little of their time offering counseling for potential and actual immigration applicants. In addition to their responsibilities directly associated with the external selection process, agents also write reports to headquarters. Most of the time, those documents give information about the numbers of files that are processed monthly but can also address some actual or future problems such as a growth of political or economical refugees applications in posts overseas.

3.2.3 The various steps of the selection process

The steps to choose family immigrants who are destined to Quebec are different from those for selecting independent immigrants. Therefore, it is useful to outline the process for two categories of newcomers separately. In the case of family immigration, the first step is the sending of a sponsorship application (IMM 1344 form) by a Canadian citizen or a permanent resident to the Case Processing Center (CPC) in Mississauga and the payment of the processing fee by the sponsor. Federal immigration agents, who work in this processing center, examine the application file and verify the relationship of the sponsor and the beneficiary. Those federal agents work essentially with documents such as birth certificate, marriage papers, divorce papers and so on. Occasionally, if the documents do not allow them to establish the relationship, they can demand DNA tests. When those officers decide the relationship is bone fide, they will sign the sponsorship application and they will send it to the The Ministère des Relations avec les citoyens et de l'Immigration (Department of Relations with Citizens and Immigration). However, if they have some doubts about the authenticity of the relationship, they ask external federal agents to conduct an interview in order to get more information about the relationship.

Figure 3.2: Organizational Chart: Ministère de l'Immigration et des Relations avec les citoyens



When a sponsorship application is completed and accepted by the federal government, the application is sent to the “service au garant et à l’immigration” (Service to immigration guarantor) which is part of the office of “Immigration services in Quebec”. Since May 1998, the assessment of family applications has been centralized and the part of the process, which is assumed by the province of Quebec, is now carried out inside the province. This means that the external agents’s role is really minimal regarding the treatment of family applications. External officers have a role to play only in exceptional circumstances such as in some cases of international adoption.

The next step, to evaluate the financial capacity of the applicant, is carried out by internal Quebec’s agents. When they decide the applicant fits the financial criteria, they deliver a “certificat de selection du Quebec” (Quebec selection certificate) specifying that this person has been selected by immigration officials to come to live in the province. Quebec’s agent can also ask to interview applicants but this is rarely done. The financial evaluation for spouses and children seems to be a process that does not have much weight in the final decision. In the selection process of family immigrants, humanitarian concerns are more important than financial ones.

The final step before the admission of a family applicant by the federal government is the conduct of medical and criminal assessments by CSIS agents and approved medical officers. Those appraisals can be done at the end of the process or at the same time the financial evaluation is completed by Quebec’s agents.

The steps to select independent immigrants who want to live in Quebec are very similar to those of the federal selection process. Contrary to family applications, which are processed by

a federal Case Processing Centre in Mississauga, external Quebec agents are the officers in charge of the selection of independent immigrants. Therefore, the first thing an applicant has to do is to apply to a mission abroad. Depending on the size of the office, case analysts or immigration officers are the ones who conduct the preliminary evaluation of the application file. They check the authenticity of the documentation included in the file such as passports, diplomas, letters of recommendations , etc. and they decide if the candidate fits the selection criteria.

When case analysts or immigration officers have completed the preliminary evaluation of the application, they decide if an interview is required. During the interview, the officer has to estimate the qualifications of the candidate and to decide if he is likely to settle without difficulty in the province of Quebec. Therefore, criteria such as education, motivation, knowledge of languages, experience and flexibility are used to evaluate the candidate.

However, in contrast to the federal selection process, Quebec's agents take into account the spouse and her qualifications in their evaluation. Thus, a candidate who has an educated, qualified and experienced spouse who speaks French or English increases his chances to receive his Quebec selection certificate. When this is done, the last step, before the obtaining of a Canadian visa, is the completion of medical and criminal inspections.

3.3 The management of the immigration policy in the United States

In contrast to Canada, the immigration policy in the United States is managed by two different departments, namely the Immigration and Naturalization Service (INS) and the Department of State (DOS). Both institutions play a distinctive role in the selection process of newcomers who want to live in the United States. The group of agents I studied were from the

Department of State since those officers work overseas and their primary function is to deliver American visas.

However, a look at Immigration and Naturalization Service is also useful since this agency is responsible for evaluating and making decisions about petitions. In other words, INS agents are the ones who first look at applications of immigration and decide if someone qualifies for an immigrant status. Therefore, an applicant who has submitted a petition to this service and who has been refused cannot go further with his application to immigrate to the United States.

To understand the American selection process of immigrants and the role of visa officers (DOS agents), a look at both organizations is necessary. This section begins with a description of the organization of the Immigration and Naturalization Service. Next, it outlines the structure of the Department of State and ends with a presentation of the various steps of the selection process for family, independent and diversity immigrants.³⁸

3.3.1 Immigration and Naturalization Service:

In the United States, the federal government obtained entire control over immigration in 1891. Before that year, immigration was a shared responsibility between the states and the federal government but “[...]because of problems caused by the divided authority over immigration, the immigration Act of 1891 was passed, establishing complete and definite federal control over immigration through a superintendent of immigration under the Secretary of the Treasury”.³⁹

After having been under the authority of the Department of Labor for many years, the Immigration and Naturalization Service became an agency of the Department of Justice in 1940.⁴⁰ This agency is headed by a commissioner who is accountable to the Attorney General. INS is

responsible for both enforcing the laws which regulate the entry of aliens into the United States and managing immigration benefits such as the naturalization of permanent immigrants, immigrant and nonimmigrant sponsorship, work authorization and so on. In fact, its mission can be summarized into four important tasks:

- facilitating the entry of persons legally admissible as visitors or as immigrants to the United States;
- granting benefits under the Immigration and Nationality Act, as amended, including providing assistance to these seeking permanent resident status or naturalization;
- preventing unlawful entry, employment, or receipt of benefits by those who are not entitled to them; and
- apprehending or removing those aliens who enter or remain illegally in the United States and/or whose stay is not in the public interest. ⁴¹

The structure of INS is divided into operational and management functions which are performed by four executive divisions at Headquarters in Washington, D.C..⁴² The first executive division is called *Programs* and its main responsibility is to supervise all enforcement and examination functions. Enforcement includes border patrol, investigations, intelligence and detention and deportation. One of the most important enforcement tasks is to guard US borders to make sure that aliens do not enter the country illegally and to remove foreigners who live and work without permission in the United States.

The Examination functions are performed by four programs: Adjudication and Nationality, Inspections, Service Center Operations and Administrative Appeals. These programs have been created to deal with foreign-born persons who aspire to live in the United States on a temporary or permanent basis and of resident aliens who want to obtain their American citizenship. More specifically, the inspections program is responsible for making sure

that all travelers arriving in the United States have the right to enter the country. Therefore, travel documents of those who arrive by land, air or sea are screened at ports of entry.

Furthermore, while the Adjudication and Nationality program has the responsibility to receive and to consider demands of immigration benefits, Service Center Operations supervises the processing systems in four Service Centers located in St. Albans, Vermont; Lincoln, Nebraska; Dallas, Texas; and Laguna Niguel, California. Immigration examiners, who work in those processing centers, evaluate and make decisions about most applications and petitions. Similar to their Canadian counterparts who work in Case Processing Centers, American agents working in Service Centers do not deal with people, but strictly with documents.

Lastly, Administrative Appeals is mainly responsible for dealing with applicants dissatisfied with decisions of immigration examiners and who ask for a second evaluation of their application.

The second executive division is *called Field Operations* and it provides all field offices around the world with executive direction. This division supervises three Regional offices as well as the Headquarters office of International Affairs. While the Regional offices have the responsibility to manage activities of thirty-three districts and twenty-one Border patrol sectors throughout the United States, the Headquarter of International Affairs oversees the activities of three district offices and thirty-nine area offices outside the country. Those offices deliver services that are guaranteed by the Immigration and Nationality Act and they perform statutory enforcement responsibilities in several geographical areas.

The third executive division is called *Policy and Planning* and it consists of three units: the Policy Division, the Planning Division, and the Evaluation and Research Center. The

responsibilities of this executive division involve some “policy development, strategic planning, program evaluation, and statistical analysis and reporting”.⁴³ As a matter of fact, *Policy and Planning* plays a major role in the collection and dissemination of information about immigration policy and it also “acts as an important liaison between the INS and various non-government organizations and interest groups who have a stake in national immigration policy”.⁴⁴

Finally, the fourth executive division is called *Management* and its main function is to coordinate and to assist INS missions and structure. *Management* consists of four Administrative Centers which support and deliver services to field offices. Those Administrative Centers are Information Resources Management, Finance, Human Resources and Administration, and equal Employment Opportunity.

Given the focus of this dissertation, the most important group of agents belongs to the first executive division, more specifically, INS agents, who actively take part in the selection process of those who make their demands outside the United States, work in Service Centers where they evaluate and make decisions about most petitions. As mentioned earlier, this step in the external selection of immigrants is central since it determines if the applicant qualifies for an immigrant status and can pursue his desire to immigrate into the United States. Consequently, those officers from Service Centers are found to work conjointly with DOS agents who deliver American visas overseas.

3.3.2 The Department of State

The Department of State was created in 1789 and it is headed by the Secretary of State whose main role is to advise the President on the formulation and the implementation of foreign affairs. The Secretary of State is assisted in his or her work by a Deputy Secretary and five Under

Secretaries who are in charge of the following areas: political affairs; economic, business, and agricultural affairs; arms control and international security; global affairs; and management (Figure 3.3).⁴⁵

The mission of the Department of State is to carry out U.S. foreign policy at home and abroad and in order to accomplish this, it:

- Exercises policy leadership, broad interagency coordination, and management of resource allocation for the conduct of foreign relations.
- Leads representation of the United States overseas and advocates U.S. policies for foreign governments and international organizations.
- Coordinates, and provides support for, the international activities of U.S. agencies, official visits, and other diplomatic missions.
- Conducts negotiations, conclude agreements, and supports U.S. participation in international negotiations of all types.
- coordinates and manages the U.S. Government response to international crises of all types.
- Carries out public affairs and public diplomacy.
- Reports on and analyzes international issues of importance to the U.S. Government.
- Assist U.S. business.
- Protects and assists American citizens living or traveling abroad.
- *Adjudicates immigrant and nonimmigrant visas to enhance U.S. border security.*
- Manages those international affairs programs and operations for which the Department has statutory responsibility.
- Guarantees the Diplomatic Readiness of the U.S. Government.⁴⁶

The foreign policy mission is executed by employees in both the civil service and the foreign service in embassies and consulates representing the United States in 162 countries.

Besides those embassies and consulates, DOS agents also work in “a national passport and visa center located in New Hampshire, 13 passport agencies, 5 agencies that provide logistics support for overseas operations, 22 security offices and 3 financial service centers located in Paris, France; Bangkok, Thailand; and Charleston, South Carolina”.⁴⁷

The national and visa center in New Hampshire plays a distinct role in the selection process. As a matter of fact, this Center processes all immigration visa petitions that have been approved by the Immigration and Naturalization Service and it retains them until they are ready for adjudication by a consular officer abroad. Those petitions may be kept by the National Visa Center for a short or a long period of time depending on the visa category and the country of birth of the applicant. When a file is about to become current, which means that it is likely to be processed within the year, the petition is sent to the U.S. embassy or consulate which is geographically responsible for the file.⁴⁸ If a candidate applies for an adjustment of status in the U.S., then the case will be forwarded to an INS office.

The group of DOS agents, who are under study in this dissertation, work essentially in embassies and consulates. They are responsible for examining application files that have been sent to them by the National Visa Center. As I have explained earlier, those agents do not decide if a person is qualified for an immigrant category. However, their role is central in the external selection process of newcomers who want to live in the United States since they are the ones who double check the information included in applications and interview candidates.

Within the Department's Headquarters in Washington, DC, 6 regional bureaus take care of the management side of the foreign policy's mission. Those bureaus are each responsible for a distinct geographical area of the world. Regional bureaus and post overseas are assisted by several domestic offices providing them with program management and administrative expertise in domains such as "economics, intelligence, and human rights, as well as finance, administration, personnel, training, medical services, and security programs".⁴⁹ Those domestic offices are a good source of information for DOS officers who deliver American visas and who need to obtain

specific pieces of information to help them to render a decision about a certain case.

3.3.3 The steps of the selection process

As mentioned earlier, the INS is the first institution which receives and examines immigration applications. INS agents are, usually, the first to look at visa petitions and they are also those in charge of approving them. In the case of family immigration, the petition (I-130 Petition for Alien Relative) must be filed by a sponsor- relative and it must be accompanied by proof of the relationship. A sponsor who wants one or more of his relatives to immigrate to the United States must meet several criteria such as proving that he is a citizen or a lawful permanent resident of the United States, that he can support his relative at 125 % above the mandated poverty line and that he is related to the person who wants to immigrate the way he says (husband and wife; sibling, parent-child etc.).

By evaluating sponsorship applications, INS officers assess if the relationship is genuine and they decide, therefore, if a candidate can go further with his desire to immigrate to the United States. Similar to their Canadian colleagues, those agents work essentially with documents in processing centers located in Vermont, Texas, Nebraska and California. In case of doubts about the authenticity of relationships between sponsors and beneficiaries, INS agents have some options. They can request DNA tests or they can ask their colleagues overseas (INS or DOS officers) to carefully interview candidates to immigration in order to clarify the situation.

Once the petition and the sponsorship have been accepted by INS agents, then the file is forwarded to the Department of State and more specifically to the National Visa Center. The last one is responsible for keeping application files until their visa number becomes current. If the person who applies for immigration is an immediate relative of a U.S. citizen, his number will be

automatically current and his file will be processed as a priority. Nevertheless, if a candidate is not an immediate relative of the sponsor, he must wait until a visa number is available to him according to certain preferences:

- First Preference: Unmarried, adult sons and daughters of U.S. citizens. Adult means 21 years of age or older.
- Second Preference: Spouses of lawful permanent residents, their unmarried children (under twenty-one), and the unmarried sons and daughters of lawful permanent residents.
- Third Preference: Married sons and daughters of U.S. citizens.
- Fourth Preference: Brothers and sisters of adult U.S. citizens.⁵⁰

When the number of a candidate to immigration becomes current, the Visa Center sends the applicant's file to the appropriate consulate office which, then, becomes in charge of the case. Consular officers are, in fact, responsible for examining the application file and interviewing each candidate before they get their American visa. Their work consists mostly of checking the application to ensure all documents are authentic and the people who apply are not part of an inadmissible groups. By law, DOS agents who work overseas must interview every foreigner who wants to immigrate to the United States. Most of the time, interviews are short and they consist of making the aspirant take an oath and a few questions to verify his identity. With regard to family immigration cases, the DOS officers' priorities are to examine the identity, the relationship and the financial capacity of both the sponsor and the beneficiary. The last step of the selection process is the medical and security checks that are completed by designated medical agents and FBI officers.

The selection of foreign nationals who want to immigrate to the United States because they have a permanent employment opportunity, or because there is an employer who wants to sponsor them, is different from the family-based immigration process. The first step consists of

determining the eligibility of the applicant for lawful permanent residency. Once the applicant and the U.S. employer have established that the former seems to correspond to the INS criteria, then the employer must complete a labor certification request for the applicant. This form must be submitted to the Department of Labor's Employment and Training. This step contrasts greatly to the Canadian selection process for employment based immigrants since, in Canada, this category of immigrant does not necessarily need to be sponsored by an employer, nor is it necessary that the applicant get a labour certificate.⁵¹

The Labour Department is in charge of granting or denying certification requests. The process of certification is usually relatively long (between 1 to 2 years) and it has to be completed before the application is sent to the INS, the main reason is that one of the supporting documents an employment-based candidate must have when he sends his applications to the INS is the Labour certification.⁵²

When the Labour department has granted the certification process, the next step involves the Immigration and Naturalization Service which is responsible for approving immigrants' visa petitions. The employer who wants to bring the foreign national to the United States to work on a permanent basis must file a sponsorship petition. If the petition is accepted, it will be forwarded to the National Visa Center which will keep the application until the would-be immigrant's number becomes current. As is done for family immigrants, when the visa number becomes current the file is sent to a consulate. From this moment, DOS agents are responsible for the completion of the selection process. They will examine application files and they will interview candidates for immigration. Interviews will be organized around questions aiming at verifying if the skills and qualifications of the person who wants to work in the United States correspond to

the position he is planning to occupy. As it is often the case in Canada, candidates who are coming from countries well known for their capacity to defraud the immigration process will be looked at more carefully. In those cases, interviews conducted by DOS agents will likely be longer and fastidious. The last step of the selection of this category of immigrants is the medical and security checks.

In addition to family and employment-based categories, consular officers are also responsible for some parts of the selection process of Diversity immigrants, a category of immigrants that does not have an equivalent in Canada. Diversity immigrants are selected by an annual lottery that is run by the Department of State and more specifically by the National Visa Center. Through this process, the United States offers 50,000 permanent resident visas each year to randomly chosen applicants from eligible countries. To be eligible, applicants must be coming from countries that have sent less than 50,000 nationals to the United States in the last five years. In addition, candidates must have a high school degree or the equivalent and no country can send more than 3500 nationals per year.

With regard to this category of immigrants, the responsibilities of DOS agents consist of deciding if the person who has been selected by the National Visa Center qualifies and to make sure he is not coming from an inadmissible class. According to few American agents interviewed, this process is complicated. They argue that it can be hard to establish, with certainty, if a person will become a public charge for the country. Without this certainty, agents must give the benefit of the doubt to candidates.

In conclusion, the description of the organization and functions of departments and

services which play an active role in the management of the immigration policy in the United States, Canada and Quebec reveals that there is a basic feature which differentiates the American selection process from the two others. This feature is the sharing, in the United States, of the selection responsibility. In the United States, both family and independent applications to immigration are processed by agents coming from two different organizations. As a matter of fact, the Department of State and Naturalization and Immigration Service participate actively in the external selection process. More specifically, while INS officers are responsible for approving visa petitions, DOS agents are the ones who do a second check of applications files, interview candidates to immigration and deliver visas. If DOS agents cannot readjudicate or refuse to deliver visas, they can, however, review them and decide that they need to return to the *Naturalization and Immigration Service* for further examinations. Thus, contrary to their Canadian colleagues, DOS agents do not have the power to refuse visas but they can make some recommendations to the INS.

In Canada, all applications to immigration, except those destined to the province of Quebec, are processed by only one organization, namely Citizenship and Immigration Canada. While external officers have a more important role in the processing of independent files, they still act, conjointly with case processing centers' agents, in the selection of family immigrants. They, in fact, interview candidates and they also have the power to refuse delivering visas to candidates who do not respond to the requirements.

In the case of applications to Quebec, and similar to the United States, two different organizations will intervene in the selection process. However, the main difference is that this concerns essentially family immigration since independent applications are processed almost

entirely by Quebec external agents. The only steps that are executed by federal officers are the security and medical checks before the delivering of the visa. Thus, this means that the most important decisions will be made by Quebec immigration officers. Furthermore, even though family applications are both assessed by federal and Quebec agents, the latter have, in contrast to American DOS officers, the power to refuse to deliver a Quebec selection certificate if they judge candidates do not meet Quebec requirements.

The fact that, in the United States, two different organizations are responsible for assessing immigration applications has a significant impact on the discretion of external officers. In the following chapters, I will demonstrate that DOS agents, compared to their Canadian and Quebec counterparts, have usually less decision to make and that their individual power to act is also more limited. Chapter Seven will show that differences in the organizational structures grant greater discretion to Canadian officials than to their American counterparts.

Appendix 3.1: List of offices which constitute the International Region

	Americas	Europe	Middle East	Asia/Pacific
Regional Program Centres/ Satellites Offices	Buffalo/ Detroit Los Angeles New York	London/ Abu Dhabi Riyadh Paris/ Rabat Rome Tunis Vienna/ Prague	Accra/ Abidjan Damascus/ Amman Beirut Tehran	Manilla/ Seoul Tokyo Singapore/ Bangkok Dhaka Taipei
Full Services Centres	Bogota Buenos Aires Guatemala Havana Kingston Lima Mexico Port-au-Prince Port of Spain Sao Paulo	Ankara Belgrade Bonn Bucharest Kiev Moscow Warsaw	Cairo Nairobi Pretoria Tel Aviv	Beijing Colombo Hong Kong Islamabad New Delhi Sydney
Specialized Offices	Caracas Miami Washington Santiago	Geneva The Hague		Canberra

Source: Citizenship and Immigration Canada, *Overview of the Overseas Immigration Program*, (Internal document of the International Region, 1998), 2.

End Notes

1. I realize that the organizational structure of the departments responsible for immigration in both Canada and the United States is not static. However, I had to deal with what was on plans at the moment of this research.
2. While “the Government of Canada continues to determine national standards and objectives and to have responsibility for the family class and refugees”,(...) the Government of Quebec is responsible for linguistic, cultural and economic integration services for permanent residents, and has exclusive responsibility for the selection of independent immigrants”(Citizenship and Immigration Canada, 1996;5). I will give more details on this issue in the following chapter. Note that while Quebec certainly has a large role compared to other provinces in immigrant selection, most other provinces have signed agreements with Ottawa relating particularly to the selection and admission of entrepreneurial and investor categories of immigrants. However, those agreements do not give the same extent of power to provinces than the Canada-Quebec agreements do and they apply only to entrepreneurs and investors not to the whole independent category of immigrants like in Quebec. Similarly, child adoption from abroad is a provincial matter but this class of immigrants is not part of this study.
3. Before 1994, Citizenship and Immigration Canada was called
 - the Department of Public Security (1993 -)
 - the Department of Manpower and Immigration (1966 -)
 - the Department of Citizenship and Immigration (1950 -)
 - the Department of Mines and Resources (before 1950)
4. Citizenship and Immigration Canada, *You asked about... ... immigration and citizenship*, (Ottawa: Minister of Public Works and Government Services Canada, 1997),1.
5. [Http://cicnet.ci.gc.ca/english/about/org-e.html](http://cicnet.ci.gc.ca/english/about/org-e.html).
6. Canada, *You asked about... ... immigration and citizenship*, 7.
7. Ibid.
8. Citizenship and Immigration Canada, *Overview of the Overseas Immigration Program*, (Internal document of the International Region, 1988), 3.
9. Ibid.

The problem of estimating if a person is likely to become a public charge on a state or whether this person could endanger the general population are common preoccupations of open-door countries. These concerns were frequently mentioned in the interviews.
10. Canada, *Overview of the Overseas Immigration Program*, 4.
11. In Appendix 3.1, you will find the list of network abroad.

12. There is one of these Regional Program Centres in Buffalo and I have interviewed some Canadian and local agents working for this office.

13. Canada, *You asked about... ... immigration and citizenship*, 8.

14. Ibid

15. Independent immigrants are those who apply for permanent status on their own merit. This category includes skilled workers, entrepreneurs, investors, and self-employed persons. I will describe this class of immigrant, in more details in the following chapter.

16. Canada, *You asked about... ... immigration and citizenship*, 20.

17. Before, a large part of this task was completed by external immigration officers.

18. An applicant is eligible when he can prove his or her relationship with the sponsor is authentic and when he does not belong to an ineligible class. "Section 19 of the Act prohibits the admission of people who pose a threat to public health, safety, order or national security. Also inadmissible are those who fail to meet other requirements, such as not having required visas, authorizations, visible means of support and valid travel documents. Exclusions on health grounds are based solely on danger to public health or safety, or excessive demands on health or social services in Canada. Inadmissibility on criminal grounds is determined according to the sentence that could be given for the equivalent offences under Canadian law; the possibility of admission following rehabilitation is also considered".

Department of Justice Canada, *Immigration Act* in *CD-ROM: Consolidated statutes and Regulations of Canada*, (Ottawa: Department of justice Canada, 1999).

19. Case analysts are often hired locally by The *Department of Foreign Affairs and International Trade* to assist immigration agents of *Citizenship and Immigration Canada*.

20. I expand on this issue in following chapters.

21. CSIS agents conduct investigations to deter candidates who are, according to the Immigration Act, criminal or dangerous for the Canadian population and, therefore, considered as being inadmissible in the country.

22. Chapter 4 discusses, in details, those criteria of selection.

23. Canada, *You asked about... ... immigration and citizenship*, 9.

24. While Quebec is the only province active in selection work, federal immigration officials do operate on occasion as agents/delegates of other provinces for particular selection categories.

25. Department of Justice Canada, *Immigration Act*.

26. Department of Justice Canada, *Immigration Act*.

27. So far, Quebec is the only province who has the exclusive responsibility of the settlement of its newcomers. It is also the only province who has its own business program. For more details see Edward Greenspon, "Ottawa offers immigration deal", *The Globe and Mail*, (Thursday, February 27, 1997), A1 and A12. Paulette Peirol, "Provinces given more jurisdiction over immigration", *The Globe and Mail*, (Saturday, March 22, 1997), A1.

28. [...] it is more since the sixties that the change appears. Then on, instead of fearing the negative consequences of immigration, authors of the Quiet Revolution realized that they must consider it like a development factor of the modern, francophone and pluralist society that they are in the process of building".

Quebec, *Énoncé de politique en matière d'immigration et d'intégration* (Quebec: Ministère des Communautés culturelles et de l'Immigration, 1990), 6.

29. "[...] the immigration department is responsible for helping the integration of immigrants in Quebec who are likely to contribute and to participate to the development of the province". Ministère des Communautés culturelles et de l'Immigration du Québec, *Au Québec, pour bâtir ensemble; Énoncé de politique en matière d'immigration et d'intégration*. (Québec :Ministère des Communautés culturelles et de l'Immigration du Québec, 1990), 7.

30. " The selection of foreigners who want to settle permanently in Quebec will be done according to both the Canadian and Quebec's criteria".

Ministère des Communautés culturelles et de l'Immigration du Québec, *Entente entre le Gouvernement du Canada et le Gouvernement du Québec portant sur la collaboration en matière d'immigration et sur la sélection des ressortissants étrangers qui souhaitent s'établir au Québec à titre permanent ou temporaire*. (Québec: Ministère des Communautés culturelles et de l'immigration, 1978), 4.

31. "[...] Canada and Quebec agree that the Quebec selection process practices will respect the categories of independent and family immigrants and the one of person in distress".

Québec, *Au Québec, pour bâtir ensemble; Énoncé de politique en matière d'immigration et d'intégration*, 23.

32. "Quebec is solely responsible for the selection of immigrants who are destined to this province and Canada is solely responsible for the admission of those immigrants."

Ministère des Communautés culturelles et de l'immigration, *Accord Canada-Québec relatif à l'immigration et à l'admission temporaire des aubains*. (Québec: Ministère des Communautés culturelles et de l'immigration, 1991), 3.

33. Joseph H. Carens, eds., *Is Québec Nationalism Just? Perspectives from Anglophone Canada*, (Montréal: McGill-Queens, 1995), 25.

Note that while Quebec can indicate which and how many Convention Refugees processed abroad it will annually accept, it has no such capacity regarding persons, already in Canada, and who claim and are granted refugee status.

34. "24. Canada agrees to withdraw from cultural and linguistic services of integration that are provided by Quebec to permanent residents in this province. 25. Canada agrees to withdraw from specialized services of economic integration that are provided by Quebec to permanent residents in this province".

Québec, *Accord Canada-Québec relatif à l'immigration et à l'admission temporaire des aubains*. 5.

35. (The Department of Relations with Citizens and Immigration)

For more information on the organization and functions of this department, see Québec, *Ministère des Relations avec les citoyens et de l'Immigration; Rapport annuel 1997-1998*, (Québec: Les Publications du Québec, 1999). And Ministère des Relations avec les citoyens et de l'Immigration, "Entre-Nous; Place à l'action et aux réalisations", *bulletin d'information à l'intention des employés du ministère des Relations avec les citoyens et de l'Immigration*, janvier 1999.

36. For example, regional agents ensure that immigrants respect their engagement vis-à-vis the government of Quebec. An immigrant who has been accepted according to the business category's criteria has to inform the regional office of the progress of his or her business. This procedure has been established to ensure that business immigrants who have been admitted will complete their part of the agreement which is to start a new business in Quebec.

37. Selection criteria of the Quebec grid are highlighted in the following chapter.

38. Diversity immigrants are newcomers who are chosen by a lottery and who come from countries with low rates of immigration to the United States. The Department of State grants randomly 55,000 immigrant visa numbers annually to those persons.

39. <http://www.ins.usdoj.gov/graphics/aboutins/thisisins/overview.htm>. P.2.

40. The Department of Commerce and Labor (later named The Labor Department) was in charge of immigration from 1903 to 1940. Immigration and Naturalization functions were also separated during some periods of time. In 1906 the naturalization role of INS began when a new law created the Bureau of Immigration and Naturalization. In 1913 the two functions became separated again when the Department of Commerce and Labor was split into two departments. Immigration and Naturalization functions were reconsolidated in 1933 with the creation of the Immigration and Naturalization Service within the Labor Department.

41. <http://www.ins.usdoj.gov/ms.html>. P.2.

42. For more information about the organization of the Immigration and Naturalization Service see the internet site: <http://www.ins.usdoj.gov/insidems/245.html>.

43. Ibid.

44. Ibid.

45. See Figure 3.3

46. [Http://travel.state.gov](http://travel.state.gov)

47. [Http://travel.state.gov](http://travel.state.gov)

48. Note if the visa category is an immediate relative such as a spouse, a parent or a child of a U.S. citizen, the file will be automatically current.

49. [Http://travel.state.gov](http://travel.state.gov).

50. For more information see the “Visa Bulletin” of the United States Department of State (http://travel.state.gov/visa_bulletin.html)

51. This does not mean, however, that an employer cannot recruit outside the country. In fact, if an employer shows that there is no Canadian qualified for a position, he can apply to recruit outside the country. This implies that there is an additional step in the American selection process and that there is also an additional group of officers from the labour department who can influence the selection decision.

52. All employment-based applications must go through the labor certification except for first preference (Priority workers: persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers) and national interest waiver.

Chapter Four

A Look at the Exercise of Street-Level Discretion Authorized by Immigration Laws and Administrative Procedures in Canada and in Quebec

In the previous chapter, I looked at the organization and the responsibilities of the main institutions in charge of the management of the immigration policy in Canada, Quebec and the United States. This exercise revealed that, in contrast to Canada, the United States has more than one department playing a key role in the external selection of newcomers. In addition, this chapter situated officers, who are responsible for selecting immigrants applying outside the receiving country, within the organization to which they belong. It also presented a description of their role as well as their main responsibilities in the selection process.

The next step of this research consists of assessing the tools available to immigration and visa agents within the selection process of would-be immigrants. The main objective of the two following chapters is, therefore, to look at immigration law and administrative procedures and to understand what room, according to those documents, is left for discretion in the selection system. Decisions to accept or refuse applicants to immigration are based on both immigration laws and administrative procedures.¹

In this chapter, it is argued that immigration laws and administrative procedures leave some important space for field-level discretion. More specifically, it is demonstrated that Canadian and Quebec selection grids with their criteria of selection such as “experience”, “knowledge of official languages” and “personal suitability” open the doors to field level agents

discretion. A look at those two selection grids reveals that the weight assigned to those discretionary factors is heavier in Quebec than it is in Canada and that Quebec has an “original” criterion called “partner characteristics” which is also discretionary.² The American immigration law and administrative procedures will be examined in the next chapter.

4.1 Canada

4.1.1 Immigration Act

Since the adoption of the point system in 1967, the *Immigration Act* has ensured that newcomers are selected according to domestic labour-market requirements instead of discriminatory ones with respect to sex, color, race, nationality and religion. The actual immigration program is based on the 1976 *Immigration Act* which was implemented in 1978 and has recently been modified.³ For the first time, this law confirmed “...the fundamental principles of Canadian immigration law: family reunion, nondiscrimination, concern for refugees and the promotion of Canada’s demographic, economic, social and cultural goals”.⁴

With the adoption of a new *Immigration Act* and of the Canadian point system, one concern was to institute objective and universal criteria for admission. Additionally, Canadian authorities were prone to reduce individual discretion of immigration and visa officers. In fact, they favored a change of practices through regulatory means instead of parliamentary legislation. As Garcia y Griego explains: “Between 1962 and 1969, (...) Canada moved away from a discretionary administrative system to one with clearly established rules and procedures, though it did so through regulatory change and not parliamentary legislation”.⁵ At that time, Canada adopted a new set of immigration regulations with its famous point system, it created the

Department of Manpower and Immigration and the Immigration Appeal Board and it consented to be a signatory of the 1951 Geneva Convention Relating to the Status of Refugees.

Although the concern for reducing discretion has been and is still important for Canadian authorities, a look at the *Immigration Act* and at the administrative procedures confirms that it would be difficult to eliminate it completely from the practice of selecting immigrants who want to settle in Canada. As a matter of fact, the Canadian Immigration law makes reference several times to the responsibilities of immigration and visa officers but it also discusses their power of decision vis-à-vis candidates who apply to immigrate in Canada.

Furthermore, it seems clear from the statute that those agents who evaluate applications for immigration will give their approval only to candidates who convince them they meet or satisfy the selection standards. In other words, in order to deliver Canadian visas, agents have to believe that applicants and their family are likely to establish with success in the adoptive country. For example provisions 6(1), 6(8), 9(2) and 9(4) of the law suggest that:

6(1) subject to this Act and the regulations, any immigrant, including a convention refugee, and all dependants, if any, may be granted landing if it is established to *the satisfaction of an immigration officer that the immigrant meets the selection standards* established by the regulations for the purpose of determining whether or not and the degree to which the immigrant will be able to become successfully established in Canada, as determined in accordance with the regulations.

6(8) Where an immigrant is of a prescribed class of immigrants for which the regulations specify that the immigrant and any of all dependants are to be assessed, the immigrants and all dependants may be granted landing if it is established to *the satisfaction of an immigration officer* that the immigrant and the dependants who are to be assessed meet;
a) the selection standards established by the regulations for the purpose of determining whether or not the degree to which the immigrant and all dependants will be able to be established in Canada, as determined in accordance with regulations or,

b) the landing requirements prescribed by regulations made under paragraph 114 (1) (e).

9(2) An application for an immigrant's visa shall be assessed by a visa officer for the purpose of determining whether the person making the application and every dependant of that person *appear* to be persons who may be granted landing.

9(4) Subject to subsection (5), where a *visa officer is satisfied* that it would not be contrary to the Act or the regulations to grant landing or entry, as the case may be, to a person who has made an application pursuant to subsection (1) and to the person's dependants, the visa officer may issue a visa to that person and to each of that person's accompanying dependants for the purpose of identifying the holder thereof as an immigrant or a visitor, as the case may be, who, *in the opinion of the visa officer*, meets the requirements of this Act and the regulations.⁶

Therefore, it appears that the law contains several provisions that are likely to lead to a certain level of subjectivity. In fact, the wording of particular clauses of the Canadian *Immigration Act* implies that there is some room for the opinion and the judgment of the agent who is in charge of evaluating applications to immigration. Expressions such as "if it is established to the satisfaction of an immigration officer" or "in the opinion of the visa officer" are used on a regular basis in the first few sections of the Canadian *Immigration Act*.

Hence, instead of mentioning that to be admitted as an immigrant in Canada, an alien must exclusively satisfy the criteria and the exigencies of the law and regulations, those provisions of the Act specify the necessity to convince the officer that the candidate for immigration will establish successfully in Canada. Would this, then, suggest that selecting immigrants in Canada is something more than evaluating applications according to strict rules?

The wording of several stipulations of the Act certainly suggest that legislators recognize the difficulty in selecting newcomers according to precise rules and standards defined in the Act

and regulations. In fact, it appears that legislators have acknowledged the need for flexibility in situations that often require responses with a human dimension. Several authors have made reference to this particular idea. For example, Lipsky summarizes well this fact of the administrative life when he states that “to the extent that tasks remain complex and human intervention is considered necessary for effective service, discretion will remain characteristic of many public service jobs”.⁷

Additionally, while the use of discretion is sometimes viewed as being a form of bureaucratic pathology⁸, Lipsky argues that it is also possible that the vagueness and ambiguity, which often create a good terrain for discretion, provide the necessary freedom to adapt policies to different and complex local situations.⁹

If selecting good candidates to immigration would be possible by following strict rules established by laws and regulations, legislators would certainly not have used the same vocabulary when writing the current *Immigration Act*. I believe they used those words especially because they knew and they recognized that the selection process must contain an element of subjectivity in order to be flexible enough to result in a thoughtful selection. This element of subjectivity can be interpreted as being the discretion exercised by visa or immigration officers in the selection process. In exercising discretion in the selection of would-be immigrants, visa and immigration agents use their personal and professional judgment to decide if a candidate for immigration will be accepted or refused.

Moreover, when the law refers to the “selection standards established by the regulations for the purpose of determining whether or not and the degree to which the immigrant will be able to become successfully established in Canada”⁶⁽¹⁾, it refers, in part, to the use of the Canadian

selection grid which is the central tool for selecting “independent” immigrants. This grid explains and gives the weight of each criterion which is taken into account in the evaluation of the eligibility of candidates to immigration. This points system is designed to select newcomers who have the skills and abilities to contribute economically to Canada. I will come back later to a discussion of this selection grid when I will look at the administrative procedures and I will show how certain individual criteria are clearly subjective and how they lead to discretion.

Finally, provision 19 of the Immigration Act, which introduces the grounds on which a person can be considered as being inadmissible for Canada, leaves also some room for subjectivity or for the exercise of discretion by immigration agents. More specifically, section (b) specifies that we should not grant admission to “persons who there are reasonable grounds to believe are or will be unable or unwilling to support themselves and those persons who are dependent on them for care and support, except persons who have satisfied an immigration officer that adequate arrangements, other than those that involve social assistance, have been made for their care and support”.¹⁰

The problem with this section (b) is that it could be difficult for an agent to evaluate if a person will be able to support himself and his dependents. Actually, several agents I have interviewed mentioned that this was more a question of judgment. According to them, there are few criteria on which they can base their decision. For example, immigration officers can ask applicants to prove they own a certain amount of money to support themselves and their family for the first months following their arrival in Canada. Nevertheless, agents can rarely be assured that an alien who applies to immigration will never need social assistance. Therefore, they often have to use their personal and professional judgment to make this kind of decision.

In sum, a closer look at the *Immigration Act* revealed that discretion is a notion that is actively present in this document. As a matter of fact, several provisions suggest that room for subjectivity or the exercise of discretion by visa and immigration agents is something real and necessary when selecting immigrants. The next section will look at the existence of the same concept, but this time, in administrative procedures of the Overseas Processing Division of Citizenship and Immigration Canada.

4.1.2 Administrative Procedures: Overseas Processing Guidelines

When one reads the procedural guidelines, it seems indisputable that the judgment of visa officers, in Canada, have an important weight in the selection process of both family and independent categories of immigrant. Nonetheless, one must never forget that decisions must be based on the *Immigration Act* and Regulations and that if agents exercise discretion, it should always be done “properly”. As proviso OP1-10 of the *Immigration Manual of Procedures* stipulates, when visa agents refuse a candidate, they must always cite a clause of the Act or Regulations in their record. This means that officers are constrained to use their power of decision in a proper manner, but more importantly in accordance with the Act and Regulations.

Furthermore, there are few actions that can be taken by applicants who have been refused by visa officers and who think they deserve a second evaluation of their file. For example, “Canadian citizens and permanent residents who sponsor close family members have the right of appeal if the family members’s application is refused by a visa officer. The Appeals are heard by members of the Appeal Division of the Immigration and Refugee Board, an independent tribunal.”¹¹ The Immigration Appeal Division “operate much like a regular court. However, rules of evidence are somewhat more flexible and the IAD can consider any evidence it believes

credible and trustworthy. When making a decision, its members consider questions of law and fact and, in some situations, humanitarian and compassionate concerns".¹² Immigrants others than family class have no such rights. The Immigration Act does not provide them for appeals to the Appeal division against negative decisions. However, they may ask an authorization to send an application for judicial review by the Federal Court of Canada.

Despite the fact that visa agents' decisions are restrained by the Act and Regulations as well as by the power of the Courts to review their decisions, a study of administrative procedures indicates that immigration officers can still exercise discretion in diverse situations. The level and the type of discretion will vary according to the category of immigrants. Therefore, as it was appropriate when I discussed the steps of the selection process in the previous chapter, I consider separately the administrative procedures specific to family immigrants and those which explain the treatment of independent immigrants' files.

- Family Immigration:

In the case of family immigrants, the agents' discretion can take different forms but before discussing those variations, let us define, first, what the *Immigration Act* and administrative procedures consider as a member of the family class. It includes:

- the sponsor's spouse; - the sponsor's dependent son or dependent daughter (including an adopted son or daughter); - the sponsor's father or mother; - the sponsor's grandfather or grandmother; - the sponsor's brother, sister, nephew, niece, grand-son or grand-daughter who is an orphan, unmarried and under 19 years of age; the sponsor's fiancé (e); - any child under 19 years of age whom the sponsor intends to adopt and who is an orphan, an abandoned child whose parents cannot be identified, a child born outside of marriage and who has been placed with a child welfare authority for adoption, or a child one of whose parents is deceased and who had been placed with a child welfare authority for adoption.¹³

An attentive reading of the administrative procedures, specific to family immigration, reveals that visa agents can exercise discretion within three distinct situations. The first one refers to the evaluation by the officer of the relationship which exists between the sponsor and his dependent(s). As explained in the previous chapter, the main preoccupation of an agent who processes a family category application is to verify the relationship. In other words, the officer who examines a sponsorship application must be convinced that the relationship is authentic. Provision 4.9 “Marriage of convenience” of the procedural guidelines mentions that officers “can refuse immigrant visas to applicants, who [they] have reason to believe, married their sponsor to benefit from processing as a member of the family class and not to live permanently with them”.¹⁴

Therefore, according to the information given by provision 4.9 of the procedural guidelines, we can hypothesize that an agent could use his judgment to decide if a relationship is one of convenience.¹⁵ In the case the officer judges a relationship to be one of convenience, he has the power to refuse the application to immigration.

Furthermore, if provision 4.9 specifies that agents must have evidence to support their decisions, it stipulates also that documentary evidence is not necessary. According to this clause, a statutory declaration from agents explaining the motivations which make them believe the relationship is one of convenience carries some weight with the Immigration Appeal Division:

“Such declarations do carry weight with the IAD as they adhere to the common rule of evidence”.¹⁶

With a concern for helping agents in their task of selecting newcomers, provision 4.9 enumerates additional factors on which immigration officers might base their decision. It stipulates that “[d]ifferences in age, race, religion or culture and a history of divorce” may ring a bell and suggest a marriage of convenience to the agent. Likewise, other factors must be

considered by visa and immigration officers in assessing relationships. Those are:

- The circumstances and duration of the courtship.
- The wedding itself (where it was celebrated, what type of marriage, who attended).
- Did the marriage ceremony conform to the beliefs and culture of the participants?
- Is there evidence the spouses have lived together?
- The Canadian immigration status of the applicant at the time of the marriage.¹⁷

Accordingly, the officer who has the responsibility for deciding if a particular relationship is genuine must form his opinion by weighing several factors. Nevertheless, after having talked with several Canadian immigration officers, I conclude that the most of those factors remain, in many ways, subjective. For example, when agents evaluate the circumstances and the duration of the courtship, they use their own criteria to judge this factor since the guidelines do not provide them with this kind of information. Assessing the authenticity of a wedding can also be very difficult to do in an objective manner. Again, the guidelines do provide agents with very few hints that can guide their decisions. Consequently, agents use their experience and their personal and professional judgment to decide if a relationship is one of convenience. For example, an officer mentioned in interview that for evaluating marriage of convenience: “we want to know if they (sponsor and the foreigner) know each other but (that the way this is assessed) really depends on the officer”.¹⁸ Another suggested that: “Des choses illogiques comme une grosse différence d’âge ou d’éducation ou le fait que le parrain ne connaisse pas beaucoup la personne qu’il veut ramener me donnent des indices comme quoi un mariage en est un de convenance”.¹⁹

In some cases, visa agents will have to process fiancé applications. Similarly to assessing a marriage, agents must be convinced that the relationship between the sponsor and his fiancé is

authentic. In order to determine if an engagement is genuine, agents use the same factors “as for determining the bona fides of marriage”.²⁰ If visa officers do not believe the sponsor and his fiancé will marry and live together, they should refuse the application. The evaluation of this kind of application also leaves some room for discretion. Since the guidelines do not provide agents with specific criteria to assess fiancé applications, they use their own.

Besides, my interviews revealed that some agents were more severe than others in that they were asking for additional documents such as love letters, pictures and so on in order to make their final decision. The country of origin of the applicant will also make a difference in the treatment of the file. As I have previously mentioned in chapter three, there are a few areas of the world where fraud is more common. In those cases, agents have to be more vigilant and might decide to ask more specific questions to make sure the engagement has not been made for the purpose of gaining admission to Canada as a member of the family class. For example, one immigration officer mentioned that immigration agents have to be careful with places such as Havana and St-Domingo where many Canadians go for vacations and could be tempted for helping would-be immigrants in exchange of money.²¹

The reading of the procedural guidelines reveals also that discretion can be exercised in the evaluation of common-law spouses and same-sex partners relationships. According to the law, common-law spouses and same-sex partners do not fall under the definition of spouse which means that they have to be treated as if they would be coming from the independent category of immigrants. However, visa officers can use their discretion to accept those applicants if they judge “undue hardship could result from separation of common-law spouses or same-sex partners”.²² If agents are convinced that the relationship is genuine and that it was not initiated for gaining

admission to Canada, they can accept common-law and same-sex partners on humanitarian and compassionate grounds.

In addition to verifying the authenticity of relationships, officers must determine if the sponsor can support the person(s) he wants to bring in Canada. This situation is a second opportunity which provides visa agents with some room to exercise discretion. According to provision 1.4 of the Overseas Processing guidelines, sponsors must submit “a promise in writing to provide for the lodging, care and support of members of the family class and their dependents (...) for a period not exceeding ten years”.²³ As I have mentioned in the section on the *Canadian Immigration Act*, considering if a person will be able to support his dependents(s) can be a complex task. Often, in those situations, agents will use their experience and their personal and professional judgment to render a decision.

Nonetheless, the guidelines specify that this requirement to convince the officer that the sponsor has the resources to support his family does not apply for spouses and dependent children without children of their own. “(...) Because of the acknowledged humanitarian aspects of family reunification, officers are encouraged not to refuse sponsored spouses and/or dependent children unless arrangements for care and support are virtually non-existent and offer no prospect of improvement.” The same article of the guidelines even stipulates that “Refusals should be extremely rare if the sponsor is employed, however marginally”.²⁴ In brief, what this means is that officers are freer to exercise discretion when they assess family members other than spouses and dependent children.

Finally, the third situation which provides immigration officers with some room to exercise discretion is when they make the decision to interview sponsors and would-be immigrants.²⁵

Provision 3.9 of the procedural guidelines specifies that agents should interview applicants and their dependents if it is essential to evaluate their application. However, the same guidelines do not mention when agents should consider an interview as essential or not. Likewise, my discussion with several visa agents indicates that conducting interviews depends mostly on the location of overseas posts and of the number of cases processed. For example, many officers told me that in areas of the world where fraudulent behavior is frequent, interviews will be almost automatic. In contrast, agents who work in posts that are very loaded with applications will tend to conduct interviews only for cases that seem problematic. As one Canadian officer explained: “ Here (in the United States) we do not do a lot of interviews. 41% of cases are waved. However, in Nairobi, we interviewed all of them. In Mauritius, we were able to rely on documents but in Ethiopia we were not”.²⁶

- Independent Immigration:

In contrast to family immigrants who are admitted primarily on humanitarian grounds, independent immigrants are selected because of their “ability to make a significant contribution to the economic, cultural, and social fabric of Canada”.²⁷ Provision 2.2 of the procedural guidelines defines independent applicants as: “persons who intend to enter the labour market and have the intention and ability to be self-supporting upon their arrival in Canada”.²⁸ This category of immigrants includes five kinds of applicants namely, skilled workers, assisted relatives, entrepreneurs, self-employed and investors.²⁹

Federal visa officers are responsible for selecting independent immigrants who are destined for all Canadian provinces but Quebec. The discussion of the administrative procedures of the processing of independent newcomers who want to settle in Quebec are discussed in the next

section.

With regard to the selection process of independent immigrants by federal visa officers, there are two different sets of administrative procedures, one for skilled workers and another for entrepreneurs and self-employed.³⁰ I begin by discussing the guidelines specific to skilled workers and, then, I look at those which concern the entrepreneurs and self-employed category of immigrant. Most independent immigrants who are settling in Canada are coming from the skilled workers sub-category. The number of skilled workers is about 3 or 4 times greater than the number of business immigrants which consists of entrepreneurs, self-employed and investors.

- Skilled workers:

When agents look at skilled workers' applications, one of the first steps consists of the assessment of occupations. Agents are responsible for assessing and coding independent applicants in a given occupation with the help of the National Occupational Classification (NOC). The NOC is a list of approximately 25,000 occupations in the Canadian market. This list gives a description of different occupations, it enumerates some examples of titles that are associated with those occupations and it summarizes the main tasks carried out by a person who occupies a particular position .

Assessing occupations is a crucial step for the success or failure of an application. If an applicant is awarded no units under the occupation factor, processing of the application ceases and applicant is rejected. Therefore, this step of the selection process gives an important decision power to the officer. This leaves also some room for the exercise of discretion. For example, provision 2.5.3 of the guidelines stipulates that "[I]f the officer is convinced that an applicant is qualified for an included occupation but is not willing to work in it, then the applicant should not

be assessed in that occupation”. I suggest that to evaluate the willingness of a person to work in a particular domain, agents would need guidelines which are presently absent from the administrative procedures. Without such directions, an officer will use his professional and personal judgment to assess this kind of situation.

In addition, as I have mentioned above, the selection grid is the main tool used for the evaluation of independent immigrants applications in Canada. This selection grid contains several criteria, some of which are more subjective than others. Because of its importance in the selection process, a discussion of this tool is essential to this research. Thus, I will begin by describing the factors of selection included in the Canadian selection grid. This description will be followed by an evaluation of the degree of subjectivity of those factors. My intentions will be to determine which factors are likely to open the door to discretion. The table below lists the factors of selection as well as the maximum number of units that can be awarded for each of them.

Table 4.1

Selection Criteria

Factors in Selection	Maximum Units Awarded
1) Education	16 units
2) Employment Training Factor	18 units
3) Experience	8 units
4) Occupation Factor	10 units
5) Arranges employment or designated occupation factor	10 units
6) Demographic Factor	10 units
7) Age	10 units
8) Knowledge of English and French Languages	15 units
9) Personal Suitability	10 units

With regard to the *education factor*, points will be awarded according to the completion of a program of study and the obtaining of a diploma recognized by Canada. For example, an applicant who has completed secondary school gets five points while someone who has obtained a bachelor degree scores 15 units. A candidate who gets the maximum of units, which is 16, will have completed a second or third level university degree. If an applicant has two degrees (e.g. two B.A.'s), visa officers only award him points for one. However, the fact of having completed a second degree could be recognized when agents assess candidate's personal suitability.

The second determinant of selection is the *employment training factor* and it "is used to assign a unit equivalent to the amount of formal education and training required for average performance in the occupation in which an applicant is assessed".³¹ After having determined if a candidate is qualified for a particular occupation, a visa officer ascertains the employment training indicator (ETI) value of that occupation. This indicator value figures in the National Occupational Classification Counseling Handbook. The next step is to convert that numerical value to the number of units of assessment under the *employment training factor* (ETF). This conversion is done according following the grid presented in Table 4.2³².

The third factor which is called *experience* is used to evaluate the job experience of an applicant with regard to a specific occupation. Visa agents award points according to the number of years worked in a particular occupation after completion of training. In order to carry out this task, officers use the calculation grid presented in Table 4.3. The result is based both on the employment training factor and on the years of experience³³.

Table 4.2: Employment Training Factor

Employment training indicator	Employment training factor
1	1
2	2
3	5
4	7
5	15
6	15
7	17
8	18

Table 4.3: Experience

ETF	Years of Experience			
	1	2	3	4
1-2	2	2	2	2
5-7	2	4	4	4
15	2	4	6	6
17-18	2	4	6	8

The guidelines specify also that someone who obtains zero units for experience is refused by visa officers unless he is sponsored by an employer. Being sponsored by an employer means that “ the applicant has arranged employment approved by the National Employment Service in Canada and has a written statement from the proposed employer verifying that he or she is willing to employ an inexperienced person in this position.”³⁴

The next criterion included in the selection grid is the *occupation factor* and it is evaluated

with the help of the General Occupations list. This list enumerates a variety of occupations and it assigns unit of assessment value for each of them. Visa officers award ten units to a candidate who has an offer of employment which proves to be valid at the moment of the evaluation of his application file. Likewise, the applicant must have an occupation which gets, according to the National Occupational Classification, an ETI number equal or greater to five. Similar to the experience factor, a candidate who has been awarded no units of assessment under this variable is refused.

The fifth determinant of selection is the *arranged employment or designated occupation factor*. Under this variable, ten units are awarded to a candidate who has a guaranteed job offer by a Canadian employer. This offer has to be validated by a Human Resource Canada Centre. Visa officers do not award units to applicants who are in a training position such as medical intern or graduate assistantship at universities. On the other hand, someone who intends to occupy a position which has been designated by the minister score 10 units under this factor. A designated occupation is defined as one for which there is a demand in the labour market in individual provinces.³⁵

With regard to the *demographic factor*, officers credit to candidates a number of points which range from 0 to 10. This value is set by the Minister and every applicant to immigration gets the same number of units. "From time to time, the points allotted to the demographic control factor, may be adjusted upwards or downwards, to increase or decrease the number of applicants who would otherwise meet the selection requirements."³⁶

The seventh factor is the one of *age* and someone who wants to get the maximum of units under this criterion must be at least 21 and not more than 44 years of age. Visa officers who assess

immigration files use the grid presented in Table 4.4 to calculate the number of units of assessment a candidate will score.

Table 4.4: Age

Age	Total Points
18	4
19	6
20	8
21-44	10
45	8
46	6
47	4
48	2
49...	0

Another important criterion figuring in the selection grid is the *knowledge of English and French language factor*. The maximum of units that an applicant can score under this determinant is fifteen and this number is based on the candidate's ability to speak, read and write a first and a second official language. Visa officers award points this way:

- | | |
|---------------------------------|--|
| First Official Language | <ul style="list-style-type: none"> - Speak, read or write fluently, three (3) credits each; - Speak, read or write well, two (2) credits each; - Speak, read, or write with difficulty, no credits. |
| Second Official Language | <ul style="list-style-type: none"> - Speak, read or write fluently, two (2) credits each; - Speak, read or write well, one (1) credit each; - Speak, read or write with difficulty, no credits. |

Once immigration agents have evaluated, usually through an interview, the ability of a candidate to communicate in French and in English, they add the points together and they convert this number in units. For example, an applicant who scores zero or one credit gets no units of

assessment, another who has between two to five credits is awarded two units and someone who receives between six to 15 credits gets the equivalent number of units. With regard to this factor, the procedural guidelines mention also that a language assessment guide has been developed in order to maintain a certain level of consistency.³⁷

The last determinant of selection, found in the Canadian grid, is called *personal suitability*. The administrative procedures specify that this factor “rests on the judgment of the interviewing officer”.³⁸ In fact, this criterion is used to evaluate how well a candidate and his relatives are deemed to establish successfully in the country. Therefore, visa officers, according to the guidelines, look at variables such as a person’s adaptability, initiative, motivation and resourcefulness to assess this factor.

Among the factors used to assess immigration applications, those which are most subjective and discretionary are *knowledge of official languages*, *experience* and *personal suitability*. First, evaluating the level of knowledge of language is an exercise that is far from being as straightforward as the guidelines would expect. Even though visa officers can base their decision on a language assessment guide, it remains, I believe, a question of judgment. In some cases, the boundary between a person who is judged to be “fluent” or to speak a language “well” can be small and confusing for agents. Likewise, the level of stress of a candidate during an interview or simply the human contact with the interviewer could play against him without indicating his real skills in knowledge.

Furthermore, although the administrative procedures specify that “(...)a deficiency in this area (language) will not automatically disqualify applicants(...)” it has been proven that some agents use it as such. For example, a recent news story brought to the public attention mentioned that an

applicant from Morocco, who wanted to settle in St-Boniface, was refused because he was not speaking English fluently. The same article also mentions that the agent had double counted the language factor when evaluating this application file. “En plus de lui avoir enlevé des points pour sa méconnaissance de l’anglais, l’agent en avait soustrait d’autres pour la même raison au moment de juger de la capacité d’adaptation du demandeur”.³⁹ Thus, in this case, an officer used both the factors of knowledge of language and of personal suitability to make a discretionary decision.

A second factor which leaves some room for discretion is the one of *experience*. Several immigration agents mentioned that, for assessing this determinant, they have to be convinced that the experience a candidate claims he has is sufficient and adequate for the position he wants to occupy in Canada. Assessing this factor presupposes that visa officers have a good knowledge of the skills needed for a large range of occupations. As an immigration lawyer explained during an interview, this is not always the case. According to him, there are some domains such as computer science or management which are more complicated to evaluate than others.

Agents may experience some problems with the main tool which has been designed for helping them to assess factors such as occupation and experience. The National Occupational Classification, which is supposed to advise visa officers on the kind of skills and qualifications required for specific occupations, is not, according to some federal agents, that easy to use nor is it updated as often as it should be. Thus, agents have to work with definitions of occupations that are not adequate or that lack details. As an agent indicated in interview, “Sometimes dealing with the national occupational classification book is hard. It is like trying to fit a square in a circle”.

Consequently, in some cases and due to a lack of knowledge, agents will have to use their professional and personal judgment to make this sort of decision. As an example, a visa officer

explained that once he had to evaluate a candidate with a profession that he did not know very well. He decided to call a friend he thought would give him some information about this kind of occupation. This story and many others, presented in following chapters, reveal that often immigration officers have to be ingenious in performing their tasks. This ingenuity usually creates a good terrain for discretion.

Among all determinants that are used to assess immigration applications, the factor of personal suitability is the one which leaves the most room for discretion. First, in looking at administrative procedures, I find that the section which concerns this notion is vague. As provision 4.1.9 of the guidelines specifies “[T]he qualities of adaptability, motivation, initiative, resourcefulness and such other attributes, admirable or otherwise, as the applicant may display, are characteristics on which the officer may base his determination”.⁴⁰ In addition to being subjective, those characteristics on which agents must base their decision are not defined anywhere in the guidelines. Consequently, agents have to develop their own set of definitions when they assess this factor.

Furthermore, interviews with immigration officers reveal that agents have very different and personal ways of assessing this factor. For example, some of them focus on motivation and look at the reasons why a person wants to quit his country of birth. If a candidate seems to have unrealistic ideas about settling in a new country, he is likely to have a lower score under this factor. Other visa officers evaluate the motivation of a particular applicant in looking at his life story: Did he pay for school? Did he start his career at the bottom and then get a better position because of his constant efforts? Such questions guide agents in determining if the applicant is someone motivated or not.

Additionally, several agents suggested that having some initiative was a very important characteristic to display for a newcomer. Hence, if a candidate took the time to find information about Canada and if he seemed to be well prepared to move, this would be a good sign. Another criterion which seems important for visa officers is the adaptability of applicants. Thus, a candidate who has some traveling experience and who already has an immigration history is considered as someone who is likely to adapt well in a receiving country.

The idea that a good candidate for immigration is someone who wants to improve his situation and who displays characteristics such as ambition and dynamism was often raised during interviews. According to several agents, a good candidate is someone who has a positive attitude toward life in general. Again, the guidelines are silent about ways of assessing if a would-be immigrant is dynamic, ambitious and has a positive attitude toward life.

In brief, I argue that the selection grid, which is used routinely for choosing independent immigrant in Canada, contains some factors that are more likely to favor discretion than others. Those determinants are vague and therefore leave more room for the judgment of the agent. I have demonstrated that not only do the guidelines allow those criteria of selection to be interpreted and evaluated in different ways but that their evaluation proves also to be based on very subjective grounds. If I add up the points, which are awarded under the factors of experience (8), occupation (10), knowledge of official languages (15) and personal suitability (10), I get a total of 43 out of 107 units of assessment. This means that, according to the federal selection grid, immigration agents can use their discretion to award, at least, 43 points of the grid.

- positive and negative discretion:

Although this point system grid is employed to evaluate candidates who are coming from

the independent category of immigrants, officials still have the right to recommend or accept candidates who do not get the required minimum of units of assessment, which is 70, for a skilled worker. Provision 4.2 of the guidelines states that: “should an applicant fail to accumulate sufficient units of assessment to pass, the officer may feel that the units of assessment do not accurately reflect the applicant’s ability to successfully settle in Canada. The officer may still pass the applicant “on discretion” provided that the opinion is agreed to, in writing, by a senior officer”.⁴¹ This is called positive discretion.

In the same way, agents can exercise “negative discretion” by refusing a candidate who has obtained the required minimum units of assessment, if they judge that settlement in the country of adoption will be problematic. Most Canadian agents interviewed mentioned that negative discretion was not often used; in contrast, positive discretion was more common, albeit not very frequent.

Therefore, it looks like discretion can take different forms. On one hand, I have shown that several determinants of selection such as experience, knowledge of official languages and personal suitability leave some room for discretion. On the other hand, the guidelines specify that discretion can also exist through the exercise of “positive and negative discretion”. The use of “positive and negative discretion” are mentioned in the section focusing on skilled workers but it also applies to the selection process of the others sub categories of independent immigrants. Let us turn now to the section of the guidelines which is more specific on the processing of entrepreneurs and self-employed applications. (OP6).

- Entrepreneur and self-employed immigrants:

An entrepreneur is defined in the Immigration Regulations as an immigrant:

- (a) who intends and has the ability to establish, purchase or make a substantial investment in a business or commercial venture in Canada that will make a significant contribution to the economy and whereby employment opportunities will be created or continued in Canada for one or more Canadian citizens or permanent residents, other than the entrepreneur and his dependants, and**
- (b) who intends and has the ability to provide active and on-going participation in the management of the business or commercial venture;⁴²**

One of the first preoccupations of visa officers when assessing entrepreneur applications is to make sure that candidates meet the definition of entrepreneur and, in doing so, they have to consider several aspects of this definition. First, immigration agents have to examine candidates' intent and ability to do business in Canada. In fact, applicants who want to move in Canada as entrepreneurs have the onus to prove to officers that they have the qualities and skills to start a successful business in the country.

Most federal agents and immigration lawyers I met in interviews mentioned that the assessment of an individual's intent and ability to do business in the country is, in many cases, complicated. According to them, the criteria they do have to evaluate an individual's intent and ability to do business in Canada often require an expertise agents do not necessarily enjoy. For example, several immigration officers reported that, most of the time, entrepreneurs will send tons of business documents accompanying their application file which renders their task a great deal more difficult. Agents feel they lack the time to do a good evaluation of those application files and, some of them, even wonder if they have adequate expertise to perform that type of function.

The investment of entrepreneurs in their future Canadian business as well as their eventual contribution to the economy are additional aspects which must be considered by immigration agents when assessing entrepreneurs' applications. Again, those facets can be complex to evaluate.

In the case of the entrepreneur's investment, agents must determine if this investment can be estimated as being substantial. However, the guidelines specifies that a:

Substantial investment does not require a specific dollar figure, nor a fixed minimum investment. Evidence of a substantial investment may be given by the amount of capital transferred to Canada for investment, by the degree of control acquired over the business in which the investment is made, or by the absolute size of the business in relation to the investment.⁴³

To do this kind of analysis, agents would need an expertise which could be acquired through post-secondary studies, training or experience which are not prerequisites for the position. For example, a background in accounting or business, which would certainly help visa officers to determine, for example, if a business plan is likely to be viable or if a candidate's experience would be adequate for the business market, is not a prerequisite of the academic training of the majority of immigration agents. While visa officers work with different types of applications, the majority assess mostly family and skilled worker' applications, as those two categories of immigrants make up a large part of the total of the immigration population in Canada. Thus, visa officers will be likely to have experience with the treatment of family and skilled workers immigrants than with entrepreneurs.

Therefore, without the adequate experience and the training allowing them to be expert in the processing of entrepreneurs applications, I assume that they will use their personal judgment to make this type of decision. Some agents mentioned that there was a new trend toward concentrating those entrepreneur applications files in a few offices staffed with agents expert in this domain. Nevertheless, it looks like this trend has not become the reality yet.

I also have some reservations about the task of determining whether an entrepreneur is

likely to make a significant contribution to the economy. The guidelines specify that agents have to be satisfied that “the business contributes in more than a temporary and marginal way to the level or nature of economic activity of Canada or one of its communities, regions, provinces or territories.”⁴⁴ Although the guidelines list a few hints on how to assess this factor, they also specify that this list is not exhaustive. Thus, the evaluation of this factor opens the door for the judgment or the ingenuity of agents. I suggest also that not only the guidelines lack details on how to evaluate if an entrepreneur is likely to make a significant contribution to the economy but that this task would be best executed by experts in this domain which is not, according to my interviewees, always the case.

Most of the time, entrepreneurs’ applications will not be refused by agents because of a failure to obtain the required minimum of points in the selection grid. Entrepreneurs will usually be refused because they do not meet the definition of entrepreneur or because they do not respect statutory grounds. Accordingly, the agent’s decision on whether a candidate meets or not the definition of entrepreneur is important. Similarly, agents enjoy the same kind of decisionary power with self-employed applicants because they can refuse them if it appears that they will not be able to establish with success in their occupation or in their business in Canada.

Once agents are satisfied that candidates fit the entrepreneur’s definition, the next step will be to evaluate those applicants on a modified version of the point system. Entrepreneurs are assessed on seven of the nine factors of the selection grid and they only require 25 points out of a maximum of 87 units available.⁴⁵ This means that entrepreneurs have the equivalent of 45 bonus points. Thus, since it is quite easy for a candidate to get the required units of assessment, it is obvious that the power of decision of visa officers weighs heavier when they verify if applicants

meet the definition of entrepreneur.

Nonetheless, the points system still contains some determinants of selection which leaves some room for discretion and therefore increases the decision power of visa officers. As I explained in the section on skilled workers, the factors of experience, of knowledge of official languages and of personal suitability are the ones which are the most discretionary. More importantly, the factor of experience is, in the case of entrepreneur, probably the variable in the selection grid which has the most consequences for an applicant. As a matter of fact, a candidate who does not obtain at least one unit of assessment under this factor will not get a Canadian visa.⁴⁶ As provision 3.2 of the procedural guidelines stipulates: "Pursuant to R11(1) a visa officer shall not issue an immigrant visa to an applicant who is not awarded any units of assessment for experience(...) in order to pass paper screening he or she [a candidate] must be awarded at least one unit of assessment for experience as set out in item 3 of Schedule 1 of the Regulations".⁴⁷

Similar to the processing of entrepreneurs' applications, self-employed applicants are first assessed according to the regulatory definition which defines a self-employed person as "an immigrant who intends and has the ability to establish or purchase a business in Canada that will create an employment opportunity for himself and will make a significant contribution to the economy or the cultural or artistic life of Canada". Most refusals or admissions of self-employed candidates will result from a failure or a success in fitting this regulatory definition.

Like entrepreneur applicants, self-employed candidates will have to prove to visa officers their serious intentions and ability to do business in Canada. To evaluate this aspect, officers look at the would-be immigrants' experience and past successes in business and investment. This sort of evaluation can be both subjective and complex and it is likely to be best performed by experts.

Since visa officers are not all experts in this domain and since they lack tools to perform this function, they are likely to use their own judgment to determine if a self-employed person meets the definition.

Furthermore, agents have to assess what sort of contribution to both the economy and the cultural or artistic life of Canada a candidate is likely to bring if he issued a Canadian visa. This part of the process is abstract and it leaves also some room for the judgment of the agent. As the guidelines stipulate: “There are no specific determinants of significant contribution for a self-employed person. The business should contribute in more than a temporary and marginal way to the economy or the cultural or artistic life of one of Canada’s communities, provinces or territories”.⁴⁸

Therefore, if the guidelines do not provide agents with the information that would guide the decision-making process, it is left in the hands of agents and their judgment. Determining if someone is going to contribute positively to the economy can raise some problems. Assessing the contribution of an artist to the cultural and artistic life in Canada can be even more difficult to do. In fact, if agents can use few documents such as personal net worth statement, balance sheet and income statement to assess the business experience of a would-be immigrant, this sort of evidence could be harder to obtain in the case of an artist. Although the study of business documents can be complex for most visa officers, the evaluation of an artist’s art pieces is much more difficult and subjective.

Once an applicant is considered as meeting the definition of a self-employed person, he will be assessed on a modified version of the selection grid. In this case, eight of the nine factors of the selection grid are considered.⁴⁹ To be admitted to Canada, a candidate needs to score at least 70

units of assessment out of a maximum of 127. This includes a bonus of 30 points. This bonus will be awarded by the officer if he thinks that the applicant will establish with success in his occupation or business in the country.

In summary, processing self-employed applications leaves more room for visa agents' discretion than the others categories of immigrants. In addition to the 30 points which are obviously awarded strictly on a discretionary basis, there is the 10 additional units of assessment of the personal suitability factor. This means that immigration agents will use their professional and personal judgment to award 40 of the required 70 units of assessment.

4.2 Quebec

The *Loi sur L' Immigration Au Quebec* was last modified in 1994. Similar to the Canadian Act, its main objectives are to reunite families, to contribute to the demographic, economic, social and cultural development of the province and to help refugees and persons in distress to leave safely. The Quebec Act aims also at favoring would-be immigrants who are likely to establish successfully in Quebec society and at facilitating the entry of those who desire to study, to work temporary or to receive a medical treatment in the province.⁵⁰

The Quebec Act is relatively short if we compare it to the Federal one and it is almost silent about the role and duties of visa officers. This document makes reference several times to the responsibilities of the minister but it does not describe the visa or immigration agent's role in the external selection process. In contrast, the administrative procedures, which are explained in *Le Guide des procédures de l'immigration (The Immigration Procedures Guide)*, address in details the treatment of immigration applications. This guide explains the processing of candidacies of

would-be immigrants destined to Quebec and it gives some information about the notion of discretion and its place in the selection process.

4.2.1 Administrative Procedures: *The Guide des procédures de l'immigration*:

In the past, the role played by external Quebec immigration officers, with regard to the processing of family candidacies, was relatively limited. As a matter of fact, federal agents, who are responsible for delivering visas and assessing sponsorships and statutory grounds of family applicants, have always been the ones who had the most influence in the selection process of this category of immigrants.

There is, however, a remaining part of this process which is under Quebec's responsibility. This is the evaluation of the sponsor's financial capacity. In the past, this process has been executed both by internal and external immigration agents. With the new centralization of the treatment of family applications, though, this task is now fully accomplished by immigration agents inside the province.⁵¹

Therefore, my analysis of the few sections of the *Guide des procédures de l'immigration* describing the overseas selection process will be shorter than the federal one since it focuses strictly on the processing of one category of immigration files; the independent one. The *Guide des procédures de l'immigration* separates the processing of skilled workers and assisted relatives with the one of business immigrants including self-employed, entrepreneur and investors.

- *The treatment of skilled workers and assisted relatives' application files*:

According to the Canada-Quebec Accord of 1991, Quebec is solely responsible for the selection of its independent immigrants while the federal government is in charge of their admission. Provision 12 of this Accord stipulates that the federal government must admit every

independent candidate who has been selected by Quebec immigration officers. It specifies also that federal agents can not admit a skilled worker who has not been chosen by the officials of this province.

The administrative procedures give a definition of both skilled workers and assisted relatives. A skilled worker is defined as:

un ressortissant étranger âgé d'au moins 18 ans, 1) soit qu'il vient au Québec pour occuper un emploi assuré; 2) soit qu'il est qualifié pour exercer une profession mentionnée dans la liste des professions en demande du Québec; 3) soit qu'il possède un niveau d'employabilité et de mobilité professionnelle, tel que prévu au facteur 2C de la Grille de sélection des immigrants indépendants de l'Annexe "A", qui lui permettra vraisemblablement d'occuper un emploi compte tenu de ses qualifications professionnelles et personnelles, et que sa profession principale n'est pas visée dans la *Liste des professions inadmissibles*.⁵²

Le règlement définit le terme "parent aidé: comme un ressortissant étranger âgé d'au moins 18 ans qui n'appartient pas à la catégorie de la famille et qui, par rapport à un résident du Québec, est: i) son enfant, son frère ou sa soeur; ii) son oncle, sa tante, son petit-fils, sa petite-fille, son neveu ou sa nièce.⁵³

According to Chapter 2 of the *Guide des procédures de l'immigration*, the study of skilled workers and assisted relatives' applications by Quebec officers will be executed in two steps, namely the preliminary examination and the selection.

- The preliminary examination:

The preliminary examination consists of identifying candidates with the best potential meaning that agents will favor applicants who fit in a satisfactory way the objectives of Quebec immigration law and its regulations. This evaluation of skilled workers and assisted relatives' applications will allow agents to disqualify those candidates who do not meet, at first sight, the criteria of selection. The preliminary examination will be accomplished by looking strictly at

documents and the decision taken at the end of this process will qualify or disqualify candidates for the next step of the selection process.

Throughout the preliminary examination, skilled workers and assisted relatives are evaluated according to two determinants of the Quebec selection grid; professional experience and occupation. As the definition of skilled workers indicates, both assisted relatives and skilled workers have three options when they apply to immigrate into the province. They can apply as someone who has a valid job offer (*emploi assuré (IE)*), as a candidate who occupies a profession which is in demand in Quebec (*I4*) or as a worker who has an employability and professional mobility profile (*employabilité et mobilité professionnelle-EMP*). Among those three options, the third one leaves the most space for external agents' discretion.

To determine if applicants can apply under the employability and professional mobility profile program, agents have to assess those against ten factors of the Quebec selection grid. Appendix 4.3 illustrates the criteria included in the preliminary selection grid of EMP workers. The first determinant of pre-selection is the one of *education*. Agents award points according to the completion of a program of study and the obtaining of a diploma. For example, an applicant who has completed secondary school gets three points while someone who has obtained a bachelor degree scores 8 units of assessment. To get the maximum of units, a candidate must have completed a third level university degree.

In addition, someone who has a second diploma in another field of study gets one unit of assessment for a program which lasts one year and two for another which implies, at least, two additional years of school. This second determinant of EMP worker distinguishes the Quebec selection system from the federal selection grid since the latter does not grant any points for a

second diploma.

A third factor, which characterizes also the originality of the Quebec grid, is called “Formation privilégiée”(favored education). Under this criterion, a candidate, who is considered as having a type of education favored by the province of Quebec, is awarded four units of assessment. To consider this factor, immigration agents use an official list of “des formations privilégiées”(favored education) provided by the Ministère des Relations avec les Citoyens et de l’Immigration (Department of Relations with Citizens and Immigration).

The fourth factor of the preliminary selection is called *experience* and Quebec immigration agents use it to evaluate the job experience of an applicant with regard to a specific occupation. For each six months of full time work in an occupation, a candidate is awarded one unit of assessment. In contrast to the federal selection grid, the time of training is taken into account in the evaluation of this factor. A candidate who does not obtain, at least, one point under this variable, is disqualified.

As I have explained in the federal selection grid’s discussion, the experience factor leaves some room for discretion. Agents who assess this factor must decide, first, if the experience a candidate claims to have is adequate for the actual work market. This could become a subjective decision as most agents do not have the knowledge nor the guidelines to make this kind of decision. Second, the National Occupational Classification, which is used to assess occupations, is a tool which can be, according to the opinion of some immigration agents, difficult to use. Thus, agents are likely to use their personal and professional judgment to compensate for the lack of information and guidance of this classification. Finally, because this criterion is eliminatory, I consider that it leaves a substantial decision power in the hands of immigration agents.

Although the assessment of the experience factor opens some room for discretion, agents are

constrained by the guidelines (to be very flexible) when evaluating this criterion at the preliminary selection stage. The guidelines specify that, in case of doubt, agents should postpone their decision to the moment of the interview. “(...)il faut être flexible à cette étape, car seule l’entrevue de sélection pourra déterminer, la plupart du temps, le véritable niveau de l’expérience professionnelle”.⁵⁴

The fifth and the sixth factors of the preliminary selection are called “Séjour au Québec”(Stay in Quebec) and “Parent ou ami au Québec”(Links with Quebec). Both of them are sub-criteria of the larger determinant of “Personal suitability” figuring in the Quebec selection grid. Immigration agents award 5 points to candidates who have studied or worked in the province and 2 for those who stayed in Quebec for a period of at least 2 weeks. Applicants to immigration who have a member of their family who is a Quebec resident obtain 4 points while those who have a friend in the province get 2 units of assessments. Although the fifth factor is not discretionary, the sixth one could become more subjective. In fact, the guidelines do not provide immigration officers with a definition of who is a “friend”. Thus, agents can have different definitions of friendship and some of them can be more limited than others.

The next criterion of pre-selection is the one of “age”. Quebec officers award the maximum of units of assessment, which is 10, to candidates who are between 23 to 30 years of age. Those who are between 31 and 35 years of age decrease by one point for each year older and those who are either older than 35 or younger than 23 are attributed 0 points by immigration agents.

The last factor assessed by Quebec officers, at this preliminary stage, is called “knowledge of official languages” and this criterion is evaluated in two phases. First, immigration agents evaluate the French of all candidates. They look at the oral comprehension and expression as well

as the written comprehension of applicants to immigration. Those who are considered to have an excellent knowledge of French obtain 6 points while those who are rather “good” or “weak” respectively get 4 and 2 points. Someone who has completed, at least, one year of post-secondary school in French gets 2 points.

In the same way, immigration officers will estimate the knowledge of English of candidates to immigration. In the Quebec selection grid, the knowledge of this language weighs, however, less than the knowledge of French. Thus, a candidate who declares that he understands and speaks English well obtains 3 points while someone who understands and speaks it well is awarded 2 units.

As it is with the Canadian selection grid, the information provided by the guidelines on how agents should evaluate this criterion is quite vague and this allows agents to use their judgment to make this type of decision. However, because the knowledge of language is, usually, evaluated through an interview, agents will wait for the second phase of the selection process to assess this criterion. In the meantime, the points, which are attributed under this factor for the preliminary examination, correspond to the information provided by candidates in their application. As provision 2.23.1 of the guidelines suggests: “Pour attribuer des points à l’étape de l’examen préliminaire à un travailleur ou un parent aidé avec EMP., on s’appuie sur le niveau de connaissance du français qu’il déclare dans sa demande de certificat de sélection du Québec”.⁵⁵

After the assessment of each of those ten criteria, candidates who obtain 30 out of a maximum of 52 points qualify for the second step of the selection process and they are attributed 7 units of assessment under the job factor. In contrast, a skilled worker who does not get a minimum of 30 points is disqualified and his application to immigration is refused. In the case of an assisted relative who does not get the minimum of 30 points, however, he still qualifies for the second step

of the selection process.

In addition, provision 3.4 of the guidelines specifies that candidates who do not get the required minimum of points can still qualify for the second step of the selection process if in immigration officers' judgement they have good reasons to be interviewed. For example, agents can use their power of discretion to accept applicants if they feel the selection grid does not permit a real assessment of possibilities for settling successfully in the province. This discretion power is an important tool permitting Quebec immigration agents to accept candidates who, otherwise, would not qualify for the next step of the selection process.

- The selection:

A look at the section discussing the selection of skilled workers and assisted relatives in the *Guide des procédures de l'immigration* allows us to distinguish between three different uses of discretion. The first one consists of deciding if a candidate will be invited to meet an immigration officer for an interview. The guidelines mention that officers can exercise their discretion by exempting a candidate from having an interview. "Il appartient au conseiller responsable de l'étude du dossier d'accorder à sa discrétion la dispense de l'entrevue au candidat (...)"⁵⁶

To be exempted, however, an applicant must meet certain conditions. First, he must have 6 months of working experience. Second, he must score 70 points or 65 points (in the case of married applicants) on the selection grid with 6 points for the "personal qualities" criterion and 1 for the "adaptability factor". Third, the candidate has to provide agents with the proof that he has the required diploma and the original working attestation necessary for the exercise of his profession and that he has also a good knowledge of one of the two official languages. Lastly, the applicant to immigration must meet the financial requirements.

The second use of discretion consists of the assessment of applications to immigration with the help of the selection grid.⁵⁷ Similar to the federal grid, the Quebec selection grid contains a few factors which leave more room for discretion. In addition to the experience and the knowledge of official languages factors, there are two supplementary determinants which are likely to necessitate the use of discretion. Those are the criterion of “adaptability” and the one called “partner characteristics”.

Agents assess “adaptability” by looking at five specific indicators. Those are personal qualities, motivation, knowledge of the province, stays in Quebec for studies, work or another reason and members of family or friends living in the province. As I have already explained, the question of evaluating friendship could be less objective than expected. Additionally, many Quebec immigration officers revealed that the action of looking at the motivation and the personal qualities of candidates was subjective as they were mostly using their judgment to award points under those 2 sub-criteria.

Therefore, to determine if a foreign person has the personal qualities required to adapt well in his province of adoption, the guidelines specify that immigration officers ask simple questions for measuring indicators such as flexibility, sociability, dynamism, initiative, perseverance, self-confidence, realism and maturity.⁵⁸ The *Guide des procédures d'immigration*, however, do not provide officers with specific information on how to evaluate those variables. Consequently and as many Quebec officials indicated, their personal and professional judgment is likely to be their main reference when assessing those elements.

In the same way, to determine if would-be immigrants are motivated, Quebec officers ask questions to evaluate the motives for emigration and the reasons explaining why they have chosen

the province of Quebec. “Pour établir si un ressortissant étranger possède la motivation susceptible de faciliter son adaptation, un conseiller à l’immigration pose des questions simples, permettant d’évaluer les motifs de son émigration et les raisons invoquées pour son éventuelle venue au Québec”.⁵⁹ Again, there is no detailed explanation on how to assess the motivation of candidates. My interviews showed that the assessment of this criterion was not only subjective but also carried out in many different ways.

For example, while some agents were mostly preoccupied by ensuring that would-be immigrants would settle in Quebec and not move to another province a few months after the delivery of their *certificat de sélection du Québec* (Quebec selection certificate), others focused more on the practicality of immigration projects. Therefore, if an applicant seemed to have done no research about life in Quebec and if he already has relatives in another province, a Quebec officer is likely to have doubts about the real intentions of the candidate to settle permanently in the province. In fact, a good number of officers mentioned that a retention problem was noticeable in Quebec and that they had to be more vigilant when assessing applications, specially those coming from Asia.

Similarly, immigration agents use their judgment to decide if applicants have realistic and well thought plans about their new life in the province. Quebec officers explained that a lot of European candidates, for instance, were attracted by the “American dream” without really knowing what life is like in Canada. In both cases, would-be immigrants would be awarded less points for their motivation.

In addition to those indicators of personal qualities and motivation, the knowledge of Quebec is another one used to evaluate the adaptability factor. Like the others, it opens the door to discretion. Provision 2.21.3 of the *Guide des procédures d’immigration* stipulates that immigration

agents appreciate candidates' knowledge of the province by looking at what they know about the working market, about the conditions characterizing the profession they want to exercise and about the Quebec lifestyle and weather situation. Although those criteria can guide agent evaluations, they are not rigid and can, therefore, leave some space for the judgment of immigration officers.

The last factor of the Quebec selection grid which is also discretionary is the one called "Partner Characteristics". To appraise this determinant of selection, immigration officials will look at the professional experience, the age and the knowledge of French of the applicant's partner. As demonstrated above, both professional experience and knowledge of French are criteria which leave some room for the exercise of discretion.

In brief, my analysis of the second use of discretion within the Quebec selection grid for skilled workers and assisted relatives reveals that there is, in total, about 65 points out of 117 which can be attributed on a discretionary basis. As a matter of fact, the points calling for the exercise of personal and professional judgment and which are awarded under the factors of job (3), professional experience (10), knowledge of official language (21), adaptability (24), and partner characteristics (10) add up together for a grand total of 68.

A look at the section discussing the selection of skilled workers and assisted relatives in the Guide des procédures de l'immigration allows us to distinguish a third use of discretion. This one refers to the fact that immigration officers, who believe the selection grid does not reflect the real capacities of a particular candidate of settling with success in Quebec, can use their derogatory power to recommend to their superior the acceptance of a candidate to immigration. "L'article 40 du règlement permet au ministre, ou aux fonctionnaires à qui a été délégué ce pouvoir dérogatoire, de délivrer un CSQ à un immigrant indépendant travailleur qui ne rencontre pas les exigences de la

grille de sélection, s'il est d'avis que le "résultat obtenu ne reflète pas les possibilités de ce ressortissant de s'établir avec succès au Québec".⁶⁰

This derogatory power is used when agents believe an applicant for immigration will integrate well and when he is likely to present a special interest for the province. The guidelines specify that this special interest can be economic, artistic, scientific, or of another kind. However, those guidelines do not provide agents with information on how to determine if a would-be immigrant represents an interest for the community. This leaves, again, a great discretionary power in the hands of Quebec officers.

Similar to the federal agents, Quebec officers can also use their derogation power to recommend to the minister the refusal of an applicant who meets the requirements of the selection grid. To take this kind of action, however, officers must prove that the would-be immigrant will not settle successfully in Quebec, that he has no intention to settle permanently in the province or that his settlement would go against the public interest. As provision 4.7 of the administrative procedures specifies, the use of the derogation power for closing the doors to a candidate must be exceptional and well-documented.⁶¹

- The treatment of business' application files:

The selection of business immigrants is similar to the one of skilled workers and assisted relatives in that Quebec is also the main actor in this process. Thus, someone who applies in this category of newcomers and who obtains a "certificat de sélection du Québec" (Quebec selection certificate) receives, after some statutory verifications, a Canadian visa. This classification of immigrants includes three types of applicants namely, entrepreneur, self-employed and investor. For the same reasons explained in the section discussing the Canadian case, I will focus strictly on

entrepreneurs and self-employed candidates. Chapter four of the *Guide des procédures*

d'immigration defines both the terms “entrepreneur” and “self employed”:

Le règlement définit le terme “entrepreneur” comme un ressortissant étranger âgé d’au moins 18 ans, qui a une expérience en gestion d’au moins trois ans dans une entreprise agricole, commerciale ou industrielle, rentable et licite, et qui vient au Québec: soit pour créer ou acquérir pour la gérer lui-même: - une entreprise agricole;- une entreprise industrielle ou commerciale qui emploiera immédiatement, de façon permanente et à plein temps, au moins trois résidents du Québec autres que le ressortissant étranger et les personnes à charge qui l’accompagnent; ii. Soit pour participer à titre d’associé à la gestion et aux opérations quotidiennes d’une entreprise(..)⁶²

Le règlement définit le terme “travailleur autonome” comme un ressortissant étranger âgé d’au moins 18 ans, qui: i. sans se qualifier comme entrepreneur, vient au Québec pour créer ou acquérir une entreprise industrielle ou commerciale qu’il gèrera lui-même ; ii. a au moins trois ans d’expérience dont au moins un an en gestion dans une entreprise agricole, commerciale ou industrielle, rentable et licite, et une expérience de travail d’au moins deux ans dans l’activité économique dans laquelle il entend oeuvrer au Québec; cette activité doit correspondre à celle décrite dans la classification type des industries (...).⁶³

Before looking at the role of external officers in the selection process of business immigrants, it is important to understand two important details. First, this category of applicants makes up only 23 % of the independent group of immigrants (which constitutes 42% of the total movement of immigrants destined to Quebec). Second, there is a portion of the business applications which is processed by internal agents at the *Direction de l’aide à l’immigration d’affaire* (The Office of Business Immigration Services). This means that external agents are likely to deal less often with business applications than with those coming from the other types of independent immigrants, specially skilled workers, which constitute 67% of the “certificat de sélection du Québec” (Quebec selection certificate) delivered within this category of newcomers.

Despite the fact that business immigration is a small part of the work of Quebec officers working abroad, the *Guide des procédures d'immigration* explains that, for those applications assessed by external agents, there are also two important steps to consider. Similar to the treatment of skilled workers and assisted relatives applications, the preliminary examination of business would-be immigrants consists of identifying, based on a written application, those candidates with the best potential. This initial look at business immigration files allows agents to disqualify those candidates who do not meet, at first sight, the criteria of selection. Therefore, the decision taken at the end of this process qualifies or disqualifies candidates for the next step of the selection process.

Immigration agents who conduct this preliminary evaluation look at two eliminatory factors of Quebec selection grid: experience and financial resources. If the financial resources' criterion is likely to be more objective, assessing the candidates's experience could create some room for agents' judgment. To be qualified for the selection's step, entrepreneurs must obtain 6 points under the management experience factor while self-employed persons must get, at least, 2 points under this determinant and 4 other points for the criterion of professional experience.

To assess the professional experience of a candidate, Quebec officers use the handbook called "Classification type des industries" (Classification of industries). It would be interesting to verify if this tool has the same disadvantages which characterize the NOC. Nonetheless, we could assume that a book, which would include all the information an agent needs to assess each occupation in each sector of industry, could be almost impossible to assemble. Consequently, I suggest that, in some cases, Quebec officers are likely to use their professional and personal judgment to decide if someone has the adequate and required experience to qualify for a particular occupation.

In addition, even if the guidelines provide agents with a definition of management experience, it can still be subject to agents' interpretation. Provision 1.4.4 defines management experience as being the full time exercise of responsibilities and functions of planning, directing and controlling of material, financial and human resources.⁶⁴ As a Quebec immigration lawyer explained in an interview, those functions and responsibilities of management could be difficult to evaluate for an outsider such as an immigration officer. This lawyer mentioned also that many immigration agents do not have adequate knowledge to make those kinds of decisions and that, consequently, their judgment will become a tool frequently used.

Once someone qualifies for the second step of the selection process, agents will use the ten factors of the business selection grid to decide if a candidate is qualified to receive a "certificat de sélection du Québec" (Quebec selection certificate).⁶⁵ Both entrepreneur and self-employed candidates must obtain a minimum of 50 units of assessment to be selected by Quebec officers. The selection grid, used to assess this category of applicants, contains few discretionary criteria. Similar to the skilled workers selection grid, it includes the factors called "professional experience", "adaptability" and "knowledge of official languages" which, I have suggested, leave some space for the agent's discretion.

Moreover, this grid comprises an additional factor called "aptitudes à réaliser un projet d'affaire" (aptitudes for realizing a business project). To consider this determinant of selection, immigration agents use four indicators: knowledge of the business's context in Quebec, market exploration and steps undertaken, financial resources and the project's feasibility and relevance. I suggest that, although the GPI provides agents with some details on how to work with those indicators, the problem is that they seem complex to use and also very time consuming. Given the

usual heavy workload of immigration officers, it is likely that they have no time to do a sound and complete analysis of a business project.

In addition, according to the guidelines, Quebec officers would have to be experts on many aspects of the province's economic life in order to assess those applications. For instance, to determine if a candidate meets the requirements of the first indicator, agents ask questions about the Quebec economic structure, the actual economic conjuncture, the main financial institutions, the economic, cultural and social laws and regulations in Quebec and many others. Those questions require a sophisticated knowledge which, I doubt, characterize every external officer who also has to be expert on other categories of immigrants. The other problem is that the guidelines give some hints on what kind of questions agents should ask business applicants without providing them with the information on how the distribution of points should be done. The distribution of points and the weight of each question is, therefore, left to the agent's judgment.

The second indicator, which is market exploration, also leaves some space for Quebec officers' discretion. In fact, the GPI specifies that immigration officers have to look at the actions undertaken by applicants and to judge if those steps are adequate and relevant for the realization of a business project. Although the guidelines provide agents with examples of relevant actions, it remains the responsibility of agents to decide if business applicants deserve a "certificat de sélection du Québec" (Quebec selection certificate). In fact, provision 2.3.5.3.2 of the GPI specifies that the agents' judgment in the business immigrants selection is key. "Lorsque le candidat démontre avoir accompli de actions *jugées* pertinentes à la réalisation d'un projet d'affaire, il se verra attribuer, selon qu'il appartient à la sous-catégorie travailleur autonome ou entrepreneur, un maximum de cinq (5) ou six (6) points".⁶⁶

In brief, if I add up the points which are awarded under the factors management experience (10 for entrepreneur and 15 for self-employed), professional experience (10 for self-employed), adaptability (about 26 for both), knowledge of official languages (23 for both) and aptitudes for realizing a business project (24 for entrepreneur and 20 for self-employed), I get a total of 83 out of a maximum of 123 units of assessment for entrepreneur and 94 for self-employed. This means that immigration officers can use their judgment to grant a large portion of the units of assessment required to be accepted as a business immigrant.

In sum, it has been shown that Quebec immigration law is more concise and gives less details about the role and responsibilities of immigration officers than the federal Act. However, Canadian and Quebec administrative procedures discuss extensively the duties and powers of immigration agents. Both sets of directives explain how and under which circumstances immigration agents, who are responsible for selecting immigrants abroad, exercise discretion.

The guidelines explain that, in contrast to their federal colleagues, external Quebec officers will play a minor role in the selection of family immigrants. They indicate also that both federal and Quebec agents use a selection grid to process independent applications. Those selection grids contain several criteria, some of which are more discretionary than others. In fact, the criteria “knowledge of languages”, “personal suitability” and “experience” are common factors which open the doors to agents’ judgment in both selection processes. Furthermore, the factors “partner characteristics” and “aptitudes for realizing a business project” leaving additional room for discretion distinguishes the Quebec selection grid from the federal one. A look at those grids also

reveals that the weight assigned to discretionary factors is heavier in Quebec than it is in Canada. As a result and according to the administrative procedures, Quebec immigration officers enjoy a higher level of discretion than their federal colleagues.

Besides the discretion granted to field officers through the selection grids, immigration agents use their judgment to decide if interviews are required to assess applicants and to decide if they will exercise their power of positive or negative discretion. Both federal and Quebec officers are given the opportunity to use their personal and professional judgment to make a final decision about an applicant and decide whether he will settle successfully even if he has or has not the minimum of units of assessment required by the selection grid.

Therefore, contrary to the traditional views on bureaucracy, both immigration laws and administrative procedures leave some interesting space for street level discretion. The following chapter will examine what room is left to discretion in the American immigration law and administrative procedures and it will compare it with the discretion of external officers in Canada and in Quebec.

Appendix 4.1: Some Definitions

“Assisted relatives -- Assisted relatives are those independent immigrants who have a relative in Canada able and willing to help them become established here. Selection points are awarded in recognition of this potential assistance.

Relatives eligible to apply under this category include the sons, daughters, brothers, sisters, grandparents, grandchildren, nieces and nephews who do not qualify in the family class, and aunt and uncles of a Canadian resident. These relatives and their dependants must meet the requirements of the *Immigration Act and Regulations*.

Entrepreneurs – to immigrate as an entrepreneur, a person must be able to demonstrate to immigration officials that he or she intends and has the ability to establish, purchase or make a substantial investment in a business in Canada that will make a significant contribution to the economy. The business must create or continue at least one job in Canada for a Canadian citizen or permanent resident other than the entrepreneur and dependants. The applicant must also intend and have the ability to provide active and ongoing participation in the management of the business.

Investors –to be eligible as an investor, a person must have a proven track record in business and have accumulated a personal net worth of \$500,000 or more. Investors have the option of subscribing in any one of three investment levels:

- Tier I, those provinces with less than 10% of landed business immigrants, require a minimum investment of \$250,000 for a minimum holding period of 5 years.

- Tier II, those provinces with 10% or greater of landed business immigrants, require an investor to have a net worth of \$500,000 and make a minimum investment of \$350,000 for a minimum holding period of 5 years; and

- Tier III, all provinces require a net worth of \$700,000 and an investment of \$500,000 for a minimum holding period of 5 years.

All investments must be in an accepted project that is of significant economic benefit to the province in which it is located. The project may not involve residential real estate and must contribute to the creation or continuation of employment opportunities for Canadian citizens or permanent residents.

Self-employed –a self employed-person is an immigrant who intends and has the ability to establish or purchase a business in Canada that will create employment opportunity for that person, and will make a significant contribution to the economy, or the cultural or artistic life of Canada.”

Source: Citizenship and Immigration Canada, *Canada's Immigration Law*, (Hull: Minister of Supply and Services Canada, 1996), 9-10.

Skilled workers - persons who intend to enter the labour market and who are admitted in Canada because of their professional qualifications.

(Source: Citizenship and Immigration Canada, *Vers le 21ème siècle: une stratégie pour l'immigration et la citoyenneté*, (Hull: Ministre des Approvisionnements et Services Canada, 1994), Annexe 1, 8).

Appendix 4.2: Language Assessment Guide

Skill/Level	Speak	Read	Write
Fluently:	The applicant speaks and understands oral communication with approximately the same ease as that of an articulate native speaker.	The applicant reads and understand texts of a general or job specific nature, including technical instructions.	The applicant writes proficiently in any context.
Well:	The applicant is able to comprehend and to communicate effectively on a range of general topics.	The applicant is able to comprehend almost all documents of a general, non-abstract nature.	The applicant is able to write a basic report or summary relevant to their education, work, or social situation.
With difficulty:	The applicant is able to communicate only in a very limited way.	The applicant is able to read and comprehend only short, familiar, or memorized text.	The applicant is able to write only a few learned words or sentences of a familiar nature.
Not at all:	The applicant is unable to understand and respond appropriately to spoken communication.	The applicant shows no understanding of the written word.	The applicant is unable to express any message in writing.

Source: Citizenship and Immigration Canada, Immigration Manual, "Processing Independent Immigrants", *Overseas Processing (abroad only)*, 37.

Appendix 4.3: Preliminary Selection Grid of EMP workers

EMPLOYABILITÉ ET MOBILITÉ PROFESSIONNELLE

1. FORMATION	1^o Scolarité - Durée du diplôme obtenu				Maximum - 11	
	Secondaire				3 points	
	Post-secondaire				5 points	
	Universitaire - 1 an				6 points	
	Universitaire - 2 ans				7 points	
	Universitaire - 3 ans				8 points	
	Universitaire - 2 ^{ème} cycle				10 points	
	Universitaire - 3 ^{ème} cycle				11 points	
	2^o Deuxième spécialité sanctionnée par un diplôme				Maximum - 2	
	Formation d'un an				1 point	
Formation de deux ans				2 points		
3^o Formations privilégiées (Voir liste des formations privilégiées)				Maximum - 4		
2. EXPÉRIENCE PROFESSIONNELLE						
Un point pour chaque six mois d'expérience professionnelle					Maximum - 5	
3. ÂGE	Maximum - 10					
	23 à 30 ans	10 pts	34 ans	6 pts	38 ans	2 pts
	31 ans	9 pts	35 ans	5 pts	39 ans	1 pt
	32 ans	8 pts	36 ans	4 pts	40 ans	0 pt
	33 ans	7 pts	37 ans	3 pts		
4. CONNAISSANCES LINGUISTIQUES	Maximum - 11					
	FRANÇAIS:	EXC - 6 pts	BON - 4 pts	FAIBLE - 2 pt	NUL - 0 pt	
	ANGLAIS:	EXC - 3 pts	BON - 2 pts	FAIBLE - 1 pt	NUL - 0 pt	
	ÉTUDES POST-SECONDAIRE EN FRANÇAIS:				2 pts	
5. SÉJOUR AU QUÉBEC	Maximum - 5					
	SÉJOUR D'ÉTUDES OU DE TRAVAIL				5 pts	
	AUTRES SÉJOURS				2 pts	
6. PARENT OU AMI AU QUÉBEC	Maximum - 4					
	PARENT AU QUÉBEC				4 pts	
	AMI AU QUÉBEC				2 pts	

* Le candidat qui réussit dans cette grille, se voit attribuer 7 points en facteur emploi

Source: Ministère des Relations avec les citoyens et de l'Immigration, *La nouvelle Grille de sélection; modification réglementaires*, (Quebec: Ministère des Relations avec les citoyens et de l'Immigration, 1998), 13.

Appendix 4.4: Selection Grid for Skilled Workers

1. FORMATION	1 ^{er} Secondaire - Baccalauréat diplôme obtenu		Maximum - 11	
	Secondaire	3 pts	Universitaire - 1 ^{er} cycle	8 pts
	Post-secondaire	5 pts	Universitaire - 2 ^{ème} cycle	10 pts
	Universitaire - 1 ^{er} an	6 pts	Universitaire - 3 ^{ème} cycle	11 pts
	Universitaire - 2 ^{ème} an	7 pts		
	2 ^{ème} Diplôme spécialité équivalente par un diplôme		Maximum - 3	
	Formation d'un an	1 pt	Formation de deux ans	2 pts
2. EMPLOI	3 ^{ème} Formations privilégiées - Universitaire - 4 pts - Autre - 4pts (voir liste des formations privilégiées)		Maximum - 4	
	Emploi assuré	0-15 pts	Emploi et Mob. prof.	0-7 pts
3. EXPÉRIENCE PROFESSIONNELLE	Profession en demande		0-12 pts	
	Un point pour chaque dix ans d'expérience professionnelle			
4. ÂGE	Maximum - 10			
	23 à 30 ans	10 pts	31 ans	7 pts
	31 ans	9 pts	34 ans	6 pts
	34 ans	8 pts	37 ans	5 pts
	37 ans	7 pts	40 ans	6 pts
5. CONNAISSANCES LINGUISTIQUES	Principale		0-15 pts	
	Anglais		0-6 pts	
6. ADAPTABILITÉ	Études postsecondaires en français		2pts	
	Maximum - 31			
	Qualité personnelle		0-15 pts	
	Motivation		0-5 pts	
	Connaissances du Québec		0-2 pts	
Séjour études ou travail		3 pts		
7. CARACTÉRISTIQUES DU CONJUGÉ	FORMATION		Maximum - 5	
	Secondaire	2 pts	Universitaire 1 ^{er} cycle	+ 1 pt
	Postsecondaire	+ 1 pt	2 ^{ème} spécialité en form. post-s.	+ 1 pt
	EXPÉRIENCE PROFESSIONNELLE		Maximum - 3	
	6 mois à 1 an	1 pt	Plus d'un an	2 pts
	ÂGE		Maximum - 2	
	30 ans et -	2 pts	31 à 39 ans	1 pt
	CONNAISSANCE DU FRANÇAIS		Maximum - 8	
	Compréhension du français	0-3 pts	Compréhension écrite du français	0-2 pts
	Expérience orale du français	0-3 pts		
8. ENFANTS	FORMATION		Maximum - 8	
	12 ans ou moins	2 pts	13 à 17 ans	1 pt
9. CAPACITÉ D'AUTONOMIE FINANCIÈRE	Période d'autonomie financière		Maximum - 1	
			0-1 pt	
SEUIL DE PASSAGE AVEC CONJUGÉ = 70 PTS - SANS CONJUGÉ = 65 PTS				

Source: Ministère des Relations avec les citoyens et de l'Immigration, *La nouvelle Grille de sélection; modification réglementaires*, (Québec: Ministère des Relations avec les citoyens et de l'Immigration, 1998),16.

Appendix 4.5: Selection Grid For Business Immigrants

LA GRILLE DE SÉLECTION DES GENS D'AFFAIRES				
PONDÉRATION DES FACTEURS ET DE CERTAINS CRITÈRES*				
• FORMATION	(maximum 17)	• Sécurité	0 à 11	
		• Droits de résidence	0 à 2	
		• Permis de résidence	0 à 4	
• EXPÉRIENCE EN GESTION	ENT**	• Soli. économique	6 pts	0 à 10
	T.A.**	• Soli. financière	3 pts	0 à 15
• EXPÉRIENCE PROFESSIONNELLE	T.A. minimum	• Soli. personnelle	4 pts	0 à 10
• ÂGE		• Qualités personnelles		0 à 10
		• Motivation		0 à 15
• ADAPTABILITÉ	(maximum 31)	• Connaissance du Québec		0 à 5
		• Séjour et lien avec le Québec		0 à 2
• CONNAISSANCES LINGUISTIQUES	(maximum 23)	• Français		0 à 17
		• Anglais		0 à 6
• RESSOURCES FINANCIÈRES	T.A. et ENT. minimum**			0 ou 1
• CONVENTION D'INVESTISSEMENT	L.V.M. minimum**			0 ou 30
• AUTONOMIE FINANCIÈRE	T.A. et ENT. minimum**			0 ou 1
• APTITUDES À RÉALISER UN PROJET D'AFFAIRES	ENT. minimum**	• Soli. économique	10 pts	10 à 30
	T.A. minimum**	• Soli. personnelle	15 pts	15 à 25
• RÉGIME DE PASSAGE				
ENTREPRENEUR	• REQUÉRANT AVEC OU SANS CONJOINT = 50 POINTS SUR UN TOTAL MAXIMUM DE 123			
TRAVAILLEUR AUTONOME	• REQUÉRANT AVEC OU SANS CONJOINT = 50 POINTS SUR UN TOTAL MAXIMUM DE 123			
IVM	• REQUÉRANT AVEC OU SANS CONJOINT = 50 POINTS SUR UN TOTAL MAXIMUM DE 121			
•	En vigueur le 1 ^{er} octobre 1996			
•	Pour l'immigration			

Source: Ministère des Relations avec les citoyens et de l'Immigration, *La nouvelle Grille de sélection; modification réglementaires*, (Québec: Ministère des Relations avec les citoyens et de l'Immigration, 1998), 21.

End notes

1. While I realize policy in both countries is not somewhat static and that, in fact, the regulations, which are the changeable part of policy, are always being altered, I had to work with what was in place at the moment of this research.
2. The comparison of the different weight assigned to discretionary factors will be discussed more in details in Chapter 6 where I introduce my classification of the different forms of discretion. One of those form of discretion is called selection grid's discretion.
3. The actual Immigration Act was modified in 1989 (Bills C-55 and C-84) specially to fix an ill-refugee determination process. In 1986 Canada was facing another huge backlog of persons claiming refugee status and its rulers decided to implement some special measures (a fast-track system of case review, a minister's permit system and an administrative adjustment similar to a quasi legalization) through the Bill C-55. In 1992, new legislation (C-86) for improving immigration management was also introduced to give Canadian authorities more power to limit the granting of visas and to deal with applications. For example, it included some provisions allowing visa and immigration officers to compare applications in order to select the best candidates.
4. Freda, Hawkins, "Canadian immigration and Refugee policies" in Painchaud, Paul, eds. *From Mackenzie King to Pierre Trudeau: Forty Years of Canadian Diplomacy 1945-1985*, (Quebec: Les Presses de l'Université Laval, 1989).
5. Manual Garcia y Griego, "Canada: Flexibility and Control in Immigration and Refugee Policy" in Cornelius, Wayne, eds. *Controlling Immigration: A Global Perspective*, (California: Stanford University Press, 1994), 123.
6. Department of Justice Canada, *Immigration Act* in *CD-ROM: Consolidated statutes and Regulations of Canada*, (Ottawa: Department of Justice Canada, 1999).
7. Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*, (New York: Russell Sage Foundation, 1980), 16.
8. R. K. Merton, "The Unanticipated Consequence of Purposive Action", *American Sociological Review*, 1 (1936), 894-904.
9. Lipsky, *Street level bureaucracy: Dilemmas of the Individual in Public Services*.
10. Department of Justice Canada, *Immigration Act* in *CD-ROM: Consolidated statutes and Regulations of Canada*.
11. The federal government does not offer counsels to appellants but it offers interpreters. [Http://www.cic.gc.ca/english/about/faq/ask-21e.html](http://www.cic.gc.ca/english/about/faq/ask-21e.html)

12. [Http://www.cic.gc.ca/english/04appeals-e.html](http://www.cic.gc.ca/english/04appeals-e.html)
13. Citizenship and Immigration Canada, Immigration Manual, "Processing members of the Family Class", *Overseas Processing (abroad only)*, 1.
14. Citizenship and Immigration Canada, Immigration Manual, "Processing members of the Family Class", *Overseas Processing (abroad only)*, 20.
15. Interviews for verifying if two persons have concluded a "marriage of convenience" can be both conducted by internal and external officers depending of where the sponsor and his spouse are at the moment of the interview. Interviews can also be conducted conjointly by one internal officer who interview the sponsor inside Canada and by one external officer who interview the spouse at the consulate.
16. Ibid.
17. Ibid.
18. Interview with a Canadian immigration officer in Ottawa..
19. " Illogic things such as a big education or age's difference or the fact that the sponsor does not know very well the person he wants to bring in Canada give me some indications that this is a marriage of convenience".
Interview with a Canadian immigration officer in Ottawa.
20. Citizenship and Immigration Canada, Immigration Manual, "Processing members of the Family Class", *Overseas Processing (abroad only)*, 35.
21. Interview with a Canadian immigration agent in Ottawa..
22. Citizenship and Immigration Canada, Immigration Manual, "General Procedural Guidelines", *Overseas Processing (abroad only)*, 6.
23. Citizenship and Immigration Canada, Immigration Manual, "Processing members of the Family Class", *Overseas Processing (abroad only)*, 2.
24. Ibid, 49.
25. Agents have a similar latitude when they process applicants from the independent category.
26. Interview conducted with a Canadian immigration officer in Buffalo.
27. Citizenship and Immigration Canada, Immigration Manual, "Processing Independent Immigrants", *Overseas Processing (abroad only)*, 1.
28. Ibid, 3.

29. See appendix 4.1 for more details on those types of immigrants.
30. Assisted relatives and investors which are also sub categories of the independent group of immigrants do not have individual section in the procedural guidelines like skilled workers, entrepreneurs and self-employed do have. Agents will therefore use the information they have in OP5 (skilled workers) and OP6 (entrepreneurs and self-employed) to process those applications. Although OP 5 is titled “independents immigrants” it concerns mainly the processing of skilled workers applications.
31. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 18.
32. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 18-19.
33. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 19.
34. Ibid.
35. At this moment, no occupation figures on the Designated Occupations list.
36. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 20.
37. This guide can be found in Appendix 4.2
38. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 22.
39. “ In addition to take out few points because the applicant did not speak and understand English well, the agent subtracted additional ones for the same reason when assessing the integration’s capacity of the applicant.” Manon Cornellier, “Immigrants recalés à cause de leur anglais; Ottawa donnera une deuxième chance aux Marocains”, *Le Devoir*, (samedi 27 et dimanche 28 novembre, 1999).A3.
40. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 22.
41. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 22.
42. Citizenship and Immigration Canada, Immigration Manual, “Processing entrepreneurs and Self-Employed Immigrants”, *Overseas Processing (abroad only)*,1.

43. Ibid, 10.

44. Ibid.

45. Those are education (16 units), specific vocational preparation (18), experience (8), demographic factor (10), age (10), knowledge of English and French languages (15), personal suitability (10).

46. This requirement is also obligatory for self-employed immigrants.

47. Citizenship and Immigration Canada, Immigration Manual, "Processing entrepreneurs and Self-Employed Immigrants", *Overseas Processing (abroad only)*, 13.

48. Ibid, 29.

49. Those are education (16 units), specific vocational preparation (18), experience (8), occupational demand (10), demographic factor (10), age (10), knowledge of English and French languages (15) and personal suitability (10).

50. Quebec, 1994, *Loi sur l'immigration au Québec*, (Quebec; Editeur officiel du Québec), 1.

51. Note that a remaining responsibility of external immigration officers, with regard to the processing of family application, concerns the international adoption cases which make up only 12 % of the total of the family immigration. In those cases, overseas agent will have to play the intermediary between the "service aux garant et aux candidats à l'immigration" and the foreign official authority responsible for taking care of adoption cases.

52. "a foreigner who is at least 18 years of age and 1) who comes to Quebec to occupy a secured job; or 2) who is qualified for occupying a position mentioned in the profession in demand list; or 3) who has an employability and professional mobility profile allowing him to occupy a job according to his personal and professional qualifications."

Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants*, composante 3, chapitre 2, (Québec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 10.

53. "The regulations define the expression "assisted relative" as a foreigner who is at least 18 years of age and who does not belong to the family category and who, in relation, with a Quebec resident, is ;

i) his or her child, his or her brother or his or her sister;

ii) his or her uncle, his or her aunt, his or her grand-son or grand daughter, his or her nephew or niece."

Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants*, composante 3, chapitre 2, (Québec: Ministère des Relations avec les Citoyens et de

l'Immigration , 1998), 11.

54. "(...) We have to be flexible at this stage of the process because only the interview can really determine the real level of professional experience".

Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants*, composante 3, chapitre 6, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998),18.

55. " To grant points at this stage of the preliminary evaluation to a worker or to an assisted relative, we look at the level of knowledge he said he has in his application". Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants*, composante 3, chapitre 2, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 23.

56. " The person who is responsible for processing the application file is the one who decides if an interview is necessary or not (...)".

Ibid, 22.

57. This selection grid is reproduced in Annex 4.4.

58. Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants* composante 3, chapitre 6, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 20.

59. " To determine if a foreigner has the motivation necessary to facilitate his adaptation, the immigration agent asks questions allowing to assess the motives of immigration and the reasons explaining why he wants to move in Quebec".

Ibid, 21.

60. " The article 40 allows the minister or civil servants, who have been selected, to deliver a Quebec selection certificate to an independent immigrant worker who does not meet the requirements of the selection grid if he believes that the result does not reflect the foreigner's real capacity to settle with success in Quebec."

Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants* composante 3, chapitre 2, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 27.

61. Ibid, 31.

62. "The regulations define the expression "entrepreneur" as a foreigner who is at least 18 years of age, who has 3 years of experience in management in a legal and profitable agricultural, commercial or industrial business and who comes in Quebec :

- i. To create or buy
 - an agricole business; or
 - an industrial or commercial business which will employ immediately and permanently at least 3 Quebec residents others than those persons who accompany the foreigner;or
 - ii) To participate, as a partner, to the management and to the daily operations of a business.
- Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants* "gens d'affaires à l'étranger, composante 3, chapitre 4, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 11-12.

63. " The regulations define the expression " self-employed" as a foreigner who is at least 18 years of age and who:

- i. does not qualify as an entrepreneur and who comes to Quebec to create or buy an industrial or commercial business that he will manage by himself;
- ii. has at least 3 years of experience (and at least 1 year of experience in management) in a legal and profitable agricole, industrial or commercial business, and who has a job experience of at least 2 years in the economic activity in which he wants to work in Quebec; This activity must correspond to the one described in the "industries classification" (a document published by the federal government)."

Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants* composante 3, chapitre 4, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 12.

64. Ibid, 13.

65. This grid is reproduced in Annex 4.5.

66. "When the candidate shows he has accomplished the actions that the agent judge relevant to the realization of the business project, he will receive a maximum of 5 (for self-employed) or 6 units (for entrepreneurs) of assessment."

Ministère des Relations avec les Citoyens et de l'Immigration, *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants* composante 3, chapitre 4, (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration , 1998), 30.

Chapter Five

The United States: The Immigration and Nationality Act and the Foreign Affairs Manual

The previous chapter examined immigration laws and administrative procedures in Canada and in Quebec and it attempted to understand what room, according to those documents, is left for field agents discretion in the selection system. In this chapter, the same kind of analysis is conducted for the United States with a look at both the *Immigration and Nationality Act* and the *Foreign Affairs Manual*. It is demonstrated that both government documents leave some space for the exercise of field discretion. Nevertheless, in comparing this discretion with the one left to Canadian and Quebec officials, we realize American visa officers operate with a lesser degree of discretion.

5.1 The Immigration and Nationality Act

The Immigration and Nationality Act was adopted in 1952. Before this date, a variety of statutes governed immigration without, however, being organized in one location. With the McCarran-Walter Bill of 1952, many existing provisions were put together and codified. This reorganization became the new Immigration law. This Act has been amended several times but this document is still, today, the basic body of immigration law in the United States.¹

Similar to the Canadian Immigration Act, the actual American legal immigration system comprises three broad “streams”: “the economic stream, which covers immigrants chosen

broadly for their human capital attributes; the social (and partly humanitarian) stream, which incorporates the family reunification categories; and the compassionate stream which admits refugees and asylum seekers who meet certain internationally agreed criteria.”.² This Act has also, since 1965, been characterized by its commitment to a non-discriminatory selection of newcomers.

As Chapter Three explains, the selection of immigrants in the United States consists principally of two main steps. The first one is the approval or the refusal of visa petitions by Immigration and Naturalization Service agents. The second step is the processing of application files by consular officers who are responsible for double checking the information on applications, interviewing candidates and issuing visas to those applicants who fit the requirements of the law.

Therefore, in contrast to Canada, where the selection process is mostly centralized in one organization, the same system in the United States is divided between two different institutions namely, the Immigration and Naturalization Service and the Department of State. This means that the selection’s responsibilities belong to both INS and DOS agents and, as a result, their respective powers of decision as well as their discretion are limited by each others’ actions. In fact, it appears that, in general, the *Immigration and Nationality Act* refers much more often to the discretionary power of the Attorney General and its subordinates (INS agents) than to the one exercised by consular officers (DOS agents). Many provisions of this law stipulate that the Attorney General can exercise his discretion to make certain type of decisions, especially those which are characterized by exceptional circumstances.³

Nevertheless, there is still some space for consular officers’ discretion in the Act and this

can be illustrated by four specific situations which discuss the responsibility of issuing immigrant visas. The first situation consists of the evaluation of the financial capacity of the “alien” by consular officers. Provision 212 (a) (4) of the *Immigration and Nationality Act* specifies that: “In general.-Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.” Thus, similar to article 19 (b) of the Canadian Act, DOS agents have to determine if a person will be able to support himself and his dependents.

As explained on the chapter on Canada, this kind of determination can be complex and it can also be subjective. Even if the *Immigration and Nationality Act* provides American visa officers with criteria to be taken into account for determining whether an alien is likely to become a public charge, it remains a question of judgment.⁴ In other words, since officers can never be certain that an alien will become a public charge in the future, they must use their personal and professional judgement to make this kind of decision. As one officer mentioned, the law which refers to the concept of “Public Charge” is written in the opinion of the consular: “is likely to become a public charge”. For this reason, officers “(...) have to use a lot of common sense”.⁵

Nonetheless, the *Immigration and Nationality Act* mentions that in addition to the factors used to evaluate the financial capacity of the applicant to immigration, the consular officer may also consider an affidavit of support. An affidavit of support is a contract: “in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is no less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable”.⁶

In filling out this form, the petitioner agrees also to reimburse any government agency or private entity that provides the sponsored alien with benefits. This tool will give detailed information on the financial situation of the alien and it is supposed to help agents to make their decision more objectively.⁷ The fact that this affidavit of support is quite new and also very complex to use does not help agents to fulfill their tasks yet.

A second situation allowing American visa officers to use their judgement to make a decision is when they decide not to issue or revoke a visa when they believe they have reason to act this way. Provisions 221 (g) and 221 (i) of the *Immigration and Nationality Act* suggest that:

INA: Act 221 (g) No visa or other documentation shall be issued to an alien if (1) *it appears* to the consular officer, from statement in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 212, or any other provision of law, (2) the application fails to comply with the provisions of this Act, or the regulations issued thereunder, or (3) the consular officer knows or *has reason to believe* that such alien is ineligible to receive a visa or such other documentation under section 212, or any provision of law (...).

INA: Act 221 (i) After the issuance of a visa or other documentation to any alien, the consular officer or the secretary of State may at any time, *in his discretion*, revoke such visa or other documentation (...).⁸

In using expressions such as “if it appears to the consular officer”, “the consular officer has reason to believe” or “in his discretion”, those sections of the *INA Act* leave room for agents to rely on their opinion and their judgment in evaluating the eligibility of candidates to receive an American visa. The use of this vocabulary suggests that legislators acknowledge the need for a certain degree of flexibility in the law. It reveals also that they accept the idea that, in some cases, street level bureaucrats use their judgment to make certain decisions.

Provision 221 (g) stipulates also that consular officers' decisions must be based partly on section 212 of the Act which discusses the general classes of aliens ineligible to receive visas. If most situations, described in this clause, do not require the exercise of discretion by consular officers, there is, at least, one exception. Provision 212 (4) which stipulates that visa officers must determine if an alien is likely to become a public charge can, as explained earlier, open the door for the agent's judgment.

A third situation which leaves some space for consular officers' judgment is the decision of accepting or refusing, in lieu of required documents, other evidence of the fact in the application file. In some cases, aliens can have difficulty in obtaining the documents which are usually required by consular officers. In this context, agents can decide if they will accept replacement documents or other satisfactory evidence in lieu of the usual required document.

Provision 222 (b) of the *Immigration and Nationality Act* illustrates this circumstance:

In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain.⁹

Lastly, similar to the Canadian Act, the *Immigration and Nationality Act* mentions that to be admitted to the United States or to be eligible for an American visa, an alien must convince the consular officer that he meets the requirements of the law. In the case a person fails to persuade the agent of his eligibility, a visa will not be issued. Therefore, provision 291 of the Act called "Burden of Proof" confirms that the judgment of consular officers is an important factor in the decision process of issuing visas. An agent, who is not satisfied with an application, has the power to refuse to deliver a visa. In such a case, the visa officer will send the application

back to the Immigration and Naturalization Service with a recommendation to refuse the visa petition.¹⁰

5.2 Foreign Affairs Manual

The Foreign Affairs Manual (FAM) consists of a 12 volume series including the policies, regulations and procedures for the Department of State's operations. This manual contains also some of the official practices which describe the work of agents in other federal departments and agencies. For example, volume 9 of the FAM discusses the procedures followed by DOS agents when issuing visas and it includes some of those which concern agents from Immigration and Naturalization Service as well as those from the Department of Labor. This manual and the *Immigration and Naturalization Act* itself are the main tools used by visa officers in the execution of their tasks.

Volume 9 of the FAM discusses the processing of family and employment based applications. Our discussion will look at the role and discretion of consular officers when they issue family based visas; followed by an analysis of the discretionary power of the same agents in the selection process of employment based immigrants.

- Family Based Immigration:

As explained in chapter 3, family based petitions are first approved by INS agents. In fact, those officers are responsible for determining whether the relationship between the sponsor and his beneficiary is authentic. Similar to their Canadian counterparts, INS agents work essentially with documents in processing centers located in different areas of the United States (Vermont, Texas, Nebraska and California). Therefore, consular officers, who work overseas,

will usually be the ones who see, for the first time, family applicants who apply from outside. I suggest that this situation gives them a weight in the selection process. Because of their physical contact with the applicants to immigration, they can discover new pieces of information and frauds difficult to detect only with a look at documents.

As provision 42.21 of volume 9 of the *Foreign Affairs Manual* stipulates: “An alien is entitled to status as an immediate relative if the consular officer has received an approved petition from INS and the consular officer is satisfied that the claimed relationship (they mean between the sponsor and his beneficiary) exists”.¹¹ Thus, the guidelines are clear that consular officers have to verify whether the relationship between the sponsor and his relatives is authentic. Since this relationship has been approved by INS agents, their role is to double check the information included in the application to see if there are any contradictions. In case of doubt, agents can decide to ask for additional documents such as wedding pictures or love letters and they can choose to ask questions allowing them to certify the authenticity of the relationship.

Furthermore, the guidelines do not provide consular officers with a strict list of documents or questions to ask in case of hesitation about how genuine relationships might be. In fact, discussions with visa officers revealed that they use their judgment to decide if investigations are necessary before the issuance of family visas. Hence, consular officers use their discretion both to decide if investigations will be conducted and how they will be carried on. Agents will decide what documents and what questions will be asked to candidates.

However, although consular officers have a verification power, the decision to approve or revoke a petition does not belong to them but to their colleagues from Naturalization and Immigration Service. Consequently, if a visa agent finds out information which puts into doubt

the honesty of an applicant, he will return the petition to the INS with a memo in which he explains what makes him believe the petition should be revoked.

In some cases, visa agents will have to revalidate a fiancé's petition. Similarly to assessing a relationship between husband and wife, the consular officer must be convinced that the relationship between the sponsor and his fiancé is authentic. In order to determine if an engagement is genuine, they have to be persuaded that the petitioner and the beneficiary intend to marry. If visa officers do not believe the sponsor and his fiancé will marry and live together within 90 days after the arrival of the beneficiary in the United States, they should refuse to issue a visa. When I interviewed consular officers, I realized that the evaluation of this kind of application also left some room for discretion. Since the guidelines do not provide agents with specific criteria to assess a fiancé's application, they use their own.

In other cases, consular officers will even have to issue visas to an applicant who has never met his fiancé before. The guidelines mention that if the decision to approve such a petition is the responsibility of the INS, consular officers should still be careful when they determine whether a bona fide marriage is intended. “(...) If the consular officer is not satisfied on this point, the officer should return the petition with an explanatory memorandum to the approving office of INS”.¹²

In sum, if consular officers find contradictions in family based applications, they will return them to the Immigration and Naturalization Service. The decision to revoke a petition or simply to reconsider it does not belong to DOS agents but to officers from Immigration and Naturalization Service. Most of the time, consular officers will exercise discretion when determining whether investigations is needed before issuing a visa. They will be the ones who

decide if they have to ask for more documents and pose more questions in order to be satisfied that visa applicants meet the requirements of the law. Most visa agents I interviewed mentioned that, in the majority of cases, visa applications did not raise any doubts or any problems for them. Nevertheless, the use of their judgment or discretion to choose to conduct a more detailed investigation and to return the petition to INS remains an option for them.

- *Employment Based Immigration:*

Contrary to the Canadian immigration system, the United States establishes strict limits on the allocation of immigrant visas. The selection of immigrants who want to settle in the United States is done according to a system of preference. There is only one category of immigrants which is not subject to numerical limitations and this includes the immediate relatives of U.S. citizens such as the children, spouses and parents.¹³

The would-be immigrants who are subject to numerical limitations are divided into two broad categories of preferences: family-sponsored and employment-based. The family sponsored preferences are enumerated in Chapter 3. With regard to the employment-based category, Section 203 of the *Immigration and Naturalization Act* differentiates between five preferences and it discusses the allotment of visas prescribed for each of them.

The first preference class is the one for priority workers and it includes aliens with extraordinary ability, outstanding professors and researchers and certain multinational executives and managers. 28.6% of the worldwide level of visas will be reserved for this class of would-be immigrants. Similar to family based applications, consular officers will issue a first preference employment based visa after having received the approval of the petition by INS and on the basis that they are satisfied the alien fits the definition of a priority worker.

The definition of each type of priority worker, provided by the guidelines, is quite detailed and I suggest that this reduces considerably the level of field level discretion. For example, the FAM mentions that “an alien may qualify as a priority worker, outstanding professor or researcher if the alien (1) is recognized internationally as outstanding in a specific academic area; (2) has at least 3 years of experience in teaching or research in the academic area; and (3) has the required offer of employment.”¹⁴

In addition to this description of what is needed to be considered as an outstanding professor or researcher, the administrative procedures give additional details on what evidence must accompany the alien’s petition to prove he is “outstanding”. Someone who has received international prizes, or awards of outstanding achievement in a particular academic area, and who has had published material or professional publications written by others about his work, will be estimated to be an outstanding professor or researcher. Thus, it appears that the criteria used for determining whether an alien fits the definition of a priority worker, outstanding professor or researcher are quite precise. As a consequence, this situation does not leave much space for subjectivity.

Furthermore, since petitions are approved by INS officers first, those actors are really the ones who decide if aliens fit the requirements of the priority workers’ definition. In fact, the work of consular officers consists essentially in verifying that the information in the application is still applicable. For example, an alien who applies as an outstanding professor or researcher must have a job offer from a U.S. university or a research institution. Before issuing a visa, consular officers should make sure this offer is still valid. Provision 42.62 of the FAM stipulates that: “[i]f the applicant is applying for a visa on the basis of a ‘job offer labor certification’, the

officer must determine that the applicant has the professional or occupational qualifications on which certification is based".¹⁵ This kind of action, however, does not leave much space for the agents's judgment since, in approving the petition, INS agents have already determined that the candidate fits those requirements. Again, the main responsibility of consular officers will be to verify and to double check whether the information appearing on the application is still accurate.

The second employment based preference is reserved for professionals with advanced degrees or persons of exceptional ability. According to section 203 of the *Immigration and Nationality Act*, visas made available for this class of immigrants again will not exceed 28.6 %. As for the priority workers' category, I think that the space for consular officers' discretion in the treatment of this category of immigrant visas is relatively small. First, the definitions provided by the guidelines of who is considered as being a professional with an advanced degree, or a person of exceptional ability, are quite detailed. Second, if some parts of those definitions could lead to a certain level of subjectivity, like evaluating "exceptional ability", the FAM reduces it in asking that petitions must be accompanied by concrete evidence of the alien's exceptional ability. Finally, because a labor certification is generally required for this category of immigrants, most important decisions concerning the eligibility of aliens to apply in this category will be taken by both officers from the Labor Department and Immigration and Naturalization Service.

The role of consular officers when processing immigrant visas from the third employment based preference - skilled workers, professionals and other workers- is also reduced to a verification one. As the administrative procedures specify, INS is responsible for determining the eligibility of an alien for reference immigrant status and consular officers are not authorized to readjudicate the petition. Therefore, the visa agents' responsibility will be to review the

petition and to determine whether: “ 1) the supporting evidence is consistent with the approval; (2) there was any misrepresentation of a material fact; and (3) the alien meets the requirements of the employment offered.”¹⁶ This review process is quite straightforward and it does not leave much space for consular officers’ discretion.

The role of consular officers is different, however, when they process immigrant visas in the fourth employment based preference. This category of visas is reserved for “special immigrants” such as religious workers and certain U.S. government employees. Only 7.1 % of the worldwide level of visas will be allocated to this class of would-be immigrants. In contrast to the other employment based preferences, the authority to approve petitions for special immigrants will be delegated to the chief consular officer at the post of recommendation or to any alternate approving officer designated by the principal officer. Therefore, this gives new responsibilities to certain consular officers in the selection process of this category of immigrants.

To acquire special immigrant visas as a US government employee, the principal officer must recommend, in exceptional circumstances, the granting of special immigrant status to an employee or a former employee of the American government and the secretary of state must approve it. By exceptional circumstances, provision 42.32 (d) of the FAM means:

1) When relations between the alien employee’s country of nationality and the U.S have been sensitive; (2) The country in which the alien employee was employed and the U.S. have severed diplomatic relations; and (3) The country in which the alien employee was employed and the U.S. strained relations and which the employee may be subjected to persecution by the local government merely because of association with the U.S. government, or where the circumstances are such that the employee may be pressured to divulge information available to him which would be contrary to U.S. national interests.¹⁷

Therefore, it appears that in processing US (or former US) employee government applications, consular officers will assume different responsibilities. In fact, they will have to evaluate the working milieu of the employee to determine if there is good reason to believe that the alien is submitted to a clear threat due to employment with the American government or under a U.S. government official. Consular officers will have also the responsibility to assess the overall picture of the employee performance in looking at evaluation reports, reprimands, awards and so on.

The processing of this category of immigrant visas provides consular officers with the power to recommend, but not to confer, a special immigrant status on an alien. This decision belongs, in fact, to the Department of State and not to external field level officers. However, although the FAM gives some guidance to visa agents on how to assess the eligibility of aliens to special immigrant status, they can still exercise discretion when evaluating, for instance, whether the situation of an employee puts him in real danger. Therefore, I suggest that consular officers have more opportunities to exercise discretion when processing special immigrants visas even if this category of visas represents a small percentage of the total of American visas distributed each year.

The fifth and last employment based category of immigrants is for those newcomers who want to enter the United States for the purpose of engaging in a new commercial enterprise. To qualify as an employment creation immigrant, an alien must create a new commercial enterprise, he must be in the process of investing or has made an investment of at least \$ 1,000,000 and his enterprise must benefit the American economy and create full-time employment for at least 10 U.S. citizens or lawful permanent residents. Investors do not need to have a labor certification

but they must have an approved petition by the INS. Thus, as it is the case for the other categories of employment based immigrants, the role of consular officers will be limited to verifying the application and making certain all the information given by applicants is accurate.

In addition to the family based and employment based visa applications, there is one more category of immigrants which distinguishes the United States from Canada and Quebec. This class of newcomers is called “diversity immigrants”. As explained in chapter 3, each year the National Visa Center will select between 50,000 to 55,000 diversity immigrant applications. To apply as a diversity immigrant, an alien must be a native of a low-admission country and he must have a high school education or its equivalent. If the alien has no high school education, he can still be eligible to get a diversity immigrant status if he has 2 years of work experience in an occupation which requires at least 2 years of training or experience.

The Foreign Affairs Manual gives a definition of what is considered to be a high school education. A high school education means: “ (1) 12 courses of elementary and secondary study in the U.S. or (2) formal course of elementary and secondary education comparable to completion of 12 years elementary or secondary education in the United States”.¹⁸ I suggest that this interpretation of a high school education could create some room for the exercise of discretion. A visa officer explained in an interview that determining if an alien has a high school education or its equivalent can be confusing in some countries. He mentioned, however, that, in case of doubts, they have to give a chance to the applicant.

Furthermore, the working experience of this type of immigrant is not assessed by the Department of labor but by consular officers. The FAM specifies that to evaluate the working experience of a diversity would-be immigrant, consular officers will use the “Dictionary of

Occupational Titles”. To qualify as a diversity immigrant, an alien must occupy a certain type of job requiring at least 2 years of experience or training.¹⁹ As argued in Chapter 4, a manual of occupation can sometimes be difficult to use since it can lack details that would allow agents to do a good assessment of applicants. For example, it could potentially take a certain time before a new occupation will be found in a manual of occupations. Thus, agents would have to use his judgment to compensate for this lack of information.

5. 3 A comparison of the field level discretion in Canada, Quebec and the United States: A summary

Chapters Four and Five have demonstrated that Immigration Laws and administrative procedures in both Canada (including Quebec) and the United States make some room for the exercise of field discretion in the selection process of would-be immigrants. What distinguishes those countries, however, is that, in Canada, the selection responsibility is mostly centralized while, in the United States, it is divided between the Immigration and Naturalization Service and the Department of State. When processing application files, Canadian and Quebec officers act, most of the time, by themselves. In contrast, American visa agents work conjointly with agents from the Immigration and Nationality Service and the Department of labour. As a result, their power of decision and their discretion are limited by the actions of those additional actors. Furthermore, it has been showed, in Chapter Five, that the Immigration and Naturalization Act appears to leave much more room for the discretion of the Attorney General than for the Department of State and its consular officers. This explains partly why Canadian officials operate with a more considerable measure of discretion than their US counterparts.

Both countries distinguish between the selection of family based and employment based

immigrants. With regard to family based applications, one of the first responsibilities of Canadian and American visa officers is to verify the authenticity of the relationship between the sponsor and the beneficiary(ies). They also have to check the capacity of the sponsor to support the persons he wants to bring in the receiving country. They both use their judgment to decide whether a family based application needs to be investigated, or not, and they exercise their discretion when asking for additional documents, or questions, to help them to determine whether applicants are entitled to get immigration visas. Although Canadian and American officers have similar responsibilities with regard to the processing of family applications, the main difference is that the latter share those responsibilities with actors from a different organization. This means that they usually have less decisions to make and therefore fewer opportunities for discretion.

Another important element differentiating Canada from the United States is that Canadian agents use their judgment to assess a relationship and, when they are not convinced the relationship is genuine, they refuse to deliver the immigrant visa. In contrast, American consular officers only have the power to make recommendations. When visa agents have serious doubts about the genuineness of a relationship, the only option they have is to send back the application to INS with a memo explaining why INS agent should reconsider the petition. Therefore, American visa officers do not have the power to either reconsider, approve or refuse an immigrant visa petition.

The Immigration and Naturalization Service possesses exclusive authority over the approval and denial of immigrant visa petition (...) consular officer should bear in mind that the Department considers the approval of a visa petition *prima facie* evidence of the relationship between the petitioner and the beneficiary.²⁰
It is the consular officers' responsibility to review, not to readjudicate

petitions. The approval of a petition is usually considered to be prima facie evidence that the alien beneficiary has met the requirements. If a consular officer knows or has reason to believe that the beneficiary is not entitled to status, the consular officer shall return the petition to the INS approving office.

In addition, in contrast to Canadian and Quebec immigration agents, Americans can not exercise their discretion for deciding whether they will interview sponsors and would-be immigrants. Provision 42.62 (a) of volume 9 of the FAM stipulates that: "Every alien applying for an immigrant visa, including an alien whose application is executed by another person, shall be required to appear personally before a consular officer for the execution of the application (...)"²¹ Thus, American visa officers must interview every alien who wants to get an immigrant visa. The only time a consular officer can use his judgment to decide whether someone will be interviewed is in the case of a child under the age of 14.

With regard to the processing of independent applications or, what is called, in the United States, employment based applications, the main difference between the two countries is the use of a selection grid to determine whether a candidate is eligible to get a Canadian visa. As explained in Chapter Four, both the Quebec and the Canadian selection grids contain several criteria such as knowledge of language, experience, personal suitability and others allowing immigration officers to use their judgment to grant a certain amount of points to candidates. American officers do not use such a tool to assess immigration applications.

Similar to the processing of family immigration, the work of American consular officers when processing employment based applications consists essentially in verifying and double checking the information on applications, interviewing candidates and delivering visas to those who meet the requirements of the law. They can, however, use their judgment to decide whether

an investigation will be conducted or not. As the INA and the administrative procedures specify, an alien will obtain his immigrant visa on the conditions that the petition has been approved by INS and that the consular officer is convinced he meets the requirements of the law. Thus, visa officers will look carefully at applications to make sure candidates have no ineligibility grounds and that they fit the definition of the category in which they apply.

The definitions of each preference of employment based immigrants, included in the Foreign Affairs Manual, are quite clear and they seem to be more detailed than the definitions provided by the Canadian and Quebec guidelines. For example, when Canadian officers assess an entrepreneur application, they have to determine whether the investment of an entrepreneur in his future Canadian business and his eventual contribution to the economy are considered to be sufficient. Nonetheless, the guidelines do not provide agents with many details on how to make this kind of decision. Consequently, agents will tend to use their personal and professional judgment to accomplish this task. Other examples are the definitions of “managerial ability” and “executive ability” that are provided by the Quebec administrative procedures. Those definitions, compared to the definitions of comparable terms found in the American guidelines, are elementary and they leave more room for interpretation. More importantly, the responsibility for determining if an applicant meets the criteria of an immigrant category rather than another belongs, first, to officials from the Immigration and Naturalization Service and the labor department. Thus, the role of DOS agents consists essentially in verifying whether the information on the applications files still fit the candidates.

A last distinction between the United States, Canada and Quebec is the existence of the exercise of positive and negative discretion or what Quebec officers call “pouvoir de

dérogration". As explained in Chapter Four, Canadian and Quebec agents can use their discretion to accept applicants who do not get the required minimum points on the selection grid, if they feel this selection grid does not allow them to assess the would-be immigrant's real possibilities of settling successfully in Canada or in the province of Quebec. This final decision discretion is not allowed in the American selection process.

End notes

1. The principal amendments of the 1952 Act were effectuated in 1965, 1980 (Refugee Act), 1986 (Immigration Reform and Control Act), 1990 and 1996 (Illegal Immigration Reform and Immigrant Responsibility Act).
2. Demetrios G. Papademetriou and Stephen Yale-Loehr, *Balancing Interest: Rethinking U.S. selection of skilled immigrants*, (Washington: Carnegie Endowment for International Peace, 1996).
3. Provisions 204 H, 204 H 2 (A), 204 H 2 (A)ii, 205, 205(v) are good examples of the discretionary power of the Attorney General.
4. Those factors are the ones of age, health, family status, assets, resources and financial status, and education and skills.
5. Interview conducted in the Department of State in Washington.
6. <http://www.insdoj.gov/graphics/lawsregs/TNA.htm>
7. When I conducted interviews with consular officers, the affidavit of support and its power of enforceability was relatively recent (about 6 months old). Thus, consular officers did not know really how it would work and if it would make a difference for their work. However, several consular officers mentioned that this form was long and complicated to analyze. Many of them agreed to say that the new affidavit of support was not facilitating their work at all.
8. <http://www.insdoj.gov/graphics/lawsregs/TNA.htm>
9. <http://www.insdoj.gov/graphics/lawsregs/TNA.htm>
10. As it was explained in Chapter Three, INS officers are the ones who decide to accept or refuse a visa petition. However, in returning a petition to the INS office with a recommendation, DOS have the power to slow down the processing of a particular application. They can also influence and incite INS officers to refuse the petition.
11. <http://foia.state.gov/fam/infor.pdf>
12. Ibid.
13. In the case of parent, the U.S citizen must be at least 21 years of age.
14. <http://foia.state.gov/fam/infor.pdf>
15. Ibid.
16. Ibid.

17. Ibid.

18. Ibid.

19. In fact, diversity immigrants must occupy jobs in the Dictionary of Occupational Titles with an SVP-7 rating or better. The SVP means the “specific vocational preparation rating as the amount of time required by a typical worker to learn the techniques, acquire the information and develop the facility needed for average performance in a specific job”. (9FAM 42.23)

20. Except for certain special immigrants and diversity immigrants.
<http://foia.state.gov/fam/infor.pdf>

21. <http://foia.state.gov/fam/infor.pdf>

Chapter Six

How Street-Level Discretion Is Exercised in Field Offices: A Discussion of the Interviews Conducted with American, Canadian and Quebec Officers

A look at both immigration laws and administrative procedures allows us to distinguish between the exercise of street level discretion in Canada, Quebec and the United States. The analysis of those documents suggests that Canadian officials operate with a significantly greater measure of discretion than their US counterparts. It indicates also that Quebec officials seem to enjoy a larger discretionary power than Canadian agents. The next step is to analyse the interviews that were conducted with immigration and visa officers to see whether we find the same trends differentiating Canada from the United States and from Quebec as we found within the procedural documents.

This chapter makes the links between the “official” use of discretion and the one “in practice”. In other words, since the study of official documents in the previous chapters revealed how discretion is supposed to be used in field offices, the discussion of those interviews helps to understand how discretion is really exercised in the external selection process and how this differs or resembles the official policy. The analysis of those interviews allows to verify whether we find the same difference in the “rules in use” as there are in the “rules in law”.¹ In this chapter, it will be argued that the analysis of interviews confirms the trends found in official documents. It will also show that the differences found between the United States and Canada are more important than those differentiating the exercise of discretion by Quebec’s officials and

Canadian agents.

In order to study how discretion is exercised in the overseas selection process of newcomers, I developed a classification of forms of discretion that permit me to distinguish between three general categories of discretion: *procedural discretion*, *final decision discretion* and *selection grid's discretion*. This classification helps to understand both how immigration and visa officials use discretion in field offices and how the Canadian, Quebec's and American practices can be differentiated from each others.

6. Forms of discretion

As it was explained earlier, overseas immigration or visa agents are those in charge of evaluating immigrants' applications that are completed outside the receiving country. In looking at candidates' files, those officers must make an estimate of their likelihood of settling well in the new country. Will this candidate adapt well in his country of adoption? Will he be an asset for the nation? These are common questions that officials explore before accepting or refusing a candidate for immigration.

Procedural discretion is the discretion used in processing the application and obtaining information from the applicant. Selection grid discretion is the discretion used in evaluating the information received when assigning values to the information. Final decision discretion is exercised after the information is evaluated. The chapter shows that the discretion exercised follows a similar pattern of Quebec having the highest and the United States the lowest levels of exercised discretion. The three systems differ, however, in the extent to which the various forms of discretion are used.

6.1 Procedural discretion

Essentially, procedural discretion refers to discretion that is used to get more information about the applicant. Overseas agents use it to verify or double check information in the applicant's application form. Most of the time, immigration officers wield this authority when they have some doubts about the eligibility or the settlement capacity of a candidate. In fact, many officers have mentioned that they exercise this type of discretion when they suspect fraud. Here obtaining additional facts about the applicant is, in many cases, indispensable for making a final decision. When this form of discretion is employed, extra delays are imposed on the applicant before he gets or is denied the right to enter the receiving country. Officials can, in fact, use their judgment either to go faster through an application or to slow down the selection process.

There are three sub-categories of procedural discretion. Overseas agents can use their authority to decide first, if applicants need to be interviewed, second, to choose how interviews will be conducted and which questions will be asked, and finally, agents can make use of their judgment in asking for additional documents.

6.1.1 The first dimension of procedural discretion: to interview?

Many Canadian and Quebec officers have mentioned that increasingly selection is based on documents alone, especially in the case of family immigration. Usually, family applications such as husband and wife or children are likely to be exempted from interviews. In those cases, agents have to verify the marital and filial relationships and these can usually be done by looking at documents such as birth certificates or marriage certificates. It does presuppose, however, that

immigration officers can rely completely on official documents that are provided by the country and administration of origin. Several federal and provincial officers pointed out that there is an increasing market for fraudulent documents in many third world countries. In those countries, a selection based on documents alone is, therefore, out of the question.

Interviews will also be conducted when family cases seem suspect. For example, immigration agents mentioned that in the case of relationships, doubts can be raised when there is a difference of language, of age or of culture between the sponsor and the beneficiary. Thus, a young fiancé which is sponsored by a substantially older person will likely be interviewed. Even if there are few hints that can guide the agents' decision to administer interviews, several officials argue that this choice is often based on a feeling. "When it (a situation) gives you the feeling that it is not right, you conduct an interview".² Therefore, we can conclude that a decision to conduct interviews is not necessarily based on strict and objective procedures. In fact, such a conclusion is based on many different factors, one of them being the personal judgment of the agent who assesses a particular application.

In contrast, a selection based on documents alone can be made for those independent immigrants who get a sufficient number of points before the interview. For example, in Canada, an educated candidate who exercises a profession in demand, who has a family with young children and who speaks one of the official languages is likely to be accepted without even being interviewed. Several Canadian and Quebec officers mentioned that when a candidate gets the minimum of points required in the selection grid in the preliminary assessment of his file, it becomes unnecessary to conduct interviews. This situation even became, for Quebec officers, a considerable source of frustration. In fact, before 1996, the criterion called "adaptability" was

eliminary, meaning that immigration agents had the option of refusing a candidate who was fitting the requirements of the Quebec's selection grid if they thought he would not adapt well in the province. Thus, this criterion permitted them to wield a considerable decision power. The modifications of the Quebec immigration Law in 1996 put an end to this in transforming the criterion of adaptability to a non - eliminary one.

La modification du règlement de 1996 a beaucoup changé et réduit notre pouvoir de discrétion. C'est une grande frustration pour tous les agents. Avant le critère d'adaptabilité était éliminatoire et il fallait plus de 15 points sur 22 pour être accepté. Avant tu pouvais exercer cette discrétion. Maintenant, on est parfois coincé et il faut manipuler les points. Je joue avec les points quand il le faut.³

Notre opinion ca vaut rien! C'est pire avec la nouvelle réglementation. Avant on avait une certaine discrétion parce que le critère "adaptabilité" était un critère éliminatoire. Le ministère a peur des journaux et des groupes de pression donc il nous a enlevé ce pouvoir.⁴

What distinguishes the United States from Canada and Quebec is the fact that this dimension of procedural discretion does not exist in that country. By law, every candidate who applies to immigrate in the United States must be interviewed.⁵ American overseas officers must see every applicant, put them under oath and ask them a few questions even if it is only for a brief meeting. "Everyone will get an interview but if there is no problem with the application, the interview will be short".⁶ As a consequence, in contrast to their Canadian and Quebec counterparts, American visa officers do not use their authority to decide if applicants to immigrate need to be interviewed although they do have discretion in the strenuousness of the interview. This brings us to the second dimension of procedural discretion.

6.1.2 The second dimension of procedural discretion: the conduct of the interview

Immigration and visa agents may be able to use their own judgment in deciding how they will conduct interviews. Officials choose what questions will be asked and the time they need to evaluate the settlement capacity of interviewees. In both countries, officers alluded to the fact that, in the past, interviews tended to be longer. With present resource limitations, they are constrained to reduce the time allowed for each interview and they use this discretion to focus on those aspects of the application that appear to be more problematic to them. As a Canadian officer reported: “prior to the interview, you try to focus on problems and, then, you ask questions that concern these problems. This way interviews can be shorter.”⁷ American officers use the same logic to decide how they will administer interviews: “The objective of the interviews is to keep them short so we tend to focus and ask questions only about the problems or where we feel a need to verify information”.⁸ On the other hand, interviews tend to be longer for candidates who come from third world countries, especially those recognized to have a higher rate of fraudulent documents. As an American agent mentioned in interview, the depth of questions depends greatly on the reliability of documents and this is problematic in what he calls “non-functioning parts of the world”.⁹ Quebec officers also mentioned the difficulty of assessing applications coming from third world countries:

Dans les pays du tiers monde, les entrevues sont plus longues parce que l'intégration est plus difficile à évaluer. Par exemple, le diplôme du Sri Lanka ne sera pas reconnu comme un diplôme d'Allemagne. Même l'expérience dans les pays du tiers monde ne sera pas autant reconnu que dans un pays du “first world”. Plus on s'éloigne, plus ça nécessite plus de vérification des détails de notre part. On leur pose aussi des questions plus spécifiques.¹⁰

The questions asked by immigration and visa officers will vary according to the category

of applicants. For example, when they deal with employment based applicants, agents mostly look at the qualifications, the experience, the job offer and the financial resources of candidates.¹¹ Thus, questions such as Where have you worked before? Can you describe your typical day at work? Have you found a job yet? Where are you planning to establish yourselves if you get your visa? are good examples of common questions asked of this category of would-be immigrants.

Furthermore, as it was specified above, most officers mentioned that, since they have several interviews to conduct every day, their strategy is to focus on problems within applications. For example, an American official explained that, in a situation in which he had some doubts about the professional qualifications of a candidate who claimed to be a Chinese cook, he asked him to cook a meal at the snack bar of the embassy. In the same way, several immigration agents argued that they were often testing employment-based candidates in asking them to describe, in detail, their work and their daily tasks. A field officer mentioned that, once, he had an applicant who was claiming to be an engineer but when pushed on what type of work this involved, he explained that he drove the choo - choo!¹² If officials judge applicants' description of their work does not look authentic, they will deny them their visa. In cases where a would - be immigrant does not appear comfortable while describing his tasks, agents could conclude the candidate is lying.

In fact, our discussions with American, Canadian and Quebec officials reveal that, while there are common questions that are used by immigration and visa officers when assessing employment based or independent immigrant applications, they remain completely free to choose examples within this set of questions or even to invent new ones. This applies also to family immigration.

With regard to family based applications, the main concern of field officers is to make sure the relationship is authentic. Therefore, officers are looking for basic information about the couple, their family and their life. They ask questions such as Where did you meet each other? When did you get married? Can you talk about the wedding ceremony? How many children do you have? Does your wife usually take a bath or use a shower ? It could also happen that immigration agents ask details about the engagement and wedding parties and verify if those fit the candidate's country traditions. For example, a Canadian officer reported that he would regularly ask African applicants if they exchanged gifts at the wedding ceremony since it is one of their well known traditions. As was mentioned earlier, a sponsor and a beneficiary who have a considerable difference in culture, age or language can be suspect. In this case, officials will be cautious and ask additional questions. Similarly, in countries where engagement frauds are common, field officers will be doubly careful.

Consequently, American, Canadian and Quebec agents all have the option of using their personal and professional judgment to select the questions they will ask to would-be immigrants. In the same way, they can also use their discretion to decide the time they need to assess applications. As an American visa officer argued: " I can ask questions about any area and I can choose to be liberal with an applicant or to hold him".¹³

Nevertheless, what distinguishes the United States from Canada and Quebec is the fact that usually interviews conducted overseas by American visa officers tend to be much shorter than the ones carried on by Canadian and Quebec agents. As a matter of fact, American officers reported that they were, most of the time, using between 3 to 10 minutes for conducting interviews whereas Canadian and Quebec officials mentioned they could use between 10 minutes

to 2 hours to assess an applicant, the average being 45 minutes to an hour. There is, therefore, an important difference between the average time used to conduct interviews in the two countries.¹⁴ I will argue that this can be explained by the fact that the selection responsibility in the United States is shared whereas in Canada it is unified.

As was explained in preceding chapters, American visa officers' work consists essentially of verifying and double checking whether the information, which figures in application files, is still applicable. In the American selection system, the decision concerning whether a person qualifies for a category is not a decision which belongs to Department of State's agents. This determination is rather made by agents coming from the Immigration and Naturalization Service. Agents coming from the Labor department will also be part of the decision making process in some employment based cases. Therefore, the fact that the selection responsibility is shared between agents coming from two different institutions and, in some cases three, explains why interviews conducted by Department of State's agents will be shorter than those performed by their Canadian or Quebec equivalents. In fact, a good portion of the files' assessment is completed inside the country by Immigration and Naturalization Service's officials and many key decisions will be taken before the file goes into the hands of Department of State's agents. As a consequence, the role of Department of State's officers is reduced to a verification one which can be, most of the time, accomplished in a small amount of time. As several American officers explained, their main task consists of checking the application to see if everything is fine. Most of the time individuals qualify and they are fine, meaning that the time needed to assess this kind of application can be reduced.

In contrast, in Canada and in Quebec, immigration officers will often pilot a file from the

beginning to end and most key decisions will be taken by those external officials. It can happen that additional agents will look at applications. For example, immigrants' applications who are destined to the province of Quebec will be looked at by federal agents who are responsible for the verification of security and medical grounds. However, the external Quebec agent remains the person who will make the most important decisions, particularly in the case of independent immigrants. Contrary to Department of State's agents who do not have the power to approve, reconsider or refuse a visa petition, Canadian and Quebec external officers assessing immigrants' applications overseas are usually the ones who accept, or refuse to deliver, visas or a "certificat de sélection du Québec" (Quebec selection certificate) to would-be immigrants. Thus, since Canadian and Quebec agents have more decisions to make and more questions to ask, it necessitates longer interviews.

6.1.3 The third dimension of procedural discretion: degree of documentation

Finally, immigration and visa agents can use their judgment to decide whether additional documents are required before making a final decision. This form of authority is used when an agent needs to verify relationships, education, professional experience, qualification and so on. Official documents such as birth certificates, marriage certificates, divorce papers, diplomas, wedding pictures, love letters, reference letters, and even DNA tests can be demanded by field officers before they render a decision. Applicants have the obligation to provide these documents to the officer if they want to get their visa.

Figure 6.1 offers a summary of the sub-categories of procedural discretion. It also illustrates how Canadian, Quebec and US officials differ in terms of the availability of this discretion in their jobs. A look at this figure reveals that there is an important distinction

between Canada (including Quebec) and the United States with regard to the availability and the use of this discretion by field officers. In fact, if we consider the three forms of procedural discretion, we understand they all are an active part of the Canadian and Quebec field officers' job. In contrast, if American visa agents can exercise their full discretion in asking for additional documents, they are using only some of it to decide how they will conduct interviews and none for deciding whether they are going to interview candidates.

Table 6.1

Forms of Procedural Discretion; their Availability and their Use in Immigration and Visa Officers's Jobs¹⁵

Procedural discretion	Canada	Quebec	The United States
Interviews	High	High	None
Length	High	High	Moderate
Questions	High	High	Moderate
Additional documents	High	High	High

6.2 Final decision discretion

In contrast to procedural discretion, final decision discretion refers to making overall judgments of immigration cases by field level officials. Its use is more serious than discretion on procedures since it can lead to the immediate refusal or acceptance of would-be immigrants. In Canada (including Quebec), immigration officers have been using a point system grid to evaluate

independent immigrants. As it is explained in previous chapters, candidates must obtain a certain number of points or units of assessment if they want to be accepted by Canadian and Quebec officials. However, even if a point system is employed to evaluate immigrants' applications, officers still have the right to recommend or accept candidates that do not get the required minimum of units of assessment. As the Canadian general procedural guidelines explain, "should an applicant fail to accumulate sufficient units of assessment to pass, the officer may feel that the units of assessment do not accurately reflect the applicant's ability to successfully settle in Canada. The officer may still pass the applicant "on discretion" provided that the opinion is agreed to, in writing, by a senior officer".¹⁶ Similarly in Quebec, "L'article 40 du règlement permet au ministre, ou aux fonctionnaires à qui a été délégué ce pouvoir dérogatoire, de délivrer un CSQ à un immigrant indépendant travailleur qui ne rencontre pas les exigences de la grille de sélection, s'il est d'avis que le "résultat obtenu ne reflète pas les possibilités de ce ressortissant de s'établir avec succès au Québec".¹⁷ This is what I call "final decision discretion" and what agents label "positive discretion" or "pouvoir dérogatoire" (derogatory power).

In the same way, agents can exercise "negative discretion" by refusing a candidate who has obtained the required minimum units of assessment, if they judge that settlement in the country of adoption will be problematic.¹⁸ Most agents mentioned that "negative discretion" was not often used; in contrast, "positive discretion" was more common, albeit not very frequent. As a federal officer stated: "Si je me sentais davantage libre, je ferais plus de discrétion négative. C'est très difficile d'utiliser la discrétion négative et surtout pour les gens d'affaire. Notre définition est plus rigide qu'au Québec".¹⁹ Another mentioned that:

Si l'applicant a déjà 70 points mais que tu trouves que ce n'est pas une bonne personne, tu peux faire une recommandation négative mais c'est rare. Cependant, si l'applicant n'a pas 70 points mais tu penses que cette personne va très bien s'adapter au pays, tu peux utiliser la dérogation positive. Tu fais une recommandation au chef de programme en faveur de l'applicant.²⁰

In the United States, officials do not utilize a point system grid, nor do they exercise final decision discretion per se. Usually, candidates who meet the requirements of the legislation will get their visa. Thus, a person who qualifies for a family based or an employment based category and who is not ineligible will likely be accepted by the visa office.²¹ Unlike Canadians, American officers cannot use their authority to stop a candidate on the basis of a judgment of their settlement capacity unless it is clear that this person will be a public charge for the country. As it was explained in preceding chapters, even in those situations, they have to return the petition to the Immigration and Naturalization Service with their recommendations since INS officers are the ones who are authorized to make this kind of decision. Similarly, agents cannot use their discretion to give visas to candidates whom they judge suitable for the country if, by law, they are ineligible or if they do not qualify for an immigration category.

Thus, this second form of discretion distinguishes clearly the United States from Canada and Quebec. Like procedural discretion, this type of discretion helps to confirm our first trend suggesting that Canadian officials operate with a significantly greater measure of discretion than their US counterparts. In contrast, the third form of discretion called selection grid discretion, which is discussed in the next section, focuses strictly on the use of discretion in Canada and in Quebec because it is not available in the United States. It verifies our second suggested trend that Quebec officials enjoy a larger discretionary power than Canadian agents.

6.3 Selection grid discretion

An important characteristic of the selection process distinguishing Canada and Quebec from the United States is the use of a selection grid to assess independent immigrants' applications. This tool, which does not exist in the American selection process, contains some criteria that are less clear and more subjective than others. This, in turn, creates a good terrain for field discretion. When immigration officers were asked if they had some discretion in the selection process, both Canadian and Quebec agents answered positively. They argue that most discretion is found in the personal suitability or adaptability factor of the respective Canadian and Quebec's selection grids.

The federal immigration procedures specify that Canadian immigration officers will look at four attributes to assess the criterion of personal suitability. Their determination will be based on the qualities of adaptability, motivation, initiative and resourcefulness.²² As it is developed in Chapter Four, those characteristics, on which agents must base their decision, are subjective and they are not defined with any precision in the guidelines. As federal agents said in interview when talking about this factor:

*C'est ton jugement et tu ne peux pas vraiment enseigner le jugement. C'est évident que deux agents peuvent avoir une opinion différente pour le même cas.*²³

*We look at initiative, creativity, resourcefulness. At the bottom line, you have feelings of how well the person will adapt.*²⁴

There is even a field officer who argued that the personal suitability factor leaves such a "huge" space for discretion that this criterion can become eliminatory if they want it to be.²⁵ One of them

also mentioned they were mostly using their “gros bon sens”(common sense) to assess this factor which, in fact, is another way to say that their main tool involves essentially their personal judgment.

Therefore, it seems evident that the evaluation of this criterion is, for most field level officers, a subjective act. In fact, in using repetitively the words “judgment”, “feelings” and even “discretion” when describing this criterion, federal agents reveal its subjective character. Moreover, since the suggested qualities that immigration officers must use to assess this factor are not defined with precision in the guidelines, it would seem that agents have to develop their own set of definitions.

Consequently, different definitions of personal suitability as well as different ways of assessing this criterion are used by federal agents. For example, to evaluate the adaptability’s quality of a candidate to immigration, field officers look at his probabilities of finding a job in Canada while others consider the applicant’s willingness to learn as well as his readiness to change his career path. Thus, a candidate who demonstrates he is prepared to make some efforts to adjust to the Canadian job market shows, according to many immigration officials, his capacity to adapt well in the country.

Il faut aussi qu’ils (candidates) soient réalistes et qu’ils montrent qu’ils n’ont pas peur de travailler et de changer d’emploi. Si la personne est ingénieur et veut faire 60,000 dollar tout de suite en arrivant au pays, ça sème des doutes... c’est-à-dire qu’il semble évident que cette personne ne veut pas faire autre chose. Ça arrive souvent qu’on rencontre des personnes comme ça. Ils ne le disent pas clairement mais on le devine.²⁶

A person who has never traveled outside his country of origin can also get, by some federal officials, a low mark under the adaptability criterion.

Moreover, agents who focus on the motivation attribute look principally at the reasons

explaining why a person wants to quit his country of birth. If federal officers judge the candidate's ideas about settling in a new country to be unrealistic, they are likely to award him a lower score under this factor. In the same way, Canadian agents consider the level of preparation of a candidate who plans to immigrate. If the latter seems to know little about Canada and he has not taken the time to do some research about the life in his aspired country of adoption, this will be considered as a bad sign by immigration officers. As one federal agent mentioned in interview: "J'essaie de capter la motivation des gens. Si la personne n'a fait aucune recherche sur le Canada et si elle ne connaît rien (about the country), c'est très mauvais pour son évaluation".²⁷ Another suggested that an applicant who is not prepared, who wants to immigrate because he does not like his country of origin and who has a spouse ambivalent about immigrating to another country is not likely to be regarded as an asset for Canada.

Furthermore, while some federal agents use the four suggested qualities (adaptability, motivation, initiative and resourcefulness) to assess the chances of a person to adapt well in Canada, others work only with one or two of those pre-established indicators and choose to invent new ones. As a matter of fact, Canadian immigration officers suggested that someone who displays characteristics such as innovation and dynamism is a good candidate for immigration. Additionally, a candidate who seems to have a positive attitude and who has a good support network in the country is likely to get a good mark by the immigration officer.

In brief, both suggested attributes and those developed by field officers are used in a subjective manner. Evaluating whether someone is adaptable or motivated depends, most of the time, on the evaluator since the guidelines fail to provide agents with objective tools. The fact that the Canadian guidelines do not offer clear definitions for the qualities of adaptability,

motivation, initiative and resourcefulness allows agents to develop their own. Thus, not only are those criteria interpreted and evaluated in different ways but are based on very subjective grounds. This situation creates a perfect opportunity for the exercise of field level discretion.

Interviews with Quebec officers also revealed that discretion is mostly associated with the factor of adaptability of the selection grid and the outline of this factor was very similar. The main difference is that Quebec specifically mentions personal qualities of candidates, knowledge of the province, connections with the province and the assessment of the applicants willingness to stay in the province.²⁸ In Canada there are some of the factors which officers use but they are not explicit.

Moreover, similarly to the federal guidelines, the Guide des procédures d'immigration du Québec does not provide agents with specific information on how to evaluate the indicators of adaptability. As a consequence, many Quebec immigration officials suggested that their personal and professional judgment is likely to be their main reference when evaluating the factor of adaptability. When asked about how they measure this factor, most agents answered they were using their judgment: "C'est beaucoup de jugement personnel et notre marge de manoeuvre est grande. C'est de voir si la personne est dynamique et si elle est capable de s'établir avec succès".²⁹

On fait appel à notre jugement tout le temps. Par exemple, un asiatique à Hong Kong qui a un "stand" dans la rue et qui fait des millions. Est-ce qu'il a vraiment une bonne expérience de gestion? J'utilise mon jugement (to make a decision). Aussi j'utilise mon jugement pour évaluer les projets d'affaire, l'expérience et sa connaissance du Québec.³⁰

In addition, most Quebec agents specified that among the four indicators suggested by the guidelines to assess the adaptability factor, there were two that they considered as being more

subjective. Those are the personal qualities and the motivation of the candidate to immigration. As an immigration official said: “ On refuse souvent des candidats sur leur personnalité. C’est notre discrétion. C’est un espèce de fourre-tout.(...) Normalement, on sélectionne ceux qui sont les plus motivés et ceux qui ont une connaissance du Québec.”³¹ Thus, many field officers consider the personal qualities factor as being a category allowing them to look at all kind of qualities a candidate can display. Similarly to their federal colleagues, several agents focus on the applicant’s level of flexibility. A would be immigrant who is considered to be a good asset for the province must, according to those officers, have the capacity to adapt quickly to a new job market and to a new culture. In order to verify whether candidates can adapt to a new job, officers ask questions such as Would you be ready to start at the bottom of a new organization? What are you looking for in terms of job in Quebec? Would you be ready to go back to school? Can you work with other people? If they feel the applicant is open to different kinds of jobs and is even willing to go back to school to learn or develop new skills, immigration agents are likely to offer him a chance.

To evaluate the capacity to integrate well in a new society, with a new culture, agents will look at the general behavior of newcomers. Again, the guidelines do not provide agents with good and precise indicators allowing them to decide if someone will integrate well into the Quebec society. Interviews with Quebec immigration officials revealed that the assessment of this indicator is subjective and often decisions will be based on the agent’s “gut feeling”.

On (immigration officers) porte un jugement sur son établissement. Je suis ouvert à l’immigration mais il faut qu’ils (newcomers) s’intègrent bien. Par exemple, j’ai eu à Boston une entrevue avec un couple musulman et la femme qui portait le voile. La femme était médecin et l’homme informaticien. J’ai dit à la femme qu’elle ne pourrait pas pratiquer sa profession au Québec et son mari a répondu que ce n’était pas grave. Il semblait très autoritaire et pas très égalitaire. C’est

vrai qu'il faut être prudent mais il ne faut pas se faire passer un sapin non plus. J'ai refusé leur application. Il faut, comme dans tout, garder la capacité d'ouverture mais aussi être prudent. On en parle avec prudence mais ici les femmes ont l'égalité et je leur ai dit que la situation de la femme fait partie du contrat moral lorsqu'ils immigreront ici.³²

Nowhere in the guidelines do we find that a Muslim woman who wears the veil and who has husband who "seems" authoritarian is not likely to adapt well to Quebec society. In this case, it is clear that the immigration agent used his discretion to refuse the immigration of this couple to the province. Although federal officers use their judgment to make all kind of decisions, an example of discretion of this type was not mentioned.

The personal qualities factor is also evaluated in looking at the realism of the applicant's project of immigration. Quebec's officers examine the objectives of the newcomer in relation with his skills and abilities in order to judge if the latter has a realistic understanding of his projected new life in Quebec. As one interviewee mentioned:

On veut évaluer si le candidat possède l'armature pour réussir son projet d'immigrant. Comment il se projette? Entrevoit-il des difficultés dans son projet? Que veut-il faire au Québec? On associe ses réponses à ses qualités et à son profil. On veut évaluer son réalisme face au projet.³³

Lastly, would be immigrants could be assessed on their general attitude toward the agent and on how he is presenting himself while he is interviewed.

J'ai eu un entrepreneur qui était insultant pendant tout l'entrevue. Je lui ai refusé son certificat de sélection du Québec puisque je savais que c'était un farfelu. Tu vois l'histoire de gars et ça se sent ces choses là!³⁴

Aussi la présentation d'une personne ça compte! Une fois j'ai eu un gars qui s'est présenté pas rasé, il puait et il avait tout l'air d'être tout juste sorti des montagnes...³⁵

Other officers suggested that applicants who seem aggressive, extremely timid and nervous during the interview are likely to lose some points under the personal qualities indicator. As has

been demonstrated, evaluating newcomers' attitudes and ways of presenting themselves is hardly done in an objective manner leaving considerable room for the agent's discretion. Again, this distinguishes Quebec officers from federal agents who did not mention they were looking at how applicants were presenting themselves. Although we could assume that federal officers did not want to admit in interview that the way a newcomer looks influence their decision, I suggest that the factors of organizational resources and the concern for integration which will be discussed in Chapter Seven, help to explain this difference found between Quebec and federal officers' practices.

In addition to the assessment of personal qualities, Quebec officers consider that the other indicator of adaptability which is highly subjective is the motivation of candidates. Newcomers are evaluated on how they seem motivated to adapt and contribute to the Quebec society. Immigration officers will look at their level of preparation and the reasons which motivate their desire to immigrate in Quebec. As an agent specified: " Si tu vois que le candidat est venu parce que sa mère lui a dit, à mon avis, cela ne démontre pas une très grande motivation ou une grande force personnelle."³⁶ Another mentioned that: " On regarde les motifs d'immigration. Si la personne ça fait 40 ans qu'elle vit dans le même village ou si elle veut fuir sa famille, ce n'est pas, selon moi, de très bons motifs pour immigrer".³⁷

Finally, field officers look at the candidates's motivation to start a new life in Quebec. They want to make sure that the applicant is not using the province as a springboard to move to another Canadian province. The Canadian constitution, with its mobility rights, gives to newcomers the opportunity to move wherever they want as soon as they receive their immigrant visa. Many immigration agents reported that they had to be cautious about this situation: " Si tu

sens qu'il (newcomer) veut aller à Vancouver dès l'obtention de son certificat de sélection, tu vas le refuser. On n'est pas dupe quand même!"³⁸ Another agent suggested that accepting immigrants who were moving almost automatically to another province was costly for the Quebec selection system: "On leur demande aussi pourquoi il veut (newcomer) venir au Quebec? Pourquoi pas une autre province? Ça c'est pour s'assurer qu'on ne sélectionnera pas une personne qui va déménager tout de suite ailleurs. Ça coûte cher des cas comme ça".³⁹ In contrast, this preoccupation does not influence the work of federal officials at all.⁴⁰

6.3.1 Differences between the federal government and Quebec selection grids

As we have seen, the assessment of the federal criterion of personal suitability and the Quebec's factor of adaptability, except for a few differences, is done in very similar ways. As a matter of fact, both Canadian and Quebec external officers focus on indicators such as flexibility, motivation, dynamism, personal qualities and realism to determine if candidates for immigration are likely to settle well in their country, or province, of adoption. It has been showed that in addition to using different and often personal definitions of those factors of selection, immigration agents work with indicators that are highly subjective. Therefore, both the Canadian and the Quebec selection grids, specially because of their criterion of personal suitability and adaptability, create a good terrain for the exercise of field level discretion.

However, what distinguishes those two selection systems is their selection grids and the weight given to the factors which are likely to open the doors to the use of discretion by external officers. A look at the federal and the Quebec selection grids demonstrates that in Quebec the weight assigned to factors which are more discretionary is heavier than in the federal selection process. In fact, while the federal grid awards 10 units under the factor of personal suitability, the

Quebec's selection grid reserves 31 units of assessment for the adaptability factor. This distinction exists also in other factors of the selection grids and in order to understand this we have to look at the selection criteria and the units of assessment awarded for each of them according to each category of independent applicants.

As explained in Chapter Four, federal external agents use nine factors to assess skilled workers' applications, four of which leave some space for the officer's judgment. Those criteria are experience, occupation, knowledge of official languages and personal suitability. It was also demonstrated that the number of units of assessment which are likely to be awarded according to the personal judgment of the immigration agent makes up a total of 43 out of 107 available units. Furthermore, both factors of experience and occupation are eliminatory, meaning that if applicants do not get the required minimum units under those criteria they will be barred for further processing.⁴¹ I suggest that this increases field officers' decision power. A low mark obtained under this factor will have important negative consequences for the applicant.

In contrast, in Quebec the criteria of the selection grid which are more discretionary are those of job⁴², professional experience, knowledge of languages, adaptability⁴³ and partner characteristics and the maximum number units awarded for each of those factors makes up a total of 68 out of 117 available points.⁴⁴ In percentage terms, this means that the room left for the agent's discretion in the federal grid can be translated by 40.2 while in Quebec it constitutes 58.2 percent of the total available number of units of assessment. Therefore, it seems that Quebec officers' discretion weighs heavier compared to their federal colleagues when they assess skilled workers' applications with the selection grid. Figure 6.2 illustrates this conclusion.

Table 6.2

**Comparison of Discretionary Factors in Selection Grid for Skilled Workers
- Canada and Quebec**

Skilled workers	Canada	Quebec
Experience	8	10
Occupation	10	none
Knowledge of official languages	15	21
Personal suitability/Adaptability	10	24
Job	none	3
Partner characteristics	none	10
Total	43/107	68/117
% of total	40.2	58.2

We find the same trend when we look at the entrepreneur category of applicant.

According to the federal selection grid, entrepreneurs are assessed on seven of the nine factors, three of which are more discretionary. Those criteria are experience, knowledge of English and French languages and personal suitability and they make up a total of 33 out of 87 available units. In contrast, entrepreneurs in Quebec are assessed on 4 discretionary factors which are management experience, adaptability, language and aptitudes for realizing a business project. Those criteria generate a total of 83 out of 123 available units of assessment.⁴⁵

Furthermore, the Quebec guidelines specify that there is a required minimum number of units for the indicators of management experience and aptitudes for realizing a business project. Those indicators are eliminatory and this increases the decision power of the immigration agent. A Quebec officer who decides to give a lower number of units under those indicators will automatically disqualify the entrepreneur for immigration. A greater decision power can create

new opportunities for field level discretion. Thus, a look at the criteria used for the assessment of entrepreneur's applications reveals that, again, Quebec agents' discretion seems to matter more, almost two times more, than the discretion of federal officers. Figure 6.3 illustrates this conclusion.

Table 6.3
Comparison of Discretionary Factors in Selection Grid for Entrepreneurs
- Canada and Quebec

Entrepreneurs	Canada	Quebec
Experience	8	none
Knowledge of official language	15	23
Personal suitability/Adaptability	10	26
Management experience	none	10
Aptitudes for realizing a business's project	none	24
Total	33/87	83/123
% of total	38	67.5

This distinction between the room left for Quebec and federal external officers' discretion is less clear in the selection of self-employed applicants. As a matter of fact, federal officers have more opportunities to use their own judgment when they select this type of immigrant than when they deal with the other categories of "independant" newcomers. In addition to the factors of experience, occupational demand, language, and personal suitability which leave some room for the agent's personal judgment, there is a bonus of 30 units of assessment if, in the officer's

opinion, the applicant will be able to become successfully established in his occupation or business in Canada. This means that there are 73 out of 127 units of assessment which open the doors to federal officer's discretion when dealing with this type of application.

In Quebec, the number of points which can be attributed on subjective grounds is also high when we consider the selection grid specific to self employed applicants. Immigration officer have the opportunity to use their discretion to assess five criteria of the grid: management experience, professional experience, adaptability, language and aptitudes for realizing a business project. Thus, there is a total number of 94 out of 123 available points which can be presumed to open the door to field level discretion. Additionally, the criteria of management experience as well as the one of professional experience and aptitudes for realizing a business project are eliminatory. Figure 6.4 illustrates the distribution of units of assessment for this category of immigrant.

Table 6.4

**Comparison of Discretionary Factors in Selection Grid for Self-Employed
- Canada and Quebec**

Self-Employed	Canada	Quebec
Experience	8	10
Occupational demand	10	none
Knowledge of official languages	15	23
Personal suitability/Adaptability	10	26
Aptitudes for realizing a business's project	none	20
Management experience	none	15
Bonus	30	none
Total	73/127	92/123
% of total	57.5	74.5

In summary, in using this classification we can recognize three broad types of discretion: procedural discretion, selection grid discretion and final decision discretion and it is clear that the use of any has significant ramifications. Furthermore, this classification helps to distinguish implementation in Canada from that in the United States. Interviews reveal that Canadian and Quebec external immigration officers exercise the three types of discretion whereas American agents are limited to procedural discretion.

Figure 6.5 illustrates these conclusions in presenting the three types of discretion as well as their use in Canada, Quebec and the United States. It specifies also that if Americans use their discretion to choose the way they will conduct interviews and whether they will ask for additional documents, they are not authorized, like their Canadian and Quebec counterparts, to use it for deciding to interview or not. Besides, this classification indicates that Canadian officers have less discretion while using the selection grid than their colleagues in Quebec. As a matter of fact, an analysis of those criteria of selection, which leave some space for field level discretion, demonstrates that while they are important for both the Canadian and the Quebec selection system, they weigh heavier in Quebec.

The use and availability of those three types of discretion can be influenced by various organizational, contextual or individual factors. The next chapter begins with a discussion of the most common explanatory factors for when discretion is likely to be available for street level officials. Second, it will consider additional factors for the use of discretion that are particular to the immigration policy area. More specifically, this chapter will aim at explaining why Canadian officials operate with more discretion than their US counterparts and why Quebec officials seem to enjoy more discretion than Canadian agents.

Table 6.5

Types of Discretion and their Availability in Canada, Quebec and the United States

Types of discretion	Canada	Quebec	The United States
Procedural discretion	High	High	Moderate - high (Lower than in Canada and in Quebec)
Selection grid's discretion	Moderate - high (Lower than in Quebec)	High	None
Final decision discretion	Moderate - low	Moderate - low	None

Appendix 6.1: Figure Representing the Units of Assessment Granted Under the Criteria Called Aptitudes for Realizing a Business's Project

Evaluation's criteria	Maximum number of units	
<i>*Knowledge of the business 's context in Quebec</i>	<i>Entrepreneur / self-employed</i>	
	<i>6</i>	<i>5</i>
<i>*Market exploration</i>	<i>6</i>	<i>5</i>
<i>Financial resources</i>	<i>6</i>	<i>5</i>
<i>*Project's feasibility and relevance</i>	<i>12</i>	<i>10</i>
Required total minimum points	18/30	15/25

Source: Ministère des relations avec les citoyens et de l'Immigration, *La nouvelles Grille de sélection; modification réglementaire*, (Quebec: Ministère des relations avec les citoyens et de l'Immigration, 1998), 19.

End notes

1. For a discussion of the relationship between the “rules in use” and the “rules in law”, see Mark Sproule-Jones, *Governments At Work; Canadian Parliamentary Federalism and Its Public Policy Effects*, (Toronto: University of Toronto Press, 1993).

2. Interviews conducted with Canadian immigration officers from the Canadian Consulate General in Buffalo.

3. “ The modification of the regulations in 1996 has changed and reduced our discretionary power very much. It is very frustrating for the agents. Before, the criterion of adaptability was eliminatory and the candidate who had 15 out of a total of 22 points was accepted. Before, you were able to use this discretion. Now, sometimes we are cornered and we have to manipulate the points of the selection grid. I play with the points when I have to.”

Interview conducted with a Quebec agent from the Ministère des Relations avec les citoyens et de l’Immigration, September 16, 1998, Montréal.

4. “Our opinion is not taken into account! And it is worst with the new regulations. Before, we had some discretion because the criterion of adaptability was eliminatory. The department is afraid of the newspapers and of the pressure groups so it removed this power from our hands”. Interview conducted with a Quebec agent from the Ministère des Relations avec les citoyens et de l’Immigration in Montréal.

5. This is specified in provision 42.62 (a) of volume 9 of the FAM

6. Interview conducted with an American visa officer from the Department of State in Washington.

7. Interviews conducted with Canadian immigration officers from the Canadian Consulate General in Buffalo.

8. Interview conducted with a consul at the American Consulate General in Toronto.

9. Interviews conducted with an American visa officer at the Department of State in Washington.

10. “In third world countries, interviews are longer because the integration’s ability of newcomers is more difficult to assess. For example, a Sri Lanka’s diploma will not be recognized as one from Germany. Even the professional experience of candidates in third world countries are not as recognized as it is in first world countries. The fact of being in remoted areas necessitates additional verifications of details. We also ask them (candidates) more specific questions”.

Interview conducted with a Quebec’s immigration officer from the Ministère des relations avec les citoyens et de l’Immigration in Montreal.

11. As mentioned in Chapter three, employment based applicants at those foreign nationals who want to immigrate to the United States because they have a permanent employment opportunity, or because there is an employer who wants to sponsor them. In Canada, those are applicants are called “independent” immigrants.

12. A story told by a Canadian immigration officer.

13. Interviews conducted with an American visa officer at the U.S. Consulate in Montreal.

14. Most of the time, in both countries interviews with business people tend to be more complex and they also tend to be longer.

15. A first draft of this figure was presented in a paper presented to the Public Administration Section for the Canadian Political Science Association Annual General Meeting, “Does Administrative Discretion Matter: Impact on Immigration Policy in Canada and the United States”, Sherbrooke, Quebec, June 1999.

16. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 22.

17. “ Article 40 of the regulations allows the minister or a delegated civil servant to deliver a Quebec selection certificate to an independent worker immigrant who does not meet the selection grid’s exigencies if he thinks that the total of the points does not reflect the candidate’s capacity to settle well in Quebec”.

Ministère des Relations avec les citoyens et de l’Immigration, 1998, *Guide des Procédures d’immigration; Programme de recrutement et de sélection des candidats indépendants* composante 3, chapitre 2, (Quebec, Ministère des Relations avec les citoyens et de l’Immigration), 27.

18. “The Canadian guidelines states that “the reasons an agent have to believe an immigrant cannot become successfully established must be defined in the economic sense. The reasons should not include factors such as the immigrant will not be a good neighbor or that an immigrant is a bad or immoral person based on his past conduct”.

Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 23.

19. “ I would exercise negative discretion more if I would feel freer. It is very difficult to use negative discretion and specially for business immigrants. Our definition (of business immigrants) is more rigid than the one in Quebec”.

Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada in Ottawa.

20. “If the applicant has already accumulated 70 points but you think he is not a good candidate, you can recommend to your supervisor to refuse him but this is rarely done. However, if the applicant does not have 70 points but you think he would adapt well in the country, you can use

your positive discretion. You recommend the applicant to your supervisor”.

Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada in Ottawa.

21. A newcomer will be considered as being ineligible on the basis of communicable diseases of public health, criminal behavior, alcohol or drug abuse, physical mental disorder that is harmful to the property, safety or welfare of the applicant or others and probability of becoming a public charge. See article 19 (1) in the Immigration Act. Department of Justice Canada, *Immigration Act* in *CD-ROM: Consolidated statutes and Regulations of Canada*, (Ottawa: Department of Justice Canada, 1999).

22. Citizenship and Immigration Canada, Immigration Manual, “Processing Independent Immigrants”, *Overseas Processing (abroad only)*, 22.

23. “ It is your judgement (opinion) and you can not really teach how to use your personal judgment”.

Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada in Ottawa.

24. Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada in Ottawa.

25. Interview conducted with a former field officer who now occupies another position in Citizenship and Immigration Canada in Ottawa.

26. “Candidates must also be realistic and they must show they are not afraid to work and they are willing to get a new job. If someone is an engineer and he wants to make \$60,000 right the first year of his arrival in the country, this raises some doubts.... It seems obvious that this person is not open to do different things. This happens often that you meet applicants like that. They do not say it clearly but you can guess (that they are not willing to adapt very well to new things)”. Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada in Ottawa.

27. “ I try to capture the motivation of applicants. If the person has not done any research about Canada and if she does not know anything about the country, it is very bad for her evaluation”. Ibid.

28. The guidelines mentions also that to determine whether a foreign person has the personal qualities required to adapt well in his or her province of adoption, immigration officers ask simple questions for measuring indicators such as flexibility, sociability, dynamism, initiative, perseverance, self-confidence, realism and maturity. Ministère des Relations avec les citoyens et de l’Immigration, 1998, *Guide des Procédures d’immigration; Programme de recrutement et de sélection des candidats indépendants* composante 3, chapitre 6, (Quebec: Ministère des Relations avec les citoyens et de l’Immigration, 1998), 20

29. "We often use our personal judgment and our margin for maneuvering is wide. We have to assess the person and determine if he is dynamic if he is able to settle with success".

Interview conducted with a Quebec's immigration officer from the Ministère des Relations avec les citoyens et de l'Immigration in Montreal.

30. "We use our judgment all the time. For example, an Asian from Hong Kong who is a street vendor stand and who makes millions. Does he really have a good management experience? I use my judgement to make a decision. Also, I use my judgment to assess business projects, experience and knowledge of Quebec".

Ibid.

31. "We often refuse candidates because of their personality. It is our discretion. It is a kind of holdall(...) Usually, we select those who are the most motivated and those who have a good knowledge of Quebec".

Ibid..

32. "We (immigration officers) judge the ability of the candidate to settle with success. I am open to immigration but they have (newcomers) to integrate well. For example, I had, in Boston, an interview with a Mussulman couple and the wife was wearing the vale. The wife was a doctor and the man was a computer technician. I said to the woman that she could not practice her profession in Quebec and her husband answered that it did not matter. He seemed very authoritarian and not in favor of egalitarian relationships. This is true that we have to be careful but we are not stupid. I refused their application. We have to stay open but we also have to be careful. We are careful about this but we still have to explain applicants that here women are equal to men and that if they immigrate here they have to accept this".

Ibid..

33. "We want to determine if the candidate has the necessary background to succeed with his immigration project. How does he see it? Does he foresee the difficulties of his project? What does he want to do in Quebec? We match his answers to his qualities and to his profile. We want to evaluate his realism and the practicality of his project."

Ibid.

34. "Once I had an entrepreneur who was insulting during the interview. I refused to grant him a Quebec selection certificate since I knew he was a weirdo. You understand the story of the guy (applicant) and you can feel it!"

Ibid.

35. "How a person presents himself is also important! Once, I had a guy who came to the interview and he was not shaved, he was not smelling well and he looked like someone who just came back from the mountain..."

Ibid.

36. "If you see that the candidate came because his mother told him to come, this, according to me, does shows that the candidate is not motivated and that he lacks personal strength".

Ibid.

37. “We look at the motives of immigration. If the applicant has lived in the same village for 40 years and if he wants to run away from his family, those are not, according to me, very good motives for migrating.”

Ibid..

38. “If you feel he (newcomer) wants to go to Vancouver as soon as he obtains his selection certificate, you will refuse him. We are not dupe!”

Ibid.

39. “ We are also asking him why he wants (newcomer) to come in Quebec? Why not another province? We do this to make sure that we will not select people who will move to another province right after having received their selection certificate. Because cases like those cost a lot of money”.

Ibid..

40. Chapter Seven will discuss this issue in more details.

41. Those factors which are eliminatory allow immigration agents to stop the processing of files if they think applicants deserve a low mark under those factors. Candidates who do not receive the required number of units of assessment under those factors will be rejected. Entrepreneurs and self-employed are also required to get a minimum of units under the factor of experience.

42. This factor will be discretionary strictly for applicants who apply as workers who have a professional employability and mobility's profile. I consider about half of the maximum number of units of assessment awarded under this criterion to be subjective.

43. I consider that immigration officers can use their discretion to award 26 units of assessment on 31 available under this factor of “adaptabilité”.

44. Similarly to the federal grid, applicants are required to get a minimum of points under the factors of experience and job if they want to get their certificat the sélection du Québec (Quebec selection certificate).

45. Appendix 6.1 illustrates how the units of assessment are distributed under the factor of aptitudes for realizing a business's project. Three of the four indicators used to assess this factor are more discretionary and they constitute a total maximum number of 24 units of assessment. Those indicators are marked by an asterisk.

Chapter Seven

Explaining Field Level Discretion

This chapter focuses on the variables which influence the exercise of field level discretion and is divided in two main parts. The first section identifies the common factors which have been recognized in the literature for creating favourable conditions for the exercise of discretion in field offices. While some links between those factors and the selection process of immigrants are established in this first section, the second addresses, more specifically, the use of discretion by immigration and visa officers. In the second section, a model using four specific variables explaining the differences in the use and in the availability of immigration agents' discretion in Canada, Quebec and the United States is presented. It is argued that political institutions, organizational design, organizational resources and a concern for integration account best for the facts that Canadian immigration officers operate with a more significant measure of discretion than their US counterparts while Quebec officials seem to enjoy a larger discretionary power than Canadian agents.

7.1 Factors affecting field-level discretion

The literature identifies three main factors which influence discretion. The first one refers to policy instructions that are vague, ambiguous, or inconsistent. This policy vagueness results from different causes. In some cases, it is an unwillingness to address the goal of the

program, in others it is multiple and conflicting goals. The outcome in those cases is to give considerable freedom to street-level bureaucrats.¹ While this is sometimes viewed as being a form of bureaucratic pathology, it is also possible that the vagueness and ambiguity provide the freedom necessary to adapt policies to different and complex situations.²

This factor certainly applies to the immigration context. Immigration policy must satisfy many different interests (that could be opposed to each other) such as business, ethnic groups, sub-national governments and intergovernmental bodies prioritizing refugees and humanitarian issues. James Wilson in his study *Bureaucracy: What Government Agencies Do and Why They Do It* talks about the conflicts between the Immigration and Naturalization Service's goals:

The Immigration and Naturalization Service (...) has vague and competing goals: "Keep out illegal immigrants, but let in necessary agricultural workers"; "carefully screen foreigners seeking to enter the country, but facilitate the entry of foreign tourists"; "find and expel illegal aliens, but do not break up families, impose hardships, violate civil rights, or deprive employers of low-paid workers."³

Such contradictions complicate the task of formulating clear and consistent immigration policy. Moreover, because the immigration issue is characterized by such competing interests, politicians tend to formulate a general policy that leaves the details to administrators in order to avoid blame.

Policy instructions that are found to be vague and ambiguous are likely to increase the three types of discretion, namely procedural discretion, selection grid discretion and final decision discretion. In both Canada (including Quebec) and the United States, unclear or even the absence of instructions permit officers to use their discretion to choose how they conduct interviews and whether, or not, they ask for additional documents. The interviewing procedures

are mostly left to the agent's discretion who decides what, and how many, questions will be asked of the candidate.⁴ As a Canadian immigration officer revealed, the kind of questions they ask to applicants varies and, often, it depends on the agent's own style.⁵ This goes even further for Canadian and Quebec immigration officials who use their judgment to decide if they will interview applicants or do only a selection on documents.

Vagueness also has an impact on final decision discretion. As the general procedural guidelines and *le guide des procédures d'immigration du Québec* (Quebec Immigration Procedures Guide) mention, Canadian and Quebec agents can use their discretion to accept or reject candidates on the basis that the selection grid does not reflect the personality and the capacity of the applicant to settle with success in Canada or in Quebec. Nevertheless, these rules are not very precise in the sense that evaluating the settlement capacity of a would-be immigrant can be very subjective. As has been shown, field level officials have many different subjective ways to estimate the settlement capacity of a candidate, thus creating favourable conditions for the exercise of field level discretion.

Furthermore, the vagueness or the lack of precision of policy instructions increase selection grid discretion. As was discussed in Chapter Six, some criteria in the Canadian and Quebec selection grids are not well defined either in the legislation, or in the administrative procedures.⁶ Consequently, immigration and visa officers define the criteria based on their own personal and professional judgment. We will come back to this point in the second section of this chapter when the impact of political institutions on the level of clarity of rules, laws and administrative procedures will be discussed.

The second common factor identified by the literature which contributes to increasing

street-level discretion is the physical distance between policy formulators (the head office) and policy implementers (immigration or visa officers). As Blau and Scott suggest: "If physical separation limits supervisors to intermittent contacts with subordinates, the latter often come to exercise more discretion than the official definition of their responsibility would warrant".⁷

In fact, distance impedes the capacity of policy formulators to monitor and control policy implementers.⁸ Monitoring is the information gathering process by which policy-makers know what is happening with a policy or a program. The fact that policy designers are often far from the implementers reduces the control they can have on the implementation of a policy. Moreover, it is difficult to monitor field-level bureaucrats when the criteria of success or performance of a policy are rarely clear and are, therefore, hard to measure.⁹ Monitoring is also difficult when the bureaucrat has the discretion not to deal with a case, an issue of omission, with the effect that the existence of the case may not be even known.

The level of control that policy makers can exercise on policy implementers is also influenced by the factor of distance. Control is the ability to change outcomes as a result or, for example, either monitoring or the pre-audit socialization of bureaucrats. Again, distance plays a role but what may be more important is the efficiency of the incentives available to policy makers to control policy implementers' behavior. Lindblom points out that: "...the incentives that the authority system creates--for example pay, promotions, prestige--never replace but only supplement the incentives already governing the administrator's behavior. Often they do not add enough to gain control over his behavior".¹⁰ Control is also difficult in cases where the final outcomes of policies are not known for some time or there are problems of policy overlap.¹¹

Immigration or visa officials who are doing the selection outside the receiving country

work in overseas offices manifestly far from immigration headquarters. Given the distance, a system allowing head office officials to control and monitor overseas officers becomes key. When asked about how supervisors were controlling and monitoring their work, immigration officers automatically referred to their individual evaluation. In both countries, many immigration and visa officers mentioned that their yearly work evaluation process was experiencing some difficulties. In Canada and in the United States, the evaluation of field officers is systematically done once a year. For example, Canadian officers are evaluated according to four criteria: (1) client service, (2) planned organizing control, analyzing and evaluation, (3) communication team work and (4) interpersonal skills.

However, several immigration officers revealed that this process was rigorous and too complex without measuring the real quality of their work: “L’évaluation est une fois par année. Les “output” sont bien mesurés mais pas notre qualité de travail....”.¹² “L’évaluation est très complexe. Elle est écrite et très détaillée mais je ne suis pas certaine qu’elle mesure bien la qualité de mon travail”.¹³ Other Canadian agents mentioned that even if the evaluation process was regular, it was far from being genuine.¹⁴ They argue that its impact on career is so harsh that supervisors are not encouraged to give bad evaluations. Thus, without a proper evaluation, control by the head office becomes difficult.¹⁵

Quebec agents experience similar problems with their evaluation process. They mentioned that it does not measure the quality of their work and that this process is often very subjective: “Ça (the evaluation process) varie beaucoup selon le superviseur. Par exemple, tu as le superviseur qui te donne une bonne évaluation parce qu’il ne veut pas de problème ou celui qui a des comptes à régler (and will give you a bad evaluation)”.¹⁶ Agents reported also that in

contrast to their federal colleagues, the evaluation process in Quebec is not conducted on a regular basis. Therefore, without even a regular evaluation process, control by the head office is likely to be even worst in Quebec than it is in the federal system.

Furthermore, a good number of immigration and visa officials, from both countries, related that overseas offices have, in fact, a certain level of autonomy from the head office: “On a l’habitude de travailler avec beaucoup d’autonomie...”.¹⁷ According to agents, each office has its own way of doing things and the procedures used are greatly influenced by the country in which they are doing the selection. As an example, in third world countries where the market for fraudulent papers is significant, more precautions will be taken by immigration agents and this can slow down and tailor the selection process. As a result, distance is likely to create procedural discretion. Since the assessment of the quality of the agents’ work is absent and the agents’ decisions about individual cases are not evaluated, or revised on a regular basis, this can also opens the door to final decision discretion and selection grid discretion.

The third factor which has been identified in the literature and which helps to protect and preserve street-level bureaucrats’ discretion arises when jobs create situations requiring responses with a human dimension. Lipsky summarizes this idea when he argues that “to the extent that tasks remain complex and human intervention is considered necessary for effective service, discretion will remain characteristic of many public service jobs”.¹⁸ As a Canadian agent reported: “ la grille de sélection est un indicateur mais notre décision se prend dans une zone autour de ça. Il n’y a pas de critères qui peuvent déterminer si ils (newcomers) vont bien s’établir ou non. Donc la discrétion ca permet d’atteindre les objectifs des lois même si les outils sont imparfaits”.¹⁹

Interviews conducted with immigration and visa officers in Canada, Quebec and the United States revealed that a rigid formula for selecting would-be immigrants is thought to be unworkable. Because no formula will ever really work, those field level officials argue that they need flexible legislation and procedures allowing them to use their judgment to adapt the selection process to the reality. As an agent from the Department of State argues: “Discretion is still an important tool and we could not function without it. We deal with human beings so we need flexibility... discretion is the grey area and no law is specific enough to avoid grey areas”.²⁰ Similar to the distance factor, a need for flexibility is likely to produce all three types of discretion.

In sum, the discussion of factors, which has been identified in the literature on discretion, gives us some hints on how they influence and create a fertile terrain for the exercise of discretion by field officers. It also makes some interesting links between those factors and the work situation of immigration and visa officers in Canada, Quebec and the United States. In fact, it has demonstrated that those three common variables have an impact on the three types of discretion: procedural discretion, final decision discretion and selection’s grid discretion.

However, this discussion does not allow us to understand why Canadian immigration officers operate with a more significant measure of discretion than their US counterparts and why Quebec officials seem to enjoy a larger discretionary power than Canadian agents. The next section tries to answer those questions. It presents four specific factors, which taken together, provide, I believe, a powerful explanation of the differences between the use of discretion by immigration and visa officers in Canada, Quebec and the United States.

7.2 Factors affecting immigration and visa officers' discretion

7.2.1 *political institutions*

The first important factor to consider is political institutions. This accounts for some of the differences distinguishing the exercise of discretion in Canada and in the United States. There is a fundamental difference in the relationship between the executive and legislative branches in a parliamentary system such as Canada and a presidential/congressional system as in the United States. A parliamentary system of government such as the one prevailing in Canada is characterized by a fusion of the executive and the legislative while in the United States those two branches are separate. As Weaver and Rockman argue those two types of government are also different in that:

In parliamentary systems, the head of government is chosen by the legislature and is dependent for continuation in office on maintaining the confidence of the legislature. In separation-of-powers systems, the chief executive is chosen independently of the legislature- usually by direct election- and serves a fixed term of office. The chief executive can neither dismiss the legislature and call for new elections nor be dismissed by the legislature without cause (...).²¹

Furthermore, compared to the United States, Canada, like most parliamentary systems of government, tends to have political parties which are much more cohesive. In fact, the political party, which forms the executive in Canada is responsible to the assembly and it must keep the confidence of the House of Commons. If the assembly believes the executive is not acting rightly, it can deny it its support by voting a motion of censure or by refusing assent to an important executive proposal which will result in the government's resignation.²² As a consequence, the executive has to ensure that its members will always adopt the party's positions and vote in their favor.²³ In the American system, the executive is not responsible to the

assembly but to the constitution and it does not need to win in the legislature on all important votes to stay in office. Consequently, legislators are more independent and free to vote according to their own or constituency beliefs and needs.

In Canada, the executive, because of its position in the legislature and because of the strong party discipline tradition, becomes, what Moe and Tsebelis call “a single veto player”. The status of a “single veto player” in the legislature has, according to both authors, a great influence on the level of details of bureaucratic procedures.²⁴ As a matter of fact, those authors explain that single veto players do not need bureaucratic procedures written into detailed laws for two reasons. First, in parliamentary systems, the executive has more opportunities to intervene directly in the implementation process of the new laws. Second, the fact that laws can be changed easily by the next government diminishes the attractiveness of spending too much time trying to pass detailed laws. As Tsebelis explains in his study called *Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism*:

Single veto players do not need detailed descriptions of bureaucratic procedures written into law. The party in power can decide how the bureaucracy is going to work, and for the bureaucracy it makes no difference if rules are written into law or come from a ministerial decision. In addition, crystallizing procedures into laws for the next government makes no sense, because the new government can write new laws with equal ease, or issue new ministerial instructions. For these reasons, single veto players have no need to restrict bureaucracies through legal procedures.²⁵

In contrast, systems of government which have multiple veto players such as the American separation-of-powers system will tend to have more cumbersome bureaucratic procedures. Formalization of achievements through detailed legislation is, in a separation of

powers government, much more attractive than it is in a parliamentary system. As a rule, changing the legal status quo in a system of separation-of-powers is very difficult. However, when legislation is passed in this kind of system, it becomes a good protection against future changes of policies or even reversal. As Moe explains:

One of the most important things to know about a separation-of-powers system is that it makes accomplishing anything through new laws- changing the legal status quo- very difficult. Conversely , when new laws are indeed achieved, the same system that made victory so difficult now works to protect these achievements from subsequent reversal. They become part of the legal status quo. As political actors struggle to harness public authority in pursuit of their own ends, therefore, they have strong incentives to embed their achievements securely in the law-to formalize through legislation. Whatever is formalized will tend to endure.²⁶

Therefore, the formalization of achievements through detailed legislation becomes, for Congress, a sort of an assurance that their policy intents will be implemented by the bureaucracy and that those realizations, in contrast to parliamentary systems, have less chances to be destroyed by future legislators. We can, thus, assume that the immigration sector in the United States will tend to be more regulated than in Canada.

A look at both the *Immigration and Nationality Act* of the United States and the *Immigration Act of Canada* confirms this assumption.²⁷ The American Act is much more detailed than the one in Canada. Chapter Five already demonstrated that the definition of each category of immigrants in the United States, specially those belonging to the employed based class, offers more details than the one in the Canadian legislation and administrative procedures.

A look at the importance of those documents in terms of size reveals also that, effectively, the *Immigration and Nationality Act* is larger than the *Immigration Act of Canada*. Although the length of those documents is a fairly crude measurement of degree of specificity, it does provide

an indication of the amount of material which has to be mastered and there is a high probability that it deals with considerable minutiae. For example, the section which discusses the selection system in the American Act consists of almost two hundred pages while the one in the Canadian Act is only 10 pages long.²⁸ Additionally, if we consider all the sections of those documents which have a certain link with the selection process, we realize, again, that the *Immigration and Nationality Act* is much bigger than the *Immigration Act of Canada*. In the first document, the sections called “General provisions”, “Selection system”, “Admission and qualifications for Aliens”, “Issuance of entry documents” and “Inspection, apprehension, examination, exclusion and removal” make up, together, a total of eight hundred and forty five pages. In contrast, comparable sections of the Canadian Act called “Immigration act”, “Canadian immigration policy”, “Admission to Canada” and “Exclusion and Removal” consist of two hundreds and sixty pages.

The administrative procedures in the United States and in Canada are also considerably different in length. The Foreign Affairs Manual (FAM- 9) is long and detailed while the General Procedural Guidelines are shorter and less specific. Indeed, the former is five hundred and ninety-nine pages long and the latter is only two hundred and thirty-three pages. Again, differences between the American congressional system and the Canadian parliamentary system account for this outcome. Legislators in the United States have greater powers to oversee the activities of the administration. To avoid so called “police patrol oversight” or mere “fire alarms”, administrators tend to render their behaviour predictable by abiding to detailed administrative procedures.²⁹

Therefore, the link established between the type of political institutions and the level of

detail in legislation and administrative procedures fits in the immigration context. The United States with its separation-of-powers system of government has legislation that is considerably bigger and more detailed than the one in the Canadian parliamentary system of government. More details in a piece of legislation often mean that less room will be left to the discretion of officers who are responsible for its implementation. Political institutions, therefore, can explain some of the difference in immigration and visa officers' discretion.

7.2.2 Organizational design

The second variable which explains why the exercise of discretion of immigration agents distinguishes Canada from the United States is the sharing or centralization of the selection responsibility. Organizational design and political institutions are the most important differences that we found to explain the use of field discretion in Canada and in the United States. The American selection system is one where responsibilities are shared between agencies. In the United States, there are three departments which play an important role in the selection process. First, there is the Immigration and Naturalization Service which decides to accept or refuse petitions. This department has a first look at immigrant's applications and is also responsible for determining whether a candidate qualifies for a specific category. Second, there is the labour department which is in charge of labour certification. All employment based immigration's applications in the United States must go through this labour certification process except first preference and national interest waivers categories. Finally, there is the Department of State which assigns visa officers around the world to examine immigration files that are sent beforehand by the Naturalization and Immigration Service.

When an immigration file lands on the desk of a Department of State agent, it is because

it has already passed through the first step, namely the acceptance of the petition by the Immigration and Naturalization Service. This signifies that an American visa official, the field officer, ends up with fewer decisions to make since some of the most important ones have already been made by Immigration and Naturalization Service or even the labour department if it is an employment based petition. As it was argued in Chapter Five, this situation diminishes considerably the decision power of field officers and it decreases the opportunities for American agents to use their judgment to make decisions. For example, in most family and employment cases, Immigration and Naturalization Service agents are responsible for determining the eligibility of an alien for reference immigrant status and consular officers (or visa officers) are not authorized to readjudicate the petitions. Although external agents can use their judgment to decide if they will conduct detailed investigations on specific cases and ask for additional documents, most important decisions such as those which concern the qualification of an alien for reference immigrant status remain under the responsibility of the Immigration and Naturalization Service which processes the applications and makes its decision within a central bureaucracy.

In contrast, in Canada, the responsibility for selecting newcomers falls under only one department and external immigration officers are often the first and the last ones to look at immigration applications. Thus, Canadian officers usually have more work to do on a file and more information to verify than American external officers. The fact that Canadian officers pilot an application file from the beginning to the end and because they are the ones who make the most important decisions in the selection process, opens the doors to a more extensive exercise of field discretion. This organisational distinction between the United States and Canada is

important to recognize as it helps to comprehend the procedures agents have to follow when they select newcomers and the differences between the two countries. For example, this contrast certainly explains why the average time of a Canadian interview is between 45 minutes to 1 hour whereas one conducted by an American officer can take between 3 to 10 minutes. The fact that Canadian officers have more decisions to make explains why they have more opportunities to use their discretion more extensively. Besides, an agent has certainly more opportunities to use discretion in a longer interview as he can choose to ask additional questions helping them to make their final decision.

Turning to Quebec, newcomers who apply to immigrate to this province will be assessed by both federal and Quebec officers. However, what is important to remember is, although federal officers play an important role in the selection of family immigrants, their role is minimal in the selection of independent ones. As a matter of fact, Quebec officers are those responsible for piloting this kind of file from the beginning to the end. They make all important decisions except those which concern the medical and criminal status of newcomers, decisions that are usually straightforward and that do not involve a lot of discretion. Therefore, we can assume that external Quebec officers are quite autonomous when they select independent immigrants and that they do not have the same constraints characterizing the American visa officers' work. The federal and Quebec selection systems are not characterized by a separation of the selection responsibility as it is the case in the United States.

In brief, the first and second variables focus on the differences found between the exercise of field discretion in Canada and in the United States but they do not necessarily help explain the distinctions found between federal and Quebec practices. Therefore, we need

additional factors to justify why Quebec officers enjoy larger discretionary power than Canadian agents .

7.2.3 Organizational resources

The third variable is, in fact, a grouping of three specific factors which contribute to increase field level discretion in immigration. I group those factors under the label “organizational resources”. The first factor is the limitations in resources which place a serious constraint on immigration agents. Most of them maintain that the lack of personnel renders their job increasingly difficult to accomplish. As a matter fact, when asked about the things the agent would improve in the organization, increasing the financial and human resources figured at the top of the list.

It is generally accepted that, in situations where the lack of resources is a reality, shortcuts or simplifications are likely to be used in order to cope with workload and stress.³⁰ In immigration, I observed that selection on documents was becoming a current practice among Canadian and Quebec agents and that it was used specially for family immigration as well as for independent applicants who have the required minimum of points after the pre-evaluation of their files. According to several immigration officials, the reason for increases in selection based on documents is the time this process saves. In the United States, agents cannot use selection on documents to reduce their workload. But, they can decide to take less time for interviewing candidates in order to reduce their stress as the questions they ask and how the interview is conducted is completely left to their own discretion.

A presumable danger coming from this lack of resources could be the loss of rigorousness in the selection process. This could prevent immigration officers from choosing newcomers who

would be assets for the receiving country or province. It is also more likely that, because of this lack of resources, undesirable people get in. They can fake documents and without the time and resources to check the authenticity of those applications, immigration officers can let them in. In some ways, the limitations of resources forces agents to use their discretion to find ways of saving time spent with each case. In this circumstance, immigration agents are likely to use their judgement to decide to shorten the time of interviews by asking fewer questions or by relying on fewer documents. As Brintnall suggests in his study called *Caseloads, Performance and Street-Level Bureaucracy*: “caseload pressures tend to make effective supervision of staff by upper-level officials unusually difficult, increasing the latitude afforded lower-level staff to act independently. On the other hand, caseload pressures reduce the resources, mainly time, which lower level staff themselves have with which to act”.³¹ He argues that the limitation of resources (time) enhances the discretionary role of field level bureaucrats but that it also, in some ways, restricts it. While Brintnall talks about “a diminished form of discretion”, I prefer to say that the limitation of resources brings a new form of discretion. The case of Quebec illustrates well this situation.

It is clear that Quebec immigration officers, who are coming from a smaller organization, are even more limited by the lack of resources. In fact, it happens regularly that an agent works in a consulate or an embassy where he is the only representative of the province of Quebec.³² As a Quebec agent explained in interview: “Ça arrive souvent que dans les petits bureaux à l'étranger, on se retrouve chef et indien en même temps”.³³ While most federal field level officials reported that they were, on a regular basis, discussing and asking their colleagues for an opinion about cases they were processing, Quebec officers revealed that, most of the time, they

did not have this opportunity. Thus, if we consider that the exchange of opinion between colleagues could create a more uniform treatment of cases, this, obviously, does not characterize the Quebec selection process. The fact of having fewer opportunities to discuss cases is likely to reduce the tendency to process application cases in a uniform manner and this opens a wider door to the use of judgment in the decision making process. The lack of opportunity for Quebec officials to share experiences with colleagues may promote inconsistencies towards immigrant admissions. This explains, partly, why Quebec immigration officers operate with a more significant measure of discretion than their federal colleagues.

Individual factors such as experience and training are also likely to influence discretion. Carroll and Siegel in their study of front-line public servants mention that street level bureaucrats, who are experienced, tend to have more latitude than younger ones.³⁴ I suggest that experienced field officers, who have a certain degree of latitude, will have better opportunities to use their discretion. Most immigration agents that were interviewed mentioned that the most useful training they had is the one called “training on the job” and that experience is one of the best tools they have to make decisions. I did notice that experienced officers were often consulted by less experienced agents on the interpretation of rules and selection criteria.

Experience influences the three types of discretion described in the classification of Chapter Six. Several field level officials explained that experience helps them to interpret the many “gray areas” found in legislation and administrative procedures. Moreover, because the officers workload has increased considerably means that they have to cope with this constraint to save time by making decisions as quickly as it is possible. As several officers reported, they do not have the luxury to hesitate too often while evaluating immigration cases and experience helps

them to avoid delays.

The idea that experienced civil servants tend to use more discretion helps to understand why I found that Quebec immigration officers seem to enjoy a larger discretion's power than Canadian agents. The majority of Quebec agents interviewed are more experienced than their federal colleagues. In fact, more than half of Quebec officers interviewed had 15 years or more experience in the Ministère des Relations avec les citoyens et de l'Immigration. Moreover, some Quebec officers even revealed that they started their career when the department was created and that renewing the team of agents has not been a priority of the Quebec government. As one agent said in interview: " Nous sommes un groupe assez vieillissant. On se rend compte qu'il faudrait remettre des jeunes dans le système pour assurer la retraite".³⁵ Consequently, the Ministère des Relations avec les citoyens et de l'Immigration is staffed with experienced people. This situation creates, for those experienced civil servants, a feeling of being an important part in the building of this organization and it contributes, somewhat, to increase their inclination to exercise discretion in the selection process. Experienced Quebec field officials feel they know their work and the organization pretty well and, as a result, they feel they are authorized to use their judgment to make decisions.

With regard to the training factor, authors such as Barbara Carroll and Kenneth Kernaghan and David Siegel argue that an appropriate training might increase discretion in that bureaucrats would be able to work within the 'spirit of the law' rather than the 'letter of the law'.³⁶ This is the logic behind the professionalization of work and it is argued that this leads to professional--internal rather than bureaucratic--external forms of accountability and control. My interviews indicate that although immigration officials received some training at the beginning of

their career, training on a continual basis is not a current practice in either of the two countries.³⁷

This situation is even amplified for Quebec immigration officers. Several agents in Quebec revealed in interview that they did not get any training when they started their career, as a good number of them were hired in the seventies. As one officer explains: “Formation? Non je suis entré au ministère avec la création de ce ministère en 1969 et je n’ai pas eu d’entraînement formel comme le fédéral. C’est plutôt de la formation sur le tas que j’ai eu”.³⁸

Nevertheless, my interviews suggest that even though immigration agents, especially those in Quebec, received little training throughout their career, this does not preclude them from using their judgment to make decisions. On the contrary, rather than limiting the exercise of discretion, a lack of training seems to encourage it. Although I agree with Carroll and Kernaghan and Siegel that adequate training can favor the use of field level discretion, I believe an almost complete absence of training can also accommodate its exercise. In the case of a lack of training, field agents are less likely to be constrained by “formal” ways of doing things or a standardization of the interpretation of rules and legislations transmitted by training sessions and, therefore, are invited to innovate and use their judgment to complete their tasks.

Although those Quebec immigration agents who were hired more recently received a few weeks of training, the fact that the organization is still, today, represented by immigration officers who have worked more than 10 years for the department indicates that the lack of training is a reality. Thus, this factor is the third piece of the puzzle which, with the lack of resources and the experience, explain why Quebec officers exercise discretion more extensively than their federal colleagues.

7.2.4 A concern for integration

The last and fourth factor which explains why Quebec officers use their discretion more extensively than their federal colleagues is, I believe, the fact that the integration of newcomers in the province of Quebec can be seen as being more challenging or more “important” than the integration of new immigrants in other provinces. As a matter of fact, interviews with Quebec immigration officers and a look at official government documents such as the “Énoncé de politique en matière d’immigration et d’intégration”³⁹ (Immigration and integration policy) indicate that selecting newcomers who will integrate well in the province and live there for a long period of time is an important challenge for immigration officers. With the Canadian rights of mobility, applicants to immigration can move wherever they want as soon as they receive their immigrant visa. This means that a newcomer, who was selected by the province of Quebec, can decide after only few days that he would prefer to live in Ontario. As a result, the time and money spent by the province during the selection process would be lost at the expense of another province. Quebec officers seemed preoccupied by this threat. As one agent mentioned in interview:” On leur demande aussi pourquoi il veut (newcomer) venir au Quebec? Pourquoi pas une autre province? Ça c’est pour s’assurer qu’on ne sélectionnera pas une personne qui va déménager tout de suite ailleurs. Ça coûte cher des cas comme ça.”⁴⁰

In contrast, this preoccupation does not really influence the federal officers’s work. A would-be immigrant who says, in his application, he would live in Ontario and, then, decide to move to another province is not an issue for the federal government.⁴¹ Federal officers are doing the selection of newcomers for all provinces, except Quebec, and the fact that newcomers move to another province does not have the same negative financial impact as it does for the province

of Quebec.

I suggest that, although the notion of “integration” is important for both the federal and Quebec selection systems, Quebec immigration officers have an additional responsibility. They have to make sure newcomers will integrate well enough to stay in Quebec. Assessing the integration capacity of newcomers is a complex task and, in order to do this, immigration officers need flexible criteria allowing them to use their judgment to make key decisions. Thus, I argue this concern for integration explains why discretionary factors such as knowledge of languages, adaptability, partner characteristics and aptitudes for realizing a business project, which also measure the integration’s capacity of applicants, weigh heavier in the Quebec selection grid.

The factor of knowledge of language certainly helps the integration of newcomers. As the “Énoncé de politique en matière d’immigration et d’intégration” mentions:

Aux yeux du Gouvernement comme de ceux de la vaste majorité du peuple québécois, l’apprentissage du français et son adaptation comme langue commune de la vie publique constituent des conditions nécessaires à l’intégration. En effet, la langue est non seulement l’instrument essentiel qui permet la participation, la communication et l’interaction avec les autres Québécois, mais elle est également un symbole d’identification.⁴²

This suggests that a newcomer who speaks and understands French well is likely to adapt better in the province of Quebec than someone who does not have this aptitude. As I have explained above, evaluating the level of knowledge of language is often an exercise of judgment. The Quebec grid grants 15 units of assessment for a candidate who speaks and understands well French and an additional 6 units if he can also communicate in English. Thus, it is obvious that the French language has more weight in the Quebec selection grid than English. Compared to

the federal grid which grants only 15 points under this factor, the Quebec grid allows a maximum of 23 units of assessment.

The factor of adaptability helps also to determine if applicants are likely to integrate well in the province of Quebec. With indicators such as motivation, personal qualities, flexibility, realism, knowledge of the province and so on, immigration officers try to determine if applicants are likely to settle but also integrate well in the province. While the federal grid grants 10 units of assessment for skilled workers under the factor of personal suitability, Quebec allows 31 points, 24 of them which I consider as being very discretionary.

Besides those two factors which help to assess the integration capacity of newcomers, the Quebec selection grid has two additional criteria of selection which also have a link with the concern for integration. Those are the factors of partner characteristic and of aptitudes for realizing a business project.⁴³ A partner's would-be-immigrant, who scores well on the grid and speaks French, is likely to influence positively the integration of the latter. To assess this determinant of selection, immigration officials look at the professional experience, the age and the knowledge of French of the applicant's partner and both professional experience and knowledge of French are criteria which leave some room for the exercise of discretion.

Lastly, the factor of aptitudes for realizing a business project has also an impact on the integration of immigrants. A newcomer who has a business which works well and who is happy professionally is likely to adapt faster to his new life. Therefore, Quebec officers favor candidates they think have a good potential to succeed in business. As has been demonstrated, three of the four factors used to assess the factor of aptitudes for realizing a business's project are discretionary and they make up a total of 24 out of a maximum of 30 units for entrepreneurs and

20 for self-employed workers. This concern for integration is the fourth factor which completes our model explaining the impact of four variables on discretion in immigration. Figure 7.1 illustrates those relationships.

Table 7.1: Four Variables and their Impact on Field Level Discretion in Immigration

Factors	Variance	Impact on Discretion
1. Political Institutions	/ separation of powers \ centralization of power	↓ decrease ↑ increase
2. Organization Design	/ sharing of the selection's responsibility \ centralization of the selection's responsibility	↓ decrease ↑ increase
3. Organizational Resources	- limitation of resources - more experience - absence of training	↑ increase ↑ increase ↑ increase
4. Integration	/more concerned \ less concerned	↑ increase ↓ decrease

In summary, this chapter began by identifying the three more common factors recognized by the literature for creating favourable conditions for the exercise of field discretion. While those factors fit the immigration context and have a certain impact on the three types of discretion, they do not explain the differences found between the exercise of field discretion in Canada, Quebec and the United States. Therefore, we need new factors justifying why Canadian immigration officers operate with a more significant measure of discretion than their US counterparts and why Quebec field level officials exercise more discretion than their federal

colleagues. I have suggested that the factors political institutions, organizational design, organization resources and a concern for integration provide a useful explanation of those differences. The first two account mainly for the differences found between Canada and the United States and the last two for those distinguishing Canada from Quebec.

Endnotes

1. Several authors discuss the relationship between policy vagueness and field officers' work and they maintain that policy vagueness gives considerable freedom to field level officers. Among this group of researchers, we find Kaufman (1960), Lipsky (1980), Prottas (1979), Edwards (1980) and Lindblom (1993).
2. See, for example R. K. Merton, "The Unanticipated Consequence of Purposive Action", *American Sociological Review*, 1 (1936), 894-904. versus Michael, Lipsky, *Street level bureaucracy: Dilemmas of the individual in public services*, (New York: Russell Sage Foundation, 1980).
3. James Q. Wilson, *Bureaucracy: What Government Agencies Do And Why they Do It*, (New York: Basic Books, 1989), 158.
4. As noted in previous chapters, only Canadian and Quebec's immigration officers decide if an interview is required or not. American visa officers do not have this kind of latitude.
5. Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada.
6. Those are personal suitability/adaptability, experience (professional or management), occupation, job, languages, partner characteristics and aptitudes for realizing a business' project.
7. Peter M. Blau and W. Richard Scott, *Formal Organizations*, (San Francisco: Chandler Publishing Company, 1962), 171.
8. Judith E. Gruber in her book called *Controlling Bureaucracies: Dilemmas in Democratic Governance* (1987), contributes in a interesting manner to the discussion on control. She suggests that even though control is important, it has also a cost and that controllers should take this into account when they choose how the control will be done. She argues also that the environment and the attitudes of civil servants are important to consider before selecting a type of control.
9. For more information look at G.C. Edwards, *Implementing public policy*. (Washington: Congressional Quarterly Inc., 1980).
10. Charles E. Lindblom, *Inquiry and change*. (New Haven, CT: Yale University Press, 1980), 6
11. This is sometimes referred to as the degree of compression in a policy. Cf. G. Bouchard, B.W. Carroll & G. E. Dirks. *When the Tail Wags the Dog: Impairment, Unintended consequences and Migration Policy*. Paper prepared for the Canadian Political Science Association Annual Meeting, Ottawa, Ontario, 1998.

12. "The evaluation is done once a year. The outputs are well measured but not our quality of work....".

Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada.

13. "The evaluation is very complicated. It is written and very detailed but I am not sure it measures the quality of my work".

Ibid.

14. Ibid.

15. Barbara Wake Carroll and David Siegel discuss the absence of a formal appraisal system which really works in the public service. In addition of finding that a formal performance appraisal system is not really working, they also found that supervisors seemed to be usually slow to confront poor performers. See chapter five in *Service in the Field; The World of Front-line Public Servants*. For a discussion of evaluation, see also Wilbair C. Rich, Appraising Employee Performance (chapter 27), in James L. Perry (ed), *Handbook of public Administration*, (San Francisco: Jossey-Bass), 1989.

16. "The evaluation process depends very much on the supervisor. For example, there are supervisors who give you a good evaluation because they do not want any trouble or those who have a bone to pick with you and will give you a bad evaluation."

Interview conducted with a Quebec immigration officer from the Ministère des Relations avec les citoyens et de l'Immigration..

17. "We are used to be autonomous in our work".

Ibid..

18. Lipsky, "Street level bureaucracy: Dilemmas of the individual in public services", 16.

19. " The selection grid is an indicator but our decision will be taken in a zone around it. There is no criteria allowing to determine whether newcomers will settle with success or not. Thus, discretion helps to achieve the objectives of the law even though the tools are not perfect".

Interview conducted with a Canadian immigration officer from Citizenship and Immigration Canada..

20. Interview conducted with an American consular officer from the Department of State in Washington.

21. R Kent Weaver and Bert A. Rockman, ed, *Do Institutions Matter? Government Capabilities in the United States and Abroad*, (Washington: The Brooking Institution, 1993), 12.

22. Arend Lijphart discusses this issue in his edited book called *Parliamentary versus Presidential Governement*, (Oxford: Oxford University Press, 1992).

23. Members of political parties have, of course, important incentives such as campaign financing and career promotions which constrain them to support the leader and his or her policy choices.
24. David Epstein and Sharyn O'Halloran discuss similar arguments in the conclusion of their book called *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers* (Cambridge: Cambridge University Press, 1999).
25. George Tsebelis, "Decision Making in political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism," *British Journal of Political Science*, 25 (1993), 324.
26. Terry M. Moe, "Political Institutions: The Neglected Side of the Story", *Journal of Law, Economics and Organization*, 6 (1990), 240.
27. Harrison and Hoberg reached the same conclusion in comparing Canadian and American environmental statutes.
28. To compare those legislations, I use The United States Code Annotated, Title 8, *Aliens and Nationality*, SS.1 to 1226 (Westlaw, 1999) and Frank N. Morrocco and Henry M. Goslet, *The 2000 Annotated Immigration Act of Canada* (Scarborough: Carswell, 1999). Those annotated Acts are popular reference- documents among those who study legislation.
29. David Epstein and Sharyn O'Halloran, *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers* (New York: Cambridge University Press, 1999), 24.
30. Lipsky, "Street level bureaucracy: Dilemmas of the individual in public services"; Michael Brintnall, "Caseload Performance and Street-Level Bureaucracy", *Urban Affairs Quarterly*, 16:3 (1981), 281-298.; Jeffrey Manditch Prottas, *People-Processing: The Street-Level Bureaucrat in Public Service Bureaucracies*, (Toronto: Lexington Books, 1979).
31. Michael Brintnall, "Caseload Performance and Street-level Bureaucracy", 296.
32. As a matter of fact, there are 1 Quebec agent in Damascus, 2 in Hong Kong, 1 in Mexico, 1 in New York, 6 in Paris and 2 in Vienna.
33. "It happens often that, in small offices overseas, we are chief and Indian at the same time". Interview conducted with a Quebec immigration officer from the Ministère des Relations avec les citoyens et de l'Immigration.
34. Barbara W. Carroll and David Siegel, *Service in the Field: The World of Front-Line Servants*, (McGill-Queen's University Press, 1999), 85.

35. “ We are a group of people that is becoming older. We realize that we would need to hire younger agents if we want to retire”.

Interview conducted with a Quebec immigration officer from the Ministère des Relations avec les citoyens et de l’Immigration.

36. Barbara Wake Carroll, Politics and Administration: A Trichotomy?, *Governance*, 3 (1990), 345-366; Kenneth Kernaguan, and David Siegel. *Public Administration in Canada: A text.*, 3rd ed., (Scarborough:Nelson, Canada, 1995).

37. 5 weeks in the United States and 6 weeks in Canada. This does not take into account the language training they received, nor other types of courses such as computer or management. Although these courses are important, they do not teach them about how to do their job or how to select newcomers per se.

38. “Training? No. When I started to work for the department in 1969, I did not receive a training like they do in the federal government. What I had was more “a training on the job”. Interview conducted with a Quebec immigration officer from the Ministère des Relations avec les citoyens et de l’Immigration..

39. Quebec, *Énoncé de politique en matière d’immigration et d’intégration* (Quebec: Ministère des Communautés culturelles et de l’Immigration, 1990).

40. “ We are also asking him why he wants (newcomer) to come in Quebec? Why not another province? We do this to make sure that we will not select people who will move to another province right after having received their selection certificate. Because cases like those cost a lot of money”.

Interview conducted with a Quebec’s immigration officer from the Ministère des Relations avec les citoyens et de l’Immigration in Montreal.

41. Unless this concerns a business applicant who made plans to start a new business in one particular province. In this case, some conditions will be established and the mobility of this kind of immigrants, compared to skilled workers, can be limited.

42. “According to the government and to the vast majority of Quebecers, learning French and its adaptation as the public common language are necessary conditions for integration. In fact, the language is not only a key tool allowing participation, communication and interaction with the other Quebecers but it is also an identification symbol.”

Quebec, *Énoncé de politique en matière d’immigration et d’intégration*, p.16.

43. The first criterion is found in the selection grid for skilled workers and the second one in the selection grid for business immigrants.

Chapter Eight

Conclusion

In the introductory chapter, I explained the importance of immigration policy and why implementation of policy is important. Immigration is a policy area which receives a great deal of media coverage. Every month, we hear disturbing stories revealing the problem engendered by the difficulties to control the eagerness of foreigners who are looking for a better life in developed countries. Thus, immigration is a topical policy area which is becoming very popular among researchers. Most students of immigration, however, address this issue by focusing on external and macro-level internal factors which influence policy choices and policy outcomes. While those explanations can be useful, they appear to neglect the manner into which policy choices are translated in the field by state officers. Policies are not always implemented as expected by policy makers.

This dissertation, thus, looks at this policy area with a different perspective. I begin with the assumption that it is immigration field officers who are responsible for interpreting and implementing immigration legislation and rules designed by policy makers. In exercising this function, immigration officers might voluntarily or involuntarily alter the original policy and thus distort policy outcomes. Therefore, I suggest a micro approach, utilizing public administration theories of civil servant discretion, to provide a new perspective on immigration policy.

Chapter Two outlines the methodology used in this study and the main objectives of the

research. This dissertation has two main objectives. First, to contribute to the understanding of the function and the role of field level bureaucrats and, more specifically, of those who work in the external selection process of newcomers. Second, to help understand the selection process and how and where immigration officer's discretion was exercised while selecting immigrants. More specifically, it is argued in this research that while Canadian officials operate with a more considerable measure of discretion than American ones, Quebec's agents enjoy a higher level of discretion than their federal colleagues. It suggests also that those two trends can be best explained by four specific factors namely, political institutions, organizational design, organizational resources and the degree to which some overriding goal of the policy is viewed as important in this case the importance attached to integration in Quebec.

A central concern of this dissertation was to compare the official use of discretion in the selection process with the one in practice. After having described, in Chapter Three, how and by whom immigration policy is administered with special attention given to the external selection process, Chapters Four and Five looked at immigration laws and administrative procedures to understand what room was officially left to immigration and visa officers' discretion in Canada, Quebec and the United States. Chapter Four, which looks at those documents and compares the federal selection process with the Quebec one, reveals that both types of documents leave some important room for the exercise of immigration agents' discretion. It suggests that field officers use their judgment to select both family and independent immigrants but that the assessment of the last ones, which is usually more complex and which is done with the help of a selection grid, is more discretionary.

The federal and Quebec selection grids include criteria such as knowledge of official

languages, experience and personal suitability requiring the use of judgment for their evaluation. Among all determinants used to assess independent immigrant applications, the part of the grid which is most discretionary is personal suitability/adaptability. Chapter Four illustrated how this criterion, which is not defined clearly in the guidelines, is interpreted in many different and personal ways by immigration officers.

The analysis of the federal and Quebec immigration laws and administrative procedures also indicates that, what differentiates those two selection systems the most, is the fact that the Quebec selection grid gives more weight to discretionary factors than the federal one and that it contains two additional criteria of selection namely, partner characteristics and aptitudes for realizing a business project. These two have been found to contribute to the use of discretion by Quebec immigration officers.

Chapter Five discussed the content of the Immigration and Nationality Act and Foreign Affairs Manuals and revealed that American visa officers, compared to their Canadian and Quebec's counterparts, have fewer responsibilities and fewer opportunities to use their discretion when executing their tasks. This is best explained by the fact that, in the United States, the selection system is not unified. Both the Department of State and Naturalization and Immigration Service participate actively in the external selection process and this greatly effects the exercise of discretion of field level officers namely, visa officers.

Under the American system, the Immigration and Naturalization Service's agents are the first ones to look at petitions and are responsible for determining if an applicant qualifies for immigrant status. In contrast, agents from the Department of State, working in embassies and consulates, are the ones who verify and double check the information figuring in applications

files and they make sure that would-be immigrants are not ineligible. Thus, visa officers do not have the power to refuse or to readjudicate petitions, but they can review them and make some recommendations for the INS.

If DOS officers do not have the same extent of power than Canadian and Quebec officers, this does not mean that they never make use of their discretion. American visa officers can still use discretion to decide whether an investigation is needed. They can use their judgment to choose the numbers and type of questions asked during interviews and to decide also whether they need additional documents before distributing visas. In sum, even though there are some important differences between the selection practices of the United States, Canada and Quebec, the study of immigration laws and administrative procedures suggests that field discretion has, effectively, an important place in what I call the "official" selection process. Chapter Six made the link between the "official" use of discretion and the one "in practice". In using interviews conducted with immigration and visa officers, this chapter presents a classification of forms of discretion allowing to distinguish between three general categories of discretion. This helps to understand both how immigration and visa officials use discretion in field offices and how the Canadian, Quebec and American practices are different from each others.

The first form of discretion is called procedural discretion and it includes three sub-categories. The first one consists of using discretion to decide if applicants for immigration need to be interviewed. While Canadian and Quebec's agents can use their judgment to determine whether they will interview candidates or do strictly a selection on documents, by law, American officers must interview every newcomer who applies for a visa.

The second sub-category of procedural discretion is when officials use their own

judgment for deciding how they will conduct interviews. Thus, immigration and visa officers exercise their discretion to determine what questions will be asked and the time required to assess the settlement capacity of newcomers. What distinguishes the United States from Canada and Quebec is that interviews carried on by American visa officers tend to be shorter than the ones conducted by Canadian and Quebec immigration agents. Because of the sharing of the selection's responsibility in the United States, Department of State agents have fewer decisions to make and they need to ask fewer questions to candidates."

The third sub-category of procedural discretion involves exercising discretion to decide whether additional documents are required before making a final decision. This dimension of discretion is available in Canada, Quebec and the United States. In brief, procedural discretion helps to differentiate the Canadian practices (Quebec included) from the American. It demonstrates that while American officers can use their judgment to choose the way they conduct interviews and whether they need additional documents, they cannot decide whether interviews are required or not.

The second form of discretion called "final decision discretion" also differentiates the United States from Canada and Quebec. As Chapters Four and Six explained, it is defined as the use of discretion to make an overall judgment of immigration cases. This form of discretion has a direct impact on candidates for immigration since immigration officers use their judgment to accept or refuse their applications on the basis of the applicant's capacity to integrate well in the country or province of adoption. This category of discretion is available only for Canadian and Quebec officers.

The third form of discretion is called "selection grid discretion". In contrast to the two

previous forms of discretion, which contribute to understanding the differences between Canadian and American practices, this one helps to distinguish the federal selection system from the Quebec one. Chapter Six demonstrates that the assessment of the federal criterion of selection called “personal suitability” and the one of “adaptability” in Quebec is done in similar ways. Both federal and provincial officers use indicators such as flexibility, motivation, dynamism, personal qualities, realism and so on to assess the settlement capacity of newcomers. Those indicators are highly subjective and they are also defined and interpreted in many different ways by immigration agents. As a result, the selection grid is good grounds for the exercise of discretion by both federal and provincial immigration officers. Nevertheless, what distinguishes those two selection grids is the weight given to discretionary factors. Much greater weight is assigned on discretionary selection criteria in the Quebec process than in the Canadian federal one.

Having found those differences between Canadian, Quebec and American practices and especially in the use of field discretion while selecting newcomers, the next step was to try to explain them. Chapter Seven offers an explanation. It suggests that those variations are best explained by four specific factors namely, political institutions, organizational design, organization resources and the degree to which some overriding goal of the policy is viewed as important in this case the importance attached to integration in Quebec. While the first two account for the main differences found between American and Canadian practices, the last ones explain why Quebec officials have a larger discretionary power than Canadian agents.

In sum, this research takes a new perspective in looking at immigration policy by focusing on implementation and more specifically on the role played by field officers in the

selection process of newcomers in two open-door countries. It demonstrates that immigration officers can, in fact, use their judgment to make important decisions while selecting would-be immigrants. Clearly, the outcome of the decisions made by these field level officers has an impact on policy outcomes because they are making decisions about “who is to get in” and “who should be one of us”. They, therefore, play an important role which is assumed, in democratic societies, to be the domain of those who are elected and accountable to the populace.

Field level discretion, when exercised consistently in an expansive or a restrictive direction, can reinforce or contradict the wishes of politicians. Immigration laws in the United States and Canada (including Quebec) suggest that politicians wish for their respective countries to be relatively accepting of immigrants. Both countries belong to the small group of “open door” countries. In the United States, elected officials’ control over immigration is closest to the democratic ideal of policy following the specific and specified wishes of the legislators. In Canada, federal agents use their discretion to accentuate openness, possibly even beyond the intent of legislators. It is in Quebec that the discretion power is generally used in a restrictive manner, possibly in contrast to politician’ wishes. On the other hand, it may be that the United States and Canada are concerned primarily with the economic integration of immigrants and as nations of immigrants are less concerned with their social and cultural integration. Social and cultural integration, however, is the primary goals of the Quebec policy. This can be viewed as a desire to admit “people who will accept the cultural character of Quebec society”. In this case, it may be that a greater degree of discretion is desirable.

It has been emphasized in this dissertation that positive discretion is more common than negative discretion. Contrasting with this general trend, Quebec officials seem to be more

restrictive, using their discretion to refuse applicants. The responsibility to assess the capacity to integrate into Quebec society create opportunities for officials to prevent the entry of newcomers who might appear unlikely to learn French or who might be likely to move quickly to another province. Legislative changes in Quebec in 1996 to reduce the level of discretion in the selection of immigrants are evidence of a contradiction between the wishes of politicians and administrative discretion in the province. Indeed, these changes wished by elected officials were not welcome by field level bureaucrats.

A key distinction between the United States and Canada is that legislation and administrative procedures are much more detailed in the former country than in the latter. In Chapter Seven, it is explained that the American separation-of-powers system of government encourages the adoption of more detailed legislation while, in Canada, the parliamentary system favors legislation written in a more general language. The American Foreign Affairs Manuals and the Immigration and Nationality Act offer more guidance to field level officers and consequently reduce opportunities for discretion. In contrast, the General Procedural Guidelines and the Immigration Act provide Canadian field officers with more discretion. As a result, the selection of immigrants is less tightly controlled by Canadian politicians than by their American counterparts. In contrast to Quebec, however, the use of discretion by Canadian federal officers reinforces the openness of the country. Criteria providing opportunities for negative discretion are fewer at the federal level than they are in Quebec. This highlights the importance of accounting for micro level administrative factors when studying control over immigration.

This research also has significance within the broader realm of public policy and implementation for it provides an example of how the policy process can be influenced by

unintended factors.¹ Within our discussion of the reasons for the exercise of discretion, political institutions, organizational design, and resources were all structural factors which were independent of the policy area itself. The fourth factor which was used to compare the degree of discretion between federal and Quebec field officers - the overarching saliency of the need for integration of immigrants- was reflected in the Quebec selection grid, but both the legislation and procedures were silent on what constituted the criteria for integration. This was left to the interpretation of the individual officers, leading to the unexpected consequence of having politician's wish contradicted.

Thus, the difference in discretion between Canada and the United States is a function of a legislative system which on the one hand produces an indifference between legislative rules and what Moe referred as a ministerial decree, and on the other hand, produces very lengthily specific, detailed legislated procedures which are difficult to change. This has an impact upon the outcomes of the policy, but is it the outcomes intended by the policy-makers with respect to this specific policy area?

Similarly, for historical reasons one country has an integrated immigration system and the other one has one which is fragmented across three different agencies. This effects the outcomes of the policy, but again is it one which was intended by policy-makers? Particularly, in the case of Canada and Quebec if this is not what was intended more controls should be put in place to ensure that the discretionary powers are used so as to produce consistent outcomes. It was clear from the factors the various interviewees expressed as important that there was a wide range of interpretations of "what type of people should get in" and how one could make this decision. This aspect of opinion versus judgment was reflected in the discretionary aspects of all three

systems. If someone says he is a chef but cannot cook a Chinese meal does this make him less able to be a good citizen? If a Muslim woman wears a veil and seems to be deferential to her husband will the family not integrate well? I would suggest that if, there is a wide range of discretion within a policy area it should be recognized and possible some attempts made to control or standardized outcomes through training. We would not expect every doctor to interpret their own cure for an infection. We expect some degree of standardization brought about through systematic training.

The degree of resources also affects outcomes even though the resource allocation is made independently of the policy area itself. A lack of resources can produce changes in administrative patterns which can inadvertently affect policy outcomes. For example, the budget constraints which forced departments to increase user fees affected the types of would-be immigrants targeted by immigration Canada to those professionals who, it was felt, could pay the highest fees. Thus, the administrative discretion led to a policy change.

Finally, when field officers decide that some particular program goal is more important than others and use their discretion to further it, it is clear that this has the effect of changing the policy. The fact that Quebec officers were favoring would be immigrants who looked like they would stay in Quebec instead of moving to another province is a good example of this.

This is not to argue that field level discretion is a bad thing which needs to be controlled. It is clear from the interviews that field level officials are trying to implement both the spirit and the letter of the law. While the analysis on the effect of field level discretion on policy outcomes is beyond the scope of this research, I would suggest that the scope for exercising discretion should be considered as part of the design and implementation of a policy and built in as a

purposive aspect of it, not simply as a by-product of other factors.

Endnotes

1. For a discussion of unintended consequences, see Louis Dexter, "Unintended Consequences of Purposive Legislative Action: Alternatives to implementation", *Journal of Public Policy*, 4 (1981), 413 - 443.

Bibliography

Appleby, Paul. *Policy and Administration*. Tuscaloosa: University of Alabama Press, 1949.

Armstrong, Jane. "Ship dumps human cargo; Smugglers leave 150 drenched Chinese on remote B.C. beach; vessel in caught trying to flee", *The Globe and Mail*, (August 12, 1999).

Baxter-Moore, Nicolas. Carroll, Terrance and Church, Roderick. *Studying Politics: An Introduction to Argument and Analysis*. Toronto: Copp Clark Longman Ltd., 1994.

Bhagwati, Jagdish. "U.S. Immigration Policy". in Duleep and Wunnavu (ed.). *Immigrants and Immigrant Policy: Individual Skills, Family Ties and Group Identities*. London: JAI Press inc., 1996.

Blau, Peter M.. and Scott, W. Richard. *Formal Organizations*. San Francisco: Chandler Publishing Company, 1962.

Bouchard, Geneviève. *Does Administrative Discretion Matter? Impact on Immigration Policy in Canada and the United States*. Paper prepared for the Public Administration Section for the Canadian Political Science Association Annual General Meeting. Sherbrooke, Quebec, June 1999.

Bouchard, Geneviève. and Chandler, William. *The Politics of Inclusion and Exclusion: Immigration and Citizenship Issues in Three Democracies*. Paper prepared for the Second Annual Meeting of the European Community Studies Association. St John's, Newfoundland, June 6-8, 1997.

Bouchard, Geneviève, Carroll, Barbara W. and Dirks, Gerald E. *When the Tail Wags the Dog: Impairment, Unintended consequences and Migration Policy*. Paper prepared for the Canadian Political Science Association Annual Meeting. Ottawa, Ontario, 1998.

Brintnall, Michael. "Caseload Performance and Street-Level Bureaucracy", *Urban Affairs Quarterly*, 16:3 (1981), 281-298.

Carens, Joseph H. (ed). *Is Québec Nationalism Just? Perspectives from Anglophone Canada*. Montréal: McGill-Queens, 1995.

Carroll, Barbara W. and Siegel, David. *Service in the Field: The World of Front-Line Public*

Servants. Montreal and Kingston: McGill-Queen's University Press, 1999.

Carroll, Barbara W. "Politics and Administration: A Trichotomy?", *Governance*, 3 (1990), 345-366.

Carroll, Terrance. "Owners, Immigrants, and Ethnic Conflict", *Ethnic and Racial Studies*, 17 (1994), 301-324.

Citizenship and Immigration Canada. *Immigration Manual: Overseas Processing (abroad only): General Procedural Guidelines*. Ottawa: Minister of Public Works and Government Services Canada, 1999.

-----, *Immigration Manual: Overseas Processing (abroad only): Processing Members of the Family Class*. Ottawa: Minister of Public Works and Government Services Canada, 1999.

-----, *Immigration Manual: Overseas Processing (abroad only): Processing Independent Immigrants*. Ottawa: Minister of Public Works and Government Services Canada, 1999.

-----, *Immigration Manual: Overseas Processing (abroad only): Processing Entrepreneurs and Self-Employed Immigrants*. Ottawa: Minister of Public Works and Government Services Canada, 1999.

-----, *You asked about... .. immigration and citizenship*. Ottawa: Minister of Public Works and Government Services Canada, 1997.

-----, *Canada's Immigration Law*. Ottawa: Minister of Supply and Services Canada, 1996.

-----, *Overview of the Overseas Immigration Program*. (Internal document of the International Region), 1988.

Cornellier, Manon. "Immigrants recalés à cause de leur anglais; Ottawa donnera une deuxième chance aux Marocains", *Le Devoir*, (27 et 28 novembre, 1999).

Cornelius, Wayne A. Martin, Philip L. and Hollifield, James F. "Introduction: The Ambivalent Quest for Immigration Control". in *Controlling Immigration: A Global Perspective*. California: Stanford University Press, 1994.

Edwards, George C. *Implementating Public Policy*. Washington: Congressional Quarterly Inc, 1980.

Epstein, David and O'Halloran, Sharyn. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. Cambridge: Cambridge University Press, 1999.

Department of Justice Canada. *Immigration Act in CD-ROM: Consolidated statutes and Regulations of Canada*. Ottawa: Department of Justice Canada, 1999.

Dexter, Louis. "Unintended Consequences of Purposive Legislative Action: Alternatives to implementation", *Journal of Public Policy*, 4 (1981), 413 - 443.

Dirks, Gerald E.. *Controversy and Complexity; Canadian Immigration Policy During the 1980s*. Montreal and Kingston: McGill-Queen's University Press, 1995.

Dwivedi, O.P. and Gow, James Ian, *From Bureaucracy to Public Management: The Administrative Culture of The Government of Canada*, Toronto: The Institute of Public Administration of Canada and Broadview Press.

Freeman, Gary P. "Modes of Immigration Politics in Liberal Democratic States", *International Immigration Review*, 29 (1995), 881- 902.

-----."Can Democratic States Control Unwanted Migration?", *The Annals of the American Academy*, 534 (1994), 16-29.

Garcia y Griego, Manuel. "Canada: Flexibility and Control in Immigration and Refugee Policy", in *Controlling Immigration: A Global Perspective*. California: Stanford University Press, 1994.

Greenspon, Edward. "Ottawa offers immigration deal", *The Globe and Mail*, (February 27, 1997).

Gruber, Judith E. *Controlling Bureaucracies; Dilemmas in Democratic Governance*. Los Angeles: University of California Press, 1987.

Goodnow, Frank. *Policy and Administration*. New York: Macmillan, 1900.

Gulick, Luther. "Politics, Administration and the New Deal", *Annals of the American Academy of Political and Social Science*, 169 (1933), 55-61.

Harrison, Kathryn, Hoberg, George. *Risk, Science and Politics; Regulating Toxic Substances in Canada and the United States*. Montréal and Kingston: McGill-Queen's University Press.

Hawkins, Freda. "Canadian Immigration and Refugee Policies". in Paul Painchaud (ed). *De Mackenzie King à Pierre Trudeau: Quarante ans de diplomatie canadienne*. Québec: Les Presses de l'Université Laval, 1989.

Heisler, Martin. "Transnational Migration as a Small Window on the Diminished Autonomy of the Modern Democratic State", *Annals (AAPSS)*, 485 (1986),153-156.

Hollifield, James. *Immigrants, Markets and States: The Political Economy of Postwar Europe*. Cambridge: Harvard University Press, 1992.

Jacobson, David. *Rights Across Borders: Immigration and the Decline of Citizenship*. Baltimore and London: The Johns Hopkins University Press, 1997.

Joppke, Christian. "Why Liberal States Accept Unwanted Immigration", *World Politics*, 50 (1998), 266-293.

Kaufman, Herbert. "Fear of Bureaucracy: A Ranging Pandemic", *Public Administration Review*, 41, (1981), 1.

Kaufman, Herbert. *The Forest Rangers: A Study in Administrative Behavior*. Baltimore: Johns Hopkins Press, 1960.

Kelly, M. "Theories of Justice and Street Level Discretion", *Journal of Public Administration: Theory and Research*, 4: 2, (1994), 119-140.

Kernaguan, Kenneth and Siegel, David. *Public Administration in Canada: A text..* 3rd ed.. Scarborough: Nelson Canada, 1995.

Lindblom, C. E. and Woodhouse, E. J.. *The policy making process* (3rd ed.). Englewood Cliffs: Prentice Hall, 1993.

Lindblom, Charles E. *Inquiry and change*. New Haven, CT: Yale University Press, 1980.

Lunman, Kim. "More ships feared as officials try to cope; First death among boat people confirmed; middle-age woman died of natural causes", *The Globe and Mail*, (September 2, 1999).

Lunman, Kim. "'Ghost ship' dropped off human cargo undetected; first of four vessels arrived in July: RCMP", *The Globe and Mail*, (September 3, 1999).

Lijphart, Arend. *Parliamentary versus Presidential Government*. Oxford: Oxford University Press, 1992.

Lipsky, Michael. *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation, 1980.

Matas, Robert and Lunman, Kim. "Migrants rescued from rusty ship; Reform Party demands Parliament be recalled to debate refugee policy. Caplan says there's no rush", *The Globe and Mail*, (September 1, 1999).

Merton, R.K. "the Unanticipated Consequences of Purposive Action, *American Sociological Review*, 1 (1936), 894-904.

Kaufman, Herbert, "Fear of Bureaucratic Red Tape: A Raging Pandemic", *Public Administration Review* (1981). 1-9.

Messina, Anthony M. "Immigration as a Political Dilemma in Britain: Implications for Western Europe", *Policy Studies Journal*, 23:4 (1995), 686-698.

Mills, Nicolaus, (ed). *Arguing Immigration: Are New Immigrants a Wealth of Diversity... or a Crushing Burden?*. New York: Touchstone, 1994.

Ministère des Communautés culturelles et de l'immigration du Québec. *Accord Canada-Québec relatif à l'immigration et à l'admission temporaire des aubains*. Québec: Ministère des Communautés culturelles et de l'immigration, 1991.

----- . *Énoncé de politique en matière d'immigration et d'intégration*. Québec: Ministère des Communautés culturelles et de l'Immigration, 1990.

----- . *Entente entre le Gouvernement du Canada et le Gouvernement du Québec portant sur la collaboration en matière d'immigration et sur la sélection des ressortissants étrangers qui souhaitent s'établir au Québec à titre permanent ou temporaire*. Québec: Ministère des Communautés culturelles et de l'immigration, 1978.

Ministère des Relations avec les citoyens et de l'Immigration . "Entre-Nous; Place à l'action et aux réalisations", *bulletin d'information à l'intention des employés du ministère des Relations avec les citoyens et de l'Immigration*, janvier 1999.

----- . *Rapport annuel 1997-1998*. Québec: Les Publications du Québec, 1999.

----- . *Guide des Procédures d'immigration; Programme de recrutement et de sélection des candidats indépendants*. Montréal: Les publications du Québec, 1998.

----- . *Guide des Procédures d'Immigration*. Montréal: Les publications du Québec, 1998.

Moe, Terry M. "Political Institutions: The Neglected Side of the Story", *Journal of Law, Economics and Organization*, 6 (1990), 213-253.

Morocco, Frank N. and Goslet, Henry M. *The 2000 Annotated Immigration Act of Canada*. Scarborough: Carswell, 1999.

Wilbur C, Rich, Appraising Employee Performance (chapter 27), in James L. Perry (ed), *Handbook of public Administration*, (San Francisco: Jossey-Bass), 1989.

Nevitte, Neil et al. "Electoral Discontinuity: The 1993 Canadian Federal Election", *International Science Journal*, 146 (1995), 584-599.

Papademetriou, Demetrios G. and Yale-Loehr, Stephen. *Balancing Interest: Rethinking U.S. selection of skilled immigrants*. Washington: Carnegie Endowment for International Peace, 1996.

Peirol, Paulette. "Provinces given more jurisdiction over immigration", *The Globe and Mail*, (March 22, 1997).

Prottas, Jeffrey Manditch. *People-Processing: The Street-Level Bureaucrat in Public Service Bureaucracies*. Toronto: Lexington Books, 1979.

Quebec. *Loi sur l'immigration au Quebec*. Quebec: Editeur officiel du Quebec, 1994.

Scott, Patrick G. "Assessing Determinants of Bureaucratic Discretion: An Experiment in Street-Level Decision-Making", *Journal of Public Administration Research and Theory*. 7:1 (1997), 35-57.

Soysal, Yasemin Nuhoglu. *Constructions of Immigrant Identities in Europe*, Paper presented at the conference on European Identity and Its intellectual Roots, Cambridge, Massachusetts, May 6-9, 1993.

Sproule-Jones, Mark. *Governments At Work; Canadian Parliamentary Federalism and Its Public Policy Effects*. Toronto: University of Toronto Press, 1993.

Sutherland, Sharon. "The Al-Mashat affair: administrative responsibility in parliamentary institutions," *Canadian Public Administration*, 34:4 (1991), 573-603.

The United States Code Annotated. Title 8. *Aliens and Nationality*. SS.1 to 1226. Westlaw,

Tsebelis, George. "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism," *British Journal of Political Science*, 25 (1993), 289-325.

United States Department of State. *Foreign Affairs Manual*. Washington: Department of State, 1998.

----- . *Visa Bulletin*. Washington, D.C.: Department of State Publications, 91:VII, 1998.

Vinzant, Janet Coble. and Crothers, Lane. *Street-level Leadership; Discretion and Legitimacy in Front-line Public Service*. Washington, D.C.: Georgetown University Press, 1998.

Weaver, R. Kent and Rockman, Bert A. (eds). *Do Institutions Matter? Government Capabilities*

in the United States and Abroad. Washington: The Brooking Institution, 1993.

White, Leonard D. *Introduction to the Study of Administration.* New York: MacMillan, 1948.

Wilson, James Q. *Bureaucracy: What Government Agencies Do And Why they Do It.* New York: Basic Books, 1989.

Wilson, Woodrow. "The study of Administration", *Political Science Quarterly*, 2(1887), 197-222.

Wilbair C, Rich, "Appraising Employee Performance" (chapter 27), in James L. Perry (ed), *Handbook of public Administration*, San Francisco: Jossey-Bass, 1989.