

This is Exhibit "B" referred to in the  
Affidavit of John Schoales  
affirmed before me on January 16, 2026

  
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COMMISSIONER FOR TAKING AFFIDAVITS

# RE: Information Session: Canadian content

Inbox



**Sensibilisation-Outreach**

Thu, Dec 11,  
2025, 9:41 AM

to

Good morning,

Following the information session on the Canadian Content decision held on November 19, 2025, please find below the responses to the questions we were unable to address during the session.

Apologies for the delay in getting back to you.

1. **Do you have a specific definition for showrunner? Does it have to be a writer? This has been a long-standing concern in the community.**

The showrunner's definition can be found in Appendix 2 of the policy [Broadcasting Regulatory Policy CRTC 2025-299 | CRTC](#).

2. **Regarding the 5% streaming contribution - How does the CRTC plan to monitor compliance , especially with streamers currently challenging the decision in court?**

The Commission monitors compliance with its regulatory frameworks mainly through routine information collection but also through targeted information collection on a case-by-case basis and other mechanisms such as hearings. The Commission requires online undertakings to file reviewed or audited financial statements on Canadian revenues and expenditures for the purpose of monitoring compliance with on the 5% base contribution requirements.

3. **Was expert legal advice sought on whether continuing to restrict the definition of Canadian content to Canadian citizens and permanent residents would be a potential human rights violation?**

The Commission's determinations are based on the public record of the proceeding. The Commission does not comment on any legal advice it may have sought or received, nor does it explain why it made the decisions set out in the regulatory policy. The rationale for the Commission's conclusions is fully described in the policy itself.

4. **The definition of "showrunner" as laid out in the CRTC's decision does not match the Writers Guild of Canada's definition (the showrunner is foremost a writing role). Do you think this will open the door to qualifying shows as "Canadian content" with NO Canadian screenwriters involved? Will it allow the owner of the production to call themselves a showrunner?**

To qualify as a Canadian program under the policy, it is not always required for a production to have a Canadian screenwriter. However, the policy provides strong incentives to use Canadian screenwriters in most cases. The showrunner has a specific definition which recognizes that it is a different role than screenwriter and director, and to achieve the criteria for a showrunner, the production must comply with its specific definition. The showrunner's definition can be found in Appendix 2 of the policy [Broadcasting Regulatory Policy CRTC 2025-299 | CRTC](#).

**5. Follow-up question to the requirement for a Canadian writer, how does that work on projects with multiple writers?**

Where each of the key creative positions of Director, Screenwriter, and Scriptwriter and Storyboard Supervisor is filled by multiple individuals, points will be awarded where at least **80% of all individuals filling a given position are Canadians**. You can find more details in the Commission's decision, outlined in paragraphs 52–59 of [Broadcasting Regulatory Policy CRTC 2025-299 | CRTC](#).

**6. Concerning the Canadian director/writer question above, can you please clarify whether there is a difference for animation?**

There is no distinction for animation in relation to the Canadian director/writer requirement. The same number of points are attributed to these roles.

**7. Do you require CAVCO numbers to help identify real people vs AI?**

Producers are required to provide the names of the individuals designated for each creative role, and the Commission can request supplementary information during the evaluation of any application.

**8. Can you speak to the rationale behind the Exception to qualification described in Appendix 1?**

These exceptions would only apply in rare and unique cases. Applicants would need to justify with a compelling and a well-documented rationale why their production should qualify for this exception. Other mandatory requirements under the Canadian certification framework would still apply. Requests for consideration of certifying a Canadian production based on this exception, would be examined by the Commission on a case-by-case basis.

**9. For clarity, if the screenwriter key creator point was not relied upon for certification, could a show the script for which was purely GenAI be certified Canadian under the new framework?**

Where a script is generated entirely by GenAI, the point for the writer position will not be applied. To qualify, a production must include either a Canadian writer or a Canadian director or both as required under applicable copyright provisions (see paragraph 158 of [Broadcasting Regulatory Policy CRTC 2025-299 | CRTC](#)). Please note that the writer/director safeguards remain consistent with the previous policy and have been strengthened in cases where copyright ownership is not majority Canadian.

**10. As the updates are not online, when will these updates and points table be available for review?**

The CRTC published its regulatory policy in [Broadcasting Regulatory Policy CRTC 2025-299 | CRTC](#). To implement its decisions on the criteria for defining 'Canadian program,' the Commission will soon issue a notice of consultation seeking comments on proposed regulations and related amendments to broadcasting rules.

**11. How is the Commission going to ascertain genuine "shared" decision-making on all creative elements, especially in the 20% ownership scenarios and the current allowance for "generally accepted foreign buyer approvals" practices?**


The CRTC can validate information relating to creative elements and the copyright ownership through clarification questions and by asking for supporting documents (i.e. Legal contracts, agreements, etc.) Regarding the second part of the question on funding of children's content, we cannot comment on questions relating to the funding of content since this issue will be part of a follow-up decision.

Kind regards,

**Sensibilisation et engagement/Outreach and Engagement**

Conseil de la radiodiffusion et des télécommunications canadiennes/Canadian Radio-  
Television and Telecommunications Commission  
Gouvernement du Canada/Government of Canada  
<http://www.crtc.gc.ca>

This is Exhibit "C" referred to in the  
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COMMISSIONER FOR TAKING AFFIDAVITS



Canadian  
human rights  
commission

Commission  
canadienne des  
droits de la personne

Human Rights

# DISCUSSION PAPER ON SYSTEMIC RACISM

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# Introduction

There is no question that racism violates human rights. Whether conscious or unconscious, subtle or overt, it diminishes human dignity and it erodes democracy. Because of historic and ongoing racism and racial discrimination, Indigenous, Black, and other racialized<sup>1</sup> people experience greater poverty, unemployment, inadequate housing and homelessness, and food insecurity. They are also at higher risk of chronic illness and diseases than white people.<sup>2</sup> Such widespread inequities are not the result of individual racist actions and beliefs alone, but of deeply entrenched systemic racism.

Canada has domestic and international obligations to combat systemic racism. The right to be free from racial discrimination is enshrined in the Canadian Human Rights Act and the Canadian Charter of Rights and Freedoms. Canada has also ratified or endorsed a number of international human rights instruments that address discrimination on the basis of race, including the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples, which has also been brought into Canadian law.

Systemic racism is deeply entrenched in Canadian society. It is in our written and unwritten policies, our laws, public practices, beliefs, and systems which “produce, condone, and perpetuate widespread, unfair treatment and oppression” of racialized people.<sup>3</sup> Systemic racism — and the negative repercussions arising out it — has been repeatedly recognized by people with lived experience, by international and regional human rights mechanisms, by civil society and Indigenous organizations, by domestic human rights institutions and, in many cases, by various levels of government. Nevertheless, progress towards eliminating systemic racism and discrimination in a meaningful way remains largely elusive. This will continue to be the case as long as any doubt remains about the meaning — or even the existence — of systemic racism in Canada.

As has often been said, no one is free until we are all free. Many societies, including our own, have been constructed in a way that places value on certain traits or identities to the exclusion of others — for example, white, male, Christian, English-speaking, thin/fit, not having a disability, heterosexual, gender conforming. Because of this, many people and communities in Canada and elsewhere face some form of discrimination, and many face multiple, intersecting forms of discrimination.

The purpose of this discussion paper is to explore the concept of systemic racism, including the historic context of Canada’s colonialism. This paper provides an overview of the different levels of racism in Canadian society, and examines the mechanisms that perpetuate it. The paper highlights the importance of learning about systemic racism in Canada and suggests tools to champion anti-racism.

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<sup>1</sup> Though some documents and pieces of legislation, such as the Employment Equity Act, use the term “visible minorities” the Commission is of the view that this is an antiquated term and is now using the term “racialized people.”

<sup>2</sup> Public Health Agency of Canada, “Inequalities in health of racialized adults in Canada”, available at <https://www.canada.ca/en/public-health/services/publications/science-research-data/inequalities-health-racialized-adults-18-plus-canada.html>

<sup>3</sup> Braveman, P et al. 2022, ‘Systemic and structural racism: Definitions, examples, health damages, and approaches to dismantling’, *Health Affairs*, vol. 41, no. 2, pp. 171-178, available at <https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.01394>

## What is race?

Though listed as a prohibited ground, race is not defined in the Canadian Human Rights Act. The Commission understands race to be a social construct, rather than something innate or biological in people. As expressed in the Government of Canada's Anti-Racism Strategy, "society forms ideas of race based on geographic, historical, political, economic, social and cultural factors, as well as physical traits, even though none of these can legitimately be used to classify groups of people."<sup>4</sup>

The process by which groups of people come to be socially constructed as races, based on characteristics such as skin-colour, ethnicity, language, economics, religion, culture, politics, etc. is called "racialization."<sup>5</sup> Modern scholarship views these socially constructed racial identities as often being created by socially dominant groups, and involving the subjugation of groups seen as racially inferior. As stated by the Canadian Race Relations Foundation, these "racial identities reflect the cultural attitudes of imperial powers dominant during the age of European colonial expansion."<sup>6</sup> For more on this point, please see the section on Colonialism and Racism in Canada. Throughout history, this intertwining of religion and culture has led to instances of the racialization of religious minorities. An example of this is antisemitism, often referred to as the world's oldest hatred - and which has been acknowledged as both a racial as well as religious form of discrimination.<sup>7</sup> This broad and inclusive understanding of what constitutes race and racism is seen in the Government of Canada's 2019–2022 Anti-Racism Strategy, which includes antisemitism, as well Islamophobia, in its annex of terminology.

## What is racism? What is racial discrimination?

Addressing systemic racism begins by being able to understand and identify what it is. In broad terms, racism is the belief that one racialized group is superior to another racialized group, specifically because of their race. Racism can be a set of beliefs that can be held consciously or unconsciously by individuals or groups of individuals. It can also operate through complex processes and structures (political, economic, judicial, etc.) to create a systemic-level of disadvantage that is linked to race. These processes and structures can be both current and historic, can influence each other, and can shape and be shaped by the racist beliefs of individuals or groups of individuals.

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<sup>4</sup> Department of Canadian Heritage, "What we heard – Informing Canada's Anti-Racism Strategy", available at <https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/what-we-heard.html#a2>

<sup>5</sup> Canadian Race Relations Foundation, "Glossary of Terms," available at <https://www.crrf-fcrr.ca/en/resources/glossary-a-terms-en-gb-1?letter=r&cc=p>

<sup>6</sup> Ibid

<sup>7</sup> Moerdler, Z. (2017). 'Racializing antisemitism: The development of racist antisemitism and its current manifestations', 40 *Fordham Int'l L.J.* 1281. Available at <https://ir.lawnet.fordham.edu/ilj/vol40/iss4/5/>

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## Colonialism and racism in Canada

Colonialism is the policy or process of one nation or people subjugating another nation or people. It is done by claiming full or partial political control over another, and by establishing colonies of settlers from the dominant group. It is done usually for the purpose of economic exploitation (of land, resources, and/or people). The process of colonization may also involve imposing the dominant language, religion, worldviews, institutions, and other cultural practices on the subjugated nation or people. This process is usually intentionally violent and destructive towards the colonized nation or people. It results in their marginalization, oppression, traumatization, and in generational damage to or loss of their own languages, religions, worldviews, institutions, other cultural practices, and lives.

Colonialism and racialization mutually reinforce each other. They have been tools used throughout history by European imperial powers to assert, justify, and maintain their dominance as “white people” over the groups they deemed to be racially inferior to themselves. Racialization and its positioning of white people as superior, also known as white supremacy, spread around the world as European imperial powers colonized large parts of the world and violently established the systems that would maintain their dominance. These systems persist globally to this day.

Canada is a settler colonial state. Its existence is rooted in the colonization of Indigenous peoples, who were positioned by Europeans as being racially inferior to them. Indigenous lands and resources were therefore considered automatically available to be claimed by European powers (according to the doctrines of discovery and of terra nullius). The continued presence of Indigenous peoples was viewed as an obstacle to these European land claims, and to the establishment and growth of the Canadian state. So institutions, policies, and practices were developed based on this racist view of Indigenous peoples. This deeply entrenched colonial dynamic continues to inform the relationship between Canada, non-Indigenous Canadians, and Indigenous peoples.

European colonialism created a system of social hierarchy based on skin colour, which has led to racial discrimination against Black and other racialized people with darker complexions. Anti-Black racism is deeply entrenched in Canadian institutions, policies, and practices. It is informed by Canada’s history of enslavement, segregation and marginalization, which shapes interactions with people of African descent and those from other racialized groups, and prevents their equal access to employment, services and opportunity.

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Racism depends on societal systems of power, and reinforces and is reinforced by existing systems of oppression. The result is that the racialized group that has historically been positioned as superior also has societal, political, and economic power over other racialized groups. White supremacy is such a system of power. It is both an ideology and a historic political system. It is the belief that white people, because of their race, are superior to all other people, and should therefore be the dominant group.

This belief takes root early in life: studies have shown that children can develop stereotypes and exhibit racist behaviours at very young ages.<sup>8</sup> Children are able to observe how race structures the world around them. They will notice who the heroes are in the shows,

movies, and books they consume — in which Indigenous, Black, and other racialized groups continue to be underrepresented, female characters are most often presented as thin and are likelier to be sexualized, and very few characters if any show signs of physical disability or chronic disease.<sup>9</sup> Children will notice that politicians in power tend to be white and male, that the wealthiest families and individuals in their communities and in society tend to be white, and as research has shown, will begin to associate white people with wealth and prestige.<sup>10</sup>

These racist ideologies and processes can manifest themselves through the treatment of, or decisions about people, on the basis of race. **This is racial discrimination, and it is prohibited in Canadian law.**

Race is listed in section 3(1) of the Canadian Human Rights Act as a prohibited ground of discrimination. Section 15(1) of the Canadian Charter of Rights and Freedoms also affirms the right of every individual to be free from discrimination based on race.

While there is no fixed definition of the term racial discrimination, Canadian case law views it as, “any distinction, conduct or action, whether intentional or not, but based on a person’s race, which has the effect of imposing burdens on an individual or group, not imposed upon others or which withholds or limits access to benefits available to other members of society.”<sup>11</sup>

Racism and racial discrimination can be manifested explicitly or implicitly, directly or indirectly, at individual, institutional, and structural, and systemic levels.

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<sup>8</sup> Kelly, D.J., Quinn, P.C., Slater, A.M., Lee, K., Gibson, A., Smith, M., Ge, L. and Pascalis, O. (2005), Three-month-olds, but not newborns, prefer own-race faces. *Developmental Science*, 8: F31-F36. <https://doi.org/10.1111/j.1467-7687.2005.0434a.x>; Katz, P. A. (2003). Racists or Tolerant Multiculturalists? How Do They Begin? *American Psychologist*, 58(11), 897–909. <https://doi.org/10.1037/0003-066X.58.11.897b>; Pahlke E, Bigler RS, Suizzo MA. Relations between colorblind socialization and children's racial bias: evidence from European American mothers and their preschool children. *Child Dev.* 2012 Jul-Aug;83(4):1164-79. doi: 10.1111/j.1467-8624.2012.01770.x. Epub 2012 Apr 26. PMID: 22537347.

<sup>9</sup> Levinson, Jordan. “Why Diversity in Children’s Media is So Important” available at <https://www.psychologyinaction.org/psychology-in-action-1/2020/3/5/why-diversity-in-childrens-media-is-so-important>

<sup>10</sup> Mandalaywala TM, Tai C, Rhodes M (2020) Children's use of race and gender as cues to social status. *PLoS ONE* 15(6): e0234398. <https://doi.org/10.1371/journal.pone.0234398>

<sup>11</sup> Ontario Human Right Commission, “Racial discrimination, race and racism (fact sheet)”, available at <http://www.ohrc.on.ca/en/racial-discrimination-race-and-racism-fact-sheet>

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### What the Canadian Human Rights Tribunal has said

Allegations of racial discrimination can be “notoriously difficult to prove because in most cases, discrimination based on race is not overt and manifests in subtle ways.”<sup>12</sup> In its 1988 *Basi* decision, the Canadian Human Rights Tribunal referred to the “subtle scent of discrimination”<sup>13</sup> which, as the Tribunal later explained in its *Grover* decision, often has to be identified by assessing circumstantial evidence.<sup>14</sup>

Tribunals have also recognized that a finding of racial discrimination can be made without there having been a discriminatory intent or motive. It is enough for there to have been a discriminatory effect.<sup>15</sup> Something can also be considered discriminatory even when racial discrimination is only one of several reasons for an action or decision.<sup>16</sup> This means that, according to Canadian case law, people can engage in racial discrimination without realizing it or doing it consciously, even if they have other reasons to explain their decision or behaviour. For instance, there may be a number of reasons why someone’s employment could be terminated, including legitimate documented performance issues. But the existence of these other factors does not, in itself, mean that there was no racial discrimination. If the decision to terminate the person was at least partly based on their race, whether consciously or unconsciously, this would constitute racial discrimination.

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<sup>12</sup> *Fitzgerald v Toronto Police Services Board*, 2019 HRTO 22, para 96

<sup>13</sup> *Basi v. Canadian National Railway Co. (No. 1)* (1988), 9 CHRR D/5029 (CHRT)

<sup>14</sup> *Grover v. National Research Council of Canada (No. 1)* (1992), 18 CHRR D/1 (CHRT) at para 158

<sup>15</sup> *Ontario Human Rights Commission v. Simpson-Sears Ltd.*, [1985] 2 SCR 536

<sup>16</sup> *Gray v. A & W Food Service of Canada Ltd.* (1994), CHRR Doc. 94-146 (Ont. Bd. Inq.), *Dominion Management v. Velenosi* (1997), 148 D.L.R. (4th) 575 at 576 (On CA), *Smith v. Mardana Ltd.* (Div. Ct.)

## What is systemic racism?

“Race-based discrimination may be understood as systemic when it goes beyond isolated individual wrongdoing to encompass broader patterns of racial inequality.”<sup>17</sup>

The Canadian Race Relations Foundation defines systemic racism as “an interlocking and reciprocal relationship between the individual, institutional and structural levels, which function as a **system of racism**. These various levels of racism operate together in a lockstep model and function together as a whole system.”<sup>18</sup> While previous sections of this paper have touched briefly on these levels of racism, the following sections will discuss them further and explore how they relate to each other.

### Individual racism (interactions between people)

To many people, this may be the most easily identifiable form of racism — person to person. It is framed by the conscious and unconscious negative race-based values, assumptions, and beliefs of individuals. Individual racism can be manifested both directly and indirectly, consciously or unconsciously, in words, attitudes, ideas, behaviours, and actions. Some of the more obvious forms of individual racism are racist slurs or other derogatory comments, hate speech, and direct attacks. Less obviously, individual racism can be manifested as jokes, microaggressions preconceived ideas about racialized people, unconscious gestures or facial expressions, among others.

**Microaggressions** – or subtle acts of exclusion – are defined as brief, indirect, and everyday slights, indignities, put-downs, and insults that communicate discriminatory attitudes towards members of equity-deserving groups. These slights can be behavioural, verbal, or environmental, and can be intentional or unintentional. Microaggressions can leave those subjected to them feeling uncomfortable, unwelcome, insulted, othered, and painfully reminded of stereotypes associated to their identities. Examples of racist microaggressions include, among many others, insistently asking a racialized person where they are really from, complimenting a racialized person on the quality of their English, or clutching one’s bag tighter in the presence of a Black man. While there may be no harm consciously intended, microaggressions nevertheless cause harm, and the harmful impact is cumulative as racialized people experience these microaggressions frequently in their day-to-day lives.

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<sup>17</sup> McGill Centre for Human Rights and Pluralism - [Understanding how racism becomes systemic](#) Colleen Sheppard, Tamara Thermitus, and Derek J. Jones, 18 Aug 2020. Article was originally published in The Globe and Mail on July 24, 2020, and was reproduced on McGill.ca with permission.

<sup>18</sup> Canadian Race Relations Foundations, “Glossary of Terms,” available at <https://www.crrf-fcrr.ca/en/resources/glossary-a-terms-en-gb-1?letter=r&cc=p>

## **Institutional racism (within institutions and systems of power)**

Institutional racism is generally understood to be embedded in an institution's policies, practices and regulations. These are then developed, carried out and enforced by individuals who may or may not be conscious of the racism underpinning all of it. One of the challenges is that the policies, practices and regulations may appear neutral on their face. Yet they can still result in the discriminatory or differential treatment of individuals based on race. This is because those policies, practices and regulations are rooted in a set of values, principles and norms that perpetuate racial inequality. Examples of such institutional systems can include the education system (including schools and school boards), the criminal justice system (including police services, courts, sentencing and prisons), the health care system (including hospitals and other physical and mental health care service providers), government departments, and other employment and service providers.

## **Structural, societal, and cultural racism (society-wide)**

This level of racism manifests at the societal level and "represents the ways in which the rooted inequities of society produce the differentiation, categorization, and stratification of members of society on the basis of race, and in turn their participation in economic, political, social, cultural, judicial, and educational institutions."<sup>19</sup> In other words, this form of racism is manifested in the ways that the dominant culture defines reality to advantage white people and to disadvantage racialized people.

One such ideology is white supremacy. It is an entire system of power that was invented to "justify the establishment of explicitly racist codes and institutions that protect white dominance."<sup>20</sup> It has manifested itself throughout Canadian history, serving, for example, to rationalize slavery, the dispossession and genocide of Indigenous peoples, the oppression of women, Japanese internment camps, and discriminatory immigration policies including the Chinese head tax, antisemitic immigration policies, and immigration restrictions against people with disabilities. The objective of such policies has often been to protect the existing systems of power that privilege the dominant race. In this way, white supremacy has been the "rigid nexus of power that protects and enforces"<sup>21</sup> systemic racial oppression.

White supremacist political systems have historically used law and policy to exclude non-white people from full participation and citizenship, by limiting their voting rights, property rights, other civil and political rights, as well as their economic, social, and cultural rights. These systems were the codification of white supremacist ideology, and in turn, served to reinforce white supremacy.

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<sup>19</sup> Carl E. James, *Seeing Ourselves: Exploring Race, Ethnicity, and Culture*. 4<sup>th</sup> edition. 2010. p. 221

<sup>20</sup> Nakagawa, Scot. "Is it White Supremacy or White Nationalism?" available at <https://scotnakagawa.substack.com/p/is-it-white-supremacy-or-white-nationalism>

<sup>21</sup> Smith, Barbara. "The problem is white supremacy" available at - <https://www.bostonglobe.com/2020/06/29/opinion/problem-is-white-supremacy/>

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## Internalized racism

“Because white supremacy culture is the water we swim in, we inevitably internalize the messages about what this culture believes, values, and considers normal. We absorb these messages as individuals and as a collective. As a result, white supremacy culture shapes how we think and act, how we make decisions and behave.”<sup>22</sup>

Internalized racism are the individual beliefs, ideas, stereotypes, values and images which are perpetuated by the white dominant society about one’s own racial group.<sup>23</sup> These can lead to feelings of self-doubt, disrespect, and disgust for one’s race or oneself as a racialized person. One way this is manifested is in colourism within and among communities of colour, wherein value is attributed to having lighter skin, and darker skin tones are perceived more negatively or as less desirable. Indigenous, Black, and other racialized people may also alter the way they speak or dress, wear their hair differently, adopt or express certain beliefs about themselves or other racialized groups. The presumption is that “aligning oneself with whiteness will provide benefits, access and opportunities. Within communities of color, it is a common practice to align with and assimilate into white society as a means to advance and propel. White adjacency adopts the notion that proximity to whiteness will equate to advantages. But we cannot forget that the system exists to oppress.”<sup>24</sup>

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<sup>22</sup> Okun, Tema. “What is White Supremacy Culture?” available at <https://www.whitesupremacyculture.info/what-is-it.html>

<sup>23</sup> Pyke, K. 2010, ‘What is internalized racial oppression and why don’t we study it? Acknowledging racism’s hidden injuries’, *Sociological Perspectives*, vol. 53, no. 4, pp. 551-572.

<sup>24</sup> Gassam Asare, Janice. “We All Uphold, Continue, and Contribute To White Supremacy” available at <https://www.forbes.com/sites/janicegassam/2021/03/21/we-all-uphold-continue-and-contribute-to-white-supremacy/?sh=4ef135dd57ea>

## How do these levels of racism interact with each other?

Because this is how our society has been built, systemic racism and white supremacist ideology continue to perpetuate themselves even without the awareness or intention of every person within those systems. To focus only on one level of racism, such as individual incidents of race-based discrimination, is to ignore the ways in which racism is so deeply embedded in our institutions and societies that it has become normalized and often invisible to socially dominant groups.

A focus on individual racism also disregards the ways in which racism and racial discrimination in one sphere may exacerbate or be exacerbated by racial inequality in another sphere.

“Systemic racism is a well-established concept rooted in our colonial past, embedded in our legislation, enabled in our institutional practices and sustained in our organizational culture. A common misconception about racism is that it involves a few bad apples who engage in racist thoughts and behaviours. This is not true, because imperfectly good people can commit acts of omission that allow individual racists to survive and even thrive in organizations. Imperfectly good people can also consciously or unconsciously enable systems to create and perpetuate policies and practices that work to the advantage of some groups and to the disadvantage of others.”<sup>25</sup>

Indigenous, Black, and other racialized people and communities experience far more negative realities than white people and white communities in a number of key areas, including: health, education, levels of poverty, access to adequate housing, employment, career growth, and many others. These negative outcomes compound each other and are reflective of the systemic nature of racism in Canadian society. A few examples:

- **Unequal health care outcomes:** Indigenous, Black, and other racialized people in Canada have consistently reported poorer health care outcomes, with Indigenous women facing the worst outcomes of any population group in Canada. This includes higher rates of hypertension, heart disease, diabetes, cervical and gallbladder cancer, HIV/AIDS, substance abuse, mental illness, and suicide. “Studies suggest that a number of factors negatively affect the health of Indigenous, Black, and other racialized people in Canada, including: the psychological stress of living in a racist environment; unequal economic opportunities; poor housing; lack of food security; inequitable access to education and other social resources; disproportionate exposure to environmental toxins; employment in dangerous and precarious work; mistrust of the health-care system; and underutilization of screening programs.”<sup>26</sup>

Additionally, a low proportion of physicians in Canada are Indigenous, Black, or racialized. This can contribute to stereotyping and bias throughout the healthcare system. This underrepresentation is itself underpinned by systemic racism. It is rooted in the systemic racism in the education system, beginning at the earliest grades, combined with other factors such as

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<sup>25</sup> Hansard, Standing Committee on Public Safety and National Security, Systemic Racism in Policing in Canada, July 24, 2020 available at <https://www.ourcommons.ca/DocumentViewer/en/43-1/secu/meeting-10/evidence>

<sup>26</sup> Colour of Poverty – Colour of Change, “Fact sheets” available at <https://colourofpoverty.ca/fact-sheets/>

poverty,<sup>27</sup> unmet housing needs,<sup>28</sup> and food insecurity — all products of systemic racism. This leads to lower levels of educational attainment overall for Indigenous, Black, and other racialized people.<sup>29</sup> This can mean lower enrollment in medical school. Additionally, many Indigenous, Black, and other racialized people who do enroll in medical school or related programs and become health care providers report experiencing racism at school and in health care institutions. All of these factors interact to result in persistently unequal health outcomes.

- **Overrepresentation in the criminal justice system:** Indigenous peoples are consistently overpoliced and overrepresented in Canadian prisons. There are a variety of systemic factors that influence this outcome, including what many advocates refer to as the “school to prison pipeline.”

Similarly, research shows that anti-Black racism in the education system leads to the over-disciplining and criminalization of Black youth, bringing them disproportionately into contact with police. In turn, Black people are overrepresented in prisons and the criminal justice system. Indigenous individuals are also drastically overrepresented in prisons, making up over a third of the prison population across Canada, despite representing less than 5% of the general population.<sup>30</sup> Research has shown a link between the discriminatory underfunding by the federal government of First Nations Child and Family Services, the vastly disproportionate

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<sup>27</sup> According to the 2016 Census, 20.8% of racialized people were low-income, compared to 12.2% of white people - see <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&Lang=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=1341679&GK=0&GRP=1&PID=110563&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=120&VID=0&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0>; The Census also showed that 81% of First Nations reserves reported median incomes below the poverty line. Refer to, “Over 80% of reserves have median income below poverty line, census data shows,” available at <https://globalnews.ca/news/3795083/reserves-poverty-line-census/>

<sup>28</sup> Individuals from racialized and newcomer communities experience homelessness at disproportionately high rates, and the same is true for Indigenous persons, who constitute anywhere from 10% to 90% of the homeless population in cities across Canada, see <https://www.homelesshub.ca/about-homelessness/population-specific/racialized-communities>; Racialized people were also nearly twice as likely to be in core housing need, which is defined as living in an unsuitable, inadequate or unaffordable dwelling, and being unable to afford alternative housing in their community, see <https://www150.statcan.gc.ca/n1/daily-quotidien/201002/dq201002a-eng.htm>; Data also shows that nearly 18% of Indigenous households live in core housing need, compared to 12% of non-Indigenous households, see <https://www.cmhc-schl.gc.ca/en/blog/2019-housing-observer/indigenous-households-core-housing-need>

<sup>29</sup> While 84% of white students graduated high school in 2015, this number was only 69% for Black students, and 50% for Indigenous students. Refer to “Colour of Poverty – Colour of Change,” Fact sheets available at <https://colourofpoverty.ca/fact-sheets/>

<sup>30</sup> Office of the Correctional Investigator, “Indigenous People in Federal Custody Surpasses 30%; Correctional Investigator Issues Statement and Challenge” available at <https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>

number of Indigenous children in foster care, and this over-incarceration — a phenomenon dubbed the “care-to-prison pipeline”<sup>31</sup> or the “child-welfare-to-prison pipeline.”<sup>32</sup>

- **Unequal access to a clean and healthy environment:** Indigenous, Black, and other racialized communities have long been sounding the alarm about the impacts of environmental racism and have been leading efforts to combat them. Environmental racism can be attributed in part to targeted placement of environmentally hazardous activities and industries, discriminatory policies, the exclusion of Indigenous, Black, and other racialized peoples from regulatory and decision-making bodies, and a lack of human rights protection. Yet, the intersecting dynamics of discriminatory policies and colonial legacies have threatened the ability of the most vulnerable communities to exercise their inherent and constitutional rights.

Exposure to environmentally hazardous activities creates serious health risks; and, for people living in communities where there are disproportionate amounts of environmentally hazardous activities, health risks intensify. The chemicals and toxins from these activities contaminate the air, water and land surrounding these communities, and as a result, the constant exposure can lead to negative health impacts and, in some instances, potential life-threatening illnesses.

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<sup>31</sup> “Data gap: Governments don’t track how many inmates have been in care” available at <https://globalnews.ca/news/7323821/child-welfare-care-prison-data-not-tracked/>

<sup>32</sup> Ontario Human Rights Commission, “Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare” available at <http://www.ohrc.on.ca/en/interrupted-childhoods>

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### Intersectional discrimination/intersectionality

Systemic racism can also interact with other forms of discrimination. **Intersectionality** is a concept that recognizes that different kinds of discrimination reinforce and influence each other. The various identities a person identifies with, such as their race, class, gender, physical or mental ability, or sexual orientation, can shape the nature of the discrimination they face in their lives.

Kimberlé Crenshaw, the scholar who coined the term, intersectionality, describes this concept by explaining that a Black woman, who experiences both racism and sexism, experiences different racism than a Black man, and different sexism than a white woman, because her two identities intersect (hence intersectionality). The two identities compound upon each other in the face of discrimination. It means the woman faces stereotyping and harassment that is exclusive to Black women.<sup>33</sup>

Applying an **intersectional approach** means taking into account that a person has more than one social category or identity, and that their experiences and lives are influenced by those other categories or identities.

It is important to acknowledge that the combined effects of multiple grounds of discrimination can have a greater impact than discrimination based on a single ground.

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## What can we do?

Systemic racism dehumanizes us all. Whether consciously or unconsciously, a failure to champion anti-racism makes one complicit in the oppression of those harmed by racial injustice. Achieving a truly equitable society will require the dismantling of the systems that inherently place a greater value on some identities than others, such as those listed in the Introduction. Addressing systemic racism requires awareness and, more importantly, action at every level — individual, institutional, and structural.

In learning about and tackling systemic racism, we need to listen to and amplify voices<sup>34</sup> and lived experiences of Indigenous, Black, and other racialized people. They are the ones who have been fighting the longest for systemic change. They are the ones who can best describe what is needed to end systemic racism. When it comes to real, concrete actions that we can all take there are many resources to turn to. These actions apply to everyone from individuals and families to institutions and governments. This section provides just a few examples, but there are so many others. Think about what you can do!

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<sup>33</sup> Crenshaw, Kimberlé. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>

<sup>34</sup> Centering Voices of Those Most Impacted in Health Equity Efforts, available at [https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2019/04/Centering-Voices-Principles\\_MATCH\\_Sept-2018.pdf](https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2019/04/Centering-Voices-Principles_MATCH_Sept-2018.pdf)

- **Developing the tools to understand and recognize how systemic racism and white supremacy operate within each person and in everyday life is a crucial step.** Having meaningful conversations about race is necessary because white supremacist messaging cannot be avoided: “Cultural racism—the cultural images and messages that affirm the assumed superiority of Whites [sic] and the assumed inferiority of people of color—is like a smog in the air. Sometimes, it is so thick it is visible, other times it is less apparent, but always, day in and day out, we are breathing it in.”<sup>35</sup> We all need to pay attention to the ways in which white supremacy exists, from examining our biases, to learning more about colourism and its impacts. It is all of our responsibility to learn more about Canada’s colonial history.
- **Changing the way white children are taught about racism is an important step forward.** Research has shown that white parents do not talk to their children about racism as often or in the same way as Indigenous, Black, or other racialized parents — who do so knowing that systemic racism will negatively affect the lives of their children.<sup>36</sup> White parents are also likelier to approach conversations about race in ways that have been shown to be ineffective at combating racism, including emphasizing colour-blindness, and telling their children that race does not matter and that people are all the same on the inside.<sup>37</sup> It is vital that white parents have deeper, more nuanced conversations about race and the history of racism and colonialism in Canada with their children.
- **Employers and service providers also have a role to play in combatting systemic racism and white supremacy within their organizations.** It is widely accepted that organizations that intentionally value diversity and inclusion perform better than their non-diverse counterparts. Research has found that “companies in the top quartile for gender or racial and ethnic diversity are more likely to have financial returns above their national industry medians. Companies in the bottom quartile in these dimensions are statistically less likely to achieve above-average returns.”<sup>38</sup>  
One way of addressing systemic racism in organizations is by adopting special programs or special measures.<sup>39</sup> These not only help address inequalities on a societal level, but also will encourage a healthier and more effective workplace overall.

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<sup>35</sup> Tatum, Beverly Daniel. “Why Are All the Black Kids Sitting Together in the Cafeteria?”: And Other Conversations About Race” revised and updated (New York: Basic Books, 2017), p. 86

<sup>36</sup> Nathoo, Zulekha. “How to talk to kids about race, and why you should start now” available at <https://www.cbc.ca/news/world/how-talk-to-kids-about-race-1.5596169>

<sup>37</sup> Sullivan, J. Nicky, Jennifer L. Eberhardt, & Steven O. Roberts. “Conversations about race in Black and White US families: Before and after George Floyd’s death” PNAS September 21 2021 118 (38) e2106366118; <https://doi.org/10.1073/pnas.2106366118>

<sup>38</sup> Business Development Bank of Canada, “Workplace diversity: Why it’s good for business” available at <https://www.bdc.ca/en/articles-tools/employees/recruit/business-benefits-workforce-diversity>

<sup>39</sup> A **special program** is any plan, arrangement, rule, or policy designed to prevent, reduce or eliminate a disadvantage or representation gap experienced by any group of individuals related to one or more prohibited grounds of discrimination as defined in the Canadian Human Rights Act. Under the Employment Equity Act, a **special measure** is adopted in an employment situation to correct situations of underrepresentation in the workforce of individuals identifying as belonging to one of four designated groups: women, Indigenous peoples, people with disabilities, and racialized people. For more information on special programs and special measures,

- **Ensuring a diverse and inclusive organization is key.** Employees from a wide range of backgrounds bring unique perspectives that foster innovation and creativity, and also allow organizations to better understand the community that they serve. But representation is only a first step. Employers should also ensure that Indigenous, Black, and other racialized employees have the tools, support, and opportunities to succeed within their organizations.

## Conclusion

As this paper illustrates, one of the keys to combatting and dismantling systemic racism in Canada is to first learn how to correctly define it, identify it and recognize it as an embedded structure within Canadian society.

While individual actions and organizational policies are also essential to the way forward, significant and sustainable progress towards eliminating systemic racism also requires societal and cultural shifts. In turn, these shifts will entail change, action, and support from governments, and national and international institutions.

The reality remains that systemic racism continues to inform how we structure our communities and our systems, how we determine value, and how we perceive reality. These are systemic problems that require urgent, systemic solutions, ongoing dialogue and concrete actions.

We are not free until we are all free.

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see the Commission's guide called "Levelling the Field: Developing a Special Program or a Special Measure Under the Canadian Human Rights Act or the Employment Equity Act" available at <https://www.chrc-ccdp.gc.ca/en/resources/publications/levelling-the-field-developing-a-special-program-under-the-canadian-human>

This is Exhibit "D" referred to in the  
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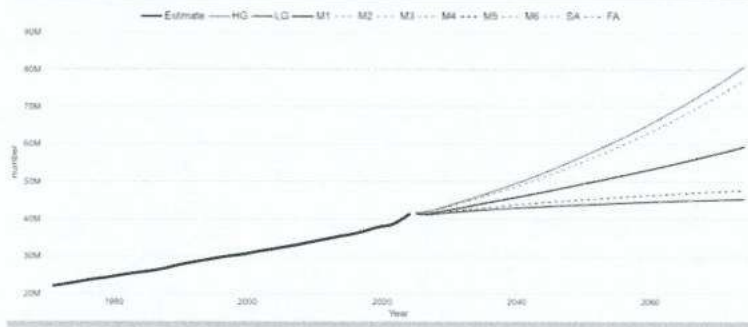
## Population Projections for Canada, Provinces and Territories: Interactive Dashboard

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### Population estimates (1971 to 2024) and projections (2025 to 2074), Canada, total - gender, all ages

Geography: Canada | Age group: All ages | Gender: Total - gender | Projection scenario: Medium-growth scenario (M1)

- By 2074, the total population in Canada could range between 45,241,600 (Low-growth scenario (LG)) and 80,780,300 (High-growth scenario (HG)).
- Under the medium-growth scenario (M1), the total population in Canada could reach 59,268,100 by 2074, a 43.5% increase compared with 2024 (41,288,599).



### Projections of population age distribution (% of total population), Medium-growth scenario (M1), Canada, 2025 to 2074

Geography: Canada | Projection scenario: Medium-growth scenario (M1)

- The proportion of children aged 0 to 14 years in Canada could reach 13.0% in 2074 under the medium-growth scenario (M1), a 2.2 percentage points decrease compared with 2024 (15.2%).
- According to the medium-growth scenario (M1), the proportion of people aged 65 and over in Canada could increase from 18.9% in 2024 to 26.5% in 2074. Canada's demographic dependency ratio (the number of persons aged 14 and under or aged 65 and over per 100 persons aged 15 to 64) would grow from 51.8 to 65.3 between 2024 and 2074.
- In 2024, people aged 85 years and over accounted for 2.2% of the total population of Canada. This proportion could increase to 6.2% by 2074, according to the medium-growth scenario (M1).

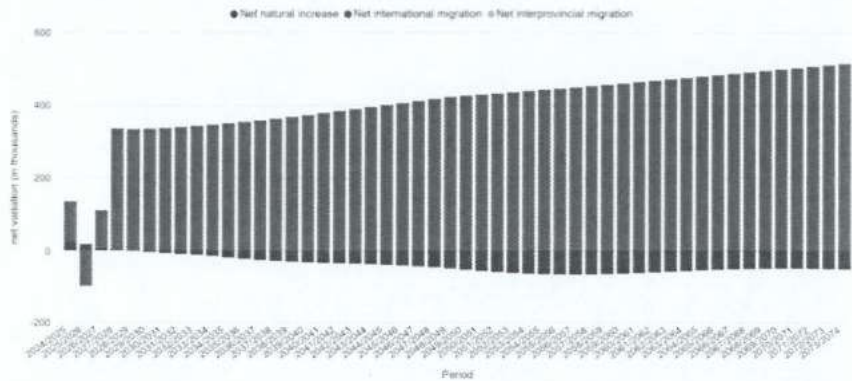


2025

## Components of projected demographic growth (Medium-growth scenario (M1)), Canada, 2024/2025 to 2073/2074

Geography: Canada | Projection scenario: Medium-growth scenario (M1)

• International migration would be the main driver of population growth in Canada over the next 50 years, according to the medium-growth scenario (M1).



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### Additional information

The population projections produced by Statistics Canada's Demography Division are not intended to be interpreted as predictions about what will happen in the future. They should instead be understood as an exercise designed to investigate what the Canadian population might become in the years ahead according to various scenarios of possible future change.

For this reason, Statistics Canada always publishes several scenarios and formulates several explicit assumptions regarding the main components of population growth. Accordingly, users are encouraged to consider several scenarios when they analyze the projection results.

Because of rounding, counts and proportions may differ from the totals.

#### Projection scenarios

The **base population** for these projections is derived from the official preliminary postcensal estimates of the population for Canada, provinces and territories as of July 1, 2024. In all scenarios, the population is projected until 2049 for the provinces and territories, and until 2074 for Canada as a whole.

For a summary of short and long-term projection scenario assumptions, see [Population Projections for Canada \(2024 to 2074\), Provinces and Territories \(2024 to 2049\)](#).

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## Economic Insights

# Two-step Immigration Selection: A Review of Benefits and Potential Challenges

by Eden Crossman, Feng Hou, and Garnett Picot

Release date: July 22, 2020



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# Two-step Immigration Selection: A Review of Benefits and Potential Challenges

*Eden Crossman, Immigration, Refugees and Citizenship Canada*

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In a two-step immigration selection process, temporary foreign workers are first selected by employers for a temporary job, and some qualified temporary foreign workers then become economic immigrants. The details of this selection process vary among countries. For example, in the US, the temporary workers are typically sponsored by the employers in their bid to become permanent residents. In Canada, the temporary residents are selected for permanent residency by the government based on a set of largely human capital criteria, although employers may play a role in some selection pathways. Viewed in a generic manner, the two-step process presents both advantages and risks. This article provides an overview of such potential advantages and risks.

**It is the first of five articles on the two-step selection process.**

## Introduction

In Canada, like many other Western countries, temporary foreign workers have become an important pool from which permanent immigrants are drawn. In 2018, almost one-half of economic immigrants came from that pool. Selecting economic immigrants from former temporary foreign workers is essentially a “two-step migration” process. Under this process, skilled migrants first obtain temporary resident status to work or to study. Their skills and qualifications are evaluated by Canadian employers when they are looking for jobs and further tested while they are on the job. Secondly, the temporary resident applies for permanent residency and is selected based on criteria outlined in either the provincial or federal economic immigrant programs. The employment and/or study experience in the receiving country as a temporary resident often strengthens qualifications for the pathway to permanent residency as an economic immigrant, viewed as a signal of relevant and in-demand labour market skills.

An increasing role within selection for employers is a key feature of the trend towards two-step immigration. However, the role played by employers can vary considerably, depending on the system. There is a noteworthy difference between the United States (US) employer-selection and Canada’s two-step selection. In both countries, employers do the selection in hiring and retaining temporary foreign workers. However, while US employers further sponsor temporary foreign workers for the application of permanent residency (by way of a job offer), employers in Canada do not generally play a direct role in the second step. The US employment-based immigration has mainly operated through employer sponsorship. The selection mechanism typically involves two

## Two-step immigration selection: A Review of Benefits and Potential Challenges

steps. First, skilled foreign workers are recruited by US employers through temporary work visas (e.g., the H-1B visa), and second, they may transition to permanent residency via employer sponsorship. In Canada, temporary workers seeking to transition still need to go through the points system, although employers still play a large role in the selection of some skilled workers, such as those landing in the Provincial Nominee Programs.<sup>1</sup>

Given the trend towards two-step immigration, it is imperative to monitor and better understand the resulting implications for immigrant labour market outcomes and impacts in Canada. This article is the first of a five-part series that provides a broad overview of the increasing importance of temporary foreign workers in the selection and labour market outcomes of new immigrants in Canada. This article reviews the literature on the advantages and potential risks of two-step immigration selection as practiced in several countries, including Canada. The remaining four articles cover the following topics:

- the expansion of two-step immigration selection in Canada since the early 2000s,
- the link between the expansion of two-step immigration and the recent improvement in immigrants' labour market outcomes,
- the role of two-step immigration in accounting for differences in labour market outcomes of economic immigrants in various admission programs
- a comparison of the effects of the two-step immigration and pre-arranged jobs on immigrants' labour market outcomes.

### The advantages of two-step immigration selection

The two-step migration process has been argued to combine the beneficial attributes from both demand-driven (employer based) and points-based (human capital based) selection systems, with the objective to improve outcomes for immigrants, employers, society, and the economy (e.g., Papademetriou and Hooper 2019; Hawthorne 2010). Under this approach to migration, the receiving country has the opportunity to 'try out' potential migrants before allowing them to stay permanently, while migrants similarly have the chance to test out life in the receiving country before making a decision on whether to make the move permanent (Spinks 2016). The evolution of the migration process to this point in several countries, including Canada, Australia, and New Zealand has been positioned as a migration system advancement (e.g., Papademetriou and Hooper 2019; Spinks 2016; Hawthorne 2010).

Primary among the reasons cited as improvements are better labour market integration among immigrants with previous temporary experience in the receiving country. Empirical research generally finds immigrants with previous temporary experience in the receiving country have higher initial employment rate and earnings than those without such experience (e.g., Boucher and Davidson 2019; Gregory 2014; Hawthorne 2015; Hou and Picot 2016; Papademetriou and

1. For example, with the exception of Quebec, Saskatchewan, and Manitoba, the skilled worker component of Provincial Nominee Programs generally requires an employer to sponsor the applicant for permanent residency. Several pilot projects currently under way in Canada also require employer sponsorship in the application for permanent residency (e.g., Atlantic Immigration Pilot; Rural and Northern Immigration Pilot). With the introduction of the Canadian Express Entry (EE) application management system in 2015, points available for a job offer almost guaranteed permanent resident status; in 2016, however, the points available from employer sponsorship were reduced considerably in order to rebalance the ranking system and to improve the chance for more highly skilled candidates (IRCC 2017).

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Hooper 2019; Sweetman and Warman 2014). Some research suggests that these labour market advantages may persist in the longer run (Hou and Bonikowska 2018).

Immigrants with prior work experience as temporary residents are unlikely to experience the same difficulty with the portability of their human capital as migrants without previous local experience because their skills have already been recognized in the receiving country by at least one employer (Ferrer, Picot, and Riddell 2014). Previous connections with domestic employers and educational institutions make it more likely an immigrant's foreign work experience will be valued and educational credentials will be recognized. Furthermore, an immigrant with previous temporary experience will have presumably worked and/or studied in the official language, and therefore not have significant language barriers to overcome (Papademetriou and Hooper 2019).

Perhaps one of the most important aspects of an at least partially demand driven system is that it facilitates better job-skills match than one-step migration (Mares 2017). Employers being able to recruit according to their specific needs - and in a timely manner - is key for productivity. When employers are able to find adequate work resources, and when the skills of employees are matched with their employment, resources are used most efficiently (the effects of skill mismatch on productivity is a loss of work potential through inefficient resource reallocation). A close job-skills match is advantageous because productivity and wages are higher when workers can effectively implement their experience and education-related skills. Moreover, under the two-step migration process, skills have not only already been proven relevant to the host labour market, there is also less chance of skills atrophy if a temporary migrant is working within the country while applying for permanent residency.

Immigrants who have successful previous experience in host country workplaces and educational institutions may have acquired relevant social network and interpersonal skills such as the ability to communicate well with other people and to work in a team. A familiarity with host country workplaces and institutions can be an advantage with respect to outcomes relative to those who do not have such experience. Immigrants' interpersonal competencies are often an important consideration of employers' hiring decision (Boucher and Davidson 2019). Papademetriou, Benton, and Hooper (2019) suggest that employer sponsored pathways, particularly temporary-to-permanent pathways that allow employers to test workers on the job and allow workers to demonstrate their adaptability to the local labour market, are well positioned to measure these traits.

One of the attractions of the two-step migration process is the inherent potential to facilitate the recruitment and retention of immigrant workers to build up the populations and labour forces in areas outside large metropolitan cities. Temporary pathways offer more scope for stipulating certain conditions such as where temporary foreign workers can settle and for how long. Regional immigration programs are often centered on temporary to permanent pathways, initially setting parameters on where a migrant can settle and work, and encouraging them to put down roots instead of moving on to more cosmopolitan cities (though once this period expires, they are free to relocate) (Papademetriou, Benton, and Hooper 2019). Moreover, the employer driven aspect of the temporary visas means many migrants are filling a specific regional labour market need. This can contribute to the economic stability and growth of these communities. As a result, the two-step migration process provides an opportunity to contribute to addressing regional labour market and population needs.

## Two-step immigration selection: A Review of Benefits and Potential Challenges

The case is often made by the business sector that the two-step migration process can enhance a company's ability to compete globally to attract the 'best and the brightest'. A clear pathway from temporary to permanent residence is appreciated by firms who are looking to hire foreign talent and can encourage them to set up - and to stay - in the host country. Access to permanent residence and, over time, citizenship, and the rights associated with these statuses (such as family reunification and access to health services and education and training), all form part of the calculus that shapes where immigrants decide to move and settle (Papademetriou, Benton, and Hooper 2019).

More generally, the two-step migration process is often heralded to promote a smoother integration process of migrants and thereby contribute to social cohesion. Temporary residents have demonstrated their ability to settle, particularly those with a skilled job offer, leading to a smoother transition as a permanent resident. By providing a clear pathway to permanent residence, the two-step migration process can reduce uncertainty for employers and immigrants, encouraging immigrants to invest in their integration, for example, by linking eligibility for permanent residence with maintaining employment, developing their language skills, integrating socially, or other priorities (such as paying taxes) (Papademetriou, Benton, and Hooper 2019).

It is important to note that temporary residents are generally a heterogeneous group in terms of skills. Initial economic outcomes vary significantly among different groups of temporary foreign workers. Research based on Canadian data by Hou and Bonikowska (2018) finds former temporary residents with work permits for skilled jobs had much higher initial earnings than immigrants without any prior Canadian experience. By comparison, former temporary residents with work permits for non-skilled jobs were found to have significantly lower initial earnings than immigrants without any prior Canadian experience.

### Potential risks of two-step immigration selection

There are risks associated with the two-step immigration process. One important aspect relates to the potential for worker exploitation. Temporary workers may be put in a vulnerable position when they are attached to, and dependent on, an employer in order to hold the job that may qualify them or provide for them the means by which to become permanent residents (if the selection system is set up in that manner). Temporary workers may tolerate being underpaid, working excessive working hours, and working under unsafe conditions out of a fear of getting offside with an employer who plays a major role in their pathway to permanent residence (Mares 2017). In the US, Lowell and Avato (2014) argue that legal stipulations that employers must pay a prevailing wage do not ensure that they do so, finding that temporary workers (H-1Bs) on average earn significantly less than the native-born. Moreover, under an employer-driven system, migrants may be selected less for their ability to contribute to key areas of skills shortage or long-term human capital needs but more based on behavioural traits, such as their potential compliance, further increasing the risk of exploitation (Boucher and Davidson 2019).

Several studies have identified a "tension" associated with the two-step migration process related to the uncapped nature of the temporary migration stream in contrast to the capped permanent migration stream. Referencing the Australian context, Gregory (2014) describes the allocation of visas with work entitlements for temporary migrants as "privatized and uncapped", wherein educational institutions choose the number of fee-paying international students and businesses choose the number of migrants employed on a temporary basis; in contrast, the allocation of permanent visas is government-led and capped. Gregory suggests there are political and

## Two-step immigration selection: A Review of Benefits and Potential Challenges

economic implications of the tensions this system creates, ones that “will become increasingly important as the pool of temporary migrants expands (uncapped) and if government decides to reduce the permanent immigrant intake (capped).”

Uncapped temporary programs may run the risk of being used more as a means to an end (e.g., permanent residency) than for intended purposes. Gregory (2014) argues that a feature of a two-step migration system is the creation of a large pool of temporary migrants with work entitlements, not all of who will subsequently acquire permanent status. If temporary foreign worker programs increase in size as a result of being used as a pathway to gain permanent residency, the pool of temporary residents could become diluted along the lines of quality of skills. Gross (2014) suggests uncapped temporary foreign worker entries may negatively impact efforts of employers to fill, and workers to find, vacancies in the labour market. In other words, the market forces of supply and demand become harder to read by all players.

Increasing the number of workers on temporary work visas may raise complications such as the potential to displace domestic workers and to put downward pressure on the wages of domestic workers. Increased access to a pool of temporary workers has been shown to increase the unemployment rate among domestic workers in Canada (e.g., Gross 2014). In Australia, Boucher and Davidson (2019) argue that undue reliance on the Working Holiday Maker Visa has led to wage evasion among employers and has allowed employers and the government to avoid taking active steps to address domestic labour shortages either by offering higher wages or increasing job training opportunities to upskill domestic workers. Although acknowledging it is difficult to prove a causal link, these authors also raise the issue of a potential relationship between an increase in temporary labour and the flight of local workers from agricultural areas in Australia. There are trade-offs to be considered with respect to increasing the number of temporary foreign workers and producing a larger selection pool for permanent residents (Hou and Picot 2016).

At the same time, filling labour market shortages with temporary residents with a pathway to transition to permanent residency raises the chance of neglecting domestic workers and their skill development (e.g., to ensure shortages are addressed in the long-term through domestic education and skills training policies and programmes). When labour market shortages are filled by temporary foreign labour, domestic market forces may not be able to send adequate signals of adjustment to address the shortage domestically. Such market forces include price signals (e.g., wages) to domestic workers, employers, and educational institutions regarding the nature, location and availability of jobs, as well as training needs. An approach to meeting labour demand that relies too heavily on immigration reduces incentives for employers and policy makers to strengthen education and training systems to build and update the skill base and employability of the whole population (Papademetriou, Benton, and Hooper 2019).

Another common concern surrounding the two-step migration process is that short-term labour market needs are addressed at the cost of long-term needs. Boucher and Davidson (2019) argue that as the system becomes more employer driven, there is a risk that selection power will move from the government into the hands of individual firms and employers. As a result, the selection of new immigrants may come to prioritize short-term demand (in the interest of individual employers and firms) over longer-term competitiveness and human capital development (the responsibility of government). Simply put, temporary work visas may be used to address

## Two-step immigration selection: A Review of Benefits and Potential Challenges

short-term skill gaps, or fill immediate job vacancies related to turnover rather than shortages. This could set up the risk that those holding such jobs may transition to permanency, despite no longer term demand or skill shortage in their occupations (Bedford and Spoonley 2014).

In a similar vein, Papademetriou and Hooper (2019) argue that while employer-sponsored programs are an effective tool for filling jobs, they are not effective in addressing the longer-term needs of the labour market and broader economy. These authors describe the challenge as one of ensuring that while meeting current labour or skills needs, governments do not overlook workers with skills that will become ever more valuable in the medium and long-term. In other words, to select immigrants with the ability to adapt to fast-changing labour markets who can thrive even if the first jobs they hold after immigrating disappear.

### Summary

The Canadian and international experiences suggest that two-step immigration selection can have significant advantages over selecting economic immigrants directly from abroad. Immigrants who go through two-step selection tend to have higher initial employment rates and earnings than immigrants who do not have work experience in the receiving-country labour market. This advantage likely persists in the longer run as well, although the research is not definitive. Two-step selection can improve the match between immigrant skills and labour market demands because employers can directly assess temporary foreign workers' skills and intangible qualities, while foreign workers can test out life in the receiving country before deciding whether to seek permanent residency. Immigrants who performed well as temporary foreign workers are unlikely to face the same difficulty with the portability of their human capital as immigrants without receiving-country experience. The two-step immigration process can be an efficient avenue to fill a specific regional labour market need, and contribute to the economic development and population growth in local communities outside of major metropolitan areas.

If employers are given a predominant role in the two-step immigration process, there is a risk temporary foreign workers may be subject to poor working conditions, including being underpaid, excessive working hours, and unsafe workplaces. A large pool of temporary foreign workers may raise complications such as the potential to displace domestic workers and to put downward pressure on the wages of domestic workers. Relying on temporary residents with a pathway to transition to permanent residency may reduce incentives for employers and governments to strengthen education and training systems for domestic workers. Most importantly, employers in search of low-cost labour may prioritize short-term demand over longer-term competitiveness, and thus employer-sponsored programs are not effective in addressing the long-term needs of the labour market and broader economy.

Some potential risks associated with dependence on temporary foreign workers are exacerbated during the present COVID-19 pandemic. For instance, the crop production and horticulture industries, where seasonal foreign agricultural workers accounted for over one-fifth of the workforce in recent years, face serious uncertainty as the inflow of temporary foreign workers is disrupted due to travel restrictions in some source countries and the mandatory 14-day self-isolation requirement upon arrival (Lu 2020). In other words, the established reliance on temporary foreign workers in these industries could ultimately test the stability of Canada's food supply chain through labour shortages and wasted crops. At the same time, some temporary

## Two-step immigration selection: A Review of Benefits and Potential Challenges

foreign workers continue to work on the front lines of the COVID-19 pandemic, employed at meat processing plants or as caregivers, orderlies, and security agents. While they are doing the jobs essential in society's response to the pandemic, they put themselves at risk for exposure to virus infection. Temporary foreign workers are also over-represented in some hard-hit industries, including accommodation and food services, and personal and private household services. The closure of businesses or limited operations in these industries led to massive layoffs or reduced working hours among temporary foreign workers.

Compared with the US employer-sponsored economic immigration selection system, Canada's two-step selection process limits the role of the employer to the first step – the selection of temporary foreign workers in their initial job placement, while maintaining government's control in the second step – the selection of economic immigrants from among temporary foreign workers. In this sense, the Canadian system has a built-in mechanism to mitigate some of the potential risks associated with employer-selection.

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**This is Exhibit "F" referred to in the  
Affidavit of John Schoales  
affirmed before me on January 16, 2026**



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**COMMISSIONER FOR TAKING AFFIDAVITS**

# Canada in 2041: A larger, more diverse population with greater differences between regions

*Released at 8:30 a.m. Eastern time in The Daily, Thursday, September 8, 2022*

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Today, Statistics Canada's Centre for Demography is releasing a new set of detailed demographic projections to 2041 on immigration and ethnocultural diversity for Canada and its regions. These new projections reflect the targets of the 2022–2024 Immigration Levels Plan released by Immigration, Refugees and Citizenship Canada in February 2022, as well as the most recent demographic developments, including those related to the COVID-19 pandemic. Population projections for the various racialized groups are now available for Canada, the provinces, the territories, and each of the country's large metropolitan areas.

## **In 2041, if current trends continue, half of the Canadian population will be made up of immigrants and their Canadian-born children**

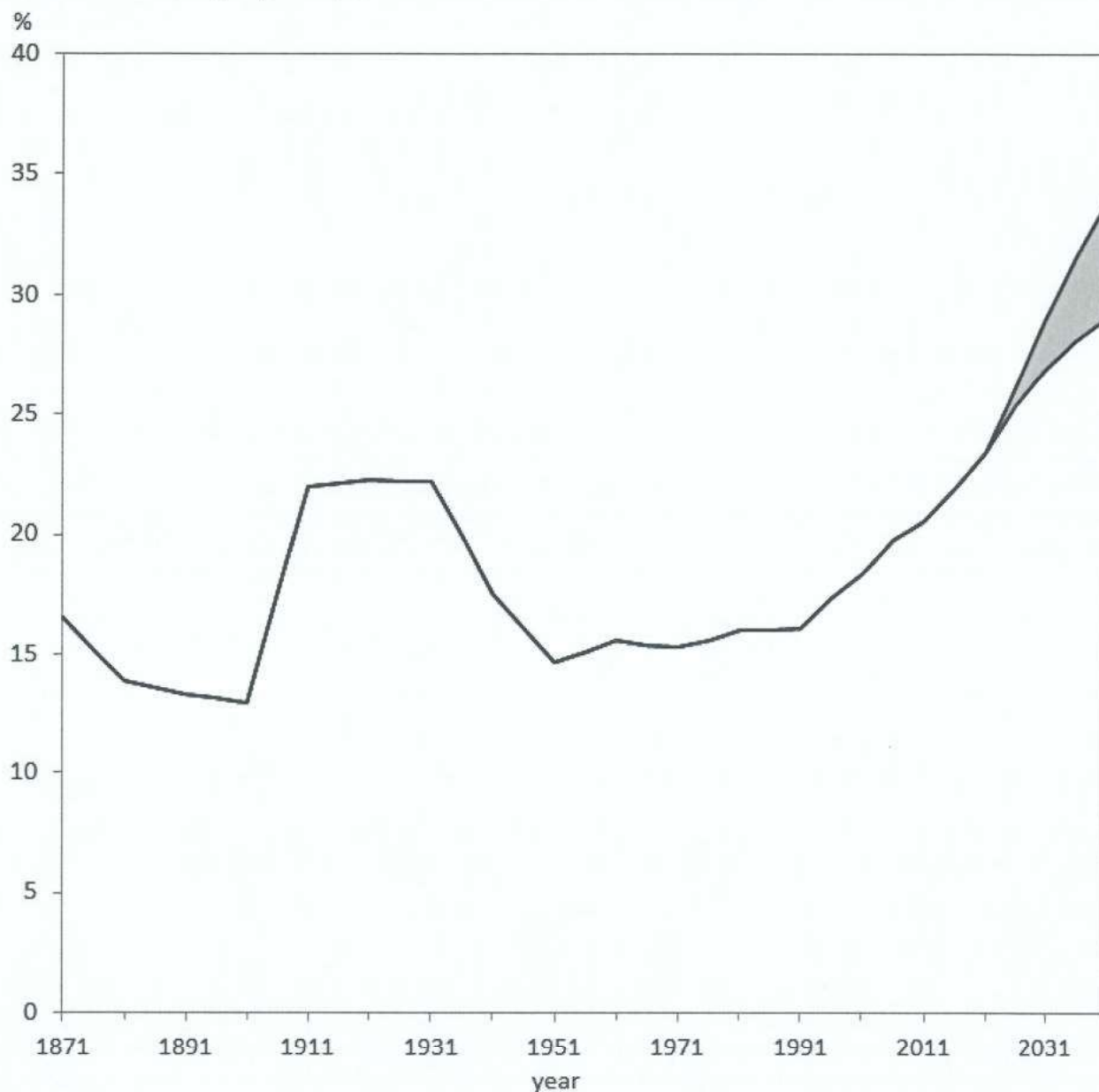
According to the reference scenario, the Canadian population would reach 47.7 million in 2041, and 25.0 million of them would be immigrants or children of immigrants born in Canada, accounting for 52.4% of the total population. In 2016, this population was 14.4 million and accounted for 40.0% of the total Canadian population.

The projected percentage in 2041 could range from 49.8% to 54.3% depending on the projection scenario. Several scenarios are proposed to reflect uncertainty about the future evolution of demographic components and to measure the sensitivity of projections to certain factors. For more information on the scenarios and concepts used for these projections, please read the Note to readers.

## **A record-high proportion of immigrants in the Canadian population in 2041**

As demonstrated by the most recent demographic projections for Canada released on August 22, 2022, immigration is projected to remain the main driver of population growth over the coming decades, continuing a trend that began in the early 1990s.

Infographic 1 – Proportion of immigrants in the population, Canada, 1871 to 2016 (estimated) and 2021 to 2041 (projected)



**Notes:** In this figure, prior to 1981, immigrants consisted of all persons born outside Canada. In the 1981 and 1986 censuses, the immigrant population consisted of persons who were not Canadian citizens by birth. Beginning in 1991, the immigrant population is defined as persons who are, or have been, landed immigrants in Canada, which means that it does not include non-permanent residents nor foreign-born persons who are Canadian citizens by birth. The shaded area shows the interval between the minimum and maximum values projected by all scenarios considered.

**Sources:** Censuses of population (3901), 2011 National Household Survey (5178), 2016 Census (adjusted) (3901) and *Population projections on immigration and diversity for Canada and its regions, 2016 to 2041* (5126).

As a result, in 2041, the proportion of immigrants in the Canadian population could reach from 29.1% to 34.0%, depending on the selected scenario, up from 21.9% in 2016. This would be a record-high level since the 1867 Canadian Confederation.

### **In 2041, 1 in 4 Canadians will be born in Asia or Africa**

The portrait of the immigrant population has changed a great deal over the past 25 years, partly because of differences in the geographic origin of immigrants. Considering these trends and the fact that population growth in the coming decades will depend primarily on international immigration, the Canadian population in 2041 is projected to include 9.9 million to 13.9 million people born in Asia or Africa, depending on the projection scenario. These people alone could account for 23.1% to 26.9% of the total Canadian population in 2041, up from 13.5% in 2016.

### **In 2041, about 2 in 5 Canadians will be part of a racialized group**

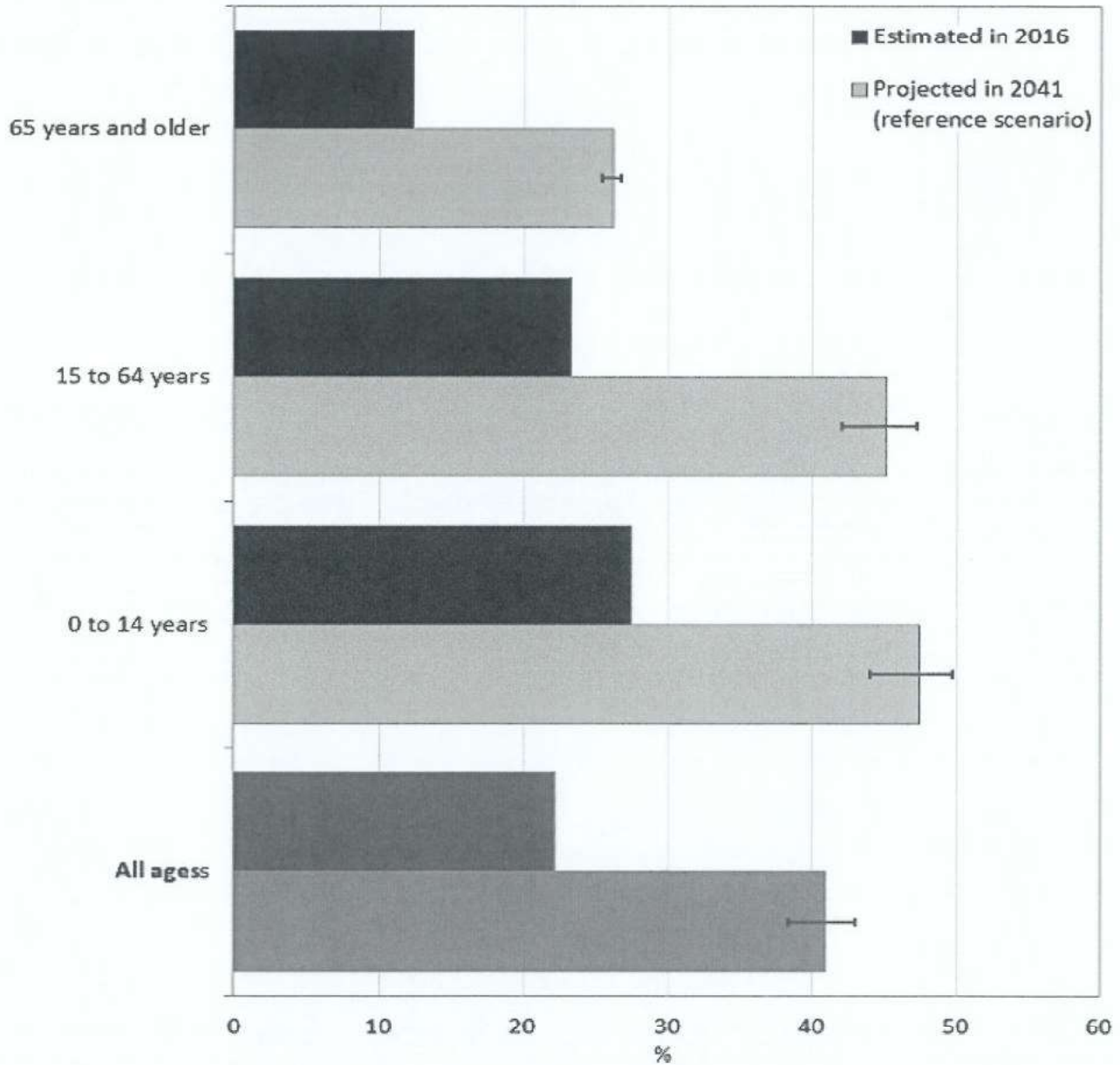
The concept of "racialized" population is derived directly from the "visible minority group" variable and therefore refers to the persons belonging to a visible minority group (for more information, see the Note to readers). This information has been collected by Statistics Canada since the 1996 Census of Population to implement the *Employment Equity Act*, which aims to address discrimination in the hiring of certain groups (women, Indigenous peoples, persons with disabilities, and members of a racialized group).

Since 1996, the racialized population in Canada has been steadily increasing. In 2016, it consisted of 8.0 million people. By 2041, the racialized population could reach 16.4 million to 22.3 million people depending on the projection scenario. The racialized population could therefore account for 38.2% to 43.0% of the Canadian population. In 2016, this proportion was 22.2%.

### **The projected proportion of the population belonging to a racialized group is higher among youth**

The proportion of the racialized population and the projected rate of increase of this proportion vary from one age group to another. Depending on the projection scenario, the racialized population would account for a higher proportion among young cohorts, reaching between 44.0% and 49.7% among those aged 0 to 14. Among the working-age population (15 to 64 years), of special interest for the application of the *Employment Equity Act*, the proportion of the racialized population would be between 42.1% and 47.3% in 2041, up from 23.3% in 2016. Lastly, among the population aged 65 or older, this proportion would remain below the national average and would be between 25.4% and 26.7% in 2041. However, the rate of increase would be fastest in this last age group, the proportion more than doubling over the projected period.

Infographic 2 – Proportion of the racialized population in the total population by age group, 2016 (estimated) and 2041 (projected under the reference scenario), Canada



Note: The symbol "—|—" corresponds to the minimum and maximum values projected by all 11 scenarios considered.  
 Sources: 2016 Census (adjusted) (3901) and *Population projections on immigration and diversity for Canada and its regions, 2016 to 2041* (5126).

## **Progeny born in Canada to persons belonging to a racialized group is an important factor in the growth of the projected racialized population**

The projected increase of the proportion of the population belonging to a racialized group is largely related to the increase in the immigrant population, as well as that of their Canadian-born children. This projected increase is significant not only among those born in Canada to at least one immigrant parent (the second-generation population), but also among the population born in Canada to parents who themselves were born in Canada (third generation or more).

The second-generation racialized population is projected to more than double from 2.2 million in 2016 to between 4.8 million and 6.3 million in 2041, depending on the projection scenario. As for the racialized population in the third generation or more, which was 283,000 people in 2016, it would rise even faster in the coming years and could reach 770,000 to 867,000 by 2041.

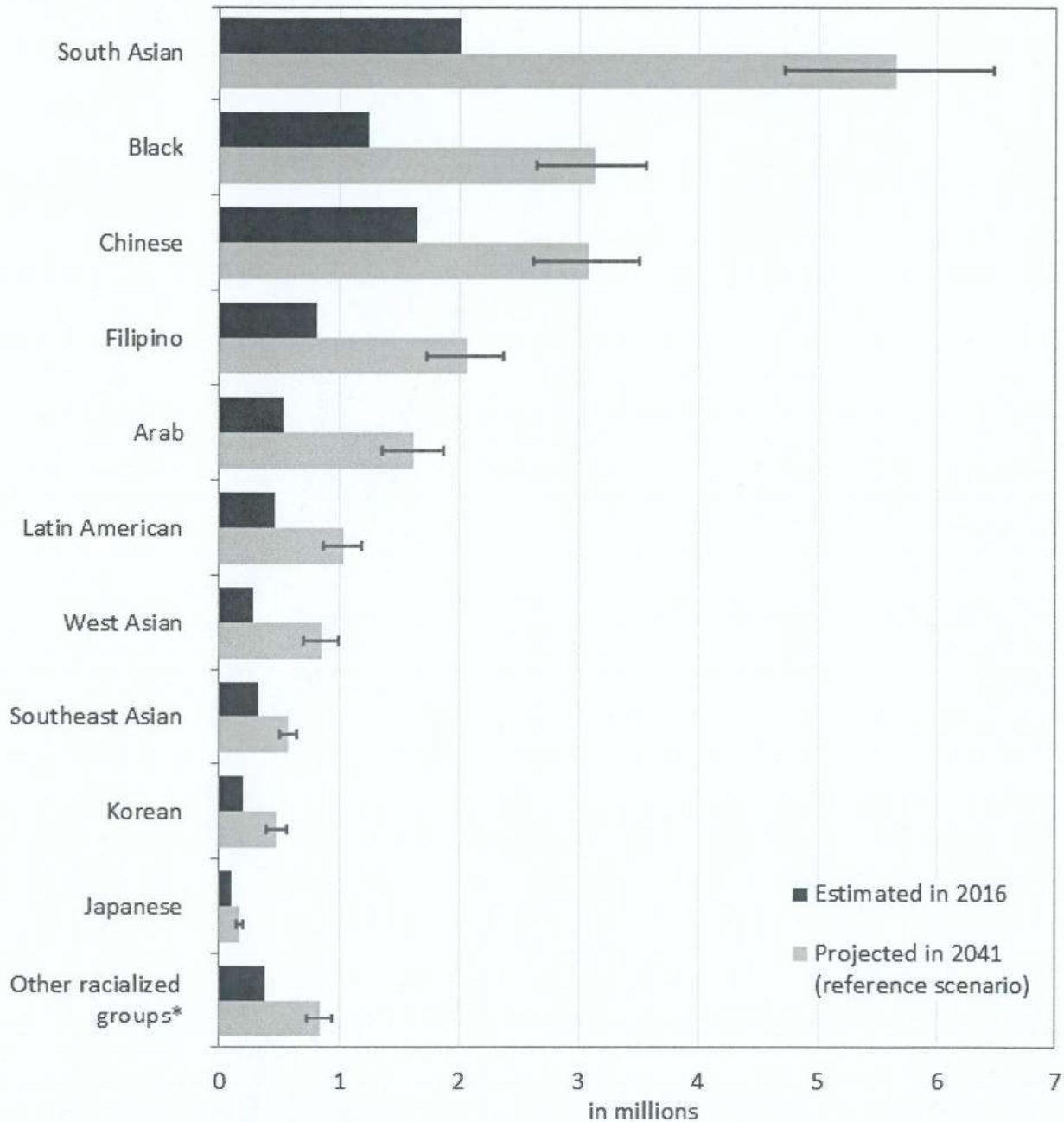
These projection results highlight an important aspect of Canada's demographic dynamic—the Canadian-born descendants of racialized people are a major factor in the growth of the racialized population. The ethnocultural diversity of the Canadian population is therefore expected to increase in the coming years, regardless of future immigration levels.

## **In 2041, the Black population would surpass the Chinese population**

It should be noted that the racialized population, like the rest of the Canadian population, is not a homogeneous group. It is made up of several groups that, defined for the purposes of the *Employment Equity Act*, are themselves diversified in many respects.

Among these racialized groups, the South Asian group would remain the largest population group in 2041, reaching between 4.7 million and 6.5 million people according to the various projection scenarios developed.

Infographic 3 – Population by racialized group, 2016 (estimated) and 2041 (projected under the reference scenario), Canada



\* The category "Other racialized groups" includes people who belong to more than one racialized group or who belong to a racialized group not included elsewhere.

Note: The symbol "—" corresponds to the minimum and maximum values projected by all 11 scenarios considered.

Sources: 2016 Census (adjusted) (3901) and *Population projections on immigration and diversity for Canada and its regions, 2016 to 2041* (5126).

The Black population would more than double from 1.2 million people in 2016 to more than 3.0 million people in 2041, according to the reference scenario. For the first time, the Black population would be larger than the Indigenous population in Canada, as well as the population belonging to the Chinese group.

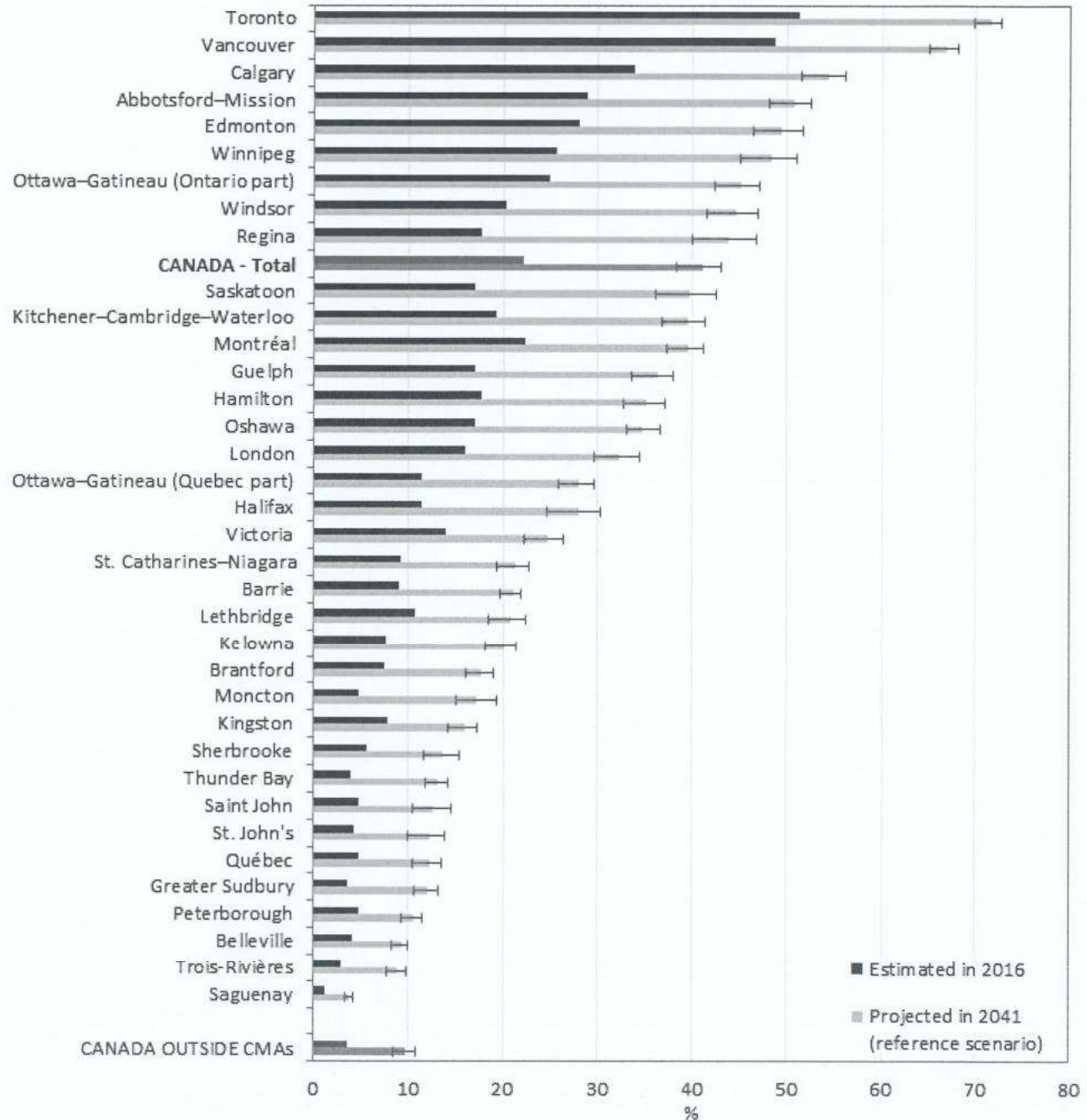
Although they form smaller populations, Western Asians and Arabs are the racialized groups that would grow the fastest, with an average annual growth rate over the period from 2016 to 2041 that could range between 3.8% and 5.2% and between 3.7% and 5.1%, respectively.

From 2016 to 2041, the average annual growth rate of the racialized population, all groups combined, would be between 2.9% and 4.2%, well above the average annual growth rate of the Canadian population as a whole (between 0.7% and 1.5%).

### **Canada, a nation of contrasts today and even more so tomorrow**

The ethnocultural mosaic differs significantly across the country, and current gaps are projected to widen over the coming years.

**Infographic 4 – Proportion of the racialized population in the total population by census metropolitan area of residence, 2016 (estimated) and 2041 (projected under the reference scenario), Canada**



CMA: Census metropolitan area.

Note: The symbol " — " corresponds to the minimum and maximum values projected by all 11 scenarios considered.

Sources: 2016 Census (adjusted) (3901) and *Population projections on immigration and diversity for Canada and its regions, 2016 to 2041* (5126).

Although increasing in all regions of the country, the proportion of the racialized population would remain significantly higher in Canada's census metropolitan areas (CMAs), regardless of the projection scenario. This proportion would be above the national average (over 41%) in Toronto, Vancouver, Calgary, Abbotsford–Mission, Edmonton, Winnipeg, Ottawa–Gatineau (Ontario part), Windsor, and Regina—all these CMAs are in Ontario or in the centre and west of the country.

Conversely, the proportion of the racialized population would be below the national average in eastern Canada, Quebec, most of Ontario's and other provinces' CMAs, and rural areas across Canada.

### **Immigrants would continue to be concentrated in Toronto, Montréal and Vancouver**

In 2016, the immigrant population was concentrated in Canada's largest cities. In 2041, the vast majority of the immigrant population would continue to live in a CMA, while Toronto, Montréal, and Vancouver would remain the three primary areas of residence of immigrants.

This obvious contrast between the country's urban and rural regions is reminiscent of some of the current challenges arising from their specific demographic dynamic, including not only pressures on the housing market and the development of urban infrastructure, but also the loss of the demographic weight of the country's rural regions.

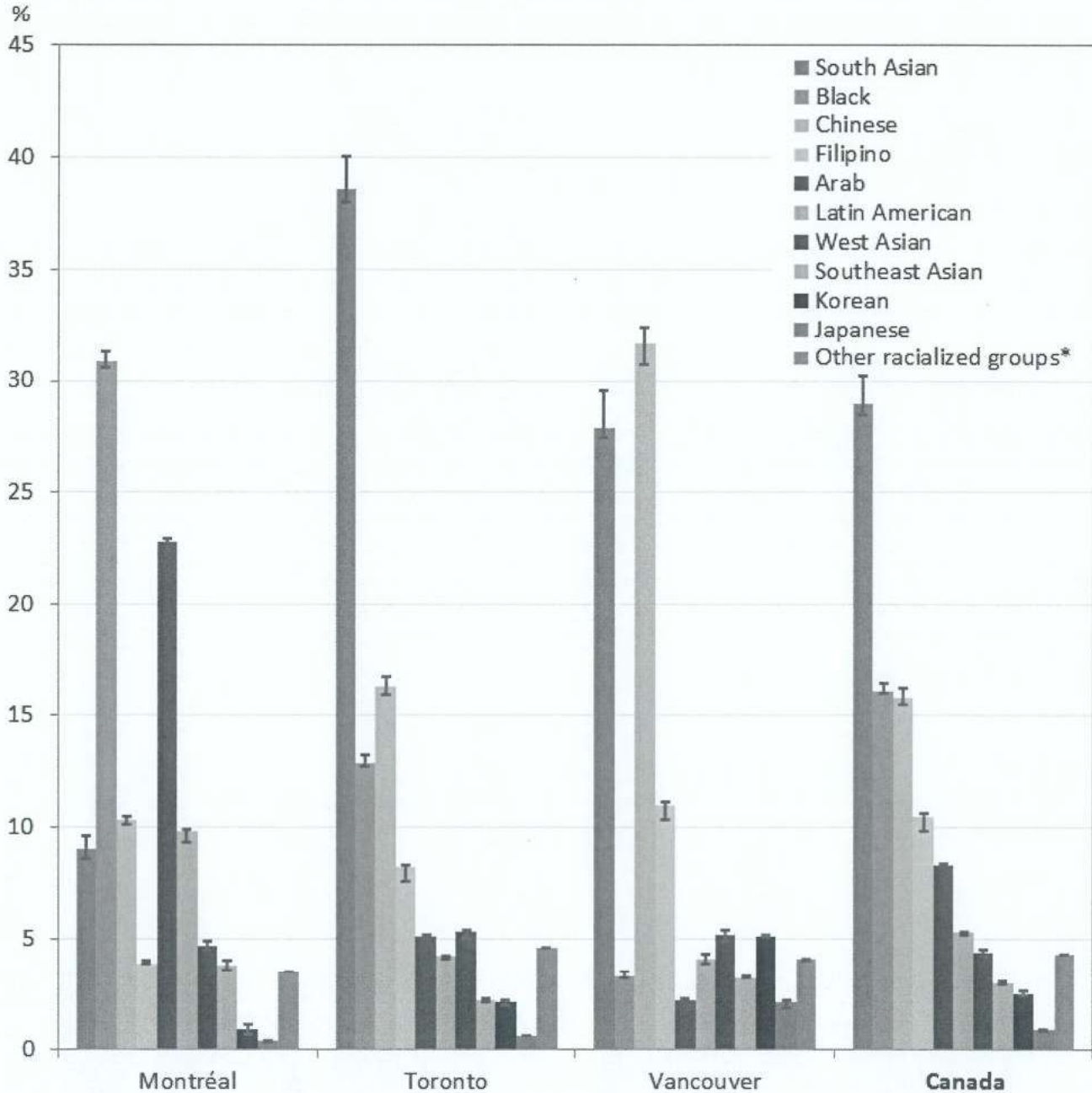
### **In 2041, 4 out of 5 Torontonians will be foreign-born or born to immigrant parents**

The Greater Toronto Area would continue to be the country's most populous metropolitan area and the home of the largest number of immigrants. Among the racialized population, the South Asian group would continue to be the largest. Depending on the projection scenario, this racialized group could number between 2.3 million and 3.2 million, up from 1.0 million in 2016. The South Asian group alone would account for 38.6% of Toronto's total racialized population in 2041, according to the reference scenario.

### **The projected portrait of diversity varies greatly by region**

The Montréal and Vancouver metropolitan areas would continue to be Canada's most populous urban agglomerations to the east and west of Toronto, respectively. However, the ethnocultural mosaic of these three metropolitan areas would be significantly different in 2041.

**Infographic 5 – Distribution of the racialized population by group, 2041 (projected under the reference scenario), Canada and the census metropolitan areas of Montréal, Toronto and Vancouver**



\* The category "Other racialized groups" includes people who belong to more than one racialized group or who belong to a racialized group not included elsewhere.

Note: The symbol "I" corresponds to the minimum and maximum values projected by all 11 scenarios considered.

Sources: 2016 Census (adjusted) (3901) and *Population projections on immigration and diversity for Canada and its regions, 2016 to 2041* (5126).

In Montréal, the main racialized group would continue to be the Black population, which would double from 276,000 people in 2016 to 673,000 people according to the reference scenario. Arabs would continue to be the second-largest group, rising from 194,000 people in 2016 to 496,000 people under the reference scenario. According to the reference scenario, these two groups would account for 30.9% and 22.8%, respectively, of the total racialized population of Montréal in 2041.

In Vancouver, Chinese (which is the largest racialized group) numbered 504,000 in 2016, and, depending on the projection scenario, would reach between 737,000 and 972,000 in 2041. This would be followed by South Asians, which would number between 638,000 and 859,000 in 2041, up from 308,000 in 2016. According to the reference scenario, these two groups would account for 31.7% and 27.9%, respectively, of the total racialized population of Vancouver in 2041.

The data visualization product Population projections on immigration and diversity: Interactive Dashboard provides the results of the population projections for the different racialized groups for each of Canada's 35 large cities (CMAs) and for provinces and territories. Projections are also available for the outside-CMA area of each province and territory.

Today's release makes new public projections of the immigrant population and the racialized population covering the period from 2016 to 2041. They highlight the significant contrasts that exist in Canada, both geographically and in terms of the characteristics of racialized Canadians, whether they have immigrated to or were born in Canada. These projections provide relevant information to properly capture some of the substantial changes that are occurring and transforming the social fabric of Canadian communities. They show that the demographic dynamic of Canadian communities is intimately linked to a process of ethnocultural diversification of the population. The projections show that this relative increase in the number of Canadians with diverse backgrounds and cultural influences is expected to continue over time. These projections reflect Statistics Canada's commitment to providing a more detailed portrait of the future Canadian population through the use of disaggregated data. On October 26, 2022, Statistics Canada will release results of the 2021 Census of Population that will provide a comprehensive statistical portrait of the ethnocultural and religious composition of Canada's population and communities from coast to coast to coast.

### Note to readers

*These projection results are based on data from the 2016 Census of Population, which were adjusted to account for, among other things, the census net undercoverage. Because of these adjustments, the figures presented here for 2016 may differ from those obtained directly from the 2016 Census.*

*These projections were generated using Demosim, Statistics Canada's microsimulation demographic projection model.*

*These projections are not predictions, but rather an exercise designed to provide a portrait of what the Canadian population might be in the coming years based on 11 projection scenarios. These scenarios were developed for two purposes: (1) to estimate the sensitivity of certain measures of ethnocultural diversity in Canada to specific aspects of immigration and other demographic components, and (2) to provide a plausible range of demographic trends for specific subpopulations (by racialized group, place of birth, etc.). Readers are asked to consider this range of results instead of a single scenario. Full details on the assumptions used in each of the 11 scenarios are available in the publication entitled "Population projections for Canada and its regions on the themes of immigration and diversity, 2016 to 2041: Overview of assumptions and scenarios" in Demosim: Reports and Analytical Studies (17-20-0001).*

*The concept of ethnocultural diversity of the population can have multiple meanings. In these projections, the ethnocultural diversity of the population is defined based on some aspects that are most likely to undergo changes as a direct or indirect result of immigration in the coming years, namely, place of birth and racialized group. In this respect, it should be remembered that the groups selected for the projections, although they comprise people who share certain characteristics, do not in themselves represent homogeneous entities.*

*In October 2021, Statistics Canada released projections reflecting another aspect of the diversity of the Canadian population, that is projections of Indigenous populations in Canada up to 2041.*

*Finally, it should be noted that the concept of "racialized" population is derived directly from the "visible minority" variable in the census. "Visible minority" refers to the persons belonging to a visible minority group defined by the Employment Equity Act. The Act defines visible minorities as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour." The visible minority population consists mainly of the following groups: South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean and Japanese. The charts and tables in this article, as well as the projections made available free of charge in Table 17-10-0146-01 on Statistics Canada's website, are based on the variable and concept of "visible minority" but use the terms "racialized population" and "racialized groups."*

**Available tables: table 17-10-0146-01.**

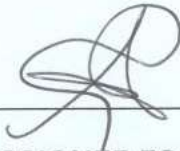
**Definitions, data sources and methods: survey number 5126.**

The report Population projections on immigration and diversity for Canada and its regions, 2016 to 2041: Overview of projection assumptions and scenarios is now available.

The data visualization product Population projections on immigration and diversity: Interactive Dashboard (71-607-x) can also be used to explore population projection results in a dynamic manner. The base data for this tool are those from the Common Output Data Repository 17-10-0146-01 table. This table, also available, presents projections of the Canadian population by racialized group, generation status, age group, sex, census metropolitan area of residence, province or territory of residence, and projection scenario for years 2016 to 2041.

For more information, or to enquire about the concepts, methods or data quality of this release, contact us (toll-free 1-800-263-1136; 514-283-8300; [infostats@statcan.gc.ca](mailto:infostats@statcan.gc.ca)) or Media Relations ([statcan.mediahotline-ligneinfomedias.statcan@statcan.gc.ca](mailto:statcan.mediahotline-ligneinfomedias.statcan@statcan.gc.ca)).

This is Exhibit "G" referred to in the  
Affidavit of John Schoales  
affirmed before me on *January 16, 2025*



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COMMISSIONER FOR TAKING AFFIDAVITS

## **The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector**

### *Introduction*

1. Racialized people are underrepresented in the audio-visual industries in Canada, in particular people who are Southeast, South, or West Asian; Black; Filipino, or Arab<sup>1</sup>. Culture policy is an important contributor to this underrepresentation because barriers to immigration in the culture industries can contribute to underrepresentation and lower earnings of racialized people. This submission will discuss how the current definition of Canadian programming contributes to underrepresentation as well as underperformance in the audio-visual industries. This undermines Canada’s aspirations to be a welcoming place for immigrants, as well as its cultural impact and its living standards.
2. It may perhaps be helpful to say a few preliminary words on systemic and cultural bias as a preface to this submission. Systemic bias is understood in this submission to be an inherent tendency for institutions or processes to result in outcomes that tend to advantage or disadvantage certain groups or individuals. Cultural bias is understood to be a tendency to favour one culture over another, including its content or its modes of expression. Cultural bias may or may not be systemic, that is, embedded in institutions or processes. Systemic and cultural bias are not the same as individual bias, which is understood to be the conscious or unconscious tendency for individuals to make decisions or take actions that tend to advantage or disadvantage certain groups or individuals. This submission makes no statements and should not be interpreted to be making any statements about individual bias. Systemic and cultural bias are often unintended and can be difficult to identify. They are often more obvious, however, to people that are negatively affected by them. People may assume that since such biases are so apparent to themselves, that others must be conscious of them as well and that negative outcomes must therefore be the result of conscious individual bias. At the same time, people can feel that they are being accused of individual bias even when they are not, resulting in counterproductive defensiveness. Systemic and cultural bias cannot necessarily be attributed to individual bias. However, it is more difficult to make this argument if there is a lack of effort to identify systemic or cultural bias or a lack of action to eliminate them once they have been identified.<sup>2</sup>

### *Immigration and Racialized Representation in Canadian Culture Industries*

3. Racialized people are underrepresented in audio-visual industries, as they generally are across all culture industries in Canada. Visible minorities represent 25.8% of employment in Canada but are underrepresented in motion pictures and video, television and broadcasting, and as artists, writers, and performers. An important reason for underrepresentation is the current regulatory and program approach to ‘Canadian content’. This creates preferential access to opportunities for people who are much more likely to be White.

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<sup>1</sup> Statistics Canada Census 2021, Table: 98-10-0599-01. Audio-visual industries include motion picture and video industries, radio and television broadcasting, and pay and specialty television.

<sup>2</sup> <https://www3.ohrc.on.ca/en/racism-and-racial-discrimination-systemic-discrimination-fact-sheet>

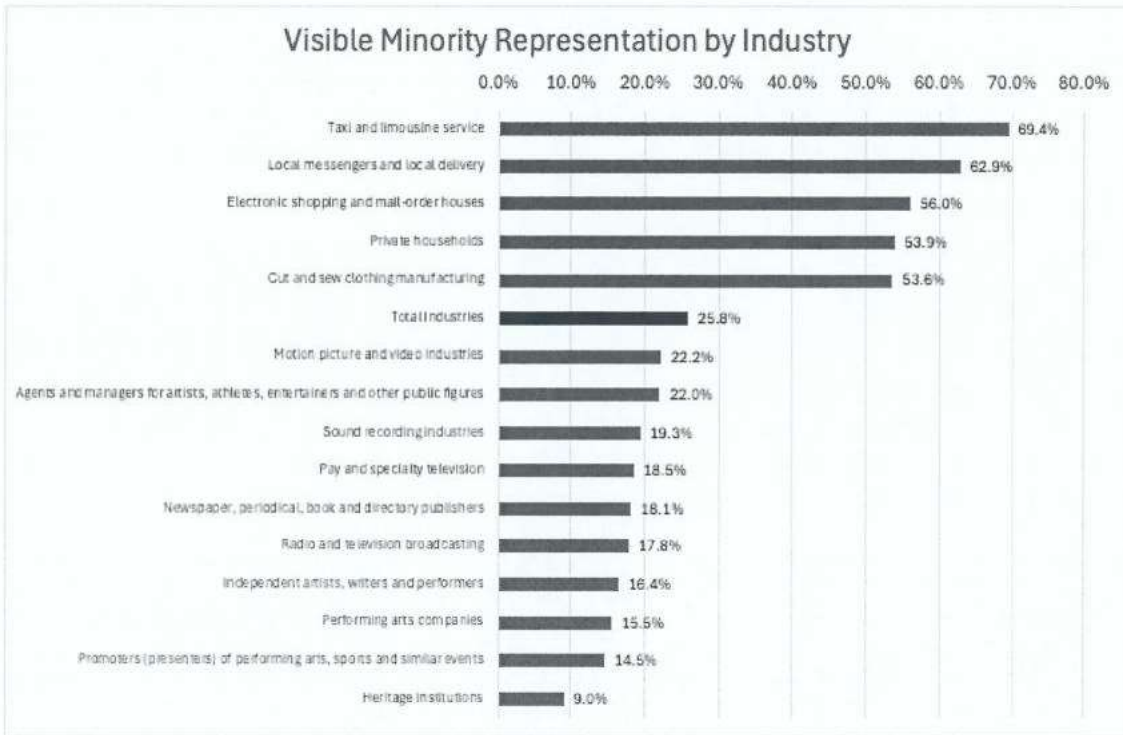


Figure 1 Visible Minority Representation by Industry. Source: Statistics Canada, 2021 Census, Table 98-10-0599-01

- The 2021 Census indicates that 83.1% of non-permanent residents are visible minorities while only 11.4% of citizens by birth are visible minorities. There are close to one million non-permanent residents in Canada who have work or study permits or are refugees that are not eligible for culture industry programs.

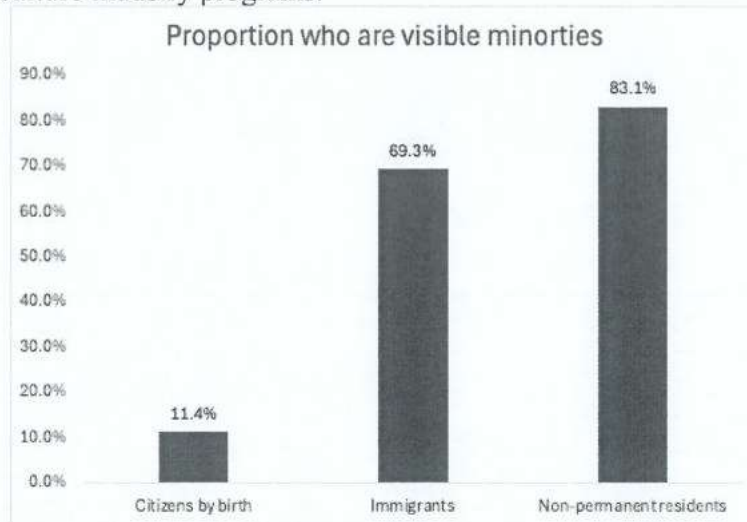


Figure 2 Proportion who are visible minorities. Source: Statistics Canada, 2021 Census, Table 98-10-0308-01

- Similarly, immigrants and racialized people are underrepresented in culture occupations. For example, the proportion of immigrants who are producers, directors, choreographers, or in related occupations is 71.2% of the proportion of all people in these occupations. The proportion of racialized people who are in these occupations is 64.7% of the average. Racialized people who do work in culture occupations also tend to earn far less than those who are not racialized. The median income of racialized people working as producers, directors, choreographers, and in related occupations is 78.5% of non-racialized people.

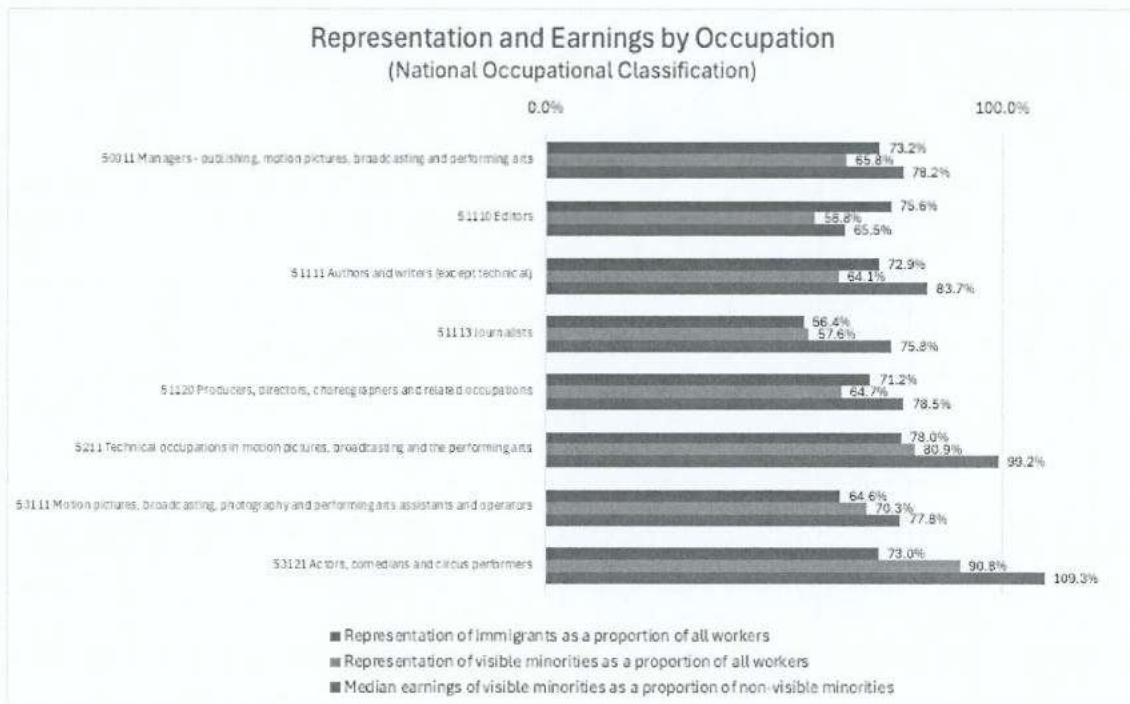


Figure 3 Representation and Earnings by Occupation. Source: Statistics Canada, 2021 Census, Tables 98-10-0316-01, 98-10-0330-01, 98-10-0586-01

- Inclusive industries allow for the cultural contributions of more people and foster collaboration and new ideas, which are also important drivers of a productive modern economy. Higher productivity is the primary driver of increasing living standards. Productivity is significantly lower in Canada than in the United States. Successful production in high human capital industries is a primary driver of productivity and is supported by the migration of skilled people into and out of each country<sup>3</sup>.
- The relationship between immigration, underrepresentation, and industry growth, success, and cultural impact is particularly important for effective Canadian policy because almost all of Canada's net population growth is due to immigration. Canada is increasingly utilizing a two-step immigration system in which immigrants are selected from the pool of non-permanent residents. It is particularly difficult for a culture industry worker to immigrate to Canada because they do not qualify for public funding programs in these industries prior to

<sup>3</sup> Brief introductions to productivity include: <https://www.statcan.gc.ca/en/sc/podcasts/eh-sayers-ep20>; <https://www.bankofcanada.ca/2024/03/time-to-break-the-glass-fixing-canadas-productivity-problem/>

becoming a permanent resident; relevant work they are able to find may not be eligible as part of an immigration application because it may be contract or part-time work, which is the norm in these industries; and there is little effort to either attract foreign workers in these industries or help them integrate into a workforce in which self-employment is very common and success is largely determined by access to established networks. Many of the most celebrated immigrants in the culture sector were able to come to Canada not because of their creative abilities but because of their skills in other fields that allowed them to immigrate or as family members or refugees. A low proportion of immigrants and racialized people in these industries also results in there being fewer role models or decision makers that understand these barriers.

8. Underrepresentation of racialized people and immigrants in culture policy positions and government agencies has an important impact because subjective bias results in eligibility restrictions based on nationality or permanent residency and can tend to favour particular people or types of products. Equity audits by external qualified firms and inclusion at all levels of people from underrepresented groups, immigrants, and Indigenous communities are necessary because people are generally not aware of their biases. While people who have long been involved in Canadian culture policy, programs, and industries often speak about the importance of equity and diversity, their personal priorities and actions often tend to reflect a primary or even exclusive emphasis on being 'Canadian'. Any programs that are intended to address inequities are quite small compared to total program budgets and generally do not address systemic or cultural bias.
9. Canadian culture policy has long reflected an exclusionary perspective. Its roots date back to the mid 20<sup>th</sup> century, a time when leading political figures talked openly about wanting to exclude non-White people through the immigration system and the residential school system was being expanded. It is not a system that effectively represents an inclusive Canada that is growing through immigration from all parts of the world and that seeks Truth and Reconciliation. Cultural policies and programs are also in potential violation of national and provincial human rights codes that prohibit discrimination based on citizenship, nationality, or place of origin. The Ontario Human Rights Commission has found that, due to the relationship between immigration and racialization, explicit and systemic barriers can constitute racial discrimination.<sup>4</sup> Human Rights Tribunals have also recognized that racial discrimination does not require a discriminatory intent or motive, it is enough for there to have been a discriminatory effect. People can engage in racial discrimination without realizing it or doing it consciously, even if they have other reasons to explain their decision or behaviour. According to the Canadian Human Rights Commission, racism can be embedded in an institution's policies, practices and regulations and developed, carried out and enforced by individuals who may or may not be conscious of discriminatory outcomes.<sup>5</sup> Canada has been an international supporter of human rights<sup>6</sup> as well as the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which recognizes the importance of the vitality of cultures for minorities and Indigenous peoples

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<sup>4</sup> See for example OHRC [Are there racial barriers to access to professions and trades for the foreign trained?](#) and [OHRC Policy on removing the Canadian experience barrier](#)

<sup>5</sup> <http://www.chrc-ccdp.gc.ca/resources/publications/discussion-paper-systemic-racism#fn15-rf>

<sup>6</sup> [https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/human\\_rights-droits\\_homme/advancing\\_rights-promouvoir\\_droits.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng)

and commits to promoting greater mobility for artists and cultural professionals from developing countries.

10. Statistics Canada projects that changing patterns of immigration will mean that by 2041 one quarter of Canadians will be born in Asia or Africa.<sup>7</sup> Current policies and programs will likely continue to result in significant underrepresentation of racialized people in culture professions. Based on the size of the culture sector in Canada and current and projected immigration levels, Canada would likely need to attract and successfully integrate more than 7,500 immigrants each year into the culture sector to effectively address the underrepresentation of racialized people, while addressing participation barriers faced by people already in Canada.<sup>8</sup>

### *Defining Canadian Programming*

11. The Broadcasting Act refers to the importance of the broadcasting system for maintaining 'national identity' and 'cultural sovereignty'.<sup>9</sup> It is common to conflate these concepts, and many who work in culture policy and the creative industries often do, but cultural sovereignty could aptly be interpreted to mean people's ability to determine their own cultural identity rather than having one imposed on them including by their national government. For many people national identity and cultural identity are entirely different concepts. People can also have differing perspectives on what constitutes a nation. Challenges for Indigenous communities that cross international borders provide one example of how Canadian nationalist policies and program barriers can undermine cultural representation. UNESCO cautions against equating national identity with cultural identity, stating 'national identity is to some extent a construction, grounded in a sometimes reconstructed past and providing a focus for our sense of commonality. Cultural identity is a more fluid, self-transforming process, to be seen less in terms of a past inheritance than of a future project'.<sup>10</sup> There have been positive steps toward such a future project by the Commission and others involved in cultural policy in Canada and additional funding, education, and time devoted to cultural diversity would contribute to Canada's continued cultural evolution. By contrast, the consequences of associating culture with nationality include not seeking to attract cultural workers among immigrants to Canada, barriers to cultural workers in the immigration system, not facilitating the participation of immigrants in the cultural industries, precluding collaboration with non-permanent residents and among cross-border cultural groups, subjective funding decisions based on what seems 'Canadian', precluding investment and ownership by people who are not Canadian citizens or permanent residents, underrepresentation of diverse perspectives and immigrants in decision-making roles, and token inclusion programs rather than addressing systemic and cultural bias. All of these have a negative impact on representation, cultural development, and industry success.
12. On reading the Broadcasting Act one can easily get the impression that 'Canadian' is to be much preferred over 'foreign'. Foreign involvement in media can be a bad thing if, for

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<sup>7</sup> [Canada in 2041: A larger, more diverse population with greater differences between regions](#)

<sup>8</sup> This calculation is based on the culture sector representing 3.3% of jobs in Canada and projected annual economic immigration of 230,000. Sources: <https://www150.statcan.gc.ca/n1/daily-quotidien/240603/dq240603a-eng.htm> and <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2025-2027.html>

<sup>9</sup> *Broadcasting Act* Part 1 3(1)(b)

<sup>10</sup> UNESCO World Report: Investing in cultural diversity and intercultural dialogue, 2009.

example, it takes the form of malicious acts. But it can also be a very good thing if it means welcoming talented people from all over the world to participate in the cultural development of Canada. It can also be a good thing when global companies help us to do this and contribute to the development of successful industries. While the Broadcasting Act distinguishes between Canadian and foreign, it leaves it to the Commission to determine what constitutes a Canadian program. If we are indeed to determine what constitutes Canadian programming, how should this be done? This depends on why we want to create such a definition.

13. The preoccupation of people who are involved in culture policy in Canada is often to counter the influence of American culture, and all other concerns are of subsidiary importance or, practically speaking, no importance. If this is the reason we want to define 'Canadian', then it should be comparable to the way we define American. We often hear concerns about the influence of American cultural products, but we less often hear how this is defined. It certainly has nothing to do with citizenship. We see Canadians participating in the development of these products alongside people from all over the world, many of them very successfully. If our goal is truly to provide opportunities for Canadians, we can feel confident that we have accomplished this. Canadians often become very successful - after leaving Canada. Many Canadians in the audio-visual industries leave for Hollywood. Hollywood, like other successful culture centres, became successful, and continues to be successful, by attracting people and businesses. Despite its own issues with inclusion, a place like Hollywood demonstrates how successful a place can be if it focuses on developing the best products it can rather than on where people are from. Similarly, Hollywood companies are widely held - many of us may hold shares in a company like Walt Disney - with head offices in far flung places including Japan. American citizenship or American ownership are apparently not what makes cultural products 'American'.
14. What motivates us to ascribe nationality to something like a creative product that can draw on ideas, people, and resources from all over the world and can similarly be distributed all over the world? Sometimes, no doubt, it reflects a nationalism that seeks to isolate and exclude; feelings that seek to create barriers, to build a wall and have American companies pay for it; that see immigrants in these industries as changing our culture or taking our jobs. Canadians are as susceptible to these tendencies as anyone else. The effort and funding we have put into such a system over many decades, only to see talented people and businesses consistently leave for better opportunities elsewhere, should be ample demonstration of how counterproductive such an approach is.
15. The current approach focuses on having Canadian citizens or permanent residents in key creative and ownership positions. As alluded to above, this does not reflect the way cultural and creative industries become successful. Throughout history leading cultural centres have been places that attract people and businesses that collaborate to create great products. The current system is designed for the people who are already here. This exclusionary approach restricts the growth and success of Canada and results in people leaving for places where they can better fulfil their potential.
16. Key creative positions are indeed valuable and in a successful industry they are often among the most highly paid. Other valuable roles such as executive functions, financing, talent representation, and key roles in related industries such as specialized legal and accounting services, marketing, and equipment manufacturing are also found in successful creative centres like Hollywood. It is more important that these valuable functions take place in

Hollywood than whether these positions are held, or businesses are owned, by Americans. Successful cultural centres tend to be vibrant mixes of people and businesses that value new ideas, regardless of where they come from, and therefore provide productive environments and better opportunities for the development, attraction, and retention of talent and new businesses.

17. It is well established in the research literature that, unlike many industries that are relatively evenly spread, creative industries are among the most geographically clustered industries in the world. This is due to their highly human capital intensive, innovative, and collaborative characteristics. The inherent tendency for these industries to be concentrated in a few places means that if a jurisdiction is not a place where workers are coming to, it is probably a place where they are leaving from. An exclusive focus on local talent and ownership will likely result, not only in a lack of success and impact, but in an outflow of talent and resources to other jurisdictions. A place that seeks to attract talented people and focuses on producing the best products it can, however, is a place that can be very successful in these industries.
18. The way jurisdictions become successful in high human capital industries has been demonstrated many times by countries like Japan, South Korea, and increasingly China, all of which have become world leaders in sophisticated industries. They generally begin by focusing on lower value functions later in the production process, based on low labour costs, and increasingly move toward earlier stage, higher value functions. To be successful in the highly clustered creative industries, however, a place must also be welcoming to newcomers. Canada, which purports to be such a place, pioneered a similar approach in the audio-visual industries by providing production services tax credits for global film and television productions to shoot in Canadian locations. Canada is not a low wage jurisdiction, but these tax credits effectively simulated a low wage jurisdiction by subsidizing labour costs. This is an expensive approach, but it fostered the development of world class crews and facilities in Canada. This might have been a reasonable approach to developing successful audio-visual industries if it were followed by a focus on increasingly valuable, earlier stage functions. However, these tax credits focused exclusively on lower value, later stage functions and, more than a quarter century later, they still do.
19. An anti-‘foreign’ bias undermines the development of the creative industries in Canada by discouraging global companies from involvement in further development of these industries. Active measures are needed to attract and enable the participation of immigrants to grow and develop these industries through international recruitment efforts, training, networking, and mentorship and by removing industry-specific barriers in the immigration system and systemic and cultural bias in culture policy and programs. Global companies play an important role in attracting international creative workers, professional development, investment, and distribution. These are valuable contributions to the development of an inclusive and successful industry. Mandatory contributions to a system with numerous systemic biases, on the other hand, exacerbates the problem of underrepresentation.
20. Canada, as a leading global destination for immigrants and with aspirations to be inclusive, has the unique potential to become a leading global culture centre with thriving and diverse creative industries. Identifying the most valuable roles in the audio-visual industries and attracting talented people, as well as developing local talent, who are skilled in these roles and providing incentives for such functions to take place in Canada, including by non-permanent residents, and fostering networking and cultural exchange would be an effective approach to developing an inclusive industry that produces content that is successful in

Canada and around the world. While trying to distinguish between Canadian and non-Canadian content based on citizenship and permanent residency is exclusionary and likely counterproductive, a more inclusive approach would produce content that could be thought of as Canadian in the same way that we think of Hollywood products as ‘American’. It would also be consistent with the Commission’s belief that a modernized definition should support and incentivize the creation and distribution of diverse Canadian content.

### *Summary of Key Points*

21. Canadian programming should not be defined by Canadian citizenship, permanent residency, or ownership
22. [Q1, 3, 5, 11, 12, 13]
  - 22.1. Active measures should be taken to attract and integrate immigrants into the audio-visual and other culture industries and the participation of non-permanent residents should be encouraged, both for the development of the industries and to address racial disparities.
  - 22.2. The impacts of global and local companies in attracting talent to Canada, developing talent in Canada, creating permanent employment positions in Canada, investing in the development of content in Canada, and distributing content in Canada and globally should be valued as important contributions. If necessary, fiscal incentives and regulation are both options to increase investment by companies in these areas.
  - 22.3. Developing an ecosystem of creative entrepreneurship and professional development, investment, related industries, collaboration, and incenting higher value roles and functions in Canada should be the primary method of fostering ‘Canadian programming’.
23. Multiple metrics would be useful to measure the success of a modernized definition of ‘Canadian program’ in meeting the goals of a flexible, sustainable, and diverse Canadian production and financial support ecosystem with profitable and exportable programming [Q38]:
  - 23.1.1. The North American Industry Classification System enables measurement of production (gross domestic product) and employment in Canada for the audio-visual industries including NAICS 5121: Motion Picture & Video Industries and NAICS 5161: Radio & Television Broadcasting Stations. Production data includes the value of income from various sources including both employment income and income from intellectual property ownership. Production and employment data can also be used to measure productivity, calculated as GDP/employment. This provides an indication of whether higher-value roles are being performed in Canada.
  - 23.1.2. Statistics Canada data including data from the Census and the Culture Satellite Account can provide more detailed information on production and employment in the audio-visual and related industries. The Culture Satellite Account could be further developed to measure representation of equity-deserving groups, immigrants, and Indigenous people in these industries.
  - 23.1.3. Statistics Canada’s Trade of Culture Products data enables the monitoring of exports in these industries.
  - 23.1.4. Regular disclosure of representation in public policy and regulatory positions by people from equity-deserving and ethnocultural groups, immigrants, and Indigenous

communities is also important as these roles can have an impact on representation in these industries.

24. The Commission has made commendable recent efforts to consult on diversity and inclusion in the broadcasting industry. However, discussions with stakeholder groups suggest that there were restrictive opportunities to participate, insufficient time to prepare, and a narrow range of potential changes meaningfully considered. The Commission no doubt understands that it is action that is required rather than merely perpetual consultation, but this important topic requires comprehensive discussion and the consideration of meaningful change. It is recommended that the Commission heed advice for more comprehensive consultation and consideration of options, particularly from those that may not necessarily benefit from the status quo or from a moderately revised version of the current approach.
25. We request to appear at the public hearing at the main location for the public hearing in Gatineau. As these comments do not necessarily align with the Commission's preliminary views, dialogue may be necessary to broaden the discussion.

John Schoales  
Adjunct Professor and Visiting Researcher  
The Creative School  
Toronto Metropolitan University

Research for this submission was developed with advice from experts in academia and industry. The viewpoints expressed here are those of the author and should not be attributed to Toronto Metropolitan University or the employer of the author.

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This is Exhibit "H" referred to in the  
Affidavit of John Schoales  
affirmed before me on January 16, 2026



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COMMISSIONER FOR TAKING AFFIDAVITS

## **The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector**

1. My name is John Schoales, I am an Adjunct Professor and Visiting Researcher at Toronto Metropolitan University. I also worked for 25 years in Canadian industry development policy at the federal and provincial levels, with a most recent 15-year focus on creative industry development. I have published a number of journal articles on this topic and my work has been cited in dozens of countries around the world.

<Slide 1>

## **Defining Canadian Programming**

- The current approach to Canadian programming results in underrepresentation of racialized people and underperformance of the audiovisual industry.
  - People that are excluded because they are not Canadian citizens or permanent residents are much more likely to be racialized. These people are important to Canada and its future.
  - Global companies can also play a more important role.
  - Equating culture with nationality conflicts with many people’s identities including Indigenous and diasporic communities.
  - Canada can be a global centre of creativity.
2. The current approach to Canadian programming contributes to underrepresentation of racialized people in the audiovisual industry in Canada. It also contributes to underperformance of the industry, which restricts opportunities for creators as well as cultural and economic benefits for Canada.
  3. People who live and work in Canada who are not citizens or permanent residents are much more likely to be racialized. These people are an important source of talent and key contributors to Canada’s future population growth and its cultural and economic development. Canada has always been a place that grows by attracting people from around the world. Almost all of Canada’s population growth is due to immigration and this will continue to be the case for the foreseeable future. Cultural industries, more than any other industries, become successful by attracting people to places where creativity and new ideas flourish. Canada has extraordinary potential to be a global center of creativity and success in the audiovisual industries.
  4. A binary distinction between Canadian content and non-Canadian content and the exclusion of people who are not yet citizens or permanent residents undermines the growth and success of the audiovisual industry. There is little appreciation of the importance of attracting talented people in the audiovisual industry or other creative

industries in Canada. There is virtually no effort attract people in these industries or to remove barriers that prevent them from pursuing their careers in Canada. Xenophobia is commonly defined as a suspicion of anything that is interpreted as being foreign or a threat to one's national identity. Our system seems to foster this perspective, which extends to global companies as well. They are often viewed with suspicion and their contributions are often only valued to the extent that they contribute to this exclusionary approach. Collaboration with global companies provides much greater opportunities than this.

5. A focus on Canadian nationality also conflicts with the self-identity of creators in Canada who want to collaborate with people and tell stories that extend beyond Canada's borders, including Indigenous people and diasporic communities.
6. Programs that are intended to address inequities by providing funds to excluded groups do not come close to overcoming these systemic and cultural biases. The Canadian Human Rights Commission states that "Systemic racism dehumanizes us all. Whether consciously or unconsciously, a failure to champion anti-racism makes one complicit in the oppression of those harmed by racial injustice. Achieving a truly equitable society will require the dismantling of the systems that inherently place a greater value on some identities than others.... Addressing systemic racism requires awareness and, more importantly, action at every level — individual, institutional, and structural."<sup>1</sup>

7.

**Key recommendations:**

- Canadian should be defined by residency (e.g. for tax purposes) not by citizenship or permanent residency. Effort should be made to include creative industry workers among immigrants to Canada and to remove barriers for temporary foreign workers to participate in these industries and to immigrate to Canada.
- The inclusion of Canadian residents in key roles should only be required to the extent that Canada is training or attracting the most qualified people for these roles.
- Global companies play an important role in investment, high value functions, training, the attraction of talent, and distribution. Business entities that are resident in Canada and have creative decision-making autonomy should be considered Canadian.
- There should not be a binary distinction between Canadian and non-Canadian content. Companies should have flexibility on how they achieve company-specific targets that contribute to inclusion and to the growth and competitiveness of the audiovisual industry in Canada.
- Industry growth and development should be encouraged by more emphasis on training and entrepreneurship, private sector investment development, and incentives for higher value functions being performed in Canada.

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<sup>1</sup> <https://www.chrc-ccdp.gc.ca/resources/publications/discussion-paper-systemic-racism#fn15-rf>

- There should be ongoing collaborative effort to achieve industry-wide productivity, growth, and inclusion targets.

### **Bias in Regulation**

8. A system that favours productions set in Canada, in specific languages, with arbitrary nationality criteria, and some predetermined standard of what constitutes a 'Canadian' story may seem fine and even desirable to many people in positions of power or that benefit from this approach. But it is a form of bias that results in cultural and racial discrimination. And this shows why we need diversity of experience and diversity of perspectives in decision-making roles. Barriers to inclusion of newcomers in the cultural industries illustrates that the current concept of Canadian does accommodate everyone. This is also indicated by the Indigenous Screen Office's use of the expression Canadian and Indigenous programming rather than just Canadian programming (Indigenous Screen Office, Swanson).
9. Several intervenors including The Canadian Internet Society (Gamble) and the Racial Equity Screen Office (Lee) expressed the concern that this proceeding risks generating comments primarily from intervenors that benefit from the status quo or that are relatively well resourced. They express the hope that the Commission will apply a wider public interest perspective in its decision-making and make any necessary efforts to hear and consider alternative perspectives.
10. The Canada Media Fund's *New Futures for Canadian Content* report (Creighton) found that the concept of Canadian content is inadequate in encompassing the full scope of the diverse realities, experiences, and social identities that are significant for Canada's audiovisual creators and for audiences looking for better representation.
11. The Racial Equity Media Collective (Carrington) and the Canadian Independent Screen Fund (Lee) note how a system based solely on nationality can create barriers for Indigenous and racialized creators seeking to collaborate with kin groups or diasporic creators based outside Canada. REMC also states that many racialized creators produce stories that are set outside Canada, often in languages other than English or French, or seek to collaborate with partners in countries without a co-production treaty. The Black Screen Office (Jenkinson) and the CBC (Kirshenblatt) make similar points, as does Fae Pictures (Joshi), which discusses barriers to collaboration with Canadian residents who are not citizens or permanent residents. REMC states that restrictions on a racialized producer from a diasporic community who wishes to film a program in their country of ancestry with internationally recognized actors may hinder that program's cultural authenticity and hinder the competitiveness of Canadian productions. REMC urges the Commission to consider how its proposed point system risks perpetuating systemic inequities in the Canadian broadcasting system, and particularly how that point system may inadvertently disadvantage creators from equity-deserving and ethnocultural groups, including Black or other racialized communities.

12. The development of a pool of racialized, indigenous, or disabled creative talent requires the capacity for such people to achieve their potential. Simply committing funds to excluded groups can be ineffective if there is insufficient attention paid to earlier stage capacity and community building, or if creative people are not included among potential immigrants to Canada. A lack of focus on capacity building and community development among excluded groups can also open programs to the criticism that funding is being provided to creators that are less qualified, putting programs at risk.

### **Issues Highlighted by the Creator Economy**

13. Although social media is not the focus of this consultation, submissions related to the creator economy highlight issues with the current approach to Canadian programming that are relevant to the audiovisual industry including compliance burden (noted by DFC, the Canadian Association of Broadcasters, BCE, Blue Ant Media, Rogers Shaikh, Roku Sher, Miracle Channel, CORUS Thompson, Thiessen, and Frontier Economics), eligibility restrictions (Jeremy Johnson, J.J. McCullough, the Computer and Communications Industry Association) and disincentives to collaborate with people who are not Canadian citizens or permanent residents.
14. Several interveners both inside and outside the creator economy note that the Commission's proposed modernization of the definition of Canadian program is just an incremental update to and expansion of the current "key creative point system". The Canadian Internet Society states that the most, if not all, of the investment in and success of Canadian-made, market driven online content could never have been produced or distributed within the confines of the regulated domestic CanCon system. This approach focuses on the supply of content by people and businesses that fit certain criteria rather than what content audiences demand (TCIS, MPA). Several interveners recommend that policy should be guided more by market demand (Berkowitz, DFC, BCE, TCIS, Blink49 Studios). What people actually consume can also provide an important indication of what they value.

### **Surveys**

15. Surveys, on the other hand, can be subject to a variety of biases based on the questions that are asked, who is surveyed, and how the results are interpreted. The Commission has made efforts to gather input from a wide range of people and has conducted a survey, as have several other intervenors (CMF, MPA, Forum for Research and Policy in Communications, Open Media). Results can differ widely on questions like the importance of intellectual property ownership, or the desirability of government rules and regulations.
16. While surveys may help identify the priorities of respondents, they do not necessarily provide support for the current regulatory approach as a means to achieving these priorities. For example, there may be broad agreement on priorities such as developing

creative opportunities for Canadians; more funding; the development of successful businesses in Canada; the development of more content with Canadian themes, places and characters; promoting diversity; and creating opportunities to own intellectual property in successful products. But these priorities might be much more effectively achieved by the development of a globally competitive industry, the attraction of international talent, collaboration with global companies, and the development of investment, entrepreneurship and training than by the current approach.

17. The Canada Media Fund's *New Futures for Canadian Content* report indicated that 80% of people outside the industry, and 33% of people inside the industry, don't know what CanCon means. Unlike many surveys, the survey commissioned by CRTC, *Perceptions of Canadian Programming and News*, did provide some of this information, but did not specify how 'Canadian' was defined or provide potential implications if this definition to respondents. Responses might be very different if a survey asked people whether they support a requirement for Canadian citizens or permanent residents to be in creative and ownership positions even if it excludes some Canadian residents, creates barriers for immigrants, contributes to underrepresentation of people from racialized groups, results in a less successful industry and fewer cultural products, or contributes to talented people leaving Canada or to lower living standards.

### **Success Requires a More Comprehensive Approach**

18. The overwhelming focus on funding for Canadian citizens and permanent residents results in little attention being paid to the inclusion of cultural workers among newcomers to Canada, and the biases and exclusions that go along with this perhaps inadvertent omission. But it also results in a lack of attention to other areas that are important to the development and growth of the industry, which could create more and better opportunities for everyone. Important areas that receive little if any attention in the audiovisual and other creative industries in Canada include training and entrepreneurship, private sector investment, and mutually beneficial collaboration with global companies.
19. Private sector investment approaches such as Angel investment, crowdfunding, and corporate venture capital were all pioneered in the arts. Angel investment originated in the financing of theatre productions. Crowdfunding also originated and gained wide usage in the creative industries. Corporate venture capital, where a corporation participates in a project pitched by an external party that aligns with its corporate goals, gained widespread use in technology industries in the late 20<sup>th</sup> century. But this model had long since been standard practice ever since film studios started contracting out conceptualization, development, and production to independent workers decades earlier. These approaches have been used extensively for growth and development of other industries in Canada but there are virtually no programs to apply these approaches to the creative industries where they began.

20. Several submissions (CFC, the National Screen Institute, and l'inis; the Pacific Screenwriting Program; The News Forum) note that Canadian creators in the film and television industries continue to struggle to access training and develop career pathways. Training in high value roles is central to the development of higher value activity in Canada. High quality training institutions can also play an important role in the attraction of both aspiring talent and, as discussed by multiple training institutions, production investment from global companies.

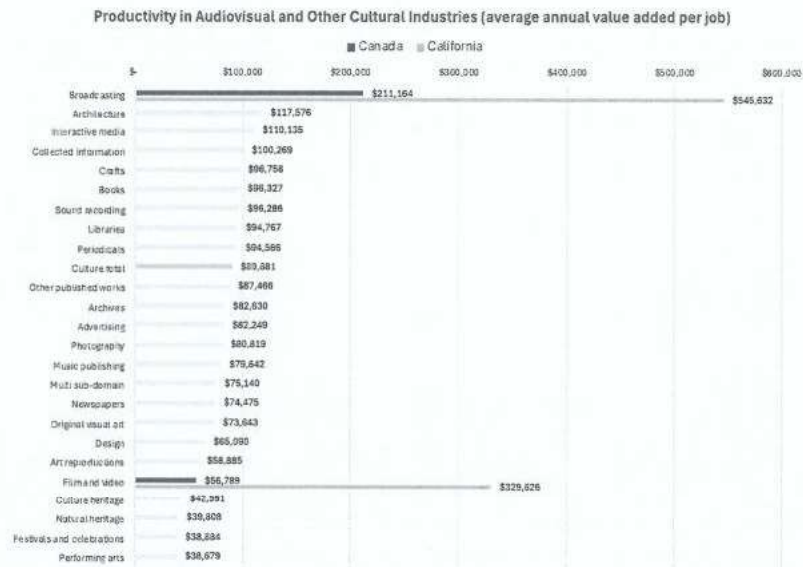
### **Global Companies**

21. An approach that equates culture with nationality reinforces a tendency to see global companies as invaders rather than as potential collaborators. In most industries Canada left behind its isolationist tendencies and concerns about being a branch plant economy decades ago to recognize that value chains are global, and that the important goal is to maximize Canada's role in high value functions. Canada now puts significant effort into international collaboration particularly in other high human capital industries due to their potential to create high quality professional development and job opportunities for Canadian workers, collaboration opportunities for Canadian companies, and to establish world-class production and distribution systems in Canada. We have seen the benefits of collaboration when it comes to Canada as a place to shoot but have not extended this collaborative approach when it comes to Canada as a place to create. Irene Berkowitz's submission suggests that it's time to move up the value chain.
22. The Frontier Economics report, *Stimulating Screen Production Investment - Analysing the impact of key policies on the audiovisual sector*, suggests that restrictive policies tend to reduce investment while incentive programs tend to lead to higher levels of investment in local content. The Department of Canadian Heritage appears to agree. In redefining Canadian programs, the Commission has been directed to consider incentive and outcome-based tools and to minimize regulatory burden in establishing a flexible and adaptable regulatory framework.
23. Submissions by the Pacific Screenwriting Program, the Animation Career Exelerator, Netflix, Paramount, Buena Vista International, the Computer and Communications Industry Association, MPA, the U.S. Chamber of Commerce, and Apple Canada, as well as the KPMG report *Impact of global studios and streamers on Canadian creatives and cultural ecosystem* indicate that global companies are quite willing to play a role in the development of successful creative production and talent and to collaborate with other members of the production ecosystem in Canada, including helping to implement technology and helping to develop the careers and businesses of people from underrepresented groups. Local companies and workers can also benefit from working with international collaborators (LaRue Entertainment, IATSE, Rogers). The KPMG report notes that Canadian directors are often hired by global companies in episodic television. The KPMG report as well as the report, *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada* by Communications MDR note that high budget local production is increasingly part of

global companies' production strategies. Netflix's submission states that they 'want to engage Canadian creative workers whose skills and talent enrich productions in meaningful ways' and have provided funding for the training and development of creators including screenwriters, directors, and producers from underrepresented groups. Paramount's submission states that it wants to use its resources and expertise in content production including international collaboration, training, using Canadians in creative positions, financing, distribution, and promotion. IATSE also highlights the importance of contributions to training.

24. Setting an arbitrary line between Canadian and not Canadian and to forcing companies to invest in the former even if it makes no sense to do so in terms of market demand will not likely result in growing investment, substantial industry development, increased opportunities for creators, or very many successful products. It would be much more beneficial for Canada and the audiovisual industry to see creators in Canada play increasingly important roles in the development of highly impactful audiovisual productions. Flexibility in key creative functions and intellectual property ownership allows for an increase in participation in these roles that is mutually beneficial to everyone involved including local workers and businesses, potential immigrants, global companies, and the Canadian public.

<Slide 2>



Data for 2021. Canadian data from Statistics Canada Table: 36-10-0452-01. California data from U.S. Bureau of Economic Analysis: Arts and Cultural Production Satellite Account, in Canadian dollars according to OECD purchasing power parities.

25. Slide 2 shows the average value added per job, or productivity, in the cultural industries in Canada. It includes comparisons with California in the audiovisual industries. Productivity is closely related to the incomes of workers in an industry. The low ranking of film and video among Canadian cultural industries reflects a lack of market success of Canadian programming as well as the production services tax credit focus on low value service functions rather than on high value creative functions.

26. The differences in the red and blue bars show there is a lot of room for growth. Success in these industries means a tremendous number of creative opportunities, high value production, and potential for high incomes.
27. Success is also about opportunities to collaborate with the best in the world. A region's unique and evolving character, reflected in its creative products such as its music, its food, and its film and television programs is often the product of local influences combined with new ideas that creative people bring to the region. Hollywood is no different. With very similar populations, California and Canada have talent pools of similar size. I took a look at the 30 highest grossing films in North America from last year to see whether people from California were in the key creative roles that are used in our points system. Using this definition, none of these films would have scored 6 out of 10 as California content. Only around 10% to 15% of key creative roles were held by people from California. Around half the films wouldn't even qualify as American content. Success in these industries is about attracting talented people from all over the world, not about regulations that help keep people out.
28. Lisa Macklem's submission states that "Canada's culture is vibrant and multifaceted and the very regulations established to help it flourish should not be stunting its growth instead".

<Slide 3>

### Example of Potential Goals for Canadian Programming

- Industry-wide outcome targets:
    - Increase productivity of film and video industry by 100%;
    - Increase in the the value of audiovisual production and exports by 200%.
    - Increase in the number of audiovisual industry key creative positions held by members of underrepresented groups and immigrants by 200%.
  - Flexible and adaptable targets for companies operating in Canada:
    - 15% of positions in each key creative role are held by residents of Canada (residency for income tax purposes);
    - 50% of the value of production is by businesses resident in Canada in which executive functions are held by residents of Canada (for tax purposes) who have creative autonomy;
  - Supported by collaborative capacity building initiatives including training and entrepreneurship, investment development, financial incentives, and the attraction of international creative workers.
29. A larger more diverse, and more culturally impactful audiovisual industry in Canada would benefit creators, companies, and the Canadian public. Increasing productivity by 100% would mean more successful products, higher value functions being performed in Canada, and greater opportunities and higher incomes for creators, and would put the film and television industry near the top of the previous chart rather than near the bottom.

Related goals that are likely quite achievable are a 200% increase in production, exports, and opportunities for underrepresented groups and immigrants.

30. Flexibility in how companies achieve targets helps ensure creative opportunities develop in mutually beneficial ways, generating continued momentum in the development and growth of the industry. The definition of key roles should reflect both the most valuable functions for the industry and our ability to produce or attract people most qualified to fill these roles. Examples of targets at the company level could be Canadian residents holding 15% of the positions in key creative roles, and 50% of the value of production being managed by people and businesses resident in Canada. Basing eligibility on residency rather than citizenship and or permanent residency status and working to grow the industry by attracting both creative individuals and the management of high value production activity to Canada are important components of growth. This approach is essentially about shifting from a dual focus on either people's citizenship status, what is often referred to as domestic production, or on lower value service functions, often referred to as foreign, to a more unified focus on higher value roles by people and businesses resident in Canada.
31. Success would require collaboration with other areas of government, industry, and other stakeholders, many of whom are participating in this and other CRTC consultations.
32. There are, however, a couple of points to emphasize. While such an approach can generate inclusive growth, there would need to be continued oversight to ensure benefits are broadly shared. Multiple interveners noted that decisions on who to hire on a creative project can be determined not by who is best for the job but by factors such as familiarity, reciprocity, or convenience. This can disadvantage people who are part of the Canadian industry, and especially traditionally excluded groups such as newcomers to Canada or Indigenous creators. Incentives and regulation would likely continue to play an important role in providing opportunities to people who might otherwise be excluded.
33. Also, as several interveners noted, the regulation of intellectual property ownership can have a negative impact on innovation and growth of the industry. But so too can concentration of intellectual property ownership. If intellectual property ownership is not to be regulated it is advisable to monitor the impact of relative market power on the distribution of the benefits of content production.

### **Final Remarks**

34. The creation of a globally competitive industry requires access to a global talent pool as well as collaboration across government and among industry players including global companies. A parochial approach that excludes 'foreigners' and that seeks to tell people what their stories should be about will almost certainly continue to struggle with high public costs, only the occasional modest success story, underrepresentation of racialized creators, and be characterized by conflict over limited resources rather than by collaboration, growth, the development and retention of businesses and talent in Canada, increasingly impactful cultural products, and higher incomes for creators.

35. The term Canadian programming may already introduce bias because it associates identity with nationality. To repeat the words of the Canadian Human Rights Commission, “Achieving a truly equitable society will require the dismantling of the systems that inherently place a greater value on some identities than others.... Addressing systemic racism requires awareness and, more importantly, action at every level — individual, institutional, and structural.” Some might interpret the word Canadian to reflect the values of diversity and inclusion and Canada as welcoming place. But this is in conflict with the exclusion of people who aspire to pursue their creative career in Canada but are not yet citizens or permanent residents or with the perception that Indigenous identity is subsumed within Canadian identity. The interpretation of the word Canadian as an inclusive ideal must be earned and be backed up by action that truly fosters what we hope the word Canadian represents.

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Research for this submission was developed with advice from experts in academia and industry. The viewpoints expressed here are those of the author and should not be attributed to Toronto Metropolitan University or the employer of the author.

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**FEDERAL COURT OF APPEAL**

Between: John Schoales (Applicant)

-and-

Canadian Radio-television and Telecommunications Commission (Respondent)

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*(Moving Party)*

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## OVERVIEW

1. The Applicant is seeking leave to appeal *Broadcasting Regulatory Policy CRTC 2025-299 - The Path Forward — Defining "Canadian program" and supporting the creation and distribution of Canadian programming in the audio-visual sector* issued by the Canadian Radio-television and Telecommunications Commission (the "CRTC" or "Commission") on November 18, 2025.

## PART I – STATEMENT OF FACTS

2. As part of the Canadian Radio-television and Telecommunications Commission's regulatory plan to implement the modernized Broadcasting Act, the Commission launched a public consultation to modernize its definition of "Canadian program".
3. As part of this consultation, the Commission received 480 written submissions and held a public hearing within a three-week period in May 2025 with 78 appearing parties.
4. The Applicant appeared at this hearing and submitted to this hearing *Intervention at public proceeding of John Schoales* (Exhibit D) and *Final Submission to public proceeding of John Schoales* (Exhibit E).
5. On November 18, 2025, the Commission issued its Decision (Exhibit A).
6. On November 20, 2025, the Commission held an online session where it presented its decision and responded to questions. The Commission's representatives were asked if expert legal advice was sought on whether continuing to restrict the definition of Canadian content to Canadian citizens and permanent residents would be a potential human rights violation. The Commission's representative said he didn't think such advice was sought but would provide a fuller response at a later time.
7. On December 11, 2025, the Commission provided the following written response to the above question via e-mail together with other responses to various questions that had been raised at the November 20 online session: "The Commission's determinations are based on the public record of the proceeding. The Commission does not comment on any legal advice it may have sought or received, nor does it explain why it made the decisions set out in the regulatory policy. The rationale for the Commission's conclusions is fully described in the policy itself." (Exhibit B).

## **PART II – POINTS IN ISSUE**

8. Leave to appeal Broadcasting Regulatory Policy CRTC 2025-299 - The Path Forward — Defining "Canadian program" and supporting the creation and distribution of Canadian programming in the audio-visual sector issued by the Canadian Radio-television and Telecommunications Commission (the "CRTC" or "Commission") on November 18, 2025.
9. An order extending the time for bringing this motion pursuant to Rule 8 of the Federal Court Rules;
10. Costs of this motion; and
11. Such further and other relief as the Court may deem just.

## **PART III – SUBMISSIONS**

### Extension of Time

12. The Commission's decision was made on November 18, 2025.
13. The Applicant has a continuing intention to pursue the application.
14. The Applicant is not legally represented. Efforts of the Applicant were made in a timely way to seek clarification from the Commission on the decision, to understand the implications of the decision, to understand the process for appeal, and to seek legal advice.
15. The holiday period fell between the Commission's decision and the motion for leave to appeal.
16. There is no prejudice to the Respondent arising from an extension.
17. The application has merit.

### Leave to Appeal

18. The Federal Court of Appeal may grant leave to appeal under Section 31(2) of the Broadcasting Act.

### Overview

19. The definition of 'Canadian' used by the Commission is contrary to the Canadian Human Rights Act that prohibits discrimination based on national origin or race.
20. Defining 'Canadian' according to citizenship and permanent residency status creates systemic barriers to people who are not yet permanent residents. This tends to deprive racialized people of employment opportunities.
21. The implementation of regulation regarding 'cultural elements' by the Commission creates cultural barriers to people whose work does not conform to the Commission's description of Canadian cultural elements. This disadvantages immigrants and potential immigrants to Canada who may choose to base their

works, characters, and settings on elements that are more aligned with their own experiences and not included in the Commission's description. This tends to deprive racialized people of employment opportunities.

22. Failure to seek to include audiovisual workers among immigrants to Canada and the imposition of regulatory barriers that tend to exclude potential immigrants in the audiovisual industry is contrary to the objective of the Immigration and Refugee Protection Act to permit Canada to pursue the maximum social, cultural and economic benefits of immigration.
23. If leave to appeal is granted the Applicant will seek the following orders from the Federal Court of Appeal:
  - a. An order setting aside the definition of 'Canadian' in favour of a definition that:
    - i. is inclusive of all people or businesses that are resident in Canada or of all business activity taking place in Canada;
    - ii. seeks to remove systemic and cultural biases and barriers that may result in the underrepresentation of racialized people in the audiovisual industry in Canada; and
    - iii. aligns with the objective of the Immigration and Refugee Protection Act to permit Canada to pursue the maximum social, cultural and economic benefits of immigration.
  - b. An order requiring that, prior to the enforcement of Commission regulations regarding employment in these occupations, immigration levels in each regulated occupation as a proportion of Canada's overall immigration levels be consistent with the size of each regulated occupation as a proportion of all Canadian occupations. Proactive attraction of immigrants in regulated occupations will serve to remove systemic bias that favours non-immigrants, and consequently people who are less likely to be racialized.
  - c. An order setting aside the prioritization of projects based on 'cultural elements' including projects based on works or characters of specific national origin, or on specific national settings. Such prioritization creates bias against immigrants and potential immigrants whose work may be based on other elements and consequently tends to discriminate against people who are more likely to be racialized.

#### Standard of Review

24. The standard of review on a question of law is subject to the standard of correctness (Housen v. Nikolaisen et al., 2002 SCC 33).

## Potential Definitions of Canadian According to the Broadcasting Act

25. The Broadcasting Act does not mandate how 'Canadian' should be defined. A variety of ways of defining Canadian are available to the Commission other than by citizenship or permanent residency of workers or business owners. These may include by place of residence of workers or business owners regardless of citizenship or permanent residency status; by place of residence of businesses; or by location of activity. The Commission has used and continues to use multiple definitions in different ways including by citizenship or permanent residency status of workers or owners, location of business, or location of activity.

## Definition of Canadian in the Commission's Decision

26. In Broadcast Regulatory Policy CRTC 2025-299 Section 6 'Interpretation Notes' (Exhibit A) the following definitions are provided:

- **Canadian:** A person who is, at all relevant times, a Canadian citizen as defined in the *Citizenship Act* or a permanent resident as defined in the *Immigration and Refugee Protection Act* who has received a Permanent Residence Certificate.
- "At all relevant times" refers to the commencement of the person's duties in relation to the production, and for the entire course of the filming or taping and post-production.
- **Canadian production company:** A Canadian company carrying on business in Canada, with a Canadian business address, that is owned and controlled by Canadians and whose principal business is the production of film, videotape or live programs for distribution on television or in theatrical, industrial or educational markets.

## Impact of the Definition of Canadian

27. The Commission's Decision states that "The certification framework for Canadian audio-visual programs is both a powerful cultural policy tool and a catalyst for Canadian employment in the Canadian production industry". Businesses in the audiovisual visual industry are regulated by the Commission to make financial contributions to the creation of audiovisual productions that have Canadians in specific roles according to the above definitions of 'Canadian'. Audiovisual productions and businesses that meet the above definitions of 'Canadian' are also generally eligible to receive public funding under a variety of federal and provincial programs.

28. The Canadian Human Rights Act prohibits discrimination based on race or national origin (Canadian Human Rights Act 3(1)).

29. The Canadian Human Rights Commission's Discussion paper on systemic racism (Exhibit C) states that "according to Canadian case law, people can engage in racial discrimination without realizing it or doing it consciously, even if they have other reasons to explain their decision or behaviour".

30. This discussion paper also describes institutional racism as “embedded in an institution’s policies, practices and regulations. These are then developed, carried out and enforced by individuals who may or may not be conscious of the racism underpinning all of it. One of the challenges is that the policies, practices and regulations may appear neutral on their face. Yet they can still result in the discriminatory or differential treatment of individuals based on race”.
31. The discussion paper also notes the importance in of the audiovisual and other cultural industries in perpetuating racism stating, “Children are able to observe how race structures the world around them. They will notice who the heroes are in the shows, movies, and books they consume — in which Indigenous, Black, and other racialized groups continue to be underrepresented, female characters are most often presented as thin and are likelier to be sexualized, and very few characters if any show signs of physical disability or chronic disease.”
32. Racialized people are underrepresented in the audiovisual industry and all cultural industries in Canada according to data from Statistics Canada, and overrepresented in low-skill, low-wage occupations (Exhibit D).
33. A definition of ‘Canadian’ based on citizenship or permanent residency results in underrepresentation both of racialized people in the audiovisual industry and on what stories and characters are portrayed on screens.
34. Non-permanent residents such as temporary foreign workers, international students, and refugees are much more likely to be racialized than Canadian citizens or permanent residents (Exhibit D).
35. According to Statistics Canada almost all of Canada’s population growth is due to immigration and this will be the case for the foreseeable future (Exhibit F).
36. Canada is also increasingly utilizing a two-step immigration system in which immigrants are selected from the pool of non-permanent residents (Exhibit G).
37. Exclusion of non-permanent residents from the group of workers who are considered ‘Canadian’ under the Commission’s definition excludes them from opportunities that are available to citizens and permanent residents. It is particularly difficult for an audiovisual or other culture industry worker to immigrate to Canada because they are disadvantaged in terms of access to professional opportunities regulated by the Commission and to the important professional experience and professional connections this provides; relevant work they are able to find may not be eligible as part of an immigration application because it may be contract or part-time work, which is the norm in the audiovisual industry; and there is little effort to either attract immigrants in the audiovisual industry or help them integrate into a workforce in which self-employment is very common and success is largely determined by access to established networks.
38. Statistics Canada projects that changing patterns of immigration will mean that by 2041 one quarter of Canadians will be born in Asia or Africa (Exhibit H). If unchanged, current regulations, policies, and programs that create barriers to potential immigrants will likely continue to result in significant underrepresentation of racialized people in the audiovisual and other culture industries in Canada.

## Decision Allowing the Participation of non-Canadians

39. Paragraphs 49-59 of Broadcast Regulatory Policy CRTC 2025-299 (Exhibit A) introduces an approach where the roles of Director, Screenwriter, and Scriptwriter and Storyboard Supervisor would be awarded points even if filling each position is shared by Canadians and non-Canadians, provided that at least 80% of the individuals filling the position are Canadian. Previously, a production only received points for a given position where all of the individuals filling that position are Canadian.
40. This minor acknowledgement of the value offered by people who may not be Canadian citizens or permanent residents only allows for participation a limited number of roles and in the unlikely case when there are at least 4 times as many Canadian citizens or permanent residents performing the same role.
41. The Decision focuses on participation of non-Canadians based in other countries rather than on the participation of non-citizens and non-permanent residents based in Canada. It also places primary emphasis on mentoring others rather than on the value non-citizens and non-permanent residents themselves could bring to a production.
42. The following phrases in the Decision:
  - a. 'contributions made by Canadian talent should not be diluted';
  - b. 'the development of homegrown expertise'; and
  - c. 'without unduly diminishing the Canadian character of these key creative positions'indicates continued and intentional discrimination against people whose place of origin is outside Canada and who may wish to pursue their careers in Canada and contribute to Canada's cultural development.

## The Addition of New Creative Positions

43. Paragraphs 73, 82, and 91 of Broadcast Regulatory Policy CRTC 2025-299 (Exhibit A) add the positions of Showrunner; Heads of Department Responsible for Costume Design, Make-up Artists and Hair Artists; and Visual Effects Director and Special Effects Director to the list of regulated key creative positions.
44. This change will discriminate against people who are not Canadian citizens or permanent residents in these positions, tend to limit the talent pool from which these roles will be drawn, and tend to contribute to underrepresentation of racialized people in these positions.

## Decision on Animated Production Workers who do not Reside in Canada

45. Paragraph 99 of Broadcast Regulatory Policy CRTC 2025-299 (Exhibit A) states that "the Commission finds that placing the emphasis on positions and functions in animated productions to be filled and performed by Canadians, rather than in

Canada, would align with the principle of fostering Canadian talent while recognizing that Canadians may choose to live and work abroad. Accordingly, the Commission amends the criteria for animated productions to be certified as Canadian programs such that the key creative functions of Key Animation, Layout Artist and Background, and Assistant Animation/In-betweening and the key creative position of Camera Operator must be performed and filled “by Canadians” rather than “in Canada” for each to be awarded 1 point”.

46. This change highlights the counterproductive nature of focusing on nationality rather than location of activity. Many Canadian writers, directors, actors and others in creative roles work in places like Hollywood, New York or elsewhere in the world. Rather than supporting the attraction of talented people to Canada and the development of the domestic industry, this decision supports the employment of Canadian citizens in other jurisdictions, which is contrary to the objectives of the Broadcasting Act to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

#### Cultural Elements

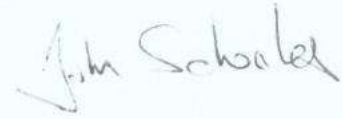
47. Paragraphs 104-126 of Broadcast Regulatory Policy CRTC 2025-299 (Exhibit A) introduces regulation whereby a production could be awarded extra points towards qualifying as ‘Canadian’ if it includes ‘Canadian’ characters and settings or is based on works authored by a ‘Canadian(s)’.
48. This decision introduces cultural bias, which discriminates against immigrants and potential immigrants whose work may be based on other elements, and consequently tends to discriminate against people who are more likely to be racialized.

#### **PART IV – ORDER SOUGHT**

The applicant requests:

49. Leave to appeal Broadcasting Regulatory Policy CRTC 2025-299 - The Path Forward — Defining "Canadian program" and supporting the creation and distribution of Canadian programming in the audio-visual sector issued by the Canadian Radio-television and Telecommunications Commission (the "CRTC" or "Commission") on November 18, 2025.
50. An order extending the time for bringing this motion pursuant to Rule 8 of the Federal Court Rules;
51. Costs of this motion; and
52. Such further and other relief as the Court may deem just.

January 11, 2026



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TO:

## **PART V – LIST OF AUTHORITIES**

### LEGISLATION/REGULATIONS

1. Canadian Human Rights Act, R.S.C., 1985, c. H-6
2. Broadcasting Act, S.C. 1991, c. 11
3. Immigration and Refugee Protection Act, S.C. 2002, c. 27
4. CRTC Decision (Broadcasting Regulatory Policy CRTC 2025-299)
5. Federal Court Rules, SOR/98-106

### SECONDARY SOURCES

1. Canadian Human Rights Commission - Discussion paper on systemic racism
2. Intervention at public proceeding of John Schoales
3. Final Submission to public proceeding of John Schoales
4. Population Projections for Canada, Provinces and Territories
5. Two-step Immigration Selection: A Review of Benefits and Potential Challenges
6. Canada in 2041: A larger, more diverse population with greater differences between regions

### CASE LAW

1. Housen v. Nikolaisen et al., 2002 SCC 33

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Dear Judicial Administrator

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