SKILL, MIGRATION AND GENDER IN AUSTRALIA AND CANADA
THE CASE OF GENDER-BASED ANALYSIS

ANNA BOUCHER

Abstract
The shift from family to skilled migration over the last decade is one of the most important changes in contemporary Australian immigration policy. This shift has been widely discussed by policy makers, academics and the media alike. Yet, the implications of this shift for female applicants have remained largely unidentified. Indeed, skilled migration has slipped by as a genderless story where the androgynous skilled migrant is the central character and economists do most of the storytelling. This paper addresses the gender issues inherent in the policy shift from family to skilled migration. It argues that Australia’s skilled migration scheme disadvantages female applicants through its construction both of economic independence and “skill.” A comparison with Canada’s skilled migration law and regulations, which are audited by gender mainstreaming tools, is also considered to ascertain what effect gender-based analysis has on identifying and rectifying the potential gender inequalities produced by skilled migration selection.

I. Introduction

“Gender,” Fitzpatrick reminds us, “is an organizing principle, not a simple variable, in migration.” Feminists have told the typically female stories of migration: sex, maid and mail-order bride migration. Skilled migration, on the other hand, has slipped by as a genderless migration story where women are largely invisible, the androgynous skilled migrant is the central character and economists do most of the storytelling. This omission must be addressed, particularly in light of the rise in skilled migration, compared with family migration, the traditional form of migration.

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for women. It is essential that the potential for gender inequality in skilled migration policy is considered. This paper is concerned with what gender inequality and equality means within the context of skilled migration. The competing understandings of gender equality – formal and substantive – are discussed as is the difficulty of applying principles of equality to a policy domain where discrimination and selection is the raison d’être of the policy itself.

This debate is explored through a feminist analysis of Australia’s and Canada’s skilled migration schemes. Relying on feminist public policy theory, I argue that the focus in the two countries’ skilled migration schemes on “occupational skill” and work experience make it more difficult for women than men to meet selection criteria. The potential gendered outcome of skilled migration policy must also be evaluated within the context of racial inequalities. Gender-blindness in data collection and publication is an additional consideration. Australia’s Migration Act (1958) and its regulations and the Canadian Immigration and Refugee Protection Act (2002) (IRPA) and its regulations are compared in light of these concerns. Finally, this paper analyses divergences between the Australian and Canadian schemes, particularly in light of gender-based analysis (GBA), a gender-auditing tool in operation in Canada.

II Skilled migration and feminist analysis
The observation that migration is gendered has long been argued by feminist academics but the link between gender and skilled migration is a more recent area of scholarly endeavour. The overwhelming majority of academic and political discussion of skilled migration focuses on economic considerations. This includes the unemployment levels of skilled migrants compared with family reunion migrants and the long-term sustainability of skilled migration. Less attention has been paid to the implications of skilled migration schemes for women. Indeed, most feminist

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4 Morokvasic was one of the first scholars to make this observation: Morokvasic, M (1984) “Birds of passage are also women,” International Migration Review, 18(4), 886-907.
work on migration focuses on traditionally “female” and “unskilled” forms of migration such as the sex trade, or the migration of domestic helpers. With increased focus on skilled migration in many countries, there is increased need for feminist analysis of the implications of this focus for women. In their recent appraisal of the scholarship on migration and gender, Kofman et al note that there is much to be done on the role that the “state of destination” plays in determining skilled migration outcomes for female migrants. While there is emerging research on this issue in Europe, the literature is otherwise limited and it would appear, most so in the countries with the highest intake of skilled migrants, such as Australia, the United States and Canada. There are some important exceptions. Dauvergne discusses the gendered impact of Australia’s migration scheme in its entirety, with a smaller analysis of the skilled stream. Iredale evaluates skilled migration schemes across a range of immigration countries including Australia. Dobson and Crush offer an excellent analysis of gender discrimination in South Africa’s Immigration Act 2002. Very recently, Kofman, Raghuram and Merefield have completed a report for the Institute for Public Policy Research in Britain, on the gender implications of the United Kingdom’s immigration policy. This paper adds to this emerging field of research by providing a detailed comparison of Australia’s and Canada’s skilled migration schemes. It also considers the success of GBA as a tool to address gender inequality in the Canadian scheme.

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III Skilled migration in Australia and Canada

A The rise of skilled migration

The 1990s saw the rise of skilled migration in Australia and Canada. In both
countries this development was based on a deliberate economic rationale; the
perception that skilled migration poses fewer economic burdens on the state and
brings more economic benefits than family migration. A recent report of the
Australian Department of Immigration, Multicultural and Indigenous Affairs
(DIMIA) for instance, states that “[t]he main thrust of the changes [to immigration
policy since 1996] has been to reduce the level of family migration and to increase the
level of skilled migration. Such a shift has clear benefits to Australia.” Skilled
migration also forms a substantial component of the Canadian immigration intake
and is seen as “play[ing] its critical role in [Canada’s] social and economic
progress.”

Longitudinal studies have to some degree challenged the view that skilled migration
brings more economic benefits than family migration. Disaggregated analysis of the
“Longitudinal Survey of Immigrants to Australia” indicates that although in the first
six months following migration, skilled migrants are more likely to gain paid work
than those on family migration visas, that the gap between the two streams
diminishes somewhat within 18 months. Other factors such as the gender, the
country of origin and the English-speaking abilities of the applicant have a greater
effect on labour force participation than the particular sub-class of visa which a
migrant holds. The notable exceptions here are humanitarian visa holders and those
migrants coming through the Business Skills and Employer Nomination Scheme
(where migrants are linked with a particular employer prior to immigration). The
former has substantially smaller chances than the other streams of gaining paid
employment whereas the latter has higher labour force participation than any other

13 Iredale, R (1997) International migration and accreditation issues, University Wollongong Press:
15 Coderee, Canada’s new immigration refugee protection regulation finalized, June 11, 2002,
Comparisons for Cohort 1 and 2 of the LSIA, The National Institute of Labour Studies , 49, 61.
17 Cobb-Clark, D, op.cit, 24.
stream. These however, represent the two extremes of the spectrum. Studies conducted in the Canadian context yield similar results. These findings suggest that the reasons for differences in employment levels between migration intake streams are complex and multi-faceted. Despite these considerations, the popular sentiment that skilled migrants are more self-reliant and skilled migration is less costly and better, has arguably remained. As can be seen from Table 1 and Table 2, in both Australia and Canada, skilled migration now exceeds family migration.

TABLE 1: MIGRANTS TO AUSTRALIA BY ELIGIBILITY CATEGORY


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18 Richardson (2004a) op.cit, 13.
TABLE 1: MIGRANTS TO CANADA BY ELIGIBILITY CATEGORY

<table>
<thead>
<tr>
<th>Year</th>
<th>Family</th>
<th>Skill</th>
<th>Humanitarian</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994-95</td>
<td>19940</td>
<td>12000</td>
<td>2000</td>
<td>1000</td>
</tr>
<tr>
<td>1996-97</td>
<td>18000</td>
<td>10000</td>
<td>1500</td>
<td>500</td>
</tr>
<tr>
<td>1998-99</td>
<td>16000</td>
<td>9000</td>
<td>1000</td>
<td>300</td>
</tr>
<tr>
<td>2000-01</td>
<td>14000</td>
<td>8000</td>
<td>900</td>
<td>200</td>
</tr>
<tr>
<td>2002-03</td>
<td>12000</td>
<td>6000</td>
<td>700</td>
<td>100</td>
</tr>
</tbody>
</table>


New regulatory regimes in Australia and Canada have directed the skilled migration intake. In Australia, following the 1998 Review of the General Points Test for the Independent and Skilled-Australian Linked Categories of skilled migration, an occupation-based selection points system for skilled migration was introduced in July 1999. Applicants must meet an accumulated points system based on their particular professional skill in order to be eligible as a skilled migrant. The number of points applicants receive for their skills depends on the current needs of the economy. In Canada, a new immigration act, the IRPA had been discussed since the early 1990s and was passed in 2002. The IRPA replaced the Canadian Immigration Act (1976) which had been amended thirty times between 1976 and 2002. The new legislation removed an occupation-based selection model – the current model in Australia – replacing it with a more general points test. Under the new model, migrants are assessed on general skills such as work experience and language proficiency rather than particular professional skills. One area of development in

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both countries which is not considered in this paper, is the rise in short-term business visas. Such visas are generally applied for by the migrant’s employer. These visas provide a maximum four year residence and work permit that is contingent upon ongoing employment with the same employer over this period. The visa does not give the applicant permanent immigration status. The rise in business visas over the last decade has been significant. The gender implications of this increase are relevant as a disproportionate number of business migrants are men. As this paper focuses on permanent residency, business visas are not discussed at length however, form a fruitful basis for future analysis.

B Skilled migration and discrimination

Does the shift from family migration to skilled migration disadvantage women in particular ways? The inherent difficulty in analysing gender inequalities in skilled migration policy is that discriminating between migrants is the very raison d’être of immigration selection. As Dauvergne notes, “[m]igration laws aim to discriminate – to determine who will be admitted and who will be excluded.” This argument is perhaps even stronger with regard to skilled migrants who are seen as the “brightest and the best”; migrants who will aid our skills crisis and assist economic growth. Further, the idea that the executive branch of government has a wide and in some respect boundless discretion to select who will come into Australia, and on which terms, is evident both in contemporary political event such as the Tampa incident and through legal pronouncement. Yet, these political imperatives and legal realities provide insufficient justification alone for immigration selection policy that discriminates on gender grounds. As Dauvergne has argued, the idea of a racially

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24 Crock, ME (2000), op.cit, 55-57.
27 Such as the High Court of Australia’s expansive reading of the constitutional aliens power. See for instance: Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs (1992) 176 CLR 1.
discriminatory immigration policy is abhorrent.28 Such a policy would also be politically unsustainable. Even were certain immigrants from certain countries more favourable it would be unacceptable for a selection policy to discriminate against migrants from certain racial groups. While, as I discuss below, there are elements to the skilled migration selection criteria in Australia and Canada that could disadvantage certain ethnic groups, both countries maintain an ethnically diverse immigration intake. A similar argument can be mounted in favour of gender equality in immigration selection. A policy which differentiates – whether formally or substantively – between male and female applicants is, arguably, no less acceptable than a policy which differentiates on the grounds of race.

Formally, both the Australian and Canadian Governments support a non-discriminatory immigration selection policy. This is clear in the Australian context from DIMIA Fact Sheet Number 1, which states that “Australia has a non-discriminatory immigration policy, which means that anyone from any country can apply to migrate regardless of their ethnic origin, their sex, colour or religion. If a person satisfies Australia’s selection criteria, he or she stands an equal chance of being successful, unless there is a cap imposed on the number of visas allocated to the particular category.”29 [my emphasis]. The CIC makes a similar pronouncement about inclusive selection practice.30 These statements raise the question of whether an immigration policy is non-discriminatory if the selection criteria themselves advantage some applicants over others. Is the non-discriminatory practice pursued in immigration selection of a substantive or merely a formal nature? Feminist public policy theory provides an excellent tool to analyse the substantive application of skilled migration law and policy as it affects women.

IV A feminist public policy analysis of skilled migration

Feminist public policy theory assists in uncovering substantive gender inequalities in policy. In Phillips’ formulation, feminist public policy theory “removes a systemic
bias that arises from the supposition that (elite) men’s experience represents all human experience.” \( ^{31} \) At its heart therefore, feminist public policy challenges epistemological assumptions central to mainstream policy theory: the idea that policy affects all equally and the idea that policy should only be concerned with public sphere operations. \( ^{32} \)

The substantive analysis of the Australian and Canadian skilled migration schemes in Parts IV(A-C) of this paper is framed around three central concerns of feminist public policy theory. These are:

   i)     The institutionalisation of gender roles through law and policy;
   ii)    Race and gender;\( ^{33} \) and
   iii)   Gendered data collection and publication.\( ^{34} \)

These three concerns of feminist public policy theory will be discussed with reference to the Australian and the Canadian immigration selection schemes. The application of GBA in the Canadian context in addressing these concerns is analysed in Part V of this paper.

**A Institutionalised gender roles and citizenship**

The extensive scholarship on the institutionalisation of gender roles in *citizenship* discourse provides some useful insights into the present discussion on skilled migration schemes. This is because skilled migration, as a means of gaining permanent residency, is the first and in many way the primary step towards gaining citizenship. Australia and Canada both have liberal naturalisation provisions and once a permanent resident has lived in Australia for several years, s/he can generally

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\( ^{31} \) Ibid, 251.


\( ^{33} \) Phillips, SD, op.cit, 251-254.

apply for citizenship. Many feminist critiques of citizenship therefore also have relevance to an analysis of skilled migration law and policy.

One issue raised within citizenship discourse which is relevant in this analysis of skilled migration is the construction of independence and dependence. Carole Pateman casts marriage as a sexual contract whereby women trade their independence for the economic support of their husbands. This contract, she argues, places women in a position of financial dependency to their male spouse. The economic dependency of women on men has had an enduring effect on women’s capacity to be valued as citizens. In Pateman’s words:

“Theoretically and historically, the central criterion for citizenship has been ‘independence’ and the elements encompassed under the heading of independence have been based on masculine attributes and abilities. Men but not women, have been seen as possessing the capacities required of ‘individuals’, ‘workers’ and ‘citizens.’ As a corollary, the meaning of ‘dependent’ is associated with all that is womanly.”

The emphasis of economic independence in citizenship discourse is most clear in obligation-based models of citizenship. In “Beyond Entitlement: The Social Obligations of Citizenship,” Lawrence Mead argues that members of a society must meet certain common, minimum employment requirements before they can be considered citizens. A right to citizenship is therefore dependent upon “the capacity to labour in some way others are willing to pay for.” However, this emphasis on economic production may also be apparent in Tom Marshall’s model of social citizenship, often presented as a rights-based vision of citizenship. In his 1949 lecture on social citizenship, Marshall argued that each citizen had an obligation to

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40 Ibid, 243.
work with “one heart in [one’s work].” He does not – at least explicitly – include unpaid work within his conception of work. These visions of citizenship are problematic for those female citizens – and indeed all citizens – who are not engaged in economic production rather, unpaid care responsibilities. Economic independence, it can be seen from these conceptions, is in many ways a hallmark of the active citizen. The flipside of viewing economic independence as a central trait of citizenship, is that economic dependence is devalued. The under-recognition of non-economic forms of production in traditional conceptions of citizenship can have the effect, as Cass argues, of devaluing women’s care contributions, and thus their position as citizens.

1 The primary/secondary applicant division

The division between male independence and female dependence apparent in citizenship theory is also apparent, in some respects, in skilled migration law and policy. The first way in which these countries’ skilled migration schemes reinforce notions of female dependency is through a distinction between the primary and the secondary applicant. The primary applicant is the person who lodges the application and who meets a “points test.” The secondary applicant migrates by virtue of his/her relationship to the primary applicant. The term “primary” replaced “breadwinner” in both countries in the 1980s. At least formally, this removed a distinction between independent male migrants and dependent female migrants. As Dauvergne notes however, although the policy is now formally gender neutral, the practice is not. Dauvergne’s analysis of gender disaggregated statistics indicates that men are more likely to be primary applicants in Australia than women. Recent figures from DIMIA update and confirm Dauvergne’s analysis.

43 I will henceforth refer to the primary applicant as “he” as this is more statistically probable.
45 Dauvergne, op.cit, 299-300.
In Canada, the distribution of primary applicant visas among men and women is even more skewed in favour of men.

<table>
<thead>
<tr>
<th>Visa Category</th>
<th>Male</th>
<th>Percentage of total primary/secondary intake</th>
<th>Female</th>
<th>Percentage of total primary/secondary intake</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>10,394</td>
<td>65.0%</td>
<td>5,596</td>
<td>35.0%</td>
<td>15,990</td>
</tr>
<tr>
<td>Secondary</td>
<td>9,468</td>
<td>42.1%</td>
<td>13,022</td>
<td>57.9%</td>
<td>22,490</td>
</tr>
<tr>
<td>Not stated</td>
<td>14</td>
<td></td>
<td>10</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>38,504</td>
</tr>
</tbody>
</table>

Source: Unpublished data given to author by the Statistics Unit, DIMIA, 12/5/04. These figures represent the average of all skilled migration visa streams.

<table>
<thead>
<tr>
<th>Visa Category</th>
<th>Intake</th>
<th>Percentage of total primary/secondary intake</th>
<th>Intake</th>
<th>Percentage of total primary/secondary intake</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>39,892</td>
<td>74.64%</td>
<td>13,556</td>
<td>25.36%</td>
<td>53,448</td>
</tr>
<tr>
<td>Secondary</td>
<td>26,889</td>
<td>38.45%</td>
<td>43,042</td>
<td>61.55%</td>
<td>69,931</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>123,379</td>
</tr>
</tbody>
</table>


What these tables show is that in both countries, men are disproportionately primary applicants and women are disproportionately secondary applicants. Indeed, for some skilled visa sub-classes in Australia, such as the Business Nominated Visa, the percentage of female primary applicants is as low as 19 per cent.\(^{46}\) The under-representation of women as primary applicants raises gender equality concerns. By casting female migrants’ position as dependent, the primary/secondary categories reinforce any dependency that might already exist within the relationship. There are several reasons for this. First, the primary applicant, being the one to meet the points test, becomes the official agent of migration. The secondary applicant fills

\(^{46}\) Unpublished data given to author by the Statistics Unit, DIMIA, 12 May, 2004.
the role of the “trailing spouse” who migrates because of her marriage or de facto relationship. The secondary application is dependent on the primary applicant for her visa although, she may contribute a limited number of points towards the primary applicant’s application by virtue of her work experience [see Table 5 below].

Second, as the primary applicant has had his skills assessed and accredited, he has much higher chances of gaining employment in the post-migration period than the secondary spouse, thereby compounding any financial dependency within the couple. While there is no restriction on a secondary applicant’s right to work post-migration, statistics indicate that secondary applicants are far less engaged in the labour force than primary applicants. Thus, while in 2003-4, only 1.2 per cent of primary skilled applicants to Australian were either unemployed or not in the labour force, 65.8 per cent of secondary skilled applicants were in this position. Aside from these differences in labour force engagement, dependency is reinforced by the requirement that the secondary applicant be required to remain in a relationship with the primary applicant for two years from the point of migration. The policy rationale behind this is understandable – to prevent against so-called “sham marriages” established either for migratory purposes, or as money-making schemes. The effect however, is that applicants must remain with their partners and be supported by them financially over this two year period. There is an important exception in both the Australian and Canadian legislation that waives the two year requirement in the event of domestic violence. Nonetheless, the negligible number of women who apply for the protection of this provision – even compared with the low reporting rates of domestic violence among citizens – suggests that some permanent

47 Fitzpatrick & Kelly, op.cit, 52.
48 I note the heterosexist reasoning here. While Australia does allow for gay and lesbian couples to come as Primary and Secondary Applicants (through an interdependent provision), few have: Dauvergne (2000) op.cit, 296. The pertinent question of how the skilled migration scheme might impact particularly on lesbian couples is unfortunately beyond the scope of this paper. For further discussion in the UK context, see: Simmons, T (2004) “Skills, sexual citizens and the UK’s family reunion provision,” Feminist Review, 77, 172-174.
residents may be staying in violent relationships due to financial imperatives in the post-migration period.\textsuperscript{51}

Of course, it is important to acknowledge that some women do apply as primary applicants and bring their male partners as secondary applicants. Some female migrants come alone. There has been significant feminisation of skilled migrant intake in the health science professions over the last twenty years. In Australia, over 50 per cent of dentists and in excess of 90 per cent of nurses entering Australia as skilled primary applicants, are women.\textsuperscript{52} In general however, women are underrepresented as primary applicants. The important developments evident in the figures for the health sciences therefore, do not impact substantially upon the overall much smaller representation of women in the primary applicant cohort.

\textit{2 Skill}

The dichotomy of the dependent female migrant and the independent male migrant is reinforced by the construction of skill in the Australian and Canadian skilled migration schemes. Feminist scholars have drawn attention to how society’s understanding of “skill” is structured by gender and class. As Phillips and Taylor argue, skill “is often an ideological category imposed on certain types of work by virtue of the sex and power of the workers who perform it.”\textsuperscript{53} In some respects, a division between the “skilled male migrant” and the “unskilled female migrant” is evident in immigration policy. An Australian policy booklet on skilled migration, for instance, states that the “skill capacities of skilled migrants” might be “diluted by dint of the Accompanying Persons.”\textsuperscript{54} The booklet does not explicitly clarify who the “Accompanying Persons” are but the phrase is suggestive of wives and children.

\textsuperscript{51} Boucher, A (2004) \textit{Häusliche Gewalt in Bewerbungen um unbefristete Aufenthaltserlaubnisse in Australien und Deutschland} (Domestic violence and the application for permanent residency visas to Australia and Germany), unpublished seminar paper for the Universität Potsdam Sociology seminar “Sex and Gender in Germany as a Country of Immigration,” January 2004.

\textsuperscript{52} Hawthorne (1996), ibid.


The perception of some female migrant as unskilled stems from the emphasis on occupational skill in skilled migration schemes. In both Australia and Canada, “skill” equates to “the productiveness of [a] worker.” This productiveness can be quantified and ranked in a hierarchy that determines financial reward. Such a construction of skill has enormous ramifications for women who for a range of reasons might not be able to attain occupational skills in the same way, within the same time period and to the same extent as men. The time that women take out from work for “child bearing and rearing” can inhibit the development of a clear career trajectory. A definition of “skill” focusing exclusively on “occupational skill” ignores the private sphere work of women and “parallel[s] traditional labour market and economic biases against women.” Further, even prior to this, women, globally, face massive disadvantages in accessing the education, work experience and mentorship, necessary to meet the points test by which applicants are assessed. This raises the issue of inequalities, in addition to regulatory regimes themselves, which inform the competitiveness of some female migrants in skilled migration selection. Iredale identifies the lower training of women in source countries as an impediment to skilled migration eligibility. Purkayastha also argues that any consideration of gender and skilled migration must analyse all stages of the immigration cycle. While these contributions highlight the complex process of gendering, they do not reduce the importance of considering the role of immigration regulation in the country of immigration in informing gendered outcomes.

In which particular ways then is skill constructed in the Australian and Canadian skilled migration schemes? As Table 5 below indicates, both schemes operate according to a points system whereby a maximum of 150 and 100 points respectively is awarded for a variety of factors.

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55 ibid.
57 Dauvergne (2000) op.cit, 297.
60 Purkayastha, op.cit.
<table>
<thead>
<tr>
<th><strong>TABLE 5: THE POINTS TEST IN THE AUSTRALIAN AND CANADIAN SKILLED MIGRATION SCHEMES</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia: Occupation-based selection model</strong></td>
</tr>
<tr>
<td><strong>Work experience</strong></td>
</tr>
<tr>
<td>10 points given for work experience.</td>
</tr>
<tr>
<td><strong>Language</strong></td>
</tr>
<tr>
<td><strong>Age</strong></td>
</tr>
<tr>
<td>Maximum of 30 points. No migrants over 45 can apply.</td>
</tr>
<tr>
<td>Applicants attract between 40 and 60 points depending on their qualifications in certain industries.</td>
</tr>
<tr>
<td>Some bonus points for skills in professions in demand also available.</td>
</tr>
<tr>
<td><strong>Education</strong></td>
</tr>
<tr>
<td>Australian qualifications needed: 10 points for education within Australia. Another 5 bonus points for postgraduate studies.</td>
</tr>
</tbody>
</table>

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61 There are six sub-classes within the Australian general skilled migration class. Given space constraints, the small differences between these sub-class visas are not discussed. This table instead provides a general picture of the skilled migration points test.
<table>
<thead>
<tr>
<th>Australia: Occupation-based selection model</th>
<th>Canada: General selection model</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Job offer</strong></td>
<td>Maximum of 10 points for a job offer. Referred to as “arranged employment.”</td>
</tr>
<tr>
<td>15 points for a job offer in an occupation in demand.</td>
<td></td>
</tr>
<tr>
<td><strong>Family link</strong></td>
<td></td>
</tr>
<tr>
<td>15 points for an Australian spouse.</td>
<td>10 points for those with family members in Canada – this is calculated together with the points for “skill” – see above.</td>
</tr>
<tr>
<td>TOTAL: 150</td>
<td>TOTAL: 100</td>
</tr>
</tbody>
</table>

Under both schemes, work experience in the paid labour force attracts a substantial number of points. Neither scheme includes unpaid domestic or child care as work experience, although there are a small number of temporary business visas for paid domestic workers to assist diplomats or consular representatives present in Australia.62 In Canada, temporary visas for live-in-carers are available. These visas can be extended to permanent visas after two years.63 Generally, both schemes prefer young migrants over older ones. The maximum age to apply in Australia is 45 and in both countries, preferential treatment is given to younger applicants.64 Both point systems also demand high levels of English or French language proficiency; an issue discussed further in Part IV(B) below. These two additional requirements of youth and English or French language proficiency can place further restrictions on women who as a product of biological factors may take longer to complete education and training – including learning a second language.

Despite the similarities there are also substantial differences between the two skilled migration schemes. It is here that the new GBA approach adopted in Canada is important. In Australia, applicants are assessed for specific skill. Potential skilled migrants must fit into one of the professions listed by the assessing body, Vetassess,

64 However, the Australian migrant intake is slightly younger than the Canadian: Richardson, S & Lester, L. (2004b) A Comparison of Australian and Canadian Immigration Policies and Labour Market Outcomes, Report to DIMIA, The National Institute of Labour Studies, Flinders University, September 2004, 29-30.
before lodging an application.\textsuperscript{65} As mentioned above, with the exception of a small number of short-term business visas, occupations often associated with new female migrants such as domestic carers or seamstresses are not included on this list for permanent skilled migrants.\textsuperscript{66} Further, the list changes according to current economic need. Canada has disbanded such an occupation-based selection model in place of a general skill model.\textsuperscript{67} As a general skills test is not so intimately linked to the needs of the economy, it recognises a broader range of professions. A general test also does not differentiate between occupations in its allocation of points. As the first GBA of the IRPA noted, a general skills tests may have the effect of including previously excluded professions. This includes nurses, a profession dominated by women and which was previously excluded under Canada’s occupational-based points system.\textsuperscript{68} Although nurses are currently included on the skills list in Australia, this has not always been the case. At times, nurses have been awarded no points or negative points for their occupational status.\textsuperscript{69} A focus on general skill may therefore, have some gender-positive outcomes by removing the uncertainty that comes with changing intake of nurses, an area where women dominate.

Another important difference between the two schemes is in the acknowledgement of part-time work experience. In both Australia and Canada, additional points are allocated for work experience. In Australia, this work experience must be in the same area as the elected occupational skill, it must be more than part-time and it must be gained within a short space of time immediately prior to lodging the application.\textsuperscript{70} Therefore, for those applicants whose occupational skilled is assessed at 60 points or above, the work experience must be for 12 months in the 18 months immediately preceding lodgment. For applicants whose occupational skill is between 40 and 50 points, the work experience must be for two years in the three years immediately preceding lodgment.

\textsuperscript{66} DIMIA (2004) Skilled Occupation List, Form1121i, Department: Canberra.
\textsuperscript{68} Gender-Based-Analysis of IRPA, No 1, accessed at www.cic.gc.ca/english/irpa/cl11-gender.html on 14 May 2004 at 12.20am . GBA No 1, ibid.
\textsuperscript{69} Kofman, E & Raghuram, P (2005) “Gender and skilled migrants: into and beyond the work place,” Geoforum 36, 149-154, 150.
\textsuperscript{70} DIMIA (2004) Booklet 6, op.cit, 7.
preceding lodgment. In either case, the work must be for at least 20 hours a week. In Canada, “work experience” includes “equivalent part-time employment in one or more occupations” gained during one to three years over a ten-year span (more points are allocated for the greater number of years of work experience). As the second GBA on the IRPA notes, including part-time work “is potentially advantageous from a gender perspective because it recognises the greater likelihood of women’s involvement in part-time employment.” This provision is responsive to women’s departures from the work force for child bearing and rearing and to the general preponderance of women to engage in part-time work. Not all aspects of the Canadian system are however, attune to gender equity. As Dobson and Crush note in their analysis of the South African Immigration Act 2002, allocating large number of points to tertiary and postgraduate education (as is the case under the new Canadian scheme) could disadvantage women. This is because women tend to gain lower levels of tertiary and postgraduate education than men.

B Race and skilled migration

The second important feminist public policy concern which has bearing on this analysis is how gender inequality is reinforced by other forms of inequality. This includes racial inequality. Women’s diverse experience demands such an investigation. In Spelman’s formulation: “Though all women are women, no woman is only a woman. [We] must give up the hunt for the generic woman – the one who is all and only woman, who by some miracle of abstraction has no particular identity in terms of race, class, ethnicity, sexual orientation, language, religion, nationality.” In short, feminist theorists argue that we must question and challenge blanket definitions of women.

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71 Ibid. There is an exception from meeting this requirement for international students in Australia who meet the points test and lodge their application onshore in the six month period immediately following completion of their Australian degree: Ibid.
72 Personal correspondence with DIMIA Adelaide Processing Centre, 7 July, 2005.
74 Ibid.
75 Dobson & Crush, op.cit, 105.
Skilled migration schemes can create blanket definitions of migrants by ignoring how ethnicity and social class establish barriers that operate in addition to gender. On its face, Australia’s skilled migration scheme appears to advantage persons from English speaking backgrounds. Likewise, the Canadian system appears to advantage persons whose native language is English or French. This is because in both countries, the points allocated for language skills are high and the language tests themselves, difficult to pass. In Australia, the maximum number of points for English ability is attained only when an applicant has “competent English” as assessed under the International English Language Testing System (IELTS). “Competent English” is similar to the level of fluency required of international students for entry into many tertiary education courses in Australia. It represents a significant degree of proficiency in a foreign language. In Canada, the number of points available for language skills increased from 20 to 25 with the 2002 reforms. The standard necessary for attaining maximum language points is similar in Canada to Australia although, unlike in Australia, language is not a compulsory criterion in Canada.

Native speakers are clearly advantaged by a focus on language skills and in most cases, are not required to sit a test. Recently, the points allocated for language skills and the difficulty of the tests have increased. What are the implications of these developments for female applicants? In Australia, academic analysis focuses on how the language requirements disadvantage certain ethnic groups. Yet with the exception of Hawthorne and Shu, there has been little research on how access to second languages may be more difficult for women than for men. In Canada, there has been significant discussion of this issue. Hyndam, for instance, argues that the harder language test is doubly difficult for women as “due to [their] family responsibilities, societal norms, and economic circumstance,” their “access to

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78 DIMIA, Booklet 6, op.cit, 27.
79 Coderre, op.cit.
81 Richardson & Lester (2004b), op.cit, 19.
language training is generally less than that of men.” The increased emphasis on language skills in the skilled migration stream may disadvantage not only certain ethnic groups but also women within those groups.

It is difficult to judge what the quantitative effect of increased language standards in skilled migration selection has been on women from certain ethnic groups. There has been no longitudinal analysis of this issue in either Australia or Canada. On its face, immigration intake in the skilled stream in both countries has remained diverse across a range of source countries. However, it is clear that certain nationalities do fare better in the skilled stream and this may be due to their English-speaking skills. British migrants to Australia in 2002-3 for instance, comprised 13.3 per cent of migrants averaged across all streams but 23 per cent of the skilled stream. However, results are not as clear in Canada. Indeed, a recent comparison between Australia and Canada suggests that Australia has a larger proportion of migrants of English-speaking background. More research is needed to fully understand the impact which the shift towards skilled migration and the increasingly difficult language tests have on the eligibility of non-English or French speaking female applicants under both schemes.

C Gendered data

The disaggregating of data along gender lines is the third main concern of feminist public policy theory. Since the 1970s, feminist scholars have brought attention to some of the egregious gender biases evident in data collection. This has included failure to consider women separately in samples or, the predilection to treat women as a block rather than many discrete and diverse sub-categories. The disaggregating

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87 Richardson & Lester (2004b), op.cit, 27.
of data according to gender is common practice in Canada. The number of men and women coming as primary and secondary applicants in the skilled migration scheme is readily available on the Department of Citizenship and Immigration Canada’s website.\textsuperscript{89} Making such information open to public scrutiny is arguably the first step in addressing the gender implications of a skilled migration scheme. In Australia, by contrast, there is no publicly available data on the gender of primary and secondary skilled migrants. Such statistics are held by the Statistics Unit at DIMIA however, can only be accessed on request and at a high cost.\textsuperscript{90} Iredale argues that this difficulty in accessing such data severely impedes analysis.\textsuperscript{91}

V GBA: Drawing lessons from the Canadian experience

This paper has identified the following differences between the Canadian and the Australian skilled migration schemes which hold implication for gender equality between male and female applicants:

- A focus in the Australian scheme on specific skill compared within general skill in the Canadian scheme;
- More acknowledgement of part-time work for applicants under the Canadian scheme than under the Australian scheme; and
- The publication and free distribution of gender disaggregated data in Canada but not in Australia.

What effect has GBA had in bringing these changes about to the Canadian scheme?

A Gender Based Analysis in Canada

First, it is necessary to consider the role of GBA in law reform in Canada. GBA is a public policy tool used to “ensure that [policies] pay due heed to the differential location and experience of women and men.”\textsuperscript{92} GBA aims to “measure the movement of projects…from gender neutral to gender sensitive” and to “gather data on current

\textsuperscript{89} See CIC (2003) \textit{Fact and Figures}, op.cit.
\textsuperscript{90} A minimum of $100.00 per spreadsheet of data.
\textsuperscript{91} Iredale (forthcoming), op.cit, 3-4.
\textsuperscript{92} Bacchi & Eveline, op.cit at 98.
gender realities.” This form of analysis has been an important aspect of all Canadian public policy since 1996. Following the Fourth United Nations World Conference on Women, the Canadian Status of Women sought to further Canada’s commitments under international law by implementing gender-mainstreaming at the domestic level. GBA was introduced as one of the major components of this new gender-mainstreaming approach. Under the auspices of the Status of Women, all Canadian government departments now conduct GBA of all policy and legislation. As such, GBA differs from other forms of gender-auditing where an external body or department oversees the gender implications of policy across all other departments. The IRPA and its regulations were reviewed using GBA techniques prior to their introduction and are required to be reviewed on a yearly basis.

B GBA and the Canadian Immigration and Refugee Protection Act (2002)

The GBA of the IRPA has addressed some but not all of the three feminist public policy theory concerns raised within the context of this paper: the institutionalisation of gender roles, race and gender and gendered data collection and production. GBA has been most successful in highlighting how certain aspects of the skilled migration scheme can be altered to offer better chances for female applicants but less successful in addressing some of the systemic issues which skilled migration presents. The first difference between the two schemes is the focus in Canada on general skill. This was raised in the first GBA of the IRPA as a feature that could be beneficial to female applicants. However, whether this policy change is referable to the GBA is unclear. Indeed, it would appear from subsequent academic discussion of the IRPA, that the central rationale behind the shift from an occupational to a general skills scheme was for Canada to become more internationally competitive to highly-skilled applicants.

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95 Ibid, 14.
98 IRPA, s94.2 (f). This provision makes the CIC the first department with a legislative obligation to report to parliament on its GBA.
99 First GBA, op.cit.
The labour market viability of an occupational-based system was also a relevant consideration. As such, the GBA appears to have played only a secondary role in determining this policy outcome.

The second difference between the Australian and the Canadian schemes is in the great acknowledgement of part-time work in the Canadian system. This was only raised as an issue in the second GBA after the *IRPA* was implemented. This would suggest again, that the GBA played more of a sanctioning than an initiating role in influencing this outcome. GBA, in this sense, is “ex post commentary” rather than “ex ante gender analysis.” This means that it cannot restructure policy direction – such as the seemingly inevitable shift towards skilled migration. Instead, it may be confined in its role to subsequent analysis. As is clear from this case study, GBA largely affirmed rather than altered the policy direction of the *IRPA* and its regulations.

Looking to the third difference between the two schemes, the analysis and publication of gender disaggregated data, there can be no doubt that this is a very important development. The stature and transparency of the issue of gender inequality in skilled migration is markedly greater in Canada than in Australia. Access to statistics has generated academic and activist debate on this topic in Canada. Aside from Dauvergne’s and Iredale’s articles, such debate is entirely absent in Australia. Yet it is again unclear what effect the GBA has had on this outcome. While both gender-based analyses highlighted the importance of gender disaggregated data collection and publication, it would appear that this practice was in place prior to 2002. As such, GBA may have done little more than affirm an already favourable policy.

The impact of GBA in achieving the discussed outcomes is therefore questionable. The capacity of GBA to address the *systemic issues* raised by a general shift towards skilled migration is even more tenuous. There is a tension here between the feminist

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100 Skilled migration must be seen not only as an issue between source and immigration country but also within the context of international competition between Australia, Canada, the United States and the United Kingdom over how to attract the best migrants. Tolley (2003), op.cit, 1.

101 Baachi & Eveline, op.cit, 99.
ideal of gender equality and the policy of skilled migration, based as it is on selection and discriminating between applicants. Skilled migration schemes are concerned with picking the best applicants. The fact that class, race and gender may have shaped who is the “best” is in this sense irrelevant. The GBA of the IRPA has not dealt with the issue of female dependency which a shift towards skilled migration may reinforce. As discussed in Part 4(A), Australia’s and Canada’s skilled migration schemes, through their distinction between primary and secondary applicants, entrench female migrants’ dependency on their male partners. Nor does the GBA discuss the interaction of race and gender with regard to the difficult language test. While the GBA does acknowledge that certain “source” countries might be adversely affected by education requirements, there is no mention of the language requirement itself. Confronting these two issues might require challenges to the overall rationale of skilled migration. These shortcomings of GBA should be kept in mind if such a tool is to be adopted in Australia.

VI Conclusion
This paper has told the story of female skilled migration so often forgotten amidst other debates over skilled migration. It has looked at whether the operation of Australia’s and Canada’s skilled migration schemes disadvantage female applicants substantively if not formally. A distinction between primary and secondary applicants and a construction of skill based on labour-market experience, reinforce gendered roles between male and female migrants. An emphasis on language proficiency also ignores how race can further shape immigration opportunities. Yet, despite these commonalities between the two skilled migration programmes, there are also differences. The Canadian scheme assesses applicants on the basis of general rather than occupational skill. It also acknowledges part-time work experience to a greater extent than is the case in Australia. These factors, accompanied by publicly available gender-sensitive skilled migration data, may have the effect that the Canadian system is more attune to issues of gender equality than the Australian.

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102 Gender-Based-Analysis of the IRPA, No 2, op.cit.
The discussion in this paper suggests that GBA has been most successful in drawing attention to particular aspects of the skilled migration model but less successful in addressing systemic inequalities that underpin the very notion of skilled migration. These systemic inequalities are located in the fact that skilled migration selection by its very nature discriminates. Indeed, to suggest that there should be no discrimination between applicants on the ground of labour market participation, educational attainment or language aptitude, would be to make a skilled migration scheme untenable. The tension between skilled migration on the one hand and gender and racial equality on the other is apparent. Whether immigration selection can ever be free of all forms of discrimination seems unlikely, especially in a world where gender and racial inequalities persist. However, this does not mean that immigration selection should not audit immigration selection criteria on gender grounds. In any case, GBA raises the stature of gender issues in public discourse. For this reason, a GBA of Australia’s Migration Act (1958) and regulations would be a fruitful beginning for such an endeavour.
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