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Brief to the Standing Committee on Citizenship and Immigration Re: Study of Recruitment and Acceptance Rates of Foreign Students in Quebec and Canada, Including Francophone Students from Africa

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Thank you Chair and Committee for the invitation to provide this brief in advance of my oral submissions.

I am writing, speaking, and presenting from the traditional, unceded, ancestral territories of the Musqueam, Squamish, Tsleil-Waututh, and Qayqat nations. Our firm, Heron Law Offices on the edges of Still Creek, Burnaby, once a seasonal gathering site for Indigenous communities with abundant wildlife, salmon, fruit, was settled on, destroyed, polluted, and is only now being remembered, revived, and renewed.¹ My participation in this process today, although in a very different spatial context, is influenced by the same *firm* belief that we must reflect and recover from the harms of our collective past.

To start, I would like to provide the Committee with some context about why I was invited to speak on the refusal rates and recruitment process of international students have negative impacted applicants from Africa and the Global South.

I will be providing this brief in English, although I would like to add at the outset, *nous ne devons pas oublier l'intersection des francophones africains (racial, linguistique, géographique, souvent genré, âgiste dans ses impacts). Nous ne pouvons pas oublier l'importance de ces problèmes pour les Québécois et les francophones canadien. Cela a affecté ces communautés de manière disproportionnée.*²

Background and Context: Getting to this Critical Juncture

Myself and a group of ad hoc lawyers (including Lou Janssen Dangzalan who you will also hear from) were among the first to put forth information to the public about Chinook, Immigration, Refugees and Citizenship Canada's ("IRCC") internal bulk processing and refusal system.

¹ Christopher Cheung, 'Never Give Up on Any Waterway' *The Tyee*. 21 February 2019. <https://thetyee.ca/News/2019/02/21/Burnaby-Waterways-Daylighting-Creeks-Streams-Buried/> Accessed on 27 January 2022

² We need to ensure that we do not lose sight of the intersection that is Francophone Africa (racial, linguistic, geographical, often gendered, ageist in its impacts). We cannot forget the importance of this issue to Quebecois and French speaking Canada. This is an issue that has affected this community disproportionately.

My own legal practice deals largely with study permits and related temporary resident refusals for Applicants from Africa and the Global South. I have spoken nationally at legal conferences and as well presented and taught to and at several educational institutions on this topic.

Through our client representation work, we have been the go-betweens and the story holders of many of these applicants, most of whom have no other routes to Canada (visit, work or immigrate to Canada through permanent residency) but to pursue studies as international students. I will try my best to channel their experiences in what I share with this committee.

For further background context, I want to point to late 2020, when this Committee asked for submissions on COVID-19, we (through the Arenous Foundation) flagged the issue of the refusal of Francophone refusals and the embedding of Anti-Black racism in our system. We wrote:

We are deeply concerned about the Anti-Black racism that continues to lead to high refusal rates from African and Global South Countries. Polestar Immigration examined refusal rates in 2019 and found that 75% of African visas were refused compared to 39% as the global rejection rate. We are in the process of examining the most recent figures from 2020, which suggest that refusal rates have increased in COVID and that the countries that have 70% or higher refusal rates continue to disproportionately represent the same African and Global South Countries.

Given Canada's history of racialization of Black migrants, specifically drawing to the Order-in-Council PC 1911-1324 which denied Black migrants on the basis of climate unsuitability, it is incumbent on Canadian immigration to explore how to create a more racially just, anti-Racist framework for assessing TRVs and study permits from African countries. Prioritizing on a limited subset of candidates from French-speaking countries through the Student Direct Stream will not bring into Canada a greater, more diverse set of the world's top students which our system leaves at the door, many holding merit-based scholarships for top institutions. Furthermore, assessments of international students and visitors seeking to enter Canada should place a greater emphasis on the Applicant's commitment to return to their countries at the end of their authorized stay, rather than perceptions and speculations about the generalized country conditions.³
(emphasis added)

In 2019, when Polestar Immigration did a study on African study permit refusals, I also flagged at that time to clear discriminatory impact the statistics showed - there was some media coverage around this and TRV refusals for African applicants.⁴ I also wrote

³ Edris Arib, Lou Janssen Dangzalan, Will Tao, Karen Jantzen, *Brief to House of Commons on Impact of On-Going COVID-19 Pandemic on Canada's Immigration System*, Arenous Foundation 11 December 2020. <https://www.ourcommons.ca/Content/Committee/432/CIMM/Brief/BR11054685/br-external/ArenousFoundation-e.pdf> Accessed on 27 January 2022.

See also: Samantha Wright Allen, "Canada's immigration policies create discriminatory outcomes for African applicants, critics say", *The Hill Times*, 11 February 2021. <https://www.hilltimes.com/2021/02/11/canadas-immigration-policies-create-discriminatory-outcomes-for-african-applicants-critics-say/283228>. Accessed on 27 January 2022.

⁴ The article from Polestar was taken down as the website no longer active, but cited in Yomi Kazeem, "Three in four Africans applying for student visas in Canada this year have been rejected." *Quartz Africa*. 13 September 2019. <https://qz.com/africa/1708714/canada-rejects-most-african-student-visa-applicants/#:~:text=New%20analysis%20of%20data%20from%20Immigration%2C%20Refugees%20and.higher%20than%20the%20global%20rejection%20rate%20of%2039%25> Accessed on 27 January 2022 and Legal Professionals Education Network, "IRCC refuses 75% of study permit applications made by African students." LPEN, 10 September 2019, <https://www.lpen.ca/post/ircc-refuses-75-of-study-permit-applications-made-by-african-students> Accessed on 27 January 2022.

extensively, when IRCC wrote in their *2019 Annual Report on Immigration*⁵ that they do not collect race-based or religious-based data for operational purposes, that this was a gap.⁶

Today, and all that has transpired in the past months, is an unfortunate reminder of what happens when we take a passive and non-collaborative approach to a systemic issue, a pandemic virus of its own kind, that threatens the stability and future of our immigration system.

I purport to go through, in my brief remarks today, three points that I believe should be considered by this Committee in their study and finally bring forward three recommendations.

Right now, Canada is at a critical juncture, where our history of racism and discrimination, largely emanating around the exclusion of immigrants from the Global South, especially Africa, has embedded itself directly into our present system. This system threatens to codify - and I use this word very intentionally - in our future technology used to process these applicants, using tools such as Chinook and the pending expansion of our Artificial Intelligence (“AI”) initiatives. If unchecked, unmarked, and not proactively avoided, our future system will bring further harm to applicants while lacking the transparency and fairness that we uphold as foundational to our system’s overall efficacy.

The Need for a Historical Lens to Situate Racist Past, but Also Opportunities

The first point I would like to discuss is the importance of not turning a blind eye to our history and to properly draw a link between the explicit exclusionary laws of yesterday and today’s implicit, discriminatory effects. Along the way, there may also be pockets of success worth replicating and perhaps narratives will be revealed that can directly challenge some of the perceptions and misconceptions that have formed over time about study permit applicants from various Global South and African countries.

It would do a disservice, from my perspective, to simply look at numbers - percentages of approval rates and ask us to increase them by some marginal percentage without exploring why we have reached this predicament in the first place and how deeply embedded Anti-Black racism in our immigration system operates and functions, today.

⁵ Immigration, Refugees and Citizenship Canada, *Annual Report on Immigration 2019*, Her Majesty the Queen in Right of Canada, represented by the Minister of Immigration, Refugees and Citizenship, 2020 <https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/annual-report-2019.pdf> at page 28. Access on 27 January 2022.

⁶ Will Tao, “The E-race-d Migrant Workers of COVID-19: Why Canada’s Colourblind Approach to COVID and Immigration needs a Major Re-think,” *Edelmann and CO. Law Offices*, 17 April 2020, <https://edelmann.ca/the-e-race-d-migrant-workers-of-covid-19-why-canadas-colourblind-approach-to-covid-and-immigration-needs-a-major-re-think/>

To begin, Anti-Black and Anti-African racism was foundational to Canada’s immigration system, alongside Anti-Asian exclusion as tools of early exclusion allowing for the creation of White Canada.⁷ In 1911, by Order of Council, Canada prohibited “immigrants belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada (see Figure 1).

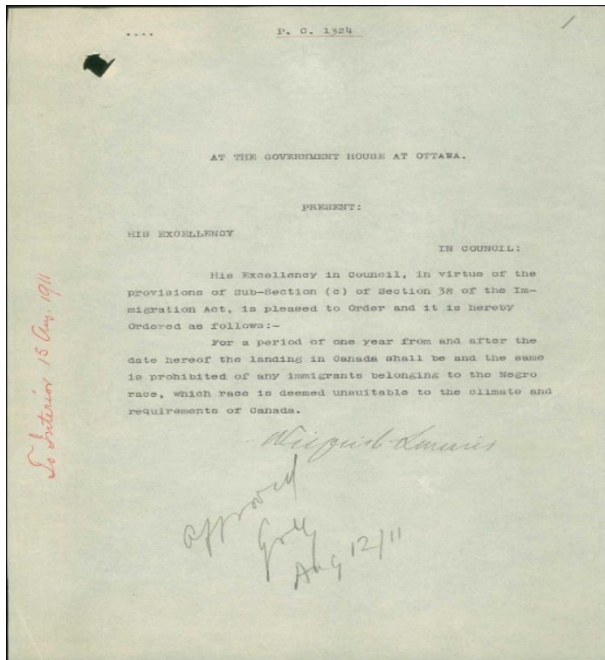


Figure 1- Source: Library and Archives Canada. “Orders in Council – Décrets-du-Conseil.” RG2-A-1-a, volume 1021, PC 1911-1324, 12 August 1911 <https://pier21.ca/research/immigration-history/order-in-council-pc-1911-1324>

We have also had significantly understudied pockets in our Canadian history where we actively recruited students from Africa, such as the Nigerian-Technical Educational Program of the late 1970s. Yet today, the Nigerian community has been one of the largest groups impacted by negative refusal rates.

Before implementing new policies, I believe we need to ask ourselves where such a policy situates within the historical context. As just one example, a recent Access to Information (“ATIP”) request I obtained discussed the development and expansion of the Student Direct Stream (“SDS”) to Morocco and Pakistan between 2018-2020. Program Officers expressed significant concern over risks of potential applicants from the region and access to banks to deposit the required GIC, but there appeared to be little examination of the racial, religious, or historical context that underpinned the significance of a move to Africa and Muslim Asia.

We should be asking ourselves the difficult and introspective question of whether we are simply recreating historical wrongs in a new name in our treatment of many study permit applicants. Until we explore that past in greater detail and reconcile it, we will not be able to shape effective policies that are historically responsive. A critical lens is truly needed, including the revisiting of darker and undiscussed moments of Canadian history and migration history to explore how Anti-Black racism and Colourism has evolved.

Yet, far from it being an entirely collective guilt-deriving experience, there is also perhaps an opportunity in embracing our success stories along the way. The 2020 Annual Report on Immigration highlighted that immigration originating from Africa surpassed European immigration in 2016 and continued in 2019,⁸ but without championing these

⁷ Library and Archives Canada, “History of Canada’s early Chinese immigrants,” Last Modified: 19 April 2017. <https://www.bac-lac.gc.ca/eng/discover/immigration/history-ethnic-cultural/early-chinese-canadians/Pages/history.aspx> Accessed on 27 January 2022.

⁸ Immigration, Refugees and Citizenship Canada, *Annual Report on Immigration 2020*, Her Majesty the Queen in Right of Canada, represented by the Minister of Immigration, Refugees and Citizenship, 2021 <https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/annual-report-2020-en.pdf> at page 8 . Accessed on 27 January 2022.

narratives and providing the data behind this, we are not effectively utilizing it to mold policy of re-examine our temporary resident programs. The disaggregation of race-based within country of citizenship-based data⁹ may provide new insights and new opportunities that will allow us to better understand visa office-specific barriers and challenge the refugee/humanitarian and compassionate/and family reunification boxes we have carved out for applicant groups from the Global South.

Present Realities – Discrimination based on Nationality (Among Other Indicators)

Next, let me address where we currently are and why I, among many other stakeholders share concerns about our collective future.

While today's system is not as explicit and perhaps does not utilize climate as a reason, immigration officers instead place significant barriers on Applicants from Africa (and the larger Global south) such as increased documentation requirements and stricter scrutiny for issues such as misrepresentations.

Furthermore, the refusal reasons under the Immigration and Protection Regulations (“IRPR”)¹⁰ R. 216 and R.220 allow for the discretionary application of trump cards - concerns over the security of the individual's country and the liquidity of one's finances - issues largely outside of the control and evidentiary paper trail of Applicants. Immigration Officers draw data-based assumptions that folks are likely to make refugee claims and will violate laws, without reading or considering their personal narratives, and importantly without revealing publicly the source, credibility, and selection biases that may underline the data. Even more troubling, citizenship intersects with gendered and age-based discrimination, where young unmarried women applicants for study permits are often refused on the grounds of being ‘*young, single, mobile, and without dependents.*’

The concept of dual intention under section 22(2) of the *Immigration and Refugee Protection Act*,¹¹ wherein an applicant can demonstrate that they are able to return to their country of residence or citizenship following their studies even if they hold a future permanent residence intention, seems not to apply to the Global South.

When you look at the statistical approval rates for programs such as the Visa-Exempt Study Permit Application (VESPA),¹² the non-public/internal study permit process for folks from the Global North that are visa-exempt when compared to the Student Direct Stream (“SDS”)¹³ for high volume Global South countries, the approval and refusal rates

⁹ See Recommendation 9 in Committee Report No. 5 - CIMM (43-2) - House of Commons, “Immigration in the Time of Covid-19: Issues and Challenges” May 2021.

<https://www.ourcommons.ca/Content/Committee/432/CIMM/Reports/RP11312743/cimmp05/cimmp05-e.pdf> Accessed on 27 January 2022.

¹⁰ Immigration and Refugee Protection Regulations (SOR/2002-227)

¹¹ Immigration and Refugee Protection Act (S.C. 2001, c. 27)

¹² Will Tao, “Why VESPA’s Internal Only Instructions Are Exhibit A to Our Two-Tiered Temporary resident System. *Vancouver Immigration Blog*, 13 November 2021, <https://vancouverimmigrationblog.com/why-vespas-internal-only-instructions-are-exhibit-a-to-our-two-tiered-temporary-resident-system/> Accessed on 27 January 2022

¹³ IRCC, Student Direct Stream: Who Can Apply. Last modified: 27 September 2021. <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit/student-direct-stream/eligibility.html> Accessed on 27 January 2022.

are nearly inverses of each other. The situation worsens when the statistics Lou Janssen Dangzalan has provided in his brief for Francophone Africa are considered (see Figure 2).¹⁴

Study Permit Applications (Excluding Extensions) Approved and Refused January 1, 2020 - November 30, 2020 by Final Decision Year, Country of Citizenship									
Country of Citizenship	Overall Study Permit				Country of Citizenship	Overall Study Permit Applications			
	Approved	Refused	Approval Rate	Refusal Rate		Approved	Refused	Approval Rate	Refusal Rate
VESPA COUNTRIES - 2020					SDS COUNTRIES - 2020				
Australia	107	12	90%	10%	Antigua and Barbuda	14	7	67%	33%
Barbados	103	5	95%	5%	Brazil	1,362	858	61%	39%
Denmark	72		100%	0%	People's Republic of China	6,560	2,243	75%	25%
Finland	57	2	97%	3%	Colombia	1,733	1,130	61%	39%
Federal Republic of Germany	1,182	13	99%	1%	Costa Rica	23	20	53%	47%
Iceland	13	9	59%	41%	India	27,468	35,869	43%	57%
Republic of Ireland	56	7	89%	11%	Morocco	1,278	1,083	54%	46%
Italy	576	34	94%	6%	Pakistan	690	1,463	32%	68%
Japan	2,258	39	98%	2%	Peru	203	164	55%	45%
New Zealand	27	1	96%	4%	Philippines	2,155	2,272	49%	51%
Norway	39	4	91%	9%	Senegal	322	1,468	18%	82%
Sweden	66	2	97%	3%	St. Vincent and the Grenadines	11	4	73%	27%
United Kingdom and Overseas Territories	709	75	90%	10%	Trinidad and Tobago, Republic	226	30	88%	12%
United States of America	3,321	128	96%	4%	Socialist Republic of Vietnam	2,013	1,377	59%	41%
Total (VESPA Countries)	8586	331	96%	4%	Total (SDS Countries)	44058	47988	48%	52%
Total Applications	8917				Total Applications	92046			

Figure 2 - Source: Consolidated CDO statistics for Study Permit Application (including Extension) approval rates between 1 January 2020 and 30 November 2020 by country of citizenship

Students from visa-exempt countries do not need to even submit a study plan/statement of purpose nor explain themselves, whereas for visa-requiring applicants from the Global South, the parents of those who apply (what they do for work) what city the family is from, and who holds the funds are all vetted with a fine-tooth comb. The smallest gap or even perceived credibility challenge is framed as an issue of insufficient evidence.

We can point to the jurisprudence of our highest Court and say that s.15 of the *Charter*¹⁵ with respect to equality rights does not extend to these applicants.¹⁶ Yet, if you think of the values we espouse in s.15 of the *Charter* and we try to espouse in this country, the use of mechanisms such as internal nationality-based filtering systems, unreviewed local risk flag systems, and bulk refusals, if replicated in any domestic arena, would lead to *Charter* breaches and human rights complaints at every step. The rule of law itself, as a broader concept, cannot exist where the principles of equality and non-discrimination¹⁷ are not being protected in systems that discriminate by gender, marital status, and nationality.

¹⁴ The presentation by my colleague, Lou Janssen Dangzalan, delves deeper into the statistical percentages by country/visa office.

¹⁵ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, <https://canlii.ca/t/ltsx> Accessed on 30 January 2022.

¹⁶ For the application of s. 15 to Canadian immigration issues and challenges with s.15 arguments in the context of immigration see Donald Galloway, "Immigration, Xenophobia and Equality Rights", *Dalhousie Law Journal*, 42:1 (2019) special Issue: Immigration Law. See also the challenges of obtaining documentary evidence in support of s.15 *Charter* claims in: *Begum v. Canada (Citizenship and Immigration)*, 2018 FCA 181.

¹⁷ See also on the history of these concepts in International Law and foundational to the Rule of Law: United Nations, Chapter 13 – The Right to Equality and Non-Discrimination in the Administration of Justice, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* <https://www.un.org/ruleoflaw/files/training9chapter13en.pdf> Accessed on 30 January 2022.

Sorting & Filtering
 You can sort & filter any column to arrange the order that your files are displayed in. To do this, simply click on any of these boxes and choose your action.

Rec'd D	Citizenship	CoR	Gender	Marital Status	Age	Purpose of Visit
7/2/2015	Pakistan	Japan	Male	Single	33	Tourism
6/21/2016	Philippines	Philippines	Male	Widowed	70	Family Visit
8/24/2016	Philippines	Philippines	Female	Widowed	59	Super Visa
7/20/2016	Philippines	Philippines	Male	Married	66	Tourism
10/11/2016	Japan	Japan	Female	Legally Separated	46	Family Visit

When the option box opens, you will be presented with a number of options for sorting and filtering. You can decide to display only applications from a specific nationality (filtering under citizenship) or organize your files to display all those with previous CAN approvals at the top (sorting by color under the previous GCMS history column).

*Be careful when sorting and filtering that you don't accidentally split groups (by applying filters that do not apply to all members of that group).

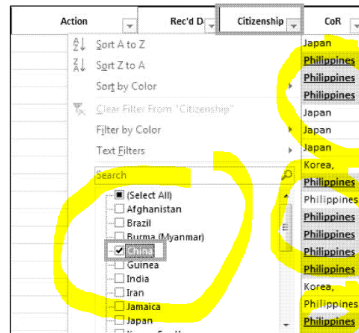


Figure 3 - How Applicants are Filtered via Chinook, supra note 18

Indeed, we now have an internal technological system in place, largely due to the implementation of Chinook, where templated refusal decisions are generated with no factual analysis and are rendered by the hundreds for student applicants from the Global South, sorted and flagged based on their age, gender, marital status, and country of citizenship.¹⁸

These cases are settling quickly in Federal Court. Officer's reasons for refusal often go directly against the established case law. The system banks on 90% of the folks not doing anything after receiving a refusal, and the cost and complexities of litigation are out of reach for most in the Global South where the cost of a lawyer's consultation hour can equal a month's salary. Returning to the theme of Anti-Black racism, it should come to no one's surprise that as a litigation strategy, the case of *Ocran*¹⁹ involving a Ghanian young woman applicant, represented by a Black African-Canadian lawyer was selected as the test case to try and introduce *Chinook* to the Federal Court. The fact our laws and precedents are built off the backs of Brown and Black bodies should be troubling to Canadians, indeed our test of procedural fairness (*Baker*²⁰) comes from a cast where an undertrained junior officer made disparaging, racist comments about a Jamaican mother.

To this date, in consultations with stakeholders, denies that there is any systemic racism or discrimination in the treatment of African applicants,²¹ when a report last year examining workplace racism at IRCC reached opposite conclusions.²² When statistically, as my colleague Lou Janssen Dangzalan presents in his paper, the statistics are so stark and the anecdotes and experiences of applicants so negative and damaging, to accept the status quo is indeed to accept the normalization of a highly discriminatory process.

¹⁸2A-2021-69051 – Chinook Manual (heavily redacted) shared by colleague, Cobus Kriek, in response to an Access to Information Request https://drive.google.com/drive/u/0/folders/11UGttJfwlho9-U2n3ajxOOps_yPekccM. Noted that almost all training manual references are to Asia, Middle East, Africa, and Caribbean. See also a discussion of the Chinook Manual, Will Tao with Mark Holthe, Canadian Immigration Institute, published on 9 December 2021 <https://www.youtube.com/watch?v=NUMJb-Y7AWQ&t=1s>

¹⁹ IMM-6571-20. Decision from Justice Little pending.

²⁰ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do>

²¹ The author did not attend the Immigration Practitioners Stakeholders Meetings on 24 January 2022 but saw this statement made by IRCC in the notes from the meeting shared to the Canadian Bar Association (CBA) Listserve.

²² IRCC, "IRCC Anti-Racism Employee Focus Groups: Final Report", Prepared by Pollara Strategic Institutes, 23 June 2021, https://epe.lac-bac.gc.ca/100/200/301/pwgs-c-tpscc-por-ef/immigration_refugees/2021/122-20-e/POR_122-20-Final_Report_EN.pdf at page 11

Future Concerns: The Codification of Racism and Discrimination through AI and the Impact on Applicants from the Global South

Of concern to us now is what the system looks like when AI replaces human officers and codifies the data of discrimination into black box²³ decision-making, aimed at refusing rather than approving applicants.²⁴ The Officer's Rules that found the system cannot be divorced from the current two-tiered system and embedded refusal rates.²⁵ While the efficiency and security of Canadians is undoubtedly a main purpose of *IRPA*²⁶ and something that must be balanced, there needs to be vetting and oversight in the creation of rules that impact temporary resident applicants from the Global South.

IRCC has indicated their intention to apply the current AI-pilot project program which automates approvals for select "Tier 1" applicants for temporary resident visa applications, across visa offices and to other areas of temporary residence.²⁷ The United Kingdom (UK) experience, where public interest groups successfully litigated against an algorithmic system vetting on the basis of nationality led to the Government withdrawing their plans and requiring an equality analysis.²⁸ In Canada, we have an obscure Algorithmic Impact Assessment process²⁹ that takes place behind closed doors, for fear applicants will game the system.³⁰

Rather than engage broader, public independent stakeholders, or re-think immigration as an issue of international diplomacy where we encourage better practices, set clearer expectations for those who seek application, we have instead gone into our shells.

For the applicants impacted by these systems, there is a hypocritical nature to them paying three to four times tuition than domestic students,³¹ being tied down by way of pre-paid tuition and GICs,³² and shepherded through grey-area legal minefield of restrictions such as the requirements to 'actively-pursue studies'³³ and remain enrolled

²³ IRCC, *Policy Playbook on Automated Support for Decision-making DRAFT*, 2021 obtained via Access to Information Request A-2021-28399 <https://drive.google.com/file/d/1CArrInyljpbra9axXfK9YWk5mjtEbPXd/view?usp=sharing> at pages 7, 8, 12, 27, and 55.

²⁴ *Ibid* at pages 8 and 27.

²⁵ *Ibid* at Policy playbook highlights the potential for AI bias at pages 8, 16, 19, 23 25, 26, 31, 39, 41, 43, 44, 45, 48, 54, and 56.

²⁶ *IRPA*, *supra* note 11, at s. 3(1)(f.1) and 3(h).

²⁷ See discussion of Mario Bellissimo, in Immlight Podcast (Special Episode) – Lou Janssen Dangzalan, Will Tao, Zeynab Ziaie Moayyed; <https://www.youtube.com/watch?v=zk4pypA5bh0>

²⁸ Natasha Lomas, "UK commits to redesign visa streaming algorithm after challenge to 'racist' tool" *Tech Crunch* 4 August 2020. <https://tcrn.ch/2DxLInI> Accessed: 27 January 2020.

²⁹ Government of Canada, Algorithmic Impact Assessment - Advanced Analytics Triage of Overseas Temporary Resident Visa Applications - AIA for the Advanced Analytics Triage of Overseas Temporary Resident Visa Applications (English), Created: 21 January 2022. <https://open.canada.ca/data/en/dataset/6cba99b1-ea2c-4f8a-b954-3843ecd3a7f0/resource/9f4dea84-e7ca-47ae-8b14-0fe2becfe6db> Accessed on 27 January 2022. See also: Nazanin Panah, "Proceed with Caution: Complicating Artificial Intelligence as a Future Decision-Maker in Canadian Law," 21 January 2021. Electronic copy available at: <https://ssrn.com/abstract=4010199> Accessed on 29 January 2022 who writes at page 13 re: the AIA process: "While this questionnaire serves the commendable goals of openness and transparency, it further obscures whether accountability for AI used by the government falls on the government or developers, and creates an inaccurate illusion of AI implementation as a shared project between the government and the public."

³⁰ IRCC, *supra* note 23 at pages 12 and 27

³¹ Anil Varughese, Saul Schwartz, "The pandemic exposed the vulnerability of international students in Canada." *The Conversation*, 24 January 2022. <https://theconversation.com/the-pandemic-exposed-the-vulnerability-of-international-students-in-canada-174105> <https://www150.statcan.gc.ca/n1/daily-quotidien/210908/dq210908a-eng.htm> Accessed on 27 January 2022

³² IRCC, "Student Direct Stream: Who can apply", Date modified: 27 September 2021, <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit/student-direct-stream/eligibility.html> Accessed on 27 January 2022.

³³ IRCC, Study Permits: Assessing study permit conditions, Date modified: 16 December 2021, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/assessing-conditions.html> Accessed on 27 January 2021;

full-time to maintain PGWP eligibility.³⁴ With high refusal rates, Agents (recruiters) abroad are emboldened by the lack of regulation on student recruitment and educational consulting. They provide low or free of charge legal services (often advising and offshoring profits overseas, beyond the reach of Canadian regulations) while collecting tens of thousands of dollars off their work, no oversight.³⁵ One should not be surprised that issues such as family separation, mental health crises, increasing narratives of suicide,³⁶ and families abroad losing their entire life savings³⁷ to try and sponsor a family member's education in Canada. We are complicit in the harms this system has created.

What is more worrisome still are that policymakers, as demonstrated by the Playbook on Automated Decision Making are in the midst of building black box systems that are contemplating being able to auto-generate refusals requiring minimal officer review time, and eventually no human in the loop.³⁸ These systems *at best* will recreate the prejudice and discrimination (learned biases)³⁹ currently embedded as a result of historical discrimination, and *at worst* will make such decisions even less transparent, more difficult to challenge, and create more grey area to be exploited by third parties.⁴⁰

The Potential to Present a Counternarrative and Be a Global Leader on Immigration from the Global South and Francophone Africa

We do have the opportunity to do different, to write a counternarrative⁴¹ that showcases Canada as a leader in Anti-Black racism and immigration; redefines Borders that are more open and no longer a colour bar. We have the opportunity to expand alternative immigration programs and Global relationships to create a more pluralistic society.

Applying further cultural humility within this space, also allows us to recognize too that while Canada reaps benefits from our International Educational Strategy,⁴² this often

³⁴ IRCC, Post-graduation work permit eligibility requirements, Date modified: 10 January 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/post-graduation-work-permit-program/eligibility.html> Accessed on 27 January 2021;

³⁵ As a lawyer and for my consultant colleagues, we are under strict scrutiny providing advice to our clients and have to adhere to strict Codes of Professional Conduct that require education, competency, and disclosure of conflict of interests. Legal-based 'immigration' advice is being provided without authorization by educational consultants and recruiters globally, at no direct charge to the client, but in violation of s.91 the *IRPA*. Much of it is being facilitated by Canadian stakeholders (institutions/banks/even Consulates) willing to turn a blind eye. See also: Nicholas Hune-Brown, "The Shadowy Business of International Education", The Walrus, 8 December 2021. <https://thewalrus.ca/the-shadowy-business-of-international-education/> Accessed on 27 January 2022.

³⁶ Cite to One Voice piece https://onevoicecanada.org/wp-content/uploads/2021/03/The-Realities-of-International-Students-Evidenced-Challenges_Full-Report-1.pdf

³⁷ *Ibid* at 36.

³⁸ See: IRCC, *supra* note 23, at page 6 discussing importance of human in loop. Contrast with Government of Canada, Algorithmic Impact Assessment, *supra* note 29 at page 2 indicating Advanced Analytics Triage of Overseas Temporary Resident Visa Applications not subject to human in the loop.

³⁹ Nazanin Panah, *supra* note 29, at pages 17-18.

⁴⁰ *Ibid*. Nazanin Panah writes poignantly at page 22: "AI is not a passive mechanism used by those in power but rather an actor with power in and of itself; for example, AI decision-makers not only make decisions with real consequences but legitimize those decisions through their status as an efficient, calculated and superior decisionmaker. Thus AI decision-makers need to be analyzed, criticized and held accountable to ensure that they are not causing further harm. It follows that regulatory standards and evaluations are part of these networks of power and are thus not neutral and objective but instead contestable and open" to being challenged.

⁴¹ See also: Will Tao, "A Hard Look at a How We Practice" *CAPIC – NCIC-CNI Conference -Presented on 20 November 2021*, <https://docs.google.com/presentation/d/12Ev9RKUWb51fNBPF4xsTta-FuFUYKWfr/edit>

⁴² Government of Canada, "Building of Success: International Education Strategy (2019-2024)", *International Education*, 2019 <https://www.international.gc.ca/education/assets/pdfs/ies-sei/Building-on-Success-International-Education-Strategy-2019-2024.pdf> Accessed on 27 January 2022

corresponds with human capital flight/brain drain from Global South countries and it is an imbalanced extraction rooted in the corresponding economic and climate destruction of racialized and Indigenous communities through colonization.⁴³ I am a firm believer that climate migration,⁴⁴ which will impact Global South communities hard, has not received a proper attention. Potential clients are already calling me about this issue regularly, asking for my advice about Vancouver’s climate suitability versus that of other cities such as Toronto. It would be advisable for the CIMM to be proactive on this issue.

Importantly, by being proactive, we have unique opportunity moving forward to strike a better balance between transparency and protection, while ensuring core Canadian values – equality and anti-discrimination – do not become merely buzz words to cover our inaction and normalization over, what we should all agree, is a troubling status-quo.

Three Recommendations for the CIMM: Oversight, Regulation, Targeted Study

1. Require independent advisory/oversight over both Chinook and expansion of Artificial Intelligence by requiring greater transparency regarding the Algorithmic Impact Assessment, Privacy Assessment, and Equity Consultations that these processes undertake. Study the UK’s experience and other Migration Five examples. Ensure a good balance of public/private/academic/media stakeholders.
2. Regulate educational consultants and recruiters to curb harm to study permit applicants abroad, particularly in Global South countries where study permit applications often only option to immigrate. Study Canadian Provincial jurisdictions such as Manitoba that have attempted regulation, and why other jurisdictions have not. Improve enforcement via international diplomacy.
3. Engage in a detailed bilingual study of the social history of anti-Black/Anti-Francophone African racism in Canadian immigration. Generate recommendations from this report to inform the recent focus on data-based decision-making to ensure yesterday’s mistakes are not repeated. Forward the look report by addressing issues such as climate migrants and the destruction of Indigenous lands because of and resulting from migration.

Again, I want to thank the Committee for engaging in this important work, engaging in this study, and allowing me to share my view in this brief and in my witness testimony.

Yours truly,



Will Tao

⁴³ Maggie Quirt, “Why we must address the colonial dimension of climate migration.” *The Conversation*, 14 October 2021 <https://theconversation.com/why-we-must-address-the-colonial-dimension-of-climate-migration-169218> Accessed on 27 January 2022.

⁴⁴ Hanna Hett, “Climate migrants”, *Open Canada*, 29 September 2021 <https://opencanada.org/climate-migrants/> Accessed on 27 January 2022.