



C-43 and social assistance: kicking people when they are down
Submission to the Senate Committee on Social Affairs, Science and Technology

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1. Introduction

Sections 172 and 173 of Bill C-43 would amend the *Federal-Provincial Fiscal Arrangements Act* to allow provinces to impose minimum residency requirements for access to social assistance, for certain persons based on immigration status. Residency requirements would continue to be prohibited for citizens, permanent residents, accepted refugees and persons on Temporary Resident Permits as survivors of human trafficking.

The group that would be the most affected, if these provisions are adopted, is refugee claimants – people seeking asylum in Canada from persecution. Refugee claimants could find themselves denied social assistance for their first months in Canada, even though they have no other means to meet their basic needs. It would also in many provinces deprive them of coverage for prescription drugs.

The Canadian Council for Refugees is firmly opposed to the proposed amendments for the following reasons.

2. Refugees at their most vulnerable

Refugees are at their most vulnerable when they first arrive in Canada as claimants. They generally arrive with little or no money; they know few if any people in Canada; they don't know their way around; they must wait several months for a work permit and they often speak neither English nor French. For all these reasons, most refugee claimants need to rely on social assistance for their very survival during their initial months in Canada.

In addition, refugee claimants need to focus on meeting the demands of the refugee determination process in their first weeks in Canada. These demands are even more pressing since changes to the system introduced in December 2012 which impose extremely short timelines on claimants. It is crucial that refugee claimants have their basic needs covered so that they can negotiate the very rigorous and accelerated claim process.

It is important to note that a refugee determination does not make a person a refugee – it recognizes that the person already is a refugee. Policies that affect refugee claimants also affect refugees, since many are refugees.

3. Targeting of refugees

Although refugee claimants are not named in the bill, they are clearly the ones being targeted.

The provisions do not simply eliminate the prohibition of a residency requirement: they carve out categories of people who may be discriminated against through the imposition of a residency requirement. Refugee claimants are the main group that would be affected. They are among the most vulnerable people in Canada: people whom the government has a particular responsibility to protect.

The fact that refugees require special care because of their situation is recognized by provincial governments, who make an exception for refugees to minimum residency requirements imposed for access to provincial health insurance. Bill C-43 is proposing to do precisely the opposite by changing the law to permit refugee claimants to be deprived of social assistance, while continuing to prohibit it for citizens and permanent residents.

The targeting of refugees in this case has a regrettable parallel in the targeting of refugees for cuts in health care, seen in the June 2012 cuts to the Interim Federal Health Program. These cuts were recently ordered reversed by the Federal Court, on the basis that they constitute cruel and unusual treatment, in violation of section 12 of the Canadian Charter of Rights and Freedoms.

4. Human rights obligations

Canada has certain legal obligations towards all persons without discrimination, under international human rights treaties. These include the obligation, under the International Covenant on Economic, Social and Cultural Rights, to recognize the right of everyone “to social security, including social insurance” (art. 9).

Canada also has a particular duty to protect children, under the Convention on the Rights of the Child. This includes taking “appropriate measures to ensure that a child who is seeking refugee status [...] shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance” (art. 22 (1)). Canada must also “recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law” (art. 26(1)).

As highlighted in this last provision, the State has an active duty to work towards the fulfilment of rights committed to. This duty is a responsibility of the federal government. It cannot open the door to denial of rights by the provinces and then wash its hands of the potential violations that may result from provincial decisions. The government of Canada has

a duty to actively protect the rights of all, and particularly those of the most vulnerable. These include refugees, to whom Canada owes protection as a signatory to the Refugee Convention.

5. Impact on refugee claimants and the community sector

The Canadian Council for Refugees has recently completed research, together with several member organizations, on the perspectives of refugee claimants, and of the NGOs that work with them, regarding the changes to the refugee determination system introduced in December 2012. The results are published in two reports, “The Experience of Refugee Claimants at Refugee Hearings in the New System” (April 2014) and “Keeping the door open: NGOs and the new refugee claim process” (October 2014).¹

Based on the research, it is clear that refugee claimants are under immense stress as they try to meet the demands of the refugee system, while adapting to an unfamiliar country. These demands include finding a lawyer, completing in English or French a detailed form about themselves and the basis of their claim within 15 days of arrival, collecting and translating documentary evidence and preparing for a hearing to be held within two months of arrival (less for claimants from Designated Countries of Origin). One claimant commented on the stress caused by the short timelines as follows:

“How was I going to finish everything before my hearing day? So I was scared and lots of stress was on my head and shoulders. My health condition was not good, there wasn’t a specific sickness or something, I know it was because of stress.”

Many claimants depend heavily on NGOs to support them, both with their claim and with many of their basic needs, such as finding housing and getting access to health care. These NGOs are themselves under significant stress: the work is not funded by the federal government, and rarely by provincial governments. Funding for most such NGOs is precarious. A number of NGOs run shelters for refugees, which are partly funded through contributions from the residents’ social assistance.

If refugee claimants were denied social assistance on arrival, already overstretched NGOs would find completely destitute refugees on their doorstep, with no possibility of providing the support they require. Refugee shelters would be under threat of closure. Since the overhaul of the refugee system, shelters have already found themselves absorbing expenses for penniless inland claimants waiting for an eligibility interview. If there is a significant increase in the numbers of claimants without any financial means needing accommodation, refugee

¹ <http://ccrweb.ca/en/refugee-hearing-report-2014> and <http://ccrweb.ca/en/keeping-door-open-report>

shelters will be overwhelmed. Refugee claimants would likely be forced into the already bursting shelter system in local municipalities. Refugee claimants living in the community would also have to move to shelters when they can't pay rent.

6. UK experience

For a glimpse of what things might look like if refugee claimants were to lose social assistance in Canada, we can look to the experience of the UK. In 2003, legislation came into effect that denied basic state support to refugee claimants who did not make their claim “as soon as reasonably practical” after entering the UK. The British Refugee Council published a report on the impact of the provision, entitled “Hungry and Homeless” (2004).² As the title indicates, the study revealed that many people were literally made hungry and homeless. Some refugees slept on the streets, including in front of government agencies and NGOs. Single women, including survivors of sexual assault, were particularly vulnerable, sleeping rough or staying as guests of strangers.

One woman reported:

I sleep outside Migrant Hotline - since one week. Migrant Hotline gave me a blanket and a sleeping bag. It closes at 11pm, so I sleep with others outside. I'm afraid, I don't sleep much. I have stomach and back pains, and throat problems from sleeping outside. I have not taken a shower for one week.

In 2005, the UK House of Lords ruled that the exclusion of some claimants from state support amounted to “inhuman and degrading treatment”, in violation of the European Convention on Human Rights, by denying “even the barest necessities of life” (ex parte Adam).³ In July 2014 the Federal Court of Canada drew on this case in finding that the Canadian government's cuts to refugee health care constituted “cruel and unusual treatment” in violation of the Canadian Charter of Rights and Freedoms.⁴

If these provisions are passed into law, and refugee claimants are deprived of the barest necessities of life in Canada, following the same logic a court might well conclude that this also represents cruel and unusual treatment.

² British Refugee Council, *Hungry & Homeless: the impact of the withdrawal of state support on asylum seekers*, http://www.refugeecouncil.org.uk/assets/0002/8823/hungry_homeless_apr04.pdf

³ <http://www.refworld.org/docid/43fc2d1a0.html>

⁴ Canadian Doctors For Refugee Care v. Canada (Attorney general), 2014 FC 651 (CanLII), <http://canlii.ca/t/g81sg>, para. 689-691.