



Eliminate the anti-refugee changes in the budget bill (Bill C-97)!

The Canadian Council for Refugees calls for the elimination of provisions in the omnibus Budget Implementation Act, Bill C-97, that significantly reduce the rights of refugee claimants. The proposed changes to the refugee determination system place many people at increased risk of being sent back to face persecution, in violation of the Canadian Charter of Rights and Freedoms and of Canada's international human rights obligations.

The inclusion of such changes in a budget bill is undemocratic and means that Parliamentarians will fail to properly consider the proposed changes, despite their profound impact on the fundamental rights of vulnerable people.

Among the key changes proposed, the bill would:

Make a person ineligible to make a refugee claim in Canada and thus to be heard by the Immigration and Refugee Board (IRB) if they have previously made a refugee claim in another country with whom Canada has an information-sharing agreement (notably in the US).

This means that numerous refugee claimants, who may need Canada's protection because they face persecution, torture or death in their country of origin, will be denied access to Canada's refugee determination system. They will have access only to a Pre-Removal Risk Assessment (PRRA), a process that provides much less fairness than a hearing at the Immigration and Refugee Board.

Reasons why this change should be opposed

- Canada has much to be proud of in our refugee determination system, including the fact that we rely on an expert, independent quasi-judicial tribunal: the Immigration and Refugee Board. The IRB has earned a reputation around the world as a model for refugee determination. Many other countries turn to Canada's IRB to improve their own refugee determination systems. The proposed change would undermine the role of the IRB and send numerous people to an inferior system (the PRRA).
- Because of its focus on refugee determination, the IRB has been able to innovate and develop significant expertise that is essential for high quality refugee determination, including use of the Chairperson's Guidelines (e.g. Gender, Sexual orientation and gender identity and expression). The IRB has highly developed programs of training, research and documentation using methods that respect risks inherent to the refugee reality. People who made a claim in the US often come to Canada precisely because the US does not provide the same protections, especially for people whose claim is based on gender or sexual orientation. Depriving these claimants of a hearing before the IRB means, among other things, that we will be failing people who flee persecution based on their gender or sexual orientation.
- Until now, the Canadian government has generally responded in a principled and rights-based way to the recent (and likely temporary) increase in the number of refugee claimants arriving in Canada. With this proposal, Canada is shamefully joining too many other countries who respond

to increased numbers of refugees not by matching capacity to needs, but by closing the door on people fleeing rights abuses.

- There is a principled and straightforward alternative solution easily available to the government: expand the capacity of the IRB to hear claims. This can be done by (a) increasing the resources at the IRB (the budget already includes significant funding increases), (b) introducing innovations in processing at the IRB in order to maximize efficiency (the IRB has already dramatically increased its finalization rate, by fast-tracking clear cases and introducing other measures), and (c) by changing the law to eliminate unhelpful rules (notably unrealistic timelines and different processes for some claimants based on country of origin).
- Ineligible claimants will have access only to a Pre-Removal Risk Assessment (PRRA), a process that provides much less fairness than a hearing at the IRB (no right to a hearing, decision-makers who are not part of a quasi-judicial tribunal and who don't have the same access to training, legal services and Chairperson's guidelines, no right to an appeal). The acceptance rate is significantly lower than at the IRB. Shortcomings in the PRRA system will almost certainly lead to people who need protection being denied it and facing removal from Canada to persecution, torture or even death, in violation of their Charter rights and Canada's international obligations.
- Ineligible claimants have significantly fewer rights than eligible claimants (work permits must be paid for, lack of access or significantly delayed access to social assistance in many provinces).
- Ineligible claimants from certain countries will face long-term limbo: there is no deportation but also no access to a PRRA for people from a country or region subject to a Temporary Suspension of Removals or an Administrative Deferral of Removals.¹ People in this situation can apply for humanitarian and compassionate (H&C) consideration, but the grounds for refugee protection cannot be considered in that process, and they would likely need to wait years before they could satisfy "establishment" grounds for a positive H&C. In the meantime, they would have no opportunity to reunite with immediate family members and no opportunity to get on with their lives. There is no evidence that the government considered the fate of people in this situation before tabling the bill: an indication that the provisions have not been well thought out.
- The recent dramatic cuts at Legal Aid Ontario will make the PRRA process completely unworkable in that province based on the current reality: there is no legal aid coverage for a PRRA. Given that legal representation is necessary to effectively present a PRRA application, a Charter challenge is likely.
- IRCC does not currently have the capacity to decide on the thousands of additional PRRA applications that would be transferred to them. There will therefore be long delays while additional decision-makers are hired and trained. The IRB has for some time been preparing for increased numbers of decision-makers, should additional funding be voted – it is not clear that

¹ Temporary Suspension of Removals currently apply to Afghanistan, the Democratic Republic of Congo, and Iraq. Administrative Deferral of Removals apply to certain regions in Somalia (Middle Shabelle, Afgoye, and Mogadishu), the Gaza Strip, Syria, Mali, the Central African Republic, South Sudan, Libya, Yemen, Burundi, Venezuela and Haiti.

there have been such plans at IRCC. The result is likely to be that claimants wait longer for a decision and overall decreased efficiency in the refugee determination process.

- Since 2012, the *Immigration and Refugee Protection Act* provides for the PRRA to be transferred to the IRB, but successive governments have failed to implement this measure. Rather than duplicating decision-making structures at the IRB and PRRA, the government should increase efficiency by transferring the PRRA to the IRB.
- The CCR has proposed a model for refugee determination in Canada, which we believe would better meet the needs of both fairness and efficiency: ccrweb.ca/en/ccr-proposed-model-refugee-determination

The budget bill would also:

Extend the bar on applications for Pre-Removal Risk Assessment and humanitarian and compassionate consideration for refugee claimants who apply to the Federal Court for judicial review, following an IRB decision.

The law currently makes refugee claimants wait 12 months from the final decision on their refugee claim before they can bring new evidence of risk forward in a Pre-Removal Risk Assessment (PRRA). This is already problematic because there may be dramatic new developments in a person's case (e.g. a family member was arrested) during the year, leaving the person with no forum to raise it.

The proposed amendment would start the 12 month clock from the final decision on an application for leave and judicial review at the Federal Court.

This makes no logical sense since it is impossible to raise new evidence before the Federal Court. Therefore, claimants will face a period far longer than 12 months during which important new evidence of risk to their life and liberty may come forward, without any avenue to present it before they are removed from Canada.

The same applies to the bar on making a humanitarian and compassionate (H&C) application. This application is crucial for many people whose compelling circumstances cannot be raised in any other process. An H&C application does not suspend removal so the only effect of barring access is that it prevents people from even bringing forward compelling humanitarian factors.

This new provision is nothing but a means of punishing people for using the legal recourse provided in Canadian law.

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