Canadian Council for Refugees
Conseil canadien pour les réfugiés

Proposed amendment to increase removal costs
CCR comments

20 December 2023

1. Introduction

The following are the comments of the Canadian Council for Refugees on the proposed amendment to the Immigration and Refugee Protection Regulations published in the Canada Gazette, Part I, Volume 157, Number 48.

The CCR opposes the proposed amendment. If adopted, it will have a serious negative impact on families attempting to reunite and individuals with a strong connection to Canada who are seeking to return to a safe and secure place to live. In some cases, the new and increased fees will prevent them from returning despite compelling reasons for them to be welcomed back. Family reunification, acting in the best interests of children, and taking into account humanitarian and compassionate factors are key goals for Canadian policy that are undermined by the proposed measure. The negative impact of the proposal will be borne overwhelmingly by the most vulnerable who are least able to pay, including racialized individuals, women, children and gender diverse people.

2. Profile of those who will be harmed by the proposed amendment

The amendment targets people who try to return to Canada after having been removed. It will significantly increase the costs that must be reimbursed to the government of Canada in order to return, as well as adding a requirement for those who were detained to pay for detention costs. We note that current costs facing those seeking to return after deportation are already steep: Authorization to Return to Canada ($400) plus the travel expense reimbursement that already exists for most countries ($1500).

Based on the experiences of our members, a significant proportion of those seeking to return after removal are:

- People who are seeking to reunite with family in Canada (often via spousal sponsorship) or

- People whose application for humanitarian and compassionate (H&C) consideration was approved after deportation.

Many of those affected are people in a refugee-like situation. Even if they are not found to meet the narrow refugee definition, they have legitimate fears based on the situation in their home country and may have experienced great hardship. We note also that refugee determination is not completely consistent – some people who are refused refugee status and face removal have very similar profiles to those who are found to be refugees.

Others have come to Canada as migrant workers because of insecurity and economic conditions in the country of origin, and have endured hardship and exploitation in the workplace in Canada. While some migrant workers are issued a Temporary Resident Permit as victims of human trafficking, based on the conditions of employment, others with similar experiences are not issued a permit.

It is also important to recognize that the economically disadvantaged will be the most affected. Those with more economic means can more easily opt for voluntary compliance, choosing, when time allows, the arrangements and costs of their exit from Canada. Those with more limited economic means often have no option but to be deported at CBSA expense. Furthermore, the proposed increased amounts to reimburse will be easily afforded by the wealthy, but for the poor they may be completely out of reach.

Those who cannot afford the increased reimbursement expenses are likely to face additional delays before they can return to Canada, while they attempt to raise the money required for not only their return journey to Canada, but also the reimbursement of removal expenses. In some cases, they or their family members may need to take out loans at highly unfavourable rates, or work in oppressive conditions, in order to make the payment. In some cases, people may be unable to return to Canada because they cannot find the money necessary, even though Canada has accepted their need for family reunification or decided on humanitarian grounds that they should be allowed to live in Canada.

3. Threats to family reunification

One of the objectives of the Immigration and Refugee Protection Act is “to see that families are reunited in Canada” (IRPA s. 3(1)(d)). The proposed amendment is focused on cost recovery and enforcement objectives and fails to take into account the family reunification objective, against which these other goals need to be balanced.

If IRCC accepts an application for family reunification, such as a Family Class sponsorship, it is incoherent to thwart that family reunification through prohibitive and punitive cost barriers.

4. Failing the best interests of the child

People who are removed from Canada as minors should be exempt from all the fees.

As a signatory to the Convention on the Rights of the Child, Canada has a legal obligation to give primary consideration to the best interests of any children affected by a decision.

The best interests of children are not taken into consideration in the proposed regulatory amendment, apart from an exemption for minors from the escort fee and from detention fees.

The following are additional areas where the best interests of the child need to be considered and may be undermined by the proposed amendment:

- Best interests of the child may be an important factor in a positive H&C decision made after a family has been removed from Canada. Yet the proposed increase in removal reimbursement expenses may act as a barrier to the family's return to Canada, despite the Canadian government having determined that return is in the best interests of one or more children.

- Children are generally not the primary decision makers in decisions to migrate to Canada or to voluntarily depart. Therefore, high fees to return will be punishing former minors for removals, when in most cases a parent or caregiver will have made for them the decision of whether to voluntarily depart or be removed.

- Families with children will face enormous fees if they must reimburse removal expenses for everyone, especially if they have several children. This will compromise the ability of some families to return to Canada. Others may need to take out a loan to pay the removal expenses and will then be saddled with a huge debt burden, with serious negative impacts on the children's well-being in Canada after their return.

- Where a parent is removed, children remaining in Canada, including Canadian citizen children, will experience prolonged separation, contrary to the best interests of the child, when the family is unable to come up with the money to reimburse the increased removal expenses.

- Canadian citizen children may also accompany a deported parent and then be unable to return to Canada, contrary to the best interests of the child, even after the parent secures an immigration route to return, because of the inability to reimburse the removal costs.

5. People should not be penalized because of IRCC delays or erroneous decisions

We urge that removals be suspended when processing of an immigration application has been delayed. In the alternative, we call for an exemption from reimbursement of removals costs (and from the cost of the Authorization to Return to Canada) when a person's family sponsorship, H&C or other application is approved after a removal has been enforced, due to delays by IRCC or following a successful judicial review.

In many cases, people being removed have an application in process to remain in Canada, such as a Family Class sponsorship or an H&C application. Often these applications take a very long time to be decided, through no fault of the applicant. (We note recent reporting showing that spousal sponsorship in Quebec is taking 41 months: https://www.lapresse.ca/actualites/2023-12-06/regroupement-familial-au-quebec/deux-ans-sans-pouvoir-tenir-mon-fils-dans-mes-bras-je-n-en-peux-plus.php.)

Where IRCC is a contributing factor in a removal that should not have taken place, the person should not bear costs (especially increased costs) to return to Canada.

6. The assumption the proposal will create an incentive to depart voluntarily is flawed

The Regulatory Impact Analysis Statement (RIAS) states that "the proposed amendments would encourage foreign nationals to voluntarily comply with Canada's immigration laws, especially if they wanted to return to Canada."

In our view, increased costs will not be effective as an incentive to depart voluntarily.

In order for voluntary compliance to be a realistic option, CBSA would need to present the voluntary departure option in a thoughtful and sensitive way, and ensure that people are given enough time to consider what they want to do, consult on what will be in their interests, find the necessary funds and make all the arrangements if they choose to voluntarily depart. CBSA would also need to provide support with overcoming barriers such as acquiring a valid travel document.

The barriers to voluntary departure are well-known to the government.

From 2012 to 2015, CBSA piloted an Assisted Voluntary Returns and Repatriation program. According to the Office of the Auditor General "the agency discontinued the program after 3 years when an internal evaluation found that it did not speed up the removal of failed claimants as intended" (*Spring 2020 Report on Immigration Removals*, July 2020, https://www.oag-bvg.gc.ca/internet/English/parl_oag_202007_01_e_43572.html). When a pilot that offers

financial assistance to individuals to voluntarily return is not successful, it is naïve to suggest that increasing the penalties for not voluntarily returning will be effective.

A well-known barrier to voluntary return is the difficulty obtaining a passport. Many people, especially refugee claimants, do not have a valid travel document. The Office of the Auditor General notes in its 2020 report: “Certain countries may be reluctant or refuse to support the return of their nationals and may be slow or uncooperative in providing travel documents”.

CBSA has also stated that the “lack of cooperation by foreign governments in issuing the travel documents required in a timely manner is one of the greatest impediments to the CBSA’s ability to remove foreign nationals who are no longer eligible to stay in Canada.” (November 2020, https://www.cbsa-asfc.gc.ca/transparency-transparence/pd-dp/bbp-rpp/pacp/2020-11-24/pii-ipi-eng.html)

Apart from the challenges related to travel documents, people generally are not given enough time to make a decision to depart voluntarily and to organize themselves to make this possible. For refugee claimants, the option for voluntary compliance generally comes almost immediately after they have received a negative decision on their refugee claim – they go from hoping they will have Protected Person status to needing to manage the consequences of a negative decision from the Immigration and Refugee Board, or at the Pre-Removal Risk Assessment. Even if they are mentally ready to choose to depart from Canada (which is rare), they usually don’t have time to find the money to pay for a flight out of Canada, wind up their affairs in Canada (where they may have been living for years), and arrange for somewhere to go in the country of origin, or apply to be admitted to a third country. The challenges are particularly great for families.

We note that the Auditor General’s 2020 report recommended that the CBSA “continue to explore options to encourage voluntary returns and assist the departure of foreign nationals to their countries of origin in line with Canada’s international commitments to promote safe and orderly migration”.

In its February 2021 report on the Auditor General’s 2020 study of Immigration Removals, the House of Commons Standing Committee on Public Accounts reinforced this recommendation, urging:

> That, by 31 December 2021, the Canada Border Services Agency provide the House of Commons Standing Committee on Public Accounts with a report describing its pilot project to encourage voluntary compliance with removals and the initial results achieved through this initiative. (https://www.ourcommons.ca/documentviewer/en/43-2/PACP/report-5/page-57#13)

In response to the Auditor General's recommendation, the CBSA stated that options had been developed "to create an Assisted Voluntary Returns Pilot Program (AVRPP) to be implemented in fall 2021". https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/pacp-nov-24-2020/pacp-assisted-voluntary-returns-pilot-program-nov-24-2020.html

It is extremely disappointing that CBSA has not implemented this pilot and is instead proposing to move forward in 2024 with increased removals fees – this calls into question CBSA's commitment to promoting voluntary departure.

7. Detention costs should not be subject to cost recovery

We oppose the proposal to introduce recovery of detention costs.

A decision to detain is made by a CBSA officer, who has broad discretion to decide whether to detain someone for removal. CCR is concerned that this discretion opens the door to decisions that are influenced by improper factors such as the person's race or the prejudices of the agent.

While it is true that the Immigration and Refugee Board reviews detention, if CBSA alleges flight risk and the removal is scheduled relatively soon after detention, it is unusual for the person to be released.

It is already problematic that CBSA has such wide discretion to detain someone prior to removal. Requiring people returning to Canada to repay detention costs adds to these problems in a number of ways:

- CBSA will have a conflict of interest because they will know that release, including to an Alternative to Detention, will mean that the detention costs will not be recovered.
- The proposed amendment is a backdoor way of imposing a fine, in addition to the loss of liberty while in detention. It is particularly punitive for vulnerable and low-income people who cannot afford the additional fee. They are penalized for a decision over which they had no control.
- The officers will have increased coercive power. This could be used to intimidate people, including those with compelling H&C or spousal cases.
- By adding the costs of detention to a person returning to Canada, CBSA is privatizing detention by making the person, often a low-income migrant, pay for their own incarceration.

8. Escorted removal costs exorbitant and unacceptable

We are deeply concerned at the high proposed escorted removal cost of $12,541.

We note that CBSA decides when an escort will be used. There is no mechanism for an individual to challenge the decision. It is unfair that individuals should bear such a heavy burden as a result of a decision that cannot be appealed.

Some of those deemed to require an escort have mental health issues. The proposed amendment will exempt people "removed under medical escort", but people with a mental health condition may not have medical escort – they may simply be perceived as unpredictable or disruptive.

Escorts are also sometimes used when the person has compelling reasons to seek to delay departure, such as a spouse and children in Canada, and has therefore urged that the removal be deferred. CBSA officers may perceive this as resisting removal and assign an escort.

The proposed amendment will greatly increase the coercive power of CBSA officers. We are concerned that officers may improperly use the threat of an escort and the financial consequences to intimidate people facing removal.

9. Differential impacts hardest on vulnerable groups

The impacts of the proposed amendment will be felt most acutely by low-income groups since they will be unable to pay for the costs of their removal and will thus face a discriminatory burden to return to Canada.

Given the gender pay gap, women will be disproportionately affected.

The proposed increased costs are far more overwhelming for people seeking to return to Canada from regions of the world where income levels are low, which are predominantly regions with majority racialized populations.

For example, the combined proposed cost of the Authorization to return to Canada ($400), unescorted removal ($3,739) and detention ($1,495) would be $5,634 – more than the average annual income in El Salvador, Algeria or Bangladesh, and more than twice the average annual income in Pakistan, Nigeria and Cameroon. https://www.worlddata.info/average-income.php

Similarly, people who are unable to work due to age, disability or illness will be disproportionately affected, as will those who face discrimination in the labour market, including women and LGBTQI people.

The RIAS GBA+ analysis fails to address these discriminatory impacts.

10. Temporary Resident Permits and H&C improbable as remedy

Based on current practice, Temporary Resident Permits (TRPs) and H&C are not viable as remedies. Significant changes would be required to make them realistic avenues.

The RIAS states that excessive burden on vulnerable people (such as persons living with disabilities, mental illness, and victims of gender-based violence) and the barrier to family reunification could be addressed through the discretionary issuance of TRPs and exemptions for humanitarian and compassionate considerations, "if case circumstances warrant".

IRCC very rarely grants TRPs to people outside Canada, even when compelling circumstances are presented. Chances of success are minimal without a lawyer – yet the most vulnerable are least likely to be able to afford a lawyer. Once outside Canada they are not generally entitled to legal aid.

Regarding the reference to H&C, although it is not spelled out, we suppose that the intention was to suggest that H&C could be requested to overcome the inability to reimburse costs.

We are not aware that H&C is currently offered in these circumstances.

We request that the government publish statistics on how often H&C and TRPs are offered to overcome the barrier of reimbursement of removal expenses.

In order to make these measures effective as remedies, officers would need to be provided with guidelines to ensure TRPs and H&C are granted in the circumstances envisaged in the RIAS. To date this guidance appears unavailable.

11. A broader vision is needed

The proposed amendment is premised on a narrow understanding of the need to enforce removals and recover costs.

This ignores the role of removals within the broader objectives of the Immigration and Refugee Protection Act (IRPA), which is less clear cut than the RIAS presents.

While the Act calls for "removal as soon as possible" the Courts have interpreted this as a discretionary exercise that must take into consideration a range of factors and situations, reflecting the Act's overall objectives. These include attention to the best interests of the child,

family separation, and evidence of new risk for people who are PRRA-barred. Removals officers have an obligation to exercise their discretion to defer removal in relevant circumstances.

The CCR also urges that consideration be given to the Government of Canada's stated aims regarding the regularization of undocumented persons, with which the proposed amendment appears incoherent.

Rather than increasing and expanding reimbursement costs, as proposed, we call on the government to evaluate how the IRPA objectives might be better achieved, and major costs savings achieved, by identifying situations where CBSA should not move forward with removal.

As noted in the RIAS, there are significant costs involved in organizing someone's removal. Even when someone is willing to leave voluntarily, there are often expenses incurred by CBSA (for example, officer time to liaise with the receiving country in order to obtain travel documents). When there is a reasonable chance that a person will subsequently be granted permission to return to Canada (for example, because they have a pending application for permanent residence, or because they have a Canadian spouse), it would be more cost effective, as well as more humanitarian and truer to the IRPA objectives, to delay the removal and thus avoid the hardships as well as the costs of needless removals.