EXCLUSIONARY CHANGES IN THE CONSERVATIVE IMMIGRATION, REFUGEE AND CITIZENSHIP POLICIES: THE BEGINNING OF THE END

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In June 2008, Bill C-50 gave the Minister of Citizenship and Immigration Canada broader power to change or cancel any Immigration and Refugee Protection Act (IRPA) program or class through Ministerial Instruction (MI), without oversight by any parliamentary body or institution; in other words, the ability to run the Ministry by decree. This heralded a disturbing new tradition in Canadian legislation and policy implementation, one that contradicts the often quoted claim: "Canada has the fairest immigration and refugee system in the world".

This article describes recent changes to the Canadian immigration system that detrimentally impacts refugees, as well as the settlement and refugee-serving sector. The sum of these changes points at a new era in how Canada 'welcomes' immigrants and refugees, one that is so exclusionary that it is a contravention of the Refugee Convention and bears little resemblance to 1986, when Canada won the UNHCR Nansen medal for "major and sustained contribution to the cause of refugees." (IRB Canada, 2013).

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The disturbing trend of exclusion and creation of impermanence has been manifested through various ongoing ways.

The 'four-year rule' for temporary foreign workers was implemented in 2011, requiring temporary foreign workers to leave Canada after four years of employment; they may reapply for a work visa after living outside Canada for four years. The stated goal of the Federal Conservative government was to encourage employers to hire Canadians (CBC newscast). Despite community resistance and the Canadian Federation of Independent Business calling for an easier path to Permanent Residence for temporary foreign workers, especially in provinces suffering from labour shortages, no revision were made to the exclusionary elements of such policy and led to the largest deportation in Canadian history on April 1st, 2015 (Toronto Star).

The Refugee Reform: In June 2012, Bill C-31 or Balanced Refugee Reform Act was passed, described by some as the complete overhaul of Canadian refugee and immigration traditions. Refugee claimants are currently divided into three categories:

1) Designated Countries of Origin (DCO). On December 14, 2012, the government released a list of countries designated as "safe", a contravention of the Refugee Convention. Nationals from DCOs have reduced rights in the refugee process (shorter timelines, no access to appeals, etc.). Refugee rights activists believe that this forms a "two-tiered" and exclusionary practice. The assigned designation is based on quantitative factors (number of claims made and claims abandoned from a particular country, etc.) and qualitative factors (if a country has an independent judiciary system, the ability of nationals to

access democratic rights, etc.). Designating a country "safe" by Ministerial opinion, can be subjective and dismissive in practice, where refugees are judged based on their country of origin, rather than factors such as abuse and discrimination. For example, while a country may have an independent judiciary body, or mechanisms to access democratic rights, members "of particular social group" may be persecuted by government, state actors and members of civil society without access to legal protection.

2) Designated Foreign Nationals, also defined as "irregular arrivals", is contravention to Refugee Convention since it focuses on the 'way' the claimant arrives in Canada rather than where they come from. Essentially, the Minister of Public Safety can designate groups of people as "irregular arrivals" in particular circumstances, including if the Minister believes that the group cannot be examined in a timely manner, or suspects that the group might have been smuggled. These nationals are subject to many extreme measures, from mandatory detention of adults (with no access to the Appeal Division of the IRB in case of a negative decision), to a bar of up to five years on applying for permanent residence, even if they are accepted as a person in need of protection. These measures highlight a trend of criminalizing refugees and newcomer populations, removing their right to "seek and enjoy asylum."

3) Non-Designated Countries of Origin. This category of refugees include those claimants who are not from a Designated Country of Origin list, or a Designated Foreign National (according to the Minister of Public Safety).

Since Bill C-31 there has been an increase in negative decisions on refugee claims found to be "without credible basis". The concept of "credible basis" gives decision makers another tool to refuse claimants, who are then denied the right to appeal such decisions. This tiered and exclusionary system, where access to rights depends on where a claimant is from, how they entered Canada, and if they have adequate evidence and documentation to support their claim to convince the IRB, reflects the extent of decision-making power resting in the arbitrary hands of the Federal Government.

These disturbing elements not only impact claimants who have entered Canada after 2012 but can lead to the loss of convention status of claimants already determined as in need of protection. Currently, convention refugees and protected persons can lose their permanent resident status if the IRB determines they are no longer in need of protection ("cessation" as per law) if the person visits their country of origin as a Permanent Resident, or if they obtain or renew their passport from their country of origin - no exceptions are recognized in the law. These elements, which make people feel unsafe and unwelcome, reflect a blatant dislike of refugee populations, some would argue.

Other Barriers to Regularization of status and Permanent Residence

- Bill C-31 includes other elements that impede the full and equitable participation of many newcomer populations in Canada. For example, since 2012, if an applicant's claim is refused, they must wait twelve months before submitting a Humanitarian and Compassionate (H&C) application; 36 months for claimants from a DCO. The H&C application is now an in-country procedure, forcing many to stay without legal status, sometimes under threat of arrest, detention or removal. The precariousness increases because of limited access to services (healthcare, social assistance, etc.), and being forced to work in unsafe, exploitative conditions.

On July 1st, 2012, the Canadian government made sweeping cuts to Interim Federal Health coverage for refugee claimants and refused refugees, which had far-reaching and detrimental impacts on these communities and on organizations that serve them. As a result of the work of various groups who insisted that "Health care is a right and not a privilege", on July 4, 2014 the Federal Court struck down these cuts as unconstitutional. The government has since appealed, despite community resistance.

Another change is the imposition/increase of fees, which increase the economic burden, stress and insecurity for newly-arrived and precarious migrants. In February 2014, the fees for a Temporary Resident Permit (TRP) increased to $100, a study permit to $150 and a work permit to $155. In February 2015 an additional $100 was imposed for an open work permit. According to Ministerial Instruction, these fees can be changed without notice and as often as the government deems necessary. An illustration of this is the recent increase in the application fees for Canadian Citizenship, which more than doubled in less than six months, totalling $630 for each application. To put this in context, this is higher than the maximum monthly amount of social assistance a single person receives in Ontario.

The journey to citizenship is now more complicated; applicants must live in Canada for four out of the last six years, excluding time spent in Canada before receiving permanent residency. Applicants between the ages of 14 and 64 are now required to pass the citizenship test and prove language proficiency in either English or French. They must declare their "Intention to Reside in Canada". The assessment of these intentions, often subjective and exclusionary, is conducted prior being granted citizenship.

Similar trends may be seen in Bill C-24, which has created a two-tier citizenship system; those with dual citizenship can have their Canadian citizenship revoked if they commit certain actions deemed as being against Canada (such as war crimes, crimes against humanity, human rights violations, organized criminality or membership in a group engaged in armed conflict against Canada). This Bill portrays a growing tendency to "radicalize" certain migrant populations, exemplified by Canadian military participation in Iraq and Syria, and the growing fear associated with the Islamic State (including ISIS).

The Illegalization, Radicalization and Isolation of Migrants

The changes around citizenship demonstrate an ongoing xenophobic and 'Othering' mentality. Both Bill C-24 and Bill C-43 underline these attitudes. The very title of Bill C-43 - "the faster removal of foreign criminals", highlights its discriminatory nature. Bill C43, passed in November 2014, is meant to expedite the removal of "foreign criminals" and make it harder for people who "pose a risk to Canadians" to enter the country. It is important to note that the definition of "foreign criminals" for the Federal government includes anyone who has committed a crime that has a maximum sentence of 2 years, or received a sentence of six months or more. Thus, someone who has lived here for most of their life, but has not applied for citizenship, can be at risk of removal and separation from their families for committing petty crimes. If someone knowingly misrepresents themselves on any application or during any process, the penalty has increased from a two-year to a five-year period of inadmissibility to any immigration application. The risks are heightened for those who are not familiar with processes in Canada, or do not speak English or French, and rely on immigration consultants or unscrupulous third parties.

In August 2014, the definition of "dependent child" changed from 22 years of age to 19, with the exception of those with mental or physical disabilities; children over the age of 19 must apply separately. Newcomers and newcomer-serving communities argue that such changes heighten the risk of family separation as many children may not live independently at the age of 19.

The heightened criminalization is also apparent in the increased detentions and deportations in 2015. Recent reports indicate refugees are being detained for months or even years, with at least 9 people dying while under the custody of the Canadian Border Services Agency (CBSA) since 2000.

Reshaping Care

In November 2014, the Minister brought a change to the Live-in Caregiver Program. Applicants are no longer required to live with their employer – a triumph of the work of community activists and the Live-in Caregiver movement. However, this remains the only unskilled worker program where participants may apply for permanent residency after fulfilling the requirements. Despite the possibility for permanent residency, under the new "Caregiver Program", migrants must have a positive Labour Market Impact Assessment (LMIA) or their application is returned.

Citizenship and Immigration Canada has created two new pathways to apply:

1) Caring for Children Pathway;
2) Caring for People with Medical Needs Pathway.
The Minister of Citizenship and Immigration wants workers with a moderate level of experience and skill who will be paid wages for the unskilled, under the guise that one day they will earn the "privilege" of becoming permanent residents. These changes impact current Live-in Caregivers who can only move out of their employer's home if the employer applies for a LMIA under one of the new pathways. For Live-in Caregivers working under the old system, moving out of their employer's home may cost more than $1,000, without any guarantee of being accepted under the new system.

The Incessant Drip of Ministerial Instruction

- The steady stream of changes from the federal government over the past two years have not only detrimentally impacted diverse newcomer communities, but have created serious concerns for non-profit organizations and service providers. Settlement and other frontline workers accompanied clients through a whirlwind of new information and changing application processes, fearing information may not be up-to-date and may negatively impact clients. In the atmosphere where advocacy can only be 10% of the work of a non-profit, federal policies have instilled fear that if they speak out against any of these injustices, staff risk losing their jobs and the organization risks losing its charitable status.

- In October, 2014, in light of the Ebola outbreak, Citizenship and Immigration Canada paused all temporary and permanent resident applications for applicants who had lived, or traveled to or through affected nations (Guinea, Liberia, and Sierra Leone). This prevented many people from leaving the affected areas and seeking help in Canada, which many argue, was needed during the Ebola crisis.

- The moratorium on removals to Haiti and Zimbabwe was lifted on December 1st, 2014, reinstating the possibility of nationals from these countries being forced to return. It was debatable whether conditions

in both countries had improved to a level where people would return without hardship. The vast majority of people had been in Canada for many years and have made Canada home. Removing them from their communities in Canada would only add to their trauma. Activists also argued that the numbers of Haitian and Zimbabwean nationals are moderate, implying no huge financial burden.

- In December 2014, Bill C-585 received royal assent, allowing provinces to deny social assistance to newly arrived refugee claimants by imposing minimum residency requirements, creating further stress and further limiting their equitable participation in Canadian society. However, the measures contained in this Bill will not take effect unless a province decides to impose the residency requirement for claimants.

- In January 2015, Ministerial Instructions were announced at an astounding rate, including one that repealed all processing eligibility criteria for new applications in three classes:

1) Skilled Worker Class;
2) The Skilled Trades Class;
3) The Canadian Experience Class.

The same Ministerial Instruction implemented the Express Entry Program. Arguably not an immigration program/class, it allows for the submission of personal and professional information online, where applicants compete against other candidates to gain enough points to realize entry to Canada. A maximum of 1200 points are awarded: 600 for the individual portion (experience, age, marital status, transferable skills and so on) and 600 for the job offer (whether through provincial nominee or valid LMIA). This program has been chastised for its perpetuation of racist, classist and hetero-capitalist values, which widen disparity and potential for discrimination of underprivileged, marginalized and vulnerable newcomer communities.

The legislative changes are ongoing and continue to reflect the deeper shift in how Canada welcomes and treats refugees. Refugees are now labelled as criminals before they land on our shores, while those who make it to safety face deportation for something as minor as a traffic violation, despite lifetime contribution they make to the fabric of the Canadian society. It is increasingly apparent how a steady stream of changes, tightly woven in law and marked by convoluted intricacies, have caused panic in the settlement serving sector. The doors are continuing to close for many in need of Canada's protection, as well as those attempting to come through any economic or professional means, marking this new era of Canadian migration with values of exclusion, impermanence, xenophobia and the criminalization of migrants.

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