FCJ Refugee Centre
Walking With Uprooted People

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Bill C-12: Strengthening Canada's Immigration System and Border Act

Brief Submitted by FCJ Refugee Centre to the Standing Committee on Public Safety and National Security (SECU)

For more than 30 years, the FCJ Refugee Centre has established itself as a leading provider of wide-ranging holistic settlement and integration support for all uprooted people. With an open-door and holistic approach, FCJ Refugee Centre helps uprooted people access justice and overcome the challenges of rebuilding their lives in Canadian society.

We serve and support precarious migrants including refugee claimants, refused refugee claimants, migrant workers, international students, survivors of human trafficking, overstayed visitors, people involved in sponsorship breakdown, and others seeking to regularize their immigration status.

The Centre's daily work includes providing summary advice and information to refugee claimants, helping claimants navigate the process of applying for legal aid and finding counsel, and to a more limited extent, direct representation by our own staff lawyer. The Centre also provides transitional housing for women and children. In 2024, our Centre supported a total of 1,805 refugees, including 925 refugee claimants at the Port of Entry and 865 inland claimants.

The Centre is a member organization of the Canadian Council for Refugees (CCR) and its Co-Executive Director, Diana Gallego, is the outgoing CCR President. The Centre's overarching concern is that Bill C-12 will undermine important guardrails in the Canadian asylum procedures, exacerbate precarity and legal limbo for vulnerable persons, and risk refoulement, contrary to Canada's domestic and international legal obligations. Accordingly, the Centre fully endorses CCR's recommendation that Bill C-12 be withdrawn. The Centre elaborates on the following key concerns about Bill C-12 in its current form:

- **One-Year Bar and Denial of Access to the IRB**

Many of the most vulnerable, complex, and compelling cases we see come from individuals who have been in Canada for more than a year before filing their claims for refugee protection. For example, women and girls escaping female genital mutilation, domestic violence, or labour and sex trafficking may fail to file within one year of arrival for many legitimate reasons, including Post-Traumatic Stress Disorder (PTSD) caused by their past persecution, fear of the authorities, or a misunderstanding of eligibility criteria exacerbated by lack of access to formal education as well as linguistic barriers.

For example, one of our clients, a survivor of domestic violence, arrived in Canada fleeing abuse, leaving her minor children with family members back in her country of origin. Due to a lack of understanding of the refugee claim process, as well as the mistaken belief that she was ineligible for protection because she did not immediately make a claim upon arrival in Canada, she did not make a claim for refugee protection until more than four years after her arrival. She

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also had been incorrectly informed that making a claim would prevent her from ever seeing her children again. All this was exacerbated by mental health challenges related to her abuse, as well as a lack of English language skills. It was not until a chance encounter with our organization that she learned that she could still make a refugee claim in Canada. Her case, which was supported by ample evidence of the horrific abuse she suffered at the hands of her ex-partner, was accepted by the refugee protection division after a short hearing. Had the proposed one-year bar been in place, the outcome for her could have been extremely different.

Similarly, many of our clients are survivors of gender-based violence, some of whom have arrived in Canada with an abusive partner and have remained in temporary or undocumented status for more than a year while trapped in the abusive relationship. These women, some of whom have Canadian-born children, face the risk of being deported back to their country of origin, where their abuser has already been deported after spending time in jail in Canada. The abuser often blames and threatens the survivor, compelling them to seek protection in Canada. Based on our experience working directly with this population, we have witnessed the complexity of cases involving gender-based harms and exploitation. Individuals affected by these situations often endure various forms of abuse for months and even years. In many instances, the trafficker is from the same country of origin as the survivor, putting both their lives and the lives of their families at risk. In some cases, survivors are required to testify against their traffickers, individuals who may have political or criminal connections in their country of origin, resulting in threats, acts of violence, and in the most severe instances, fatal attacks of family members abroad. These circumstances often force survivors to seek refugee protection in Canada to obtain the safety and protection guaranteed under the Convention.

This situation often impedes access to legal advice and representation. In our experience, it is not uncommon for this population of highly vulnerable asylum seekers to initiate contact with FCJ Refugee Centre's support services long after their arrival and well after 12 months. Survivors of gender-based harms need time, support, and access to a safe space to be ready to make the decision to leave the person causing harm and begin their protection claim.

During 2024, our team supported clients in submitting 20 inland claims, 26 PRRA applications, and 3 reopening or reinstatement applications. Via our in-house counsel, we also represented a number of individuals in oral hearings before the IRB. Reviewing the record of accepted claims as represented by our in-house counsel and referrals to the private bar, we can readily confirm that many of these cases are accepted by the Refugee Protection Division (RPD) after a hearing on the merits. However, denying these claimants access to a full oral hearing, particularly for unrepresented claimants, risks compromising the quality and fairness of decision making. The pre-removal risk assessment is not an adequate substitute for the RPD. Without a hearing asylum seekers will be unable to effectively present their evidence and provide important context through testimony. Meritorious claims that have been routinely accepted with the benefit of an oral hearing will likely be refused in the more restrictive paper process of the Pre-Removal Risk Assessment (PRRA).

Impact on Individuals from Moratorium Countries

The FCJ Refugee Centre represents many individuals from countries for which there is currently a moratorium on removal in place, in particular Haiti and Venezuela. Individuals from

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moratorium countries who are barred from accessing the RPD due to the ineligibility provision currently set out in section 101 of the *Immigration and Refugee Protection Act* (IRPA), as well as individuals who would become ineligible under the regime set out in C-12, are generally unable to begin the PRRA until their removals become enforceable (meaning that the moratorium would have to be lifted). As a result, we are witnessing many of these applicants fall through the cracks as they await a chance to make their case. This results in lengthy separation from families as well as difficulties accessing the labour market and social supports. It also forces these individuals into the margins of Canadian society, where they are more likely to fall prey to predatory 'ghost consultants' and other unscrupulous actors in the immigration law space.

The proposed one-year bar will mean that claimants will no longer have access to an appeal on the merits of their refused claim or the right to have removal proceedings stayed pending review of their refused claims by a court. Because of this, the one-year bar provision in Bill C-12 will produce increased litigation and increase the size of the Federal Court's current backlog, which is already significant.

Overall, the one-year bar set out in Bill C-12 will subject more refugees to an inadequate, paper-based application process. If their PRRA is denied, they must request a review of their case from the Federal Court. If they do not receive a stay of removal from the Federal Court, they may face removal from the country without receiving a decision on the review of their protection claim. As framed, the one-year bar will penalize the most vulnerable claimants and does so in a manner that is arbitrary and unjustified.

- **Restrictions on Arrivals Between Ports of Entry**

Under Bill C-12, a person entering Canada from the United States is ineligible to seek refugee protection if they make their claim 14 days or more after arriving between Ports of Entry. Under the Safe Third Country Agreement (STCA), people who make a claim within 14 days of crossing from the United States between Ports of Entry are already denied the right to seek protection in Canada and are returned to the United States, unless they meet an exception in the STCA. This means that, under the regime set out in C-12, individuals entering Canada between Ports of Entry would effectively be banned from making a refugee claim, regardless of the potential merit of their case. The right to asylum should not be arbitrarily constrained by the manner of arrival. How an individual arrives in Canada has no bearing on the merit of their claim for refugee protection.

As with the one year-bar, the proposed restrictions on arrivals between Ports of Entry increase the refugee system's reliance on the PRRA as the sole tool for assessing the merit of an individual's risk of persecution in their country of origin, raising a number of the same issues: the inadequacy of the PRRA process, which does not guarantee an oral hearing and relies on decision-makers without the resources and training of the IRB; no right of appeal or automatic stay of removal pending judicial review, likely increasing the Federal Court's already heavy caseload; and leaving individuals from moratorium countries in a state of legal limbo, hindering their ability to participate in the labour market or obtain vital forms of social support and pushing them into the margins of Canadian society, while extending indefinitely separation from family.

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- **Suspension and Termination of Applications/Automatic Abandonment**

Bill C-12 includes new provisions that authorize the Minister or delegated officials to unilaterally cancel entire categories of immigration applications or to suspend processing of them, without providing individual hearings or recourse to review. The Centre is concerned that these new discretionary powers significantly undermine individual due process and the right to a fair hearing.

Bill C-12 also expands the grounds on which protection claims may be declared abandoned, including prior to formal referral to the Immigration and Refugee Board. This is accomplished through provisions that impose strict deadlines for providing documents or attending eligibility reviews, with little flexibility or accommodation for the realities facing refugees—such as

unstable housing, limited access to communication tools, and mental health crises. The Centre is particularly concerned that these provisions will result in an unwieldy and unnecessary increase in abandonment proceedings and more precarity for vulnerable claimants in the face of simple mix-ups. For example: not receiving a notice to appear due to a change of address reported after the notice was issued. These are frequent occurrences in the lives of newly arrived claimants who struggle to find adequate support in their first weeks in Canada. As proposed, claims must be referred abandonment for every missed deadline or missed appointment.

These provisions completely overlook the vulnerabilities faced by refugees from equity-seeking populations. They fail to recognize the risks faced by victims of SOGIESC (sexual orientation, gender identity and expression, and sex characteristics) and Gender Based Violence. Many of these individuals struggle with unstable housing and often lack access to the technology needed to follow up on the initial steps of a complex refugee claim.

The Centre has supported many of these vulnerable clients to reopen an abandoned IRB claim. Our process focuses on ensuring our clients have access to legal support and supporting clients to obtain the necessary supporting evidence to demonstrate how the client's intersecting vulnerabilities have hindered their ability to meet IRB deadlines. In one file, FCJ staff were able to coordinate with the client's mental health support specialist and their Legal Aid Ontario representative to submit medical reports to the IRB and obtain a reopening of the file.

In our experience, access to the IRB ensures that all the client's intersecting vulnerabilities are evaluated when their claims are considered for reopening.

In addition, Bill C-12 introduces a new step, authorizing the Minister to obtain specific information and documents required to support a claim for refugee protection and to evaluate whether a claim is ready to move forward to the IRB, an extra hurdle that is going to be managed by bureaucrats and will certainly add to existing processing delays rather than resolve them.

Concluding Recommendation: This bill should be withdrawn in its current form.