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Submission of the British Columbia Public Interest Advocacy Centre to the Standing Committee on Finance on Bill C-43

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Introduction

1. The amendments proposed in sections 172 and 173 of Bill C-43 fundamentally dismantle the last remaining national standard governing all provincial social assistance programs. Bill C-43 narrows the national standard, leaving the most vulnerable out of its protection. If these amendments pass, provinces could, without penalty, change their social assistance legislation to require refugee claimants, certain groups of immigrants, and/or people without regularized status, to meet a minimal residency requirement prior to being able to obtain social assistance. Some of the most vulnerable people in our communities could be denied access to social assistance at the time they most need it.

2. The British Columbia Public Interest Advocacy Centre (BCPIAC) is opposed to the proposed amendments and asks that the Committee reject sections 172 and 173 of Bill C-43.

3. BCPIAC is a non-profit, non-partisan, public interest law office. Its creation in 1981 reflected the fundamental belief that it should not only be the rich and powerful that are represented before our courts and regulators. For those bodies to function as they should, they must hear from all of those affected by their decisions. Much of our work has focused on the legal rights of social assistance recipients.

The proposed amendments in their historical context

4. The *Federal-Provincial Fiscal Arrangements Act* (*FPFA*) provides that no province receiving a transfer of federal money through the Canada Social Transfer (CST) can impose a minimum residency period as a pre-requisite for receiving social

assistance. The CST is the primary way that the federal government provides financial support for territorial and provincial social programs. The only condition for this funding is that there is no minimal residency requirement for obtaining social assistance. This is called the “national standard” in the *FPFA*.

5. Sections 172 and 173 of Bill C-43 amend the sections in the *FPFA* relating to the national standard. Instead of a standard that provides a safeguard for equitable access to all those applying for social assistance, the amendment takes away the protection of this national standard for some groups, most notably, refugee claimants. Residency requirements would still be prohibited for citizens, permanent residents, accepted refugees, and persons on Temporary Resident Permits as survivors of human trafficking.

6. Under the now extinct Canadian Assistance Plan (CAP), established in 1966, there were a number of national conditions requiring compliance by provincial social assistance programs in order to receive federal funding, including the ban on minimal residency requirements. When the Canadian Health and Social Transfer (the predecessor to the current CST) came into force in April of 1996, the only national condition remaining was that no province could impose a minimal residency requirement.

7. It is not without precedent that a provincial government has attempted to impose residency requirements for the receipt of social assistance. For example, the government of British Columbia attempted to put in a minimum residency requirement of 90 days in the early nineties when the CAP program was still in place. The federal government withheld $46 million in transfer payments due to the province’s non-compliance with one of the national standards set out in CAP.[1]

8. The significance of the decision to amend the national standard in the *FPFA* should be seen within the historical context of social welfare legislation in Canada. For nearly fifty years the “no minimal residency national standard” has been a safeguard for equitable access to social assistance across Canada. It is alarming that such a fundamental change to the oversight of provincial social assistance programs is being sped through Parliament as part of an omnibus budget bill, foreclosing the possibility of adequate debate.

[1] In the court challenge to the provision brought by the Federated Anti-Poverty Groups of British Columbia, the Supreme Court of BC ultimately held that the Province was *ultra vires* the *Guaranteed Available Income for Need Act* and therefore the provision was found invalid. See [1996] B.C.J. No. 2088 (QL) (S.C.).

Social Assistance as a program of the last resort

9. Social assistance is a program of last resort. It provides financial relief to those most on the margins of our society. There are strict eligibility requirements for the provision of social assistance in every province. These are financial safety-net programs for adults, couples, families with children, and people with disabilities; all of whom turn to social assistance when they are in desperate need of financial relief. Requiring a minimal period of residency is antithetical to the underlying purpose of social assistance programs as a safety-net of the last resort.

10. It is difficult to contemplate a circumstance where it would seem just to deny assistance to someone who otherwise meets the eligibility requirements simply because they did not live in a particular province for the deemed correct amount of time before applying. In fact, the period in which someone is new to a province, and as is often the case with refugee claimants, also new to a country, is likely the time where they need financial assistance the most.

11. The decision to amend these sections of *FPFA* is not a neutral act. In taking this myopic step the federal government is stripping away the last remaining safeguard for certain classes of people. This a deliberate measure to erode the national standard, with the effect of permitting the targeting of particular marginalized groups, like refugee claimants. While it is true that the provinces would have to legislate in order to impose the minimal residency requirement, narrowing the national standard in this way suggests that the federal government is giving its approval to the provinces to legislate away immediate access to social assistance for classes of people for whom the national standard no longer protects.

Targeting refugee claimants at their time of greatest need

12. Refugee claimants are legally entitled to be in Canada during the course of their refugee determination procedure. If the amendments are passed, provincial governments could specifically require refugee claimants to meet a residency requirement prior to being found eligible for social assistance. The particular circumstances of refugee claimants make this allowance particularly callous and not at all connected to the needs of refugee claimants during the refugee determination procedure.

13. The Federal Court recently found that refugee claimants, those seeking the protection of Canada, to be “an admittedly poor, vulnerable and disadvantaged group.”[2]

[2] See *Canadian Doctors For Refugee Care v. Canada (Attorney General)*, 2014 FC 651 at paragraph 1078.

Many refugee claimants arrive in Canada with little money or possessions. Many are disoriented in their new country, without social supports or family upon whom they can rely. Many have been victims or torture and violence. Many do not speak English or French.

14. On top of these many barriers, refugee claimants are required to present evidence of their persecution and proceed quickly through the refugee determination procedure, a procedure that as result of the changes implemented in December of 2012 has extremely fast timelines. Some claimants will have to present their case at a hearing 45 days after they first arrived in Canada.

15. Refugee claimants are not permitted to work without a work permit in Canada. Some claimants from certain countries (Designated Country of Origin) are specifically prohibited by the *Immigration and Refugee Protection Regulations* from obtaining a work permit until they have been in the country for 180 days.[3] Others are able to apply once they have made a claim but due to processing delays are not likely to receive one until they have already been in Canada for at least two or three months.

16. Allowing provinces to impose a residency requirement on refugee claimants would mean that at a time that this disadvantaged group needs assistance the most - a time where they are a) new to the country, b) not legally able to work, and c) required to present their legal case at a hearing, a refugee claimant and her children could be turned away from social assistance.

Conclusion

17. For the foregoing reasons, BCPIAC asks the committee to eliminate sections 172 and 173 of Bill C-43. The proposed amendments significantly alter a national standard governing all social assistance programs in Canada. These amendments are unjust, and can ultimately result in devastating consequences for some of the most marginalized people in Canada.

[3] See s.206(2) of the *Immigration and Refugee Protection Regulations*