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Via email: soci@sen.parl.gc.ca; nffn@sen.parl.gc.ca; FINA@parl.gc.ca; CIMM@parl.gc.ca

The Honourable Kelvin K. Ogilvie
Chair, Committee on Social Affairs, Science and
Technology
The Senate of Canada
Ottawa, ON K1A 0A4

The Honourable Joseph A. Day
Chair, Committee on National Finance
The Senate of Canada
Ottawa, ON K1A 0A4

David Tilson, M.P.
Chair, Committee on Citizenship and Immigration
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

James Rajotte, M.P.
Chair, Committee on Finance
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Senators Ogilvie and Day and Messrs. Tilson and Rajotte:

Re: Bill C-43, Part 4, Division 5 – *Federal-Provincial Fiscal Arrangements Act*

I am writing on behalf of the National Immigration Law Section of the Canadian Bar Association (the CBA Section) to comment on Part 4, Division 5 of Bill C-43, the *Economic Action Plan 2014 Act, No. 2*, which amends the *Federal-Provincial Fiscal Arrangements Act*. The CBA is a national association of over 37,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

The CBA Section opposes the proposed amendments to the *Federal-Provincial Fiscal Arrangements Act*. Allowing provinces to impose a minimum period of residency for entitlement to social assistance will harshly affect vulnerable newcomers to Canada. The existing federal legislative standard ensures that, across the country all persons qualifying based on need have access to social support without a waiting period. The proposed amendment in Part 5 of Bill C-43 changes this standard by allowing provinces to impose waiting periods upon certain persons. Particularly affected will be refugee claimants. Canadian values are eroded when we fail to protect marginalized members of our society.

Further, the CBA Section has concerns with certain provisions contained in Division 24 of Part 4, amending the *Immigration and Refugee Protection Act*. Our comments on that portion of Bill C-43 will follow in due course.

Details regarding our concerns about Divisions 5 follow below.

Part 4, Division 5 - Amendments to the *Federal-Provincial Fiscal Arrangements Act*

The amendments to the *Federal-Provincial Fiscal Arrangements Act* will allow provinces to impose waiting periods to prevent certain persons from accessing social assistance. Currently, the law does not allow the provinces to impose waiting periods without incurring financial penalties. The amendments allow the provinces to impose waiting periods without penalty except in relation to certain persons (Canadian citizens, permanent residents, recognized victims of human trafficking, and recognized protected persons). Therefore, provinces will be permitted to impose waiting periods in relation to temporary residents, including visitors, students, workers and refugee (protected person) claimants.

There are five reasons why Part 4, Division 5 should not be enacted into law in its present form:

- **Imposition of a minimum period of residency for social assistance entitlement will affect the most vulnerable.** Having fled violence, torture, persecution or trauma, many refugee claimants enter Canada with next to nothing. Refugee claimants are at their most vulnerable when they first arrive: they are not permitted to work, they are new to Canadian society, and they must quickly prepare for a refugee determination hearing (which takes place within 60 days of making a refugee claim). Access to social assistance, like access to health care, provides an indispensable lifeline. Without it, many asylum-seekers will struggle to feed, house and clothe their families as they prepare for their refugee determination hearings and adjust to a new life in Canada. The Bill affects refugee claimants at a time already rife with stress, upheaval and adversity.
- **Imposition of a minimum period of residency for social assistance entitlement will not target abusers of Canada's public social benefits.** The proposed legislation stands to impact many individuals and families who are living in Canada in accordance with our laws. Asylum-seekers awaiting their hearing, or awaiting a decision on their claim, are those who stand to lose access to social assistance. These asylum-seekers will not have access to social assistance, even though their claims may eventually be accepted.
- **If provinces choose to impose residency requirements, it will place a greater burden on provinces that do not have this requirement.** Although these provisions are framed as permitting provincial choice, this choice is not self-contained. The scheme will create pressure for other provinces to impose residency requirements compounding the problem for recently arrived refugee claimants.
- **The burden will be transferred to other bodies.** The burden to provide for vulnerable individuals will be transferred to shelters, social service agencies, community organizations, and private individuals. Many of these bodies already face significant resource challenges.
- **Introducing this major national policy change by way of an omnibus bill eliminates the opportunity for careful analysis and scrutiny.** This is a substantial legislative change with the potential to threaten lives. It ought to be treated as such, and subjected to a more rigorous process of debate and consultation.

Over many decades, Canada had an enviable record in protecting the displaced and persecuted. Social assistance is an essential element for compliance with Canada's obligations to protect refugees. Access to the means to support themselves on a basic level from the outset is a humane measure which permits claimants to focus on advancing their claims, rather than enhancing their suffering and deepening their fears.

The Federal Court has recently ruled that the federal government's denial of basic medical care to certain refugee claimants is an affront to values of human decency and dignity that Canadians hold dear,¹ and similar comment could be made about withholding social assistance from arriving refugee claimants in legitimate need.

Recommendation

The CBA Section recommends that:

1. Part 4, Division 5 be eliminated from Bill C-43, or amended to ensure that all vulnerable persons in need, especially refugee claimants, be exempted from provincial wait lists.

Conclusion

We hope that these comments have been helpful to you in your study of Part 4, Divisions 5 of Bill C-43. We would be pleased to answer any questions you may have about our submission.

Yours truly,

(original signed by Kerri Froc for Deanna L. Okun-Nachoff)

Deanna L. Okun-Nachoff
Chair, Immigration Law Section

¹ *Canadian Doctors For Refugee Care v. Canada (Attorney General)*, 2014 FC 651.