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HIV & AIDS Legal Clinic Ontario

Recent Changes to Canada's Immigration and Refugee Policies: Impact on People Living with HIV

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Background: Refugee Claims

- ❑ The 1951 “Convention Relating to the Status of Refugees” is an international treaty which many countries, including Canada have signed.
- ❑ Countries that have signed the Convention agree not to send people back to their country of origin if they would face a certain type of danger there.
- ❑ People who are protected from deportation in this way are called “Convention Refugees”



Background: Refugee Claims

- Ways to be accepted as a refugee in Canada:
 - **Convention Refugee:** claimant has well-founded fear of persecution by reason of race, religion, nationality, political opinion, or membership in a particular social group (e.g. sexual orientation, HIV status, disability, violence against women);
 - **Other Risk Grounds:** being removed would subject them to danger of torture or risk to life/risk of cruel and unusual punishment ... not caused by inability of a country to provide adequate health or medical care.



Background: Refugee Claims

- ❑ Although the Refugee Convention tells countries which people must be protected, it does not say what process countries must follow to determine if a person is a refugee.
- ❑ The recent changes in the law affect the process Canada uses to determine who is a refugee.



Background: “H&C” Applications

- ❑ An application for Permanent Residence on Humanitarian and Compassionate grounds (“H&C Application”) is a separate process from a refugee claim.
- ❑ An H&C application asks the Minister to exercise his discretion to allow a person to stay in Canada because they would face “unusual, undeserved, or disproportionate hardship” if forced to leave the country.



Background: H&C vs. Refugee Claim

- ❑ There is no limit to the arguments one can make in an “H&C” application except that they cannot be based on facts that would make someone a refugee.
- ❑ Examples of grounds that an H&C **can** be based on:
 - **Discrimination** in applicant’s country due to gender, race, religion, sexual orientation, disability, HIV status, etc.
 - **Inadequate health care** such as lack of access to quality HIV care or other health care
 - **Best interests of the child** affected - applicant’s biological child OR a child in applicant’s care who would be detrimentally impacted by client’s removal to their country
 - **Establishment in or ties to Canada** such as being in Canada for a long time, working or volunteering, having family or friends in Canada, upgrading education, etc.



Background: “H&C” Applications

- ❑ Before June 2012, a person could make an H&C application shortly after their refugee claim was refused, or while they were waiting for a decision on their refugee claims.
- ❑ H&C’s often worked as a “last resort” or “back-up” for refused refugee claimants, in particular for HIV-positive claimants who face medical risks in their countries.



Background: Bill C-31

- ❑ Bill C-31 was passed by Parliament on June 28, 2012.
- ❑ When did Bill C-31 come into effect?
 - Some changes took effect immediately on June 28, 2012:
 1. Humanitarian & Compassionate Applications (H&C)
 2. Pre-Removal Risk Assessments (PRRA)
 - The balance of the changes concerning the refugee claims and appeals process took effect on December 15, 2012.



Bill C-31: Significant Changes

- 1. Changes to start of claim process**
2. Designated Countries of Origin (DCO)
3. Shorter timelines for scheduling refugee hearings
4. Introduction of the Refugee Appeal Division (RAD)
5. Faster deportations without chance to submit H&C application



Changes to start of claim process

Old System:

- ❑ Client makes claim – required to submit forms (“PIF”) detailing reason for claim within 28 days
- ❑ Immigration Medical Exam (incl. HIV test) usually held within these 28 days
- ❑ Refugee health care coverage begins when client makes the claim



Changes to start of claim process

New System

- ❑ Claims made at airport/border: clients have 15 days to submit Basis of Claim and other forms
- ❑ Claims made inside Canada: claim is initiated only when client brings all forms completed
 - Immigration Medical Exam held afterward
 - Refugee health care coverage only begins after forms are submitted



Changes to start of claim process

Possible Impact / How to Help

- ❑ Shorter timeframes = harder time getting legal help
- ❑ IME held after forms submitted = less likely client will include HIV-related risks
- ❑ Need for refugee health care coverage may lead to people submitting the Basis of Claim (BOC) before getting legal help
- ❑ Stress the importance of getting legal help to complete BOC forms and to disclose HIV status to lawyer



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Designated Countries of Origin (DCO)

- ❑ Old system: all refugee claimants received the same refugee process no matter what their country of origin.
- ❑ New regime: the Minister of Citizenship and Immigration has almost unlimited power to create a list of “Designated Countries of Origin” (DCO). These will be countries that generally respect human rights, or whose citizens are not often successful in refugee claims in Canada based on statistics.



Designated Countries of Origin (DCO)

- ❑ Refugee claimants from DCOs still can be accepted as refugees but experience:
 - Shorter wait times for refugee hearings
 - Dramatically reduced appeal rights
 - No health care benefits except to treat infectious diseases (i.e. IFH “public health/safety” coverage)
 - No work permit unless claim is accepted

- ❑ Potential refugee claimants from DCOs need legal advice before making claim. An H&C application may be a better option.



Designated Countries of Origin (DCO)

- ❑ Current list includes all EU member states (except Bulgaria and Romania), Iceland, Norway, Switzerland, Australia, New Zealand, South Korea, Japan, Israel, Chile, Mexico and USA
- ❑ The list can be amended at any time (see <http://www.cic.gc.ca/english/refugees/reform-safe.asp> for updated list)



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Shorter timelines for scheduling refugee hearings

Old system

- ❑ There were no fixed timelines for the scheduling of refugee claims.
- ❑ The wait times varied widely from as short as 4 months from the time of claim, to as long as 3 years.
- ❑ The long wait times caused much stress, but also allowed people to prepare for their refugee hearings.



Shorter timelines for scheduling refugee hearings

- ❑ For claims made after December 15, 2012, there are fixed timelines. Claimants get their hearing date when they make their claim.

- ❑ Refugee hearings take place after:
 - 30 days for a claimant from a DCO who makes their claim at an immigration office in Canada
 - 45 days for a claimant from a DCO who makes their claim at an airport or border
 - 60 days for all non-DCO claimants (no matter where the claim is made)



Shorter timelines for scheduling refugee hearings: Impact on Clients

- ❑ We anticipate the short timelines will have the most significant impact on clients.
- ❑ Time to prepare a refugee hearing can include:
 - Obtaining or changing legal counsel
 - For traumatized clients, becoming comfortable telling their story
 - Obtaining evidence like medical reports, police reports, expert evidence on country conditions (all evidence is due 10 days prior to the hearing)
- ❑ It may be that more clients will be refused because they will not have enough time to prepare their refugee case.



Shorter timelines for scheduling refugee hearings: How to help

- ❑ Adjournments are possible for medical reasons.
- ❑ If you believe a refugee claimant is not able to participate in their hearing for mental or physical health reasons, you should contact their counsel to discuss it.
- ❑ This may include coming to terms with a new HIV diagnosis.
- ❑ Counsel may not be aware of any problems – may require being proactive.



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Introduction of the Refugee Appeal Division (RAD)

- ❑ Old system: only way to challenge a negative decision was in Federal Court
- ❑ New system: a new appeal at the Immigration and Refugee Board, but only for *some* claimants. If the appeal is denied, it can still be challenged in Federal Court.



Introduction of the Refugee Appeal Division (RAD): Timelines

- ❑ Refugee claimants who receive a negative decision after their hearing will have only 15 days after receiving their written decision to submit their notice of appeal. All of the evidence and written arguments are due 30 days from receiving the written decision.
- ❑ Clients need to know how urgently the appeal must be dealt with.



Introduction of the Refugee Appeal Division (RAD): No Access for All

- ❑ Many refused refugee claimants will not have a right to appeal to the RAD:
 - Designated Country of Origin (“DCO”) claimants
 - Those persons whose refugee claims are found to be “manifestly unfounded” or to have “no credible basis”
 - Claimants who make their claim at the US-Canada border
 - Claimants designated to have arrived in Canada as part of an “Irregular Arrival”
- ❑ Will still be able to go to Federal Court, but removal is not postponed during that challenge.



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Faster deportations without chance to submit H&C application

Old System

- ❑ Refused refugees could file a Humanitarian and Compassionate (H&C) grounds application while their refugee claim was in process, or shortly after refusal.
- ❑ Removal was delayed because all deportees had a right to make a Pre-Removal Risk Assessment application

Faster deportations without chance to submit H&C application

- ❑ As of June 28, 2012, a person cannot make an H&C application for **1 year** following a refused refugee claim. Most will be deported during that year.
 - **Exceptions to the one year bar:**
 - **Risk to life** based on inadequate health care
 - Adverse effect on **best interests of a child** directly affected
- ❑ No concurrent H&C applications and refugee claims.
- ❑ New system effectively forces people to choose between making refugee claim and H&C application.



Faster deportations without chance to submit H&C application

- ❑ New system also imposes a 1 year bar on right to a Pre-Removal Risk Assessment prior to removal (3 year bar for DCO claimants).
- ❑ Almost all refused refugee claimants will be in a legal position to be deported a very short time after their refugee claim and appeals to the RAD or Federal Court area over. Typically 3-6 months.



Overall Impact on Clients

- ❑ Fewer refugee claimants ultimately get status because it may become harder to win a refugee claim, and harder to make an H&C application.
- ❑ More people may go “underground” to avoid deportation.
- ❑ More difficulty accessing health care benefits.



Advice for potential refugee claimants:

- ❑ Arrange the best legal representation possible as early as possible – even before the claim.
- ❑ Collect evidence as early as possible.
- ❑ Prioritize the refugee claim above all other settlement issues to the extent that is possible.
- ❑ Be aware in advance of the next steps to follow in case the refugee claim is not successful.
- ❑ Make sure the claimant is aware of the possibility of a quick deportation so that preparations can be made.

Refugee Claim or H&C Application?

Benefits received for each type of application:

	Refugee claim	H&C application
Social assistance	Most (all?) provinces provide pending decision	Check if province provides pending decision (Ontario does)
Health care	Fed Govt provides pending decision (IFH); province provides after approval	Fed Govt does not provide unless client is a refused refugee claimant; province may provide after approval
Work permit	Available 3-6 months after refugee claim is made	Not available until H&C is approved. Available if client is a refused refugee claimant.



Refugee Health Care Cuts

- ❑ Interim Federal Health Program provides health care to:
 - Refugee claimants awaiting their hearing or outcome of an appeal
 - Refused refugee claimants who are still legally in Canada before removal or while waiting for another process

- ❑ Provinces/territories cover accepted refugees



Refugee Health Care Cuts

- As of June 30, 2012, IFHP will only cover “public health or public safety” illnesses for the following groups:
 - refused refugee claimants still legally in Canada
 - refugee claimants from the designated “safe” countries (DCO countries)
- HIV is considered a “public health” illness
- the other “public health” illnesses can be found here: <http://www.phac-aspc.gc.ca/bid-bmi/dsd-dsm/duns-eng.php>

Refugee Health Care Cuts: Impact on PHAs

HIV Care

- ❑ Covered: ARVs, HIV specialist visits, PMTCT, hospitalizations related to HIV and opportunistic infections, CD4/VL testing, genotyping
- ❑ Not Covered: services or drugs to prevent, diagnose or treat “complications of treatment”



Refugee Health Care Cuts: Impact on PHAs

- ❑ For those PHAs with coverage only for “public health or public safety” illnesses, *only* their HIV (or Hepatitis, TB, etc.) can be treated to the exclusion of all other medical issues
- ❑ All other health issues (e.g. injury, management of other chronic illnesses, etc.)



Refugee Health Care Cuts: How to Help

- ❑ Email John Norquay at norquaj@lao.on.ca to advise of any case of hardship caused by the IFHP cuts
- ❑ Participate in advocacy against the cuts
<http://www.doctorsforrefugeecare.ca/>

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