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Bill C-31 – Protecting Canada's Immigration System Act (PCISA)

Presented by

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* In the interest of time we will not be addressing changes to the human smuggling and trafficking regime or changes to the *Marine Transportation Security Act*

Changes to Canada's Inland Refugee Determination System

The government has indicated that the proposed changes to the inland refugee determination system under Bill C-31 are intended to make the system faster and fairer and to address the problem of human smuggling. In order to meet these goals, the bill allows for differentiation between groups of refugee claimants, who are then subject to different treatment. The important designations are:

- **Claimants from *designated countries of origin***: nationals from countries designated by the Minister of Citizenship and Immigration for having low refugee claim success rates, high claim withdrawal and abandonment rates, or meeting certain criteria concerning protections available. (Bill C-31, clause 58)

- **Claimants whose claims are *manifestly unfounded***: foreign nationals whose claims for protection were rejected by the Refugee Protection Division because it is of the opinion that they were clearly fraudulent. (Bill C-31, clause 57)

- **Claimants whose claims have *no credible basis***: foreign nationals whose claims for protection were rejected by the Refugee Protection Division because there was no credible or trustworthy evidence on which the claim could have been accepted. (*Immigration and Refugee Protection Act* (IRPA), section 107(2))

- ***Designated foreign nationals***: claimants who arrive in Canada as members of a group that is designated by the Minister of Public Safety as an "irregular arrival." (Bill C-31, clause 10)

- **Claimants who make a claim under an *exception to Safe Third Country Agreements***. (IRPA, section 102)

Claimant Group	Refugee Protection Hearing Timeline	Refugee Appeal Division	Detention Review Regime	Stay on Removal for Judicial Review	Other Restrictions
Most claimants (standard)	60 days	Yes	• Within 48 hours of initial detention; • within the following 7 days; • at least once every 30-day period thereafter	Yes	
Designated countries of origin	• 30 days for inland claims; • 45 days for port-of-entry claims	No	Standard	No	• Failed claimants not eligible for pre-removal risk assessment until 36 months have passed since the negative Refugee Protection Division decision • Ineligible for work permit for 180 days
Manifestly unfounded	60 days	No	Standard	No	
No credible basis	60 days	No	Standard	No	
Designated foreign nationals		No	• **Within 14 days** after initial detention; • 6 months after **the conclusion of** the first review; • 6 months after any subsequent review	No	• 5-year wait for applications for permanent residence on humanitarian and compassionate grounds • 5-year wait for eligibility for permanent resident status • No access to travel documents until permanent resident status
Exception to Safe Third Country Agreements	60 days	No	Standard	No	

Changes to the *Balanced Refugee Reform Act*, 2010 (BRRA)

The bill makes the following significant changes:

- replaces the interview that had been introduced into the refugee determination process by the BRRA with a different procedure
- bars certain groups of refugee claimants from appealing refugee protection decisions
- changes the process and criteria for designating countries
- expands the restrictions on applications to remain in Canada after a negative refugee determination decision.
- The bill also specifies that the BRRA will come into force at a date to be fixed by order of the Governor in Council, rather than on 29 June 2012

Basis of Claim Document and Hearing (Clauses 33, 49, 56, 59, 61 and 84)

Under the BRRA, the previous method of gathering information on an individual's refugee claim, the Personal Information Form (PIF), is to be replaced by an interview with a public servant at the IRB. Previously, claimants had 28 days to submit a complete PIF; under the BRRA, however, the interview may be held as soon as 15 days after the refugee claim is referred. The IRB has indicated that such interviews will be held as close to 15 days after referral as possible.

Basis of Claim Document and Hearing Continued…

Bill C-31 replaces the interview with a Basis of Claim document. It also introduces a distinction between the process for refugee claims made at a port of entry, whereby claimants are directed to provide the necessary documentation to the Refugee Protection Division (clause 56), and claims made elsewhere in Canada, whereby claimants are directed to provide necessary documentation to an immigration officer (clause 33). The bill does not specify time limits for submitting the Basis of Claim document, which will be established in regulations (clause 59).

Basis of Claim Document and Hearing Scheduling

- As Bill C-31 removes the eligibility interview step, it provides in clause 56 that the *referring officer* must, "in accordance with the regulations, the rules of the Board and any directions of the Chairperson," fix the hearing date before the RPD.
- As was the case with the BRRA, Bill C-31 allows for time limits to be established by way of regulations for the RPD hearing (clause 59). However, the government has signalled its intentions to set the hearing dates sooner than those proposed in draft regulations to implement the BRRA. According to a backgrounder issued by Citizenship and Immigration Canada (CIC), hearings will be scheduled for inland claims from individuals from designated countries of origin within 30 days, for port-of-entry claims from individuals from designated countries of origin within 45 days (as opposed to 60 days for designated country of origin claimants in the proposed regulations) and within 60 days for all other claimants (as opposed to 90 days in the proposed regulations).

Changes to the Refugee Appeal Division

- whereas the BRRA states that the provisions enacting the RAD will come into force no later than 29 June 2012, Bill C-31 provides that they will come into force on a day to be fixed by order of the Governor in Council (clause 55).

- The BRRA makes the proposed RAD more robust and sets 29 June 2012 as the date on which the relevant provisions will come into force. Under the BRRA, all refugee claimants *would* have access to the RAD, but…

- Bill C-31 bars access to the RAD for RPD decisions concerning five groups of refugee claimants:

Changes to the Refugee Appeal Division

Clause 36 states that RPD decisions concerning the following four refugee claimant groups may not be appealed:

1. designated foreign nationals (a restriction originally proposed in Bill C-4);
2. those whose claims are found to have no credible basis;
3. those whose claims are found to be manifestly unfounded, and;
4. those whose claims are heard as exceptions to Safe Third Country Agreements (The regulations may provide exceptions to the bar for this group).

- When the relevant sections of the BRRA and the relevant clauses of Bill C-31 come into force, the fifth group, claimants from designated countries of origin, will also be unable to appeal RPD decisions to the RAD (clause 84(2)).
- Although RPD decisions for these groups cannot be appealed to the RAD, claimants or the Minister may apply to the Federal Court seeking judicial review of any decision, pursuant to section 72 of the IRPA.

Designated Countries of Origin (Clauses 58 and 84)

The BRRA introduced a new power for the Minister of Citizenship and Immigration to designate by order nationals of a country or a part of a country, or a class of nationals of a country, who would face accelerated timelines in the refugee process.

- Bill C-31 changes the process for designation and the impact on claimants of being from a designated country of origin.
- First, in Bill C-31, designation applies to entire countries only.
- Second, in clause 58, Bill C-31 changes the threshold criteria for designation, according to two different scenarios:
  - In the first scenario, when the number of claims from a country reaches a certain threshold, to be established by ministerial order, the rate of rejected, withdrawn, and abandoned claims of nationals of that country is the only criterion for designation.
  - In the second scenario, when the number of claims from a country is less than the threshold established by ministerial order, the Minister may make a designation if he or she believes the country in question has an independent judicial system, recognizes basic democratic rights and freedoms and makes available a mechanism for redress, and if civil society organizations exist.

Designated Countries of Origin - Restrictions

- under Bill C-31 failed claimants from designated countries of origin **would not be eligible for pre-removal risk assessment until 36 months had passed since their negative RPD decision**.
- Other restrictions may be made by regulation. For example, the government has signalled its intention to make claimants from designated countries of origin ineligible for a work permit until their claim is approved by the IRB or 180 days have passed.
- Proposed changes under BRRA remain in effect: **claimants from a DCO will not be granted an automatic stay of removal upon filing a leave to appeal application to the Federal Court.**
  - PCISA will expand the exception to the automatic stay of removal to include claims found to have no credible basis, those from designated foreign nationals, and those made as exceptions to Safe Third Country Agreements.

Designated Countries of Origin – PRRA Restrictions

- The BRRA introduced a bar on PRRAs for unsuccessful refugee claimants for the year following the negative IRB decision, though the Minister could make exemptions to this bar for nationals of a country, nationals who lived in a given part of a country, and a class of nationals of a country. Bill C-31 extends the bar on PRRA applications to include those who received a negative PRRA decision within the previous 12 months. **Further, the bar on PRRA applications for failed claimants from designated countries of origin was extended to provide that these claimants may not apply for PRRA for 36 months from the negative RPD decision.**
- **The 12-month waiting period will come into force on the day Bill C-31 receives Royal Assent, and the 36-month waiting period for nationals of designated countries of origin will come into force when the relevant sections of the BRRA come into force (clauses 69 and 84).**

BRRA Coming-into-Force

- Bill C-31 amends the transitional provisions of the BRRA so that the changes affect most claims in process. Whereas the BRRA applied only to claims where the claimant had not yet submitted a PIF, Bill C-31 applies to every claim referred to the RPD before this bill comes into force if there has been no hearing or, if there has been a hearing, where no substantive evidence has been heard. In respect of a claim referred before the bill comes into force, if a PIF has not been submitted and the time limit for doing so has not expired, the claimant must submit the PIF as required by the *Refugee Protection Division Rules* as they read on that day (clause 66).
- **Applications for PRRAs will be terminated if they were made before the coming into force of this section and did not comply with the 12-month restriction (clauses 68 and 83.1).**
- Rather than coming into force no later than 29 June 2012 as originally provided, under Bill C-31 the provisions of the BRRA will come into force on a day or days to be fixed by order of the Governor in Council (with some exceptions).

Provisions Dealing with "Irregular Arrivals" of Refugee Claimants (Bill C-4)

Bill C-31 will make important changes to IRPA in regards to irregular migration:

- Introduces the new category of "designated foreign national" which applies to those who arrive in Canada as members of a group that is designated by the Minister of Public Safety as an "irregular arrival," and the implications this designation may have for these individuals;
- Introduces new definitions regarding human smuggling, criminal organization and terrorist group; and
- increases penalties for contraventions of the *Marine Transportation Security Act*.

“Designated Foreign National” Regime Created in IRPA

- Among other things, Bill C-31 creates under the IRPA the category of “designated foreign national.” This new category applies to persons who arrive in Canada as part of a group designated by the Minister as an “irregular arrival.” Designated foreign nationals will be subject to a different detention regime than other refugee claimants and will face restrictions on applications different from other claimants.
- Clause 10 provides for the creation in the IRPA of two new sections, including new section 20.1 concerning the designation of “irregular arrival.”

Designated Foreign Nationals

New section 20.1(1) gives the Minister discretionary power that he or she can exercise in the "public interest" to order the arrival in Canada of a group of persons to be designated as an "irregular arrival" based on one of two criteria (new sections 20.1(1)(*a*) and (*b*)):

1) The Minister is of the opinion that

- *neither* examinations of the persons in the group, particularly for the purpose of establishing the identity or determining the inadmissibility of those persons
- *nor* any other investigations concerning persons in the group

can be conducted in a "timely manner" (new paragraph 20.1(1)(*a*)).

2) The Minister has reasonable grounds to suspect that there has been, or will be, human smuggling for the benefit/profit of, at the direction of, or in association with, a criminal organization or terrorist group (new paragraph 20.1(1)(*b*)).

Designated Foreign Nationals

- A foreign national who is part of a group whose arrival in Canada is designated by the Minister as an "irregular arrival" automatically becomes a "designated foreign national" unless he or she holds the documents required for entry, and on examination the officer is satisfied that the person is not inadmissible to Canada (new section 20.1(2)).
- Clause 81(1) of Bill C-31 allows a designation of an "irregular arrival" to be made retroactively to 31 March 2009. Mass arrivals of claimants by boat in October 2009 (*Ocean Lady*) and in August 2010 (*Sun Sea*) are covered by this time period.

Consequences of Designation

Mandatory Arrest and Detention (Clauses 23 and 24)

Clause 23(3) of Bill C-31 amends section 55 of the IRPA by adding new section 55(3.1), which provides that once the Minister has designated the arrival in Canada of a group of persons as an "irregular arrival," resulting in those without proper documentation becoming "designated foreign nationals," an officer must either:

- detain the "designated foreign national" *upon entry into Canada* (new section 55(3.1)(*a*));
- arrest and detain without a warrant a foreign national who becomes a "designated foreign national" *after entry into Canada* (new section 55(3.1)(*b*)); or
- issue a warrant for the arrest and detention of a foreign national who becomes a "designated foreign national" *after entry into Canada* (new section 55(3.1)(*b*)).

Consequences of Designation

Duration of Detention (Clause 24)

- Bill C-31 specifies what may determine the period of detention for a "designated foreign national." Clause 24 of Bill C-31 amends section 56 of the IRPA by renumbering the current section 56 as section 56(1), and by adding a new section 56(2).
- The new section 56(2) provides that detention of a "designated foreign national" is mandatory for those who are 16 years of age and older until such a time as:
  - a final determination is made to allow a claim or application for refugee protection;
  - the person is released as a result of an order of the Immigration Division of the IRB under section 58 (as amended); or
  - the person is released as a result of a ministerial order under section 58.1.

Consequences of Designation

Distinct Detention Review Regime (Clause 25)

Clause 25 of Bill C-31 creates a distinct regime for the review of detention for "designated foreign nationals" in section 57.1 of the IRPA. This new regime differs from existing detention review regimes currently in place under the IRPA for permanent residents, foreign nationals and persons named in security certificates.

- The existing detention review regime under section 57 of the IRPA that is generally applicable to permanent residents or foreign nationals provides for the following:
  - a mandatory review by a member of the Immigration Division of the reasons for continued detention within 48 hours of the start of detention (section 57(1));
  - a mandatory review by a member of the Immigration Division of the reasons for continued detention at least once during the seven days following the 48-hour review (section 57(2)); and
  - a mandatory review by a member of the Immigration Division of the reasons for continued detention at least once during every 30-day period thereafter (section 57(2)).

The Immigration Division has the discretion to conduct reviews of the reasons for continued detention prior to the expiry of the next planned review, if new evidence is brought forward and all parties agree to an early hearing.

Consequences of Designation

Distinct Detention Review Regime (Clause 25) Continued…

Clause 25 of Bill C-31 introduces a detention review procedure applicable only to "designated foreign nationals," as follows:

- The Immigration Division must conduct a mandatory first review of the reasons for continued detention **within 14 days** after the day of initial detention **or without delay afterward** (new section 57.1(1)).
- The Immigration Division must conduct subsequent reviews of the reasons for continued detention on the expiry of six months **following the conclusion of** the previous review **and may not do so before** the six months have expired (new section 57.1(2)).
- Release from detention prior to the initial review may occur upon the determination of a claim for refugee or protected person status, or with a discretionary order from the Minister based on exceptional circumstances **or, if in the Minister's opinion, the reasons for detention no longer exist**.

Detention Review Regimes Under the *Immigration and Refugee Protection Act*

Mandatory Reviews of Reasons for Continued Detention	Regime Applicable to Permanent Residents and Foreign Nationals (Section 57 of IRPA)	Regime Applicable to Persons Detained Under the Authority of a Security Certificate (Section 82 of IRPA)	Regime Applicable to "Designated Foreign Nationals" (New Section 57.1 of IRPA Created by Bill C-31)
First review	Within 48 hours of detention (section 57(1))	Within 48 hours of detention (section 82(1))	**Within 14 days after the day of initial detention or without delay afterward** (new section 57.1(1))
Second review	Within 7 days of the first review (section 57(2))	Within 6 months of the first review (section 82(2) or 82(3))	6 months **following the conclusion of the previous review** (new section 57.1(2))
Subsequent reviews	At least once during every 30-day period after the second review (section 57(2))	At least once during the 6-month period following the most recent review (section 82(2) or 82(3))	6 months **following the conclusion of the previous review** (new section 57.1(2))

Consequences of Designation

Changes to Grounds for Detention (Clause 26)

Section 58 of the IRPA provides a list of factors that the Immigration Division is to consider before ordering the release from detention of a permanent resident or foreign national. Bill C-31 amends this list of factors.

- If the Immigration Division is satisfied that any of the following factors are met, then the permanent resident, foreign national or "designated foreign national" (where applicable) will not be released:
  - The permanent resident or foreign national is considered a danger to the public (section 58(1)(*a*)).
  - The permanent resident or foreign national is considered unlikely to appear for certain proceedings under the IRPA (section 58(1)(*b*)).
  - The Minister is inquiring into a reasonable suspicion that the permanent resident or foreign national is inadmissible on the grounds of security or for violating human or international rights (section 58(1)(*c*)). Further grounds of inadmissibility are added by Bill C-31 to section (*c*), specifically "serious criminality, criminality, or organized criminality."
  - The Minister is of the opinion that the identity of the foreign national has not been, but may be, established and that the foreign national has not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing his or her identity, or the Minister is making reasonable efforts to establish the identity (section 58(1)(*d*)). Paragraph (*d*) is amended by Bill C-31 to specify that this factor applies only to foreign nationals and *does not apply* to "designated foreign nationals."

Consequences of Designation

Changes to Grounds for Detention (Clause 26)

- Bill C-31 creates a new section 58(1)(*e*), which sets out a factor applicable only to "designated foreign nationals" who are 16 years of age or older on the day of arrival, that the Minister is of the opinion that the identity of the "designated foreign national" has not been established.
- **New section 58(1.1) clarifies that the factors described in sections 58(1)(*a*) to 58(1)(*c*) and 58(1)(*e*) are the only factors to be taken into consideration by the Immigration Division for continued detention of a "designated foreign national." Clause 26 was amended by the committee to create this new section.**

Consequences of Designation

Changes to Release with Conditions (Clauses 26, 27 and 28)

- Clause 26(2) of Bill C-31 amends section 58 of the IRPA by adding a new section 58(4), which provides that the Immigration Division, when ordering the release from detention of a "designated foreign national" who was 16 years of age or older on the day of arrival, shall impose any condition that is prescribed. Section 61 of the IRPA, as amended by Bill C-31, provides that the type of conditions will be set out in regulations. Also, when ordering the release from detention (as described above), the Minister may impose any conditions he or she considers necessary.
- The imposition of mandatory conditions on "designated foreign nationals" is different from the regime applicable to permanent residents and foreign nationals being released from detention. Section 56 of the IRPA (renumbered as section 56(1) in Bill C-31) provides a discretionary power for an officer to order the release from detention of a permanent resident or foreign national prior to the first detention review by the Immigration Division, and the power to impose any conditions on the release that the officer considers necessary.

Consequences of Designation

Impact of Breaching Conditions of Release (Clauses 5, 10, 12 and 13)

A breach of release conditions provides an officer with the discretion to refuse to consider certain immigration applications made by a "designated foreign national." Specifically, new sections 11(1.3), 20.2(3), 24(7) and 25(1.03) provide that an officer *may* refuse to consider an application for permanent residence, a request for a temporary resident permit, or an application for permanent residence on humanitarian and compassionate grounds if:

- a foreign national is a "designated foreign national";
- the person fails to comply, without reasonable excuse, with any of the conditions of release imposed on him or her under new sections 58(4), 58.1 and 98.1; and
- less than 12 months have passed since the end of the applicable five-year waiting period for these various applications.

Consequences of Designation

Restrictions on the Issuance of Refugee Travel Documents: Bill C-31 and Article 28 of the Refugee Convention (Clause 16)

Clause 16 adds new section 31.1 to the IRPA. This section provides that a "designated foreign national" is considered to be "lawfully staying" in Canada only if his or her claim or application for refugee protection is accepted and, after five years from the decision, the person becomes a permanent resident or is issued a temporary resident permit. As a result of this new section, "designated foreign nationals" will not benefit from Article 28 of the Refugee Convention, which requires contracting states, such as Canada, to issue travel documents to refugees "lawfully staying" in their territory. In practical terms, "designated foreign nationals" will not have the ability to travel outside of Canada for at least five years.

Consequences of Designation

Other Consequences for "Designated Foreign Nationals"

- Clauses 5, 10, 12 and 13 of Bill C-31 add a number of restrictions on the ability of a "designated foreign national" to make an application for permanent residence, a request for a temporary resident permit, or an application for permanent residence on humanitarian and compassionate grounds. Applications or requests from "designated foreign nationals" will not be considered for at least five years after they have become "designated foreign nationals," and the processing of these applications or requests will be suspended if a foreign national becomes a "designated foreign national" after his or her application or request is made.
- The practical consequence of these waiting periods is that a "designated foreign national" can obtain refugee status or the status of a person in need of protection but will need to wait five years before being able to apply for permanent residence. A second practical consequence is that "designated foreign nationals" will not be able to sponsor their family members to come to Canada as they must have acquired permanent residence status to do so.

Consequences of Designation

Other Consequences for "Designated Foreign Nationals"

- Clause 32 creates a new section 98.1 of the IRPA, which requires "designated foreign nationals" who have obtained refugee protection in Canada to report to an officer in accordance with the regulations. This is not a requirement for others who are found to be protected persons in Canada after a determination before the IRB.

- As mentioned earlier, RPD decisions concerning "designated foreign nationals" may not be appealed to the RAD.

Inadmissibility and Loss of Status (Clauses 17, 18 and 19)

- Bill C-31 introduces a new provision governing inadmissibility by adding section 40.1 to the IRPA. Clause 18, **as amended,** states that upon a final decision that refugee protection has ceased, the **foreign national** who was previously a Convention refugee is now inadmissible to Canada, and therefore cannot remain in or enter Canada. Cessation of refugee protection is described in section 108 of the IRPA and involves situations such as the individual returning to his or her country of origin, reacquiring his or her original citizenship or acquiring a new one, or simply that the conditions in the country of origin have changed and the person is no longer in need of protection. The RPD may make such a determination upon application by the Minister.
- **under new section 40.1(2), permanent residents may only be rendered inadmissible when a decision is made that refugee protection has ceased for circumstances identified in sections 108(*a*) to 108(*d*) of the IRPA. As described in section 108(*e*), this excludes cessation if the reasons for which the person sought refugee protection have ceased to exist, such as a change of conditions in the country of origin.** Bill C-31 makes the impact of cessation decisions more serious, providing in clause 19 that permanent resident status may be **lost if refugee protection has ceased for reasons described in sections 108(*a*) to 108(*d*) of the IRPA**.

Removal Order Enforcement

- Clause 21 of Bill C-31 seeks to clarify when the conditional removal order comes into force for a failed refugee claimant. Section 49(2)(*c*) is amended to indicate two situations: if a claim is rejected at the RPD but is not appealed, then the removal order comes into force according to regulations that have not yet been published. If the failed claimant appeals to the RAD, the removal order will come into force if the appeal fails, within 15 days after notification of this final decision.
- Regulations, provided for by section 53 of the IRPA, describe the different types of removal orders. However, clause 22 seeks to modify section 53 so that the regulations may also include the consideration of factors that will determine when the enforcement of the removal order is possible.

Biometrics for Temporary Resident Visa Applications (Clauses 6, 9, 30, 47 and 78)

- Although fingerprints have been collected from refugee claimants and from individuals arrested for contravening the IRPA in Canada, clause 6 introduces the collection of biometrics in a non-enforcement context by adding section 11.1 to the Act.
- A foreign national identified in regulations, who applies for a temporary resident visa, will be subject to this new procedure starting in 2013. Clause 9, which refers to the content of the regulations, indicates that there may be exceptions to the rule. Clause 30 refers to fees related to the collection of biometrics and adds new section 89(2), which states that those fees will not be subject to the *User Fees Act*. (This Act allows Parliament to review fee schedules.) Clause 47 amends section 150.1 of the IRPA to allow the disclosure of information, including biometrics, to foreign governments and to the RCMP. Clause 78, which amends the *Department of Citizenship and Immigration Act*, allows CIC to enter into arrangements with foreign governments and to provide services to the Canada Border Services Agency.
- CIC has indicated that it expects to use the network of Visa Application Centres (of which there are 60 in 41 countries) to collect the data that are to be used to verify the identity of applicants entering Canada.

Sponsorship (Clauses 7, 8 and 9)

- Section 13 of the IRPA provides for the right to sponsor foreign nationals in two circumstances: individuals may sponsor members of their family; and a group of individuals or an organization may sponsor Convention refugees or persons in similar circumstances.
- Clause 7 of Bill C-31 replaces the existing text of the IRPA referring to the two circumstances above with an open-ended provision that allows the same actors (Canadian citizens, permanent residents, groups of these last two, corporations, unincorporated organizations and associations) to sponsor a foreign national "subject to the regulations." (this means that the government will have the power to place restrictions on the right of sponsorship)

Humanitarian and Compassionate Applications

Restrictions on Applications for Permanent Residence on Humanitarian and Compassionate Grounds (Clauses 13 and 80)

Bill C-31 restricts permanent residence applications on humanitarian and compassionate grounds, similar to the restriction included in the original Bill C-11 (BRRA). Clause 13(3) of Bill C-31 states that the Minister may not examine an H & C application if:

- such an application is already made and is pending; or
- a claim has been made and is pending before the RPD **or the RAD**; or
- less than 12 months have passed since the foreign national's claim for refugee protection was **last** rejected, determined to be abandoned, or determined to be withdrawn **by the RPD or the RAD**.

Unlike Bill C-11, however, Bill C-31 includes exceptions to this bar for cases where there is a risk to life in the country of origin due to inadequate health or medical care or where "removal would have an adverse effect on the best interests of a child directly affected."

The transitional provision for this change provides that H & C applications for permanent residence should be considered in accordance with the Act in force on the day of application (clause 80).

Humanitarian and Compassionate Applications

Undertakings for Applications for Permanent Residence on Humanitarian and Compassionate Grounds (Clauses 14 and 15)

Clause 14(1) of Bill C-31 allows the Minister to impose conditions on foreign nationals granted permanent residence on humanitarian and compassionate grounds for public policy considerations. These conditions are new and are further elaborated in clause 14(2), which states “the conditions referred to in subsection (1) may include a requirement for the foreign national to obtain an undertaking or to obtain a determination of their eligibility from a third party that meets any criteria specified by the Minister.” Clause 15 states that the regulations may provide for any matter related to: undertakings in respect of humanitarian and compassionate requests; penalties for failure to comply with undertakings; and the determination of eligibility referred to above.

Coming into Force (Clause 85)

- Many of the provisions in C-31 come into force immediately upon Royal Assent: the provisions dealing with designated foreign nationals, staffing at the RPD, the modifications to the IRPA in regards to H & C applications **and the new waiting restriction for PRRA applications (except for those for nationals of designated countries of origin, which will come into force along with the relevant sections of the BRRA)**.
- Clause 4 and the clauses dealing with biometrics (6, 9(2), 30, 47 and 78) come into force on a day to be fixed by order of the Governor in Council.
- Clauses identified in 85(2) come into force on a day or days to be fixed by order of the Governor in Council (clauses 7 and 8, 9(1) and 11(1), 17–22, 23(1) and 29, 31, 33–35, **38(1) and 38(2), 39**–46, 49–51, 53, 54 and 70–77).

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