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Submission to the  
House of Commons  
Standing Committee on  
Citizenship and Immigration

The Immigration and  
Refugee Protection Regulations

Presented by:  
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Immigration and Refugee Issues

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## **I. Introduction**

The City of Toronto is a key destination for immigrants and refugees to Canada. The proposed *Immigration and Refugee Protection Regulations* will directly affect the City and its residents. Because of the importance and benefits of immigration and settlement to the City, Toronto City Council has made submissions on legislative changes on immigration to the Minister of Citizenship and Immigration as well as the House of Commons Standing Committee on Citizenship and Immigration, including a submission on Bill C-11.

The success of national immigration policies depends on local community based programs and public services turning the potential benefits of immigration into tangible results. Many of the impacts of immigration occur at a local level. The goal of Toronto City Council is to be formally consulted and to collaborate with the federal government on immigration and settlement issues.

## **II. Background**

Toronto City Council has submitted its position on Bill C-11. The City's comments on the proposed *Immigration and Refugee Protection Regulations* are based on Council's submission on Bill C-11 and relevant policies and directions approved by Toronto City Council.

Council welcomes and supports the positive proposals in Bill C-11:

- Inclusion of the protection of equality rights in the legislation
- Access to the refugee determination system for refugee claimants convicted of political protest and dissent
- Provision of criteria for detention decisions in new regulations and establishment of principle that the detention of minor children is a last resort.
- Separate sections and objectives for immigrants and refugees in the Bill, recognizing that refugees and immigrants are fundamentally different in their circumstances, and that the principles of protection should guide the decisions regarding refugees.
- Facilitation of the entry of skilled workers
- Expansion of family class immigrants and facilitation of family reunification
- Incorporation of the principle of the "best interests of the child"
- A faster and more efficient refugee determination system.

Council also made the following recommendations for amendments to the Bill:

- Including municipalities as full participants in consultation by federal government
- Addressing settlement and integration in local communities and recognizing the role of municipalities
- Reimbursing municipalities for service costs arising directly from federal immigration and refugee policies
- Including solutions to the long-standing issue of access to professions and trades
- Providing access to education to minor children and assistance to school boards
- Including "gender" as one of the grounds of persecution

### **III. Issues and recommendations**

The following comments and recommendations on the *Immigration and Refugee Protection Regulations* are provided in keeping with the position taken by Toronto City Council.

#### **Gender-based analysis and principles of diversity and justice**

The City of Toronto supports the gender-based analysis and diversity considerations being carried out to assess the differential impacts of the Regulations on men and women and different groups of men and women. The results of the analysis should inform the development of the Regulations to ensure that the Regulations are fair and equitable to men and women from diverse backgrounds.

The principles of human rights and justice espoused by Canadians should also guide the development of the Regulations. It is important that immigrants and refugees are entitled to a fair process, and their fundamental rights are respected. It is challenging and worthy of our best efforts to safeguard these Canadian values at this time of heightened safety and security concerns in the aftermath of September 11, 2001.

#### **Comments and recommendations**

##### **A. Barriers to public input**

Since the *Immigration and Refugee Protection Act* provides only a general framework of the new legislation, the regulations under the Act contain most of the details for implementation. It is therefore important that the regulations are open to public input. The City finds that the timetable for the public to respond to the regulations, which were introduced just before the end of 2001, does not allow sufficient time for thorough review and input.

In addition, the way the regulations are presented is difficult to follow. The divisions and parts do not correspond to those of the Act. It is hard to make cross-reference of the Act and the Regulations and to review and analyse the Regulations in a coherent way.

- **Recommendation #1**

Citizenship and Immigration Canada should adopt a consultative process that would provide sufficient time and opportunity to encourage public input, in particular, the input of community-based immigrant and refugee settlement sector, for any future amendments to the Regulations.

- **Recommendation #2**

The Regulations should be reorganized to make them easy to be referenced to the *Immigration and Refugee Protection Act*, and easy to understand for the greatest number of people.

**B. *Lack of consultation with municipalities***

One of the recommendations in the Toronto City Council's submission on Bill C-11 was that the Minister of Citizenship and Immigration should immediately establish a process to include the City of Toronto and other affected municipalities as full participants in the development of regulations to Bill C-11. Nearly three-quarters of all immigrants live in the three largest Census Metropolitan Areas: Toronto, Montreal and Vancouver, and the Toronto CMA is the largest immigrant and refugee reception centre of all the urban centres in Canada.

The City of Toronto is disappointed that it was not consulted during the development of the Regulations, and was not included among the stakeholder groups that were invited to make submissions to the Standing Committee on Citizenship and Immigration after the Regulations were published.

• **Recommendation #3**

The Government of Canada should consult directly with municipalities receiving large numbers of immigrants and refugees and include them at the table for discussion of relevant immigration and settlement policy and program issues.

**C. *New point system for the selection of skilled workers (Part 5, Sections 61 – 75)***

In the proposed Regulations, a new point system for the selection of skilled workers will put increased weight on post-secondary education. The new selection criteria will also be applied retroactively. The Minister of Citizenship and Immigration as well as major stakeholders have expressed their concern that the new point system will exclude many experienced tradespeople Canada needs, who do not have post-secondary education, but are highly skilled workers through apprenticeship and work experience.

The proposed retroactive application of the new system is also contrary to the principle of procedural fairness. Applicants should be assessed in accordance with the laws that are in place at the time of their application.

The City of Toronto supports the intent of the Minister of Citizenship and Immigration to amend the Regulations to address the expressed concerns regarding the new point system for the selection of skilled tradespeople.

In the Regulatory Impact Analysis Statement, Citizenship and Immigration Canada officials explain that it is necessary to raise the level of education for the selection of skilled workers. Recent skilled immigrants have experienced difficulty in establishing themselves economically based on income tax, unemployment and social assistance data. Human Resources Development Canada has predicted that less than six percent of the job openings in the next five years will be available for those with less than a high school education.

In fact, many of the recent immigrants who are unemployed or underemployed have post-secondary education. To address the poor economic performance of recent skilled immigrants, CIC needs to take a comprehensive and systems approach. It needs to provide leadership and incentives to involve all key players in identifying the systemic barriers to immigrants' access to

employment and in planning and delivering assessment of foreign credentials, labour market language training, skills upgrading and orientation to Canadian workplace practices.

- **Recommendation #4**

In order to attract skilled tradespeople that Canada needs, Citizenship and Immigration Canada should continue with the criteria in the current system and should not give increased weight to post-secondary education in the selection of skilled tradespeople.

- **Recommendation #5**

Changes to the selection criteria that would have a negative impact on applicants who are currently waiting for assessment should not be applied retroactively.

- **Recommendation #6**

Citizenship and Immigration Canada should provide leadership and incentives to involve all key players in identifying the systemic barriers to immigrants' access to employment and in planning and delivering assessment of foreign credentials, labour market language training, skills upgrading and orientation to Canadian workplace practices.

**D. *Detention of minor children (Part 14, Section 256)***

The City of Toronto supports the stipulation in the *Immigration and Refugee Protection Act* that the detention of children less than 18 years of age shall be used as a measure of last resort. But the proposed considerations for detaining minor children set out in the Regulations suggest that detaining minor children suspected of being controlled by smugglers or traffickers is appropriate. Detention cannot be used as a form of protection. If there are protection concerns for minor children, services such as guardians and “safe houses” should be provided.

- **Recommendation #7**

Detention should not be used as a form of protection for minor children suspected of being controlled by smugglers or traffickers and appropriate services should be provided to protect these children.

**E. *Criteria for refugee resettlement (Part 7, Section 136)***

The City of Toronto supports separate sections and objectives for immigrants and refugees in the *Immigration and Refugee Protection Act*, recognizing that refugees and immigrants are fundamentally different in their circumstances, and that the principles of protection should guide the decisions regarding refugees.

However, the Regulations require most refugees applying to resettle to Canada to show not only that they need protection, but also they can successfully establish themselves in Canada, such as their “resourcefulness”, “presence of their relatives” and “potential for employment”. This means that refugees must meet protection and immigration criteria. Exceptions will only be made to refugees who are determined by an officer to be “vulnerable or in urgent need of protection”.

The requirement for successful establishment will affect particularly women since they often do not have access to education and work experience. In addition, the Regulations do not provide objective assessment tools for an officer to determine vulnerability or urgent need of protection. In fact, all refugees are vulnerable people and they should be exempted from the immigration criteria.

- **Recommendation #8**

The successful establishment requirement should be eliminated from the criteria for refugee resettlement.

**F. Inadmissibility (Part 12)**

The *Immigration and Refugee Protection Act* has created a number of broad categories of inadmissible people on grounds of security, human rights violation and organized criminality. This has raised the concern that people who are not undesirable are caught by these broad categories. For example, the past and present members of the African National Congress would be inadmissible to Canada.

According to the Act, the Minister of Citizenship and Immigration can decide the presence of some people caught by the broad categories would not be detrimental to national interest, and would therefore be exempted from the provisions of inadmissibility.

The Regulations, however, do not provide a mechanism for applying to the Minister for an exemption. People whose presence in Canada is not detrimental to the national interest, but who are considered to be inadmissible under the Act would not be heard and would remain inadmissible.

- **Recommendation #9**

The Regulations should create a mechanism to ensure that a person can apply for ministerial relief and be given a fair hearing.