

Bill C-31 - The Immigration and Refugee Protection Act

(City Council on July 4, 5 and 6, 2000, amended this Clause by adding thereto the following:

“It is further recommended that:

- (a) Recommendation No. (1)(c)(iii) embodied in the report dated June 1, 2000, from the Chief Administrative Officer, be struck out and referred to the Chief Administrative Officer for further consultation, including consultation with Councillor Prue, and report thereon to the Administration Committee, through the Immigration and Refugee Working Group, viz.:*

‘(1) Council request that Bill C-31 be amended:

- (c) to reflect Canadian core values, democratic principles and human rights standards, specifically:*

- (iii) to limit the powers given to immigration officers to detain people on the basis of identity as genuine refugees are often forced to flee without proof of identity (Sections 50 – 55);’;*

- (b) as recommended in the report dated June 28, 2000, from the Chief Administrative Officer, Recommendation No. (1)(c)(iv) embodied in the report dated June 1, 2000, from the Chief Administrative Officer, be adopted, viz.:*

‘(1) Council request that Bill C-31 be amended:

- (c) to reflect Canadian core values, democratic principles and human rights standards, specifically:*

- (iv) to respect the status and rights of permanent residents as in the current Immigration Act (Sections 2, 27, 42 and 58);’;
and*

- (c) the Federation of Canadian Municipalities be requested to assist the City of Toronto in approaching the federal government respecting the consultation process referred to in this Clause.”)*

The Administration Committee recommends the adoption of the following report (June 1, 2000) from the Chief Administrative Officer, with the exception of Recommendations Nos.(1) (c) (iii) and (iv); and reports having referred the aforementioned Recommendations Nos. (1) (c) (iii) and (iv) to the Chief Administrative Officer for report thereon directly to Council for its meeting scheduled to be held on June 4, 2000, detailing the rationale for limiting the powers given to Immigration Officers to detain people on the basis of their identify.

The Administration Committee submits the following report (June 1, 2000) from the Chief Administrative Officer:

Purpose:

To identify for City Council the implications of the proposed changes to Canada's immigration legislation as outlined in Bill C-31 and to recommend to Council directions regarding the City's input into the proposed legislative changes. This report has been developed cooperatively with Community and Neighbourhood Services, Public Health Unit, Economic Development, Culture and Tourism and Urban Development Services.

Financial Implications and Impact Statement:

There are no current financial implications.

Recommendations:

It is recommended that:

- (1) Council request that Bill C-31 be amended:
 - (a) to make provision for the Government of Canada to formally consult with municipalities receiving large numbers of immigrants and refugees on relevant policy and program issues, specifically by including municipalities in the sections on "Objectives and application" and "Consultations with the Provinces" (Section 3(1)(c) and (f); Section 3(3)(c); Section 10(1) and (2));
 - (b) to maintain a strong emphasis on providing support for the settlement and integration of immigrants and refugees and recognizing their contribution to Canadian society while acknowledging the need to address the abuse of the immigration and refugee system;
 - (c) to reflect Canadian core values, democratic principles and human rights standards, specifically:
 - (i) to allow persons convicted of crimes as a result of engaging in lawful advocacy, protest or dissent and prisoners of conscience to gain access to Canada and make a refugee claim (Section 3 (1)(i) and (2)(h));
 - (ii) to define "gender" as one of the grounds of persecution (Section 3(2)(d));
 - (iii) to limit the powers given to immigration officers to detain people on the basis of identity as genuine refugees are often forced to flee without proof of identity (Sections 50 – 55); and

- (iv) to respect the status and rights of permanent residents as in the current Immigration Act (Sections 2, 27, 42 and 58);
- (2) Council request the Minister of Citizenship and Immigration to establish immediately a formal process to include the City of Toronto and other affected municipalities as full participants in the development of regulations to Bill C-31;
- (3) Council request that the Government of Ontario facilitate federal consultation with municipal governments on immigration and refugee matters affecting large urban centres;
- (4) Council request the Government of Canada to reimburse municipalities regarding:
 - (i) public health expenditures related to refugees;
 - (ii) social assistance and hostel costs provided to refugees; and
 - (iii) social assistance to immigrants because of sponsorship breakdown;
- (5) Council request the Government of Canada to explicitly address and support federal-provincial agreements related to public health, social assistance and hostel costs for newcomers;
- (6) Council support the requests made by the School Boards in the Toronto District:
 - (i) to the Governments of Canada and Ontario to provide assistance regarding language training needs of immigrant and refugee children and adults; and
 - (ii) to the Minister of Citizenship and Immigration that undocumented refugee children and youngsters under the age of 19, as per the Ontario Education Act (Section 49A[1]), be admitted to schools without authorization by Citizenship and Immigration Canada;
- (7) Council request the Government of Canada:
 - (i) to consult with professional and technical associations to identify measures to accelerate the professional recognition and skills upgrading of foreign-trained workers;
 - (ii) to include the City of Toronto in the consultations; and
 - (iii) to increase funding and support to enhance the skills upgrading and employment-related language training programs for newcomers;
- (8) this report be forwarded to the Federal Ministers of Citizenship and Immigration and Human Resources Development, and the Ontario Ministers of Citizenship, Culture and Recreation; Education; Community and Social Services; Health and Long-Term Care; Training, Colleges and Universities; and Economic Development and Trade;

- (9) this report be incorporated in the City of Toronto's submission to the House of Commons Standing Committee on Citizenship and Immigration;
- (10) this report be forwarded to the Federation of Canadian Municipalities and Association of Municipalities in Ontario to further the development of an urban policy framework and best practices that address immigrant and refugee issues and involve all orders of government;
- (11) Council encourage the Government of Canada to conduct broad and public consultation on Bill C-31 to ensure all relevant stakeholders have an opportunity for input; and
- (12) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On April 6, 2000, the Honourable Elinor Caplan, Minister of Citizenship and Immigration, tabled Bill C-31, *The Immigration and Refugee Act*, in the House of Commons. The Standing Committee on Citizenship and Immigration will conduct hearings and clause-by-clause study of the Bill, which, if enacted, will replace the current Immigration Act dated 1976. Appendix A presents the highlights of Bill C-31.

Citizenship and Immigration Canada initiated a review of immigration and refugee legislation in 1996. Council's position on the review and proposed changes in the directions for immigration and refugee legislation is outlined in the report to Council "Immigration Legislative Review" (March 1998), and the report *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation*, Announcement by Minister of Citizenship and Immigration" (April 1999). The hearings to be held by the Standing Committee on Citizenship and Immigration provide an opportunity for the City of Toronto to give input to Bill C-31 and reiterate its position that the Federal Government include the City in formal consultation and collaboration on relevant policy and program issues.

Comments:

- (a) The context:

The Toronto region is the primary destination for immigrants and refugees to Canada. Immigration accounted for 85 percent of the total population growth, an average of 79,000 people a year, in the Toronto census metropolitan area (CMA) from 1991 to 1997. Most of the immigrants live in the City of Toronto and an increasing number of recent immigrants are settling in suburban communities outside of the inner city core. People born outside of Canada now make up nearly half of the City's population.

Immigration has become an important factor in urban growth and development. Issues of immigration are not independent and separate from the social, economic and planning issues facing large city regions: social cohesion, regional economic restructuring, governance and public finance, and regulation of land use and physical environment. The City will need to address immigration issues within a framework of broad-based

urban physical, economic and social development. Due to the significance of these issues and the roles of all orders of governments in immigration and refugee matters, it is critical to the interests of Toronto that the City is able to influence decision-making with the other orders of government.

The City of Toronto is committed to the principle that newcomers must have access to appropriate levels of support to participate in all aspects of civic and community life. Immigration brings social, cultural and economic benefits to the municipality. It increases Toronto's social and ethno-racial diversity, making it one of the most diverse cities in the world. It enriches Toronto's cultural life. It sustains a source of new and highly skilled human resources to Canada's population. It stimulates urban renewal. It strengthens Toronto economically by enhancing the City's position in the global economy and opening doors to new investments and new businesses.

In addition to the opportunities noted above, the effects of immigration on the municipality are also a challenge. One such challenge is that government, educational, social, health, cultural and economic institutions in the City have to adapt to the growing diversity in the population. The City has to have strategies to create a positive climate of welcome to newcomers and strengthen respect among residents for diversity. The City, the community-based sector as well as public institutions also have to respond to the health, educational and social service needs of refugees and immigrants who experience difficulties especially during the initial period of settlement.

Over all, based on 1995 statistics, Toronto's immigrants made a net contribution to Canada's treasury, with an income tax to benefits ratio of 1.7:1 as noted in the study, *Immigrants' Economic Status in Toronto: Rethinking Settlement and Integration Strategies*, published by the Joint Centre of Excellence for Research on Immigration and Settlement (CERIS) – Toronto in March 2000. Immigrants also had a lower welfare dependency rate and a lower unemployment insurance usage rate than the general population. If newcomers are given the opportunities to integrate socially and economically, they will contribute to the society where they are settled and call home.

(b) Positive proposals:

(1) Objectives:

- Bill C-31 has separate sections and objectives for immigration and refugees. This recognizes that refugees and immigrants are fundamentally different in their circumstances, and the principles of protection should guide the decisions regarding refugees.
- The objectives acknowledge the social, cultural and economic benefits of immigration. Objective 3(1)(c) states that the benefits are to be shared across all regions of Canada, which should provide a rationale for the Federal government's formal consultation with city-regions in the country.

- The Bill has included an objective to promote the successful integration of permanent residents into Canada and recognizes that integration involves mutual obligations for new immigrants and Canadian society, and that the change process is two-way.

(2) Economic class immigrants and skilled workers:

- for selection of economic class immigrants, the regulations to Bill C-31 will assign more weight to education and move to a model focussed on flexible and transferable skills. This shift recognizes that the global knowledge-based economy is driven by intellectual capital, skills and continual innovation, the basis of economic competitiveness for Canada and the Toronto region; and
- provisions in the regulations to the Bill will include measures to facilitate the entry of temporary workers and allow recently graduated foreign students to remain in Canada. These measures will help address many of Toronto's key industry clusters that are facing skilled labour shortages, for example, information and technology, apparel and biomedical/biotechnical.

(3) Family class and family reunification:

Regulations to the Bill will include a number of positive measures which will ensure family reunion and facilitate settlement and integration:

- expansion of the family class to include common-law and same-sex partners;
- broadening the definition of dependent child by increasing the age from under 19 to under 22;
- Exemption of sponsored spouses and dependent children from the admission bar related to excessive demand on health and social services;
- Reducing the length of sponsorship requirement for spouses and common-law and same-sex partners from ten years to three years;
- Processing overseas families, including extended family members of refugees, as a unit whenever possible; and
- Processing dependents of refugees inland or abroad as part of the same application for a period of one year after a refugee has acquired permanent resident status.

(4) The principle of the "best interests of the child":

The Bill incorporates the principle of the "best interests of the child" based on the United Nations *Convention on the Rights of the Child*, of which Canada is a signatory. Decisions on humanitarian and compassionate grounds as well as inadmissibility and removal would have to take this principle into consideration. However, there is no guarantee that refugee claimant and non-status children can study at the pre-school, primary or secondary level without authorization.

(5) Refugee determination system:

- Bill C-31 recognizes Canada's international obligations under the *Convention against Torture*. The grounds for protection will be extended to include a person who is at risk of torture.
- The Bill introduces an appeal on merit of a negative claim by creating a Refugee Appeal Division within the Immigration and Refugee Board (IRB) to ensure rigour and fairness in decision-making.
- Some measures in the Bill and its regulations will establish a faster and more efficient refugee determination process. The consolidation of protection grounds assessment allows for one risk assessment during a single hearing at the (IRB) to include grounds of the *Geneva Convention*, *Convention against Torture* and risk to life and/or cruel and unusual treatment or punishment. Eligible claims will be referred to IRB within 72 hours. A faster refugee determination system would facilitate refugee claimants in moving ahead with their lives and would be a relief to the pressures on the community-based and City-operated emergency shelter system. The Pearson International Airport pilot project, for instance, has lessened the pressure on hostels.

(c) Key concerns:

(1) Formal consultation and collaboration:

Bill C-31 is silent on consultation and collaboration with municipalities. The Bill deletes a stated objective of the current Immigration Act, which promotes cooperation between the Government of Canada and other levels of government. The Minister, according to the Bill, must consult only with provinces regarding economic and demographic requirements for the distribution of immigrants and measures to facilitate integration.

Integration into Canadian society in fact means integration into a local community somewhere in Canada. The success of national immigration policies depends on local community based programs and initiatives turning the potential benefits of immigration into tangible results. Many of the impacts of immigration occur at a local level, and municipalities and local service providers are most aware of how federal policy affects local communities.

The City's emerging Economic Development Strategy stresses the increasing importance of cities and city-regions to national economies and the need for all orders of government to work cooperatively with each other, and with the community and private sectors, toward achieving a common goal.

Due to the lack of federal-provincial agreements, decrease in federal transfer payments and provincial downloading to municipalities, the City of Toronto, and more broadly the Toronto region, needs to be at the table with the Federal and Provincial governments in the discussion of immigration and refugee policies and programs.

The need for municipalities to be consulted formally is made all the more apparent as the details of the changes to the immigration act will be provided in regulations rather than the Bill. Section 34, for instance, addresses the protection of health and safety of Canadians and the grounds for health inadmissibility. In developing the regulations for this section, Toronto Public health needs to be actively involved as a key player. The City must reiterate its position that it be included as a full participant in the formal discussion with the Federal Government regarding immigration and refugee issues.

- (2) Support for the settlement and integration of immigrants and refugees and their contribution to Canadian society:

Bill C-31 is presented as an Act “designed to curb criminal abuse of the immigration and refugee system”. The Bill includes a number of provisions to strengthen mechanisms to address fraud and abuse. Several non-governmental organizations, such as Amnesty International, Canadian Council for Refugees and Maytree Foundation, are concerned that the tone surrounding the communication of Bill C-31 suggests that the Federal Government is responding to anti-refugee sentiments.

This negative approach is counter-productive to many efforts made by community groups and municipal governments in promoting positive race and ethnic relations, preventing hate and strengthening respect for diversity. Some of these efforts are exemplified in the City of Toronto’s policies on human rights and hate activities, Council’s Strategic Plan, the report of the Task Force on Community Access and Equity and the Social Development Strategy. Concern has also been expressed that media portrayal of “uncontrolled boat arrivals”, “queue-jumpers” and the threat of diseases has fuelled racism and xenophobia.

If the new *Immigration and Refugee Protection Act* is to be built on a strong foundation for the 21 century, Bill C-31 will have to place its emphasis on realizing the potential contribution of immigrants and refugees to Canadian society and facilitating their settlement and integration. It is important for the Bill to indicate policy directions and a commitment on the part of the Federal Government to support the funding of programs and initiatives for the social and economic well being of immigrants and refugees and their successful integration, which involves mutual obligation for newcomers and Canadian society.

The Bill also needs to address policies which would remove barriers to the settlement process. One of these barriers is the identity document requirement for Convention refugees seeking landing in Canada. Many genuine refugees who are allowed to stay but are denied landing status are in legal limbo indefinitely and remain on the margins of society.

Examples of programs and initiatives that will facilitate settlement and integration range from public awareness and education of the benefits of immigration, accessible and equitable settlement services, affordable housing strategies, skills upgrading for foreign-trained workers and collaboration with provincial professional regulatory bodies and technical associations to accelerate the recognition and certification of foreign credentials.

(3) Federal funding responsibility for public health, social assistance and hostel costs

There is no indication in Bill C-31 that the Federal Government is committed to contributing to the costs borne by municipalities for providing public health services, emergency shelter and social assistance to refugee claimants as well as social assistance to immigrants because of sponsorship breakdown.

Federal/provincial ambiguity regarding Ontario's role in immigration combined with provincial downloading has affected the City of Toronto's ability to support the programs and services necessary to newcomers. In addition, the trickle-down devolution of the change from the Canada Assistance Plan to the Canada Health and Social Transfer and the accompanying decrease in federal transfers to Ontario has left Toronto with a \$175 million pressure in the funding of social programs.

In any given month, 8,000 social assistance cases are estimated to be refugees. An additional estimated 6,000 cases are immigrants receiving social assistance because of sponsorship breakdown. The change from 100 percent provincial funding of family benefits to 80/20 provincial/municipal cost sharing has created further pressure at the municipal level. Based on average costs, the municipal funding share is estimated at \$23.95 million annually.

It is estimated that 450 refugee claimants are accommodated in Toronto's emergency shelter system at any given night. Federal policy limits refugee claimants' access to services, which in effect downloads service needs to the community-based sector and municipalities. The emergency shelter system therefore incurs additional cost of providing interpretation and helping newcomers navigate the immigration and social service system.

A faster refugee determination system proposed by Bill C-31 will provide the City with some relief, but the Federal government must allocate adequate resources to appropriately fund services to meet newcomers' needs.

As an additional pressure, provincial education funding changes have removed the ability of school boards to support special programs through local taxes. This curtails the capacity of Toronto's three school boards to provide education to special needs populations such as immigrant children and adults. The cost of providing English as a Second Language (ESL) alone in the Toronto District School Board is \$101.8 million. There is concern that the school board will be unable to afford the current level of service when the mitigation funding given by the province to ease school board amalgamation pressures runs out in 2001.

(4) Democratic principles and human rights standards:

Compared to the current Immigration Act, Bill C-31 makes it harder for "foreign nationals, including refugee claimants" who are criminals and security risks to access Canada (Section 3(1)(i) and Section 3(2)(h)). The current Immigration Act denies access to Canadian territory to "persons who are likely to engage in criminal activity", which allows for the use of discretion and case-by-case evaluation.

Bill C-31 may result in excluding genuine refugees from seeking asylum in Canada, as repressive governments are known to have laid criminal charges and convicted political dissidents. It is important that the Bill does not in effect prevent persons convicted of crimes resulting from engaging in lawful advocacy, protest or dissent and prisoners of conscience from access to Canada and from making a refugee claim. The notion of “equivalency” of an offence committed outside of Canada to an offence committed in Canada should be clarified.

The grounds of persecution (Section 3(2)(d)) for offering safe haven to persons in Canada should include “gender”. Gender is a fundamental human rights protection concern. Canada is also a signatory of the *Convention on the Elimination of All Forms of Discrimination against Women*. Gender as a ground of persecution should be clearly articulated in Canada’s immigration legislation, and should not be left to regulations.

Bill C-31 gives immigration officers expanded powers to detain people on the basis of identity. Refugees are often forced to flee without proof of identity because it is their identity that puts them at risk of persecution. Bill C-31 proposes that people can be detained if they fail to establish their identity for any procedure under the Immigration Act, for instance, at their refugee hearing. These new provisions constitute a serious threat to the fundamental right of liberty.

(5) Status and rights of permanent residents:

Bill C-31 redefines the status of permanent residents. Under the current Act, permanent residents enjoy most of their rights as citizens, and they pay taxes and contribute to society although they have not acquired Canadian citizenship. Many residents in the City are permanent residents. The proposed changes will seriously erode their rights.

The Bill defines permanent residents as “foreign nationals” along with temporary workers, visitors, students and refugee claimants. The current Act permits permanent residents who must be absent for compelling reasons, but have no intention of abandoning Canada as their home, to apply for a returning resident permit before leaving Canada or from abroad. Bill C-31 requires a permanent resident to be physically present in Canada for a cumulative period of two years in every five years to retain permanent residence. A permanent resident who intends to enroll in a four-year college education abroad, for instance, runs the risk of losing residency status.

Permanent residents who travel abroad are required to carry a renewable identity card. If the card expires or is lost or stolen, they are presumed not to be permanent residents and would be denied entry into Canada unless they can satisfy an immigration officer of their residency. A permanent resident who is denied re-entry is permitted only a paper appeal, without being entitled to attend in person or call any witnesses.

Conclusions :

Immigration and refugee issues are important to the City of Toronto, which is the primary reception centre of newcomers to Canada. Due to the significance of these issues and the roles of all orders of government in matters concerning immigration and refugees, the City must be able to influence decision-making with other orders of government and address immigration and refugee issues within a framework of broad-based physical, economic, health and social development.

Bill C-31 has proposed significant changes to the existing immigration legislation. The City recognizes that the social, economic and cultural contributions made by immigrants and refugees to the City are invaluable. It is necessary for the City to ensure that the Bill facilitates the successful settlement and integration of immigrants and refugees who make up nearly half of its population, and upholds Canadian core values, democratic principles and human rights standards.

The implications of Bill C-31 are such that City Council should provide input to the House of Commons Standing Committee on Citizenship and Immigration. The Bill does not address the need for formal consultation and collaboration with municipalities. Nor does it commit the Federal Government to providing funding for public health, social assistance and hostel services related to newcomers. The City must reiterate its position clearly on these issues.

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List of Attachments:

Appendix A – Highlights of Bill C-31, *The Immigration and Refugee Protection Act*

Appendix A

Highlights of Bill C-31, Immigration and Refugee Protection Act

(Bill C-31 and its summary are available on the Citizenship and Immigration Canada website: http://cicnet.ci.gc.ca/english/about/policy/legrev_e.html)

(A) Thrust of Bill C-31:

- (1) The Minister promoted Bill C-31 as an Act “designed to curb criminal abuse of the immigration and refugee systems”. She stressed that “Closing the back door to those who would abuse the system allows us to ensure that the front door will remain open ...”
- (2) The Bill’s emphasis is on “closing the back door”. Its content is largely devoted to strengthening mechanisms to address fraud, abuse and misrepresentation as well as keep out and remove criminals, security risks and human rights violators.
- (3) Many measures for “keeping the front door open” are not found in the Bill, but are proposed as supporting regulations over the coming months.

(B) Major differences from the current Immigration Act:

- (1) Bill C-31 has separate sections and objectives for immigration and refugees. This recognizes that refugees and immigrants are fundamentally different in their circumstances, and the principles of protection should guide the decisions regarding refugees.
- (2) Bill C-31 includes only the general framework of the new Act and leaves most of the details to regulations. The bill is therefore much shorter than the current Act and is easier to read. It also gives flexibility to the government to change the rules. By the same token, the rules can be changed without parliamentary scrutiny.

(C) Objectives:

- (1) Immigration (Section 3 (1)):
 - (i) The Bill outlines nine immigration objectives. Several of these objectives are similar to those of the current Immigration Act:

- to enrich and strengthen the social and cultural fabric of Canadian society while respecting the federal and bilingual character of Canada;
 - to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;
 - to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities; and
 - to protect the health and safety of Canadians and to maintain the security of Canadian society.
- (ii) The Bill has deleted objective (d) of the current Immigration Act, which refers to promoting cooperation with other levels of government:
- “to encourage and facilitate the adaptation of persons who have been granted admission as permanent residents to Canadian society by promoting cooperation between the Government of Canada and other levels of government and non-governmental agencies in Canada with respect thereto”.
- (iii) The Bill includes an objective which refers to consultation with the provinces,
- “to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces”
- (iv) The objective about family reunification has been rewritten. The current Immigration Act says,
- “to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad”.
- Bill C-31 says,
- “to see that families are reunited”.
- (v) The Bill has included an objective to promote the successful integration of permanent residents into Canada and recognizes that integration involves mutual obligations for new immigrants and Canadian society. The current Immigration Act refers to adaptation of permanent residents and does not mention the two-way change process.

- (vi) The Bill makes it harder on access to Canada to foreign nationals who have a criminal record. Objective (i) says,

“to promote international justice and security by denying access to Canadian territory to foreign nationals who are criminals or security risks”.

The current Act’s objective is to deny “the use of Canadian territory to persons who are likely to engage in criminal activity”.

(2) Refugees (Section 3 (2)):

- (i) To recognize that the refugee program is about saving lives and offering protection.

The Bill is stronger than the current Act in offering protection, rather than just upholding Canada’s humanitarian traditions.

- (ii) To fulfil Canada’s international legal obligations with respect to refugees and affirm commitment to international efforts to provide assistance to those in need of resettlement.

Reference to resettlement is new.

- (iii) To grant, as a fundamental expression of Canada’s humanitarian ideals, fair consideration to those who come to Canada claiming persecution.

This objective of fairness is new.

- (iv) To offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment.

- (v) To establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada’s respect for the human rights and fundamental freedoms of all human beings.

- (vi) To support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members.

- (vii) To protect the health and safety of Canadians and to maintain the security of Canadian society.

- (viii) To promote international justice and security by denying access to Canadian territory to foreign nationals, including refugee claimants, who are serious criminals or security risks.

(D) Application (Section 3 (3)):

The Bill says that the Act will be applied in a manner that “facilitates cooperation between the government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations”. Municipal governments are not mentioned.

(E) Agreements with governments or international organizations (Sections 7 - 10):

According to the Bill, the Minister “may consult with the governments of the provinces on immigration and refugee protection policies and programs, in order to facilitate cooperation and to take into consideration the effects that the implementation of this Act may have on the provinces”. The required consultations will cover:

- (i) number of foreign nationals in each class to be granted permanent resident status each year;
- (ii) their distribution in Canada taking into account regional economic and demographic requirements; and
- (iii) measures to be taken to facilitate their integration into Canadian society.

(F) Family class, family reunification and sponsorship:

Many of the following provisions are not found in Bill C-31, but are to be included in regulations:

- (i) The family class is expanded to include common-law and same-sex partners to ensure consistency in accordance with legislation under consideration.
- (ii) The definition of dependent child is broadened by increasing the age from under 19 to under 22.
- (iii) Adoption provisions are opened up in keeping with the principles of the best interests of the child.
- (iv) An in-Canada landing class for sponsored spouses and partners is to be created.
- (v) Sponsored spouses and dependent children are exempted from the admission bar related to excessive demand on health or social services.

- (vi) The age at which Canadian citizens or permanent residents are eligible to sponsor is reduced from 19 to 18.
- (vii) The length of sponsorship requirement for spouses and common-law and same-sex partners is reduced from 10 years to 3 years.
- (viii) The procedures for the government to collect money owed in relation to a sponsorship undertaking are simplified. If a person sponsors a family member who receives social assistance, the sponsor can become liable for the amount and can have his or her wages garnished (Sections 139-141).
- (ix) The possibility of a 'guarantor' arrangement for those who want to sponsor a family member but cannot meet the Low Income Cut-Off is to be explored.
- (x) Person in default of court-ordered spousal or child support payments and persons convicted of a crime related to domestic abuse will be denied the right to sponsor.
- (xi) Overseas families, including extended family members of refugees, are to be processed as a unit whenever possible.
- (xii) Dependents of refugees selected inland or abroad are allowed to be processed as part of the same application for a period of one year after a refugee has acquired permanent resident status.

(G) Best Interests of the Child:

The Bill incorporates the principle of the best interests of the child contained in the UN Convention on the Rights of the Child, of which Canada is a signatory.

- (i) The Minister must take into account the best interests of the child in making humanitarian and compassionate considerations:
 - concerning a foreign national who is inadmissible, or who does not meet the requirements of this Act before authorizing the foreign national to enter or remain in Canada as a permanent resident (Section 22 (2)); and
 - concerning a person who loses permanent resident status (Section 42 (a)).
- (ii) The Immigration Appeal Division must take into account the best interests of the child directly affected by a decision regarding sponsorship of a family member, removal order and retention of permanent resident status (Section 61 (2)).
- (iii) "A minor child in Canada does not require an authorization to study at the preschool, primary or secondary level. However, the minor child of a temporary resident requires the authorization if the temporary resident is not authorized to work or study in Canada." (Section 26 (2)).

(H) Skilled workers and temporary workers program:

The following provisions are to be included as regulations:

- (i) The selection system for skilled workers is to be moved away from an occupation-based model to one focused on flexible and transferable skills.
- (ii) More weight is assigned to education.
- (iii) The relative weight of having knowledge of an official language is increased while ensuring that language is not a bar to admission.
- (iv) The entry of temporary workers is facilitated through a more service-oriented approach.
- (v) An in-Canada landing class for temporary workers is to be created.
- (vi) Recently graduated foreign students who meet the criteria for economic immigration, have a permanent job offer and have been working in Canada are allowed to land from within Canada.
- (vii) Agreements with individual sectors or firms are to be pursued to identify and meet short-term labour market needs.

(I) Business immigration:

The following is to be provided in regulations:

- (i) Objective criteria to assess business experience for both the investor and entrepreneur programs are to be established.
- (ii) A new net worth requirement for entrepreneurs is to be created.

(J) Permanent residents:

Permanent residents are people who permanently reside in Canada but who have not obtained Canadian citizenship.

- (i) Under Bill C-31, permanent residents, temporary workers, visitors, students and refugee claimants are collectively defined as “foreign nationals”. This is different from the current Act, which gives permanent residents a defined status, and guaranteed right to enter Canada until their loss of status is determined through inland processes.

- (ii) The Bill requires a permanent resident to be physically present in Canada for a cumulative period of two years in every five years to retain permanent residence (Section 24). The current Act permits permanent residents who must be absent for compelling reasons, but have no intention of abandoning Canada as their home, to apply for a returning resident permit before leaving Canada or from abroad.
 - (iii) A permanent residence card will be developed (Section 27 and regulations). The card will expire and must be renewed every five years. Permanent residents who are outside of Canada when their card has expired, or is lost would not be permitted to board flights to Canada until successful application for renewal. Permanent residents who appear at ports of entry without valid cards and without satisfying an immigration officer of their residency would be denied entry (Section 42 (1)(a) and regulations).
 - (iv) A permanent resident who is denied re-entry or renewal is permitted only a paper appeal, without being entitled to attend in person or to call any witnesses. The Immigration and Refugee Board is entitled to look at the information that was before the immigration officer. Failure of the appeal means loss of permanent resident status (Section 58(2)).
- (K) “Closing the back door” measures:
- (i) Bill C-31 creates severe penalties --- fines of up to \$1 million and life in prison --- for people smugglers and those caught trafficking in humans (Section 113).
 - (ii) Criminal Code counterfeiting provisions are extended to cover any immigration document or travel document, with an exemption for refugees (Section 115).
 - (iii) The Minister announced, but did not include in the Bill, that “more immigrant control officers will be stationed abroad, to direct genuine refugees to appropriate missions or international organizations, while preventing undocumented persons from seeking irregular channels of migration to Canada” (Citizenship and Immigration Canada, News Release 2000-09, Backgrounder No. 1, Closing the Back Door).
 - (iv) The Bill broadens the provisions for detention (Sections 50 – 55):
 - Immigration officers are given new powers to detain at the port of entry where they consider it necessary to “complete an examination”, or they have “reasonable grounds to suspect” that the foreign national is inadmissible on grounds of security or human rights violations.
 - Immigration officers will be able to arrest and detain, without warrant, people who are inadmissible, even when they are not about to be removed.

- Under the current Act, people can only be detained on the basis of identity at the port of entry. According to Bill C-31, people can be detained if they fail to establish their identity for any procedure under the new Act, for instance, at a refugee hearing.
- (v) (The Bill enlarges the categories of people whose claims will be found ineligible and therefore will not be referred for a hearing to the Immigration and Refugee Board (Sections 94 – 96).
 - (i) Anyone who has previously made a refugee claim in Canada will be ineligible to make a new claim. This applies to people whose first claim was refused, abandoned, withdrawn and found ineligible. The only recourse offered under Bill C-31 is a pre-removal risk assessment, and this is open to claimants who have been outside Canada for at least a year since their first claim (Sections 107 – 108).
 - (ii) Claims will be ineligible for serious criminals, security risks, organizers of criminal operations, or violators of human rights. A serious crime means a person who has been convicted of an offence punishable by ten years or more and has received a sentence of two years or more.
- (vi) The appeal to the Immigration Appeal Division is eliminated for serious criminals, security risks, members of criminal organizations and war criminals. There will remain recourse to judicial review with leave by the Federal Court.
- (vii) A person's protection application to the Immigration and Refugee Board is suspended if he or she has been charged with a crime. The claim would be suspended until the Courts have rendered a decision on the case.
- (viii) Bill C-31 introduces new provisions for assessing the risks faced by people who are denied access to a refugee hearing before the Immigration and Refugee Board (Sections 107 – 108):
 - People who have a removal order against them;
 - People who have made a claim in the past; and
 - People who are inadmissible on grounds of serious criminality, security, human rights violations or organized criminality. Their needs for protection will be balanced against the threat they pose to the national interest or security.
- (ix) Two new classes of people who are inadmissible to Canada are created:
 - Representatives of governments against which Canada has imposed sanctions; and
 - Those who committed fraud or misrepresentation on an immigration application (Section 36).

- (x) Bill C-31 restricts appeals by family class sponsors of inadmissible persons, introduces a new leave requirement for those appealing visa officer decisions from overseas, and limits humanitarian and compassionate applications to one per year (Sections 56 – 65).
- (L) New mechanisms in the refugee determination system:
 - (i) Bill C-31 recognizes Canada's international obligations under the Convention against Torture (Section 89 – 90). The grounds for protection will include a person who is at risk of torture as defined by the Convention.
 - (ii) Eligible claims will be referred to the Immigration and Refugee Board (IRB) within 72 hours.
 - (iii) The assessment of the grounds for protection is to be consolidated. Under the current Act, the assessment is handled in several stages, one at the IRB, and others at Citizenship and Immigration Canada. The new system will consolidate these grounds in one risk assessment during a single hearing process at the IRB. The grounds for assessment or risk are: Geneva Convention on Refugees, risk of torture and risk to life and/or cruel and unusual punishment.
 - (iv) The IRB will use single-member panels to hear refugee cases as the norm. Currently two-member panels hear cases.
 - (v) Bill C-31 introduces an appeal on merit of a negative refugee claim by the IRB Refugee Protection Division (Sections 105 – 106). This is an appeal on paper, generally before a single member from the Refugee Appeal Division.
 - (vi) In the new system, security screening will be initiated for all claimants at the time the claim is submitted to improve the timeliness of security information. Currently, security and background checks are initiated only once an individual has had a refugee claim accepted and has applied for permanent resident status.

Councillor Michael Prue, East York, appeared before the Administration Committee in connection with the foregoing matter.

(Councillor Denzil Minnan-Wong declared his interest in the foregoing matter, in that he is a practicing lawyer whose practice includes immigration law.)

(City Council on July 4, 5 and 6, 2000, had before it, during consideration of the foregoing Clause, the following report (June 28, 2000) from the Chief Administrative Officer:

Purpose:

This report clarifies recommendations 1c, (iii) and (iv) in the report (June 1, 2000) on Bill C-31, The Immigration and Refugee Protection Act, to the Administration Committee as outlined in Report No. 14, Clause No. 16.

Financial Implications and Impact Statement:

There are no current financial implications.

Recommendations:

It is recommended that:

- (1) Council adopt recommendations 1c, (iii) and (iv) in the report (June 1, 2000) on Bill C-31 to the Administration Committee; and*
- (2) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.*

Background:

On June 13, 2000 the Administration Committee considered a report on Bill C-31. The purpose of the report is to identify for City Council the implications of the proposed changes to Canada's immigration legislation as outlined in Bill C-31 and to recommend to Council directions regarding the City's input into the proposed legislative changes. The House of Commons Standing Committee on Citizenship and Immigration will conduct hearings and clause-by-clause review of the Bill.

The report proposed that changes to the immigration legislation be within a framework that reflects "Canadian core values, democratic principles and human rights standards". The Administration Committee adopted the report except for recommendations 1c (iii) and (iv), which address the power of detention and the rights of permanent residents. The amendments that are proposed are:

- "(iii) to limit the powers given to immigration officers to detain people on the basis of identity as genuine refugees are often forced to flee without proof of identity (Sections 50 –55);*
- (iv) to respect the status and rights of permanent residents as in the current Immigration Act (Sections 2, 27, 42 and 58)."*

The Administration Committee referred the above-noted recommendations to the CAO for a further report directly to City Council. This report is a response to the Committee's request.

Comments:

- (1) Detention powers*

Under the current Act, a person can only be detained at the port of entry when "the person is unable to satisfy an immigration officer with respect to that person's identity" (Section 103.1(1)(a)). This allows the immigration official to evaluate a case and exercise discretion to decide whether detention is warranted.

Bill C-31 proposes to provide immigration officials with expanded powers to detain people on the basis of identity. The Bill gives the immigration official the permission to detain any person “who does not establish their identity” (Section 51(2)(b)). It also proposes that people can be detained on the basis of identity for any procedure under the Immigration Act, for instance, at their refugee hearing (Section 51(2)(b)). A person detained on identity grounds is to be released if it is established that the person has cooperated and the identity is established or cannot be established, or alternatively if the Minister has not made reasonable efforts to establish the identity (Section 53(3)).

The news release from Citizenship and Immigration Canada (CIC) (2000-09 – Backgrounder 4) stated that the proposed changes regarding detention are intended to make provision for “undocumented claimants who refuse to cooperate in establishing their identity”. However, the CIC regulatory impact analysis statement (December 12, 1998) said that there is a “small minority of individuals who would willfully conceal their identity or country of origin, for the purpose of hiding information that could adversely affect their entitlement to protection in Canada”.

In a democratic society, detention is one of the most serious measures that the state can impose on an individual. The decision to deny liberty to an individual is one that must be weighed carefully and responsibly. Refugees are often forced to flee without identity documents for fear of alerting the government of their intent to flee. Some refugees are fleeing from military conflict and their personal belongings have been destroyed. In some countries, dissidents are routinely denied identity documents by oppressive governments, or their documents have been confiscated. For example, a refugee woman flees persecution in her country without taking any identity documents for fear of being caught and identified by her persecutors. On arrival in Canada, she is detained and would not be released until her family can find a safe way to send her identity documents. In these circumstances, it can take detainees weeks or months to obtain identity documents, or prove that they are unable to obtain these documents.

A number of organizations have also analyzed the proposed legislative changes. The UN High Commissioner for Refugees (UNHCR) has expressed concern that the proposed changes may lead to increased detention of asylum-seekers and has asked Canada to “resort to detention of persons seeking protection only when absolutely necessary” (Ottawa, April 6, 2000). UNHCR further states that detention of children should not take place at all.

Amnesty International has stated that “False claimants must be deterred. But access to protection by Canada of genuine refugees cannot be denied under the guise of stopping undocumented persons” (News release, April 7, 2000).

The Caledon Institute of Social Policy in its commentary on Bill C-31 (May 2000) also warns that the increased detention of refugee claimants “may be in violation of the Canadian Charter of Rights and Freedoms as well as international human rights standards”.

Bill C-31 should maintain the provisions of the current Immigration Act which allow the immigration official to use discretion and evaluate whether detention is warranted, rather than broadening the power of the immigration official to detain an individual on identity grounds for any procedure under the Immigration Act.

(2) Status of permanent residents

Bill C-31 redefines the status and rights of permanent residents.

The current Immigration Act defines a permanent resident as a person who has been granted landing, has not become a Canadian citizen, and has not left or remained outside Canada for more than six months in any one-year period with the intention of abandoning Canada as a place of permanent residence, or has not been issued a removal order (Sections 2, 24 and 25). Currently, permanent residents who must be absent for compelling reasons, but have no intention of abandoning Canada as their home, can apply for a returning resident permit (Section 25). They have the right to enter Canada until their loss of status is determined through processes held within Canada.

Under Bill C-31, permanent residents are categorized as “foreign nationals” along with temporary workers, visitors, students and refugee claimants (Section 2(1)). The Bill does not make provision for a returning resident permit. Permanent residents are required to be physically present in Canada for a cumulative period of two years in every five years to retain permanent residence (Section 24(2)).

The Bill proposes that a renewable permanent resident card be issued to permanent residents. Unlike the returning resident permit, the card does not give permission to a permanent resident to be outside of Canada for an extended period of time. If the card expires or is lost or stolen while permanent residents are travelling abroad, they are presumed not to be permanent residents and would be denied entry into Canada unless they can satisfy an immigration officer of their residency. A permanent resident who is denied re-entry is permitted only a paper appeal, without being entitled to attend in person or call any witnesses.

CIC explained that the new physical residency requirement will provide an objective standard that is easier to administer, but has not provided an explanation regarding the change of the definition of permanent resident to “foreign national”, the elimination of the returning resident permit and the change in the right of entry of permanent residents in its news release or clause by clause analysis of Bill C-31

A number of immigrants and refugees do not obtain citizenship after being granted permanent resident status for a variety of reasons, for example, concern that they will lose citizenship in their country of origin. They may not meet the physical residency requirement if they are studying in a four-year college program abroad, or they have to care for a sick family member in the country of origin. Many residents of the City of Toronto are permanent residents, and the proposed changes in Bill C-31 will erode their rights.

Community organizations, including the Coalition for a Just Immigration and Refugee Policy, Caledon Institute of Social Policy and Canadian Bar Association have voiced their concerns about the loss of status and rights of permanent residents under Bill C-31. The term “foreign national” emphasizes foreign origins rather than permanent residents’ immigration and establishment in Canada. The fundamental right of permanent residents to enter Canada is significantly changed, and the appeal process is unsatisfactory.

The existing provisions in the current Immigration Act regarding permanent residents, such as the definition, right of entry and returning resident permit should be maintained.

Conclusion:

This report clarifies the rationale for recommendations 1c (iii) and (iv) in the CAO’s report to the Administration Committee on Bill C-31 (June 1, 2000) as requested by Committee.

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