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Bill C-11 The Balanced Refugee Reform Act

Bill C-11 received Royal Assent on June 29, 2010. Full implementation of the changes to the *Immigration and Refugee Protection Act* (IRPA) will come into effect no later than 2 years from Royal Assent. However, some changes, in particular those related to Humanitarian and Compassionate (H&C) applications and requests for Temporary Resident Permits (TRPs), came into effect at Royal Assent. In addition, the transfer of the Pre-Removal Risk Assessment (PRRA) to the Immigration and Refugee Board (IRB) will take place one year after implementation of the new refugee protection system.

Background

Bill C-11 was tabled in Parliament on March 30, 2010. It proposed changes to the refugee status determination system that are intended to deliver faster decisions, deter abuse and quickly remove persons not in need of Canada's protection. In addition, the Bill proposes consolidation of all immigration related risk decisions at the IRB.

What will change

The following chart provides highlights of the changes:

Current system	New system
Eligibility Review.	No change.
Information gathered in 28 days through a Personal Information Form (PIF).	Information gathered through an interview at the IRB no sooner than 15 days after referral.
Initial hearing currently in about 19 months by Governor in Council term appointees.	Initial hearing by permanent public servant members in the Refugee Protection Division (RPD) within a timeframe to be established in the Regulations.
No Appeal Division.	Refugee Appeal Division (RAD) to review first-level decisions (GIC appointees).
No authority to designate countries of origin.	Authority to designate countries of origin. Claimants from such countries will have access to an expedited (RPD) hearing and a (RAD) decision.
Access to multiple recourses for failed claimants, including judicial review by the Federal Court after each rejection – estimated 3 years.	Following the last negative IRB decision, access only to the Federal Court with a leave decision anticipated within 4 months.
Manifestly unfounded cases not identified for expedited process.	Identification of “manifestly unfounded claims” by RPD, result will be expedited RAD.
PRRA application may be submitted once removal ready, regardless of when the decision on refugee status	One year bar on PRRA applications after the last decision at the IRB (RPD or RAD).

was made.	
PRRA conducted at CIC.	PRRA function transferred to the IRB one year after implementation of the new system. 112(3) and 115(1) cases will remain at CIC.
Access to TRPs.	One year bar on requests for TRPs after last IRB decision (RPD or RAD).
Removed approximately 3 years after last IRB decision.	Removed within 1 year after last IRB decision without any access to PRRA.
H&C – No restriction on factors for consideration in H&C applications.	Minister may not consider factors contained in section 96 (Convention refugee) and section 97 (person in need of protection) for in-Canada requests for H&C.
CBSA has capacity for interventions but not CIC.	CIC will develop capacity to review and intervene in cases before the RPD and RAD, for reasons of credibility (of claim) or integrity (of system), 4-year pilot.
No monetary incentives to voluntarily return.	New Assisted-voluntary return (AVR) program to encourage voluntary departure. Includes counselling, plane ticket, financial assistance for reintegration (education, employment assistance), 4-year pilot at CBSA.
Resettlement target of 12,000.	Increase in Resettlement targets by up to 2,500 (500 Government-assisted and 2,000 privately sponsored).

What came into effect on Royal Assent (June 29, 2010)

At Royal Assent the following changes came into effect:

- With respect to applications for TRPs under section 24 of IRPA:
 - Refused refugee claimants may not request a TRP if less than 12 months have passed since their claim was last rejected (or determined to be withdrawn or abandoned).
- With respect to requests for H&C consideration under section 25 of the IRPA (for applications submitted on or after June 29, 2010):
 - It is no longer possible for applicants to submit more than one H&C application at a time.
 - The legislation now states that fees must be paid in order for an application to be complete*.
 - The Minister may waive fees on his own initiative.
 - The public policy and H&C components are now separate provisions in IRPA*.
 - When examining requests for H&C consideration from foreign nationals in Canada, H&C decision makers will no longer consider risks contained in section 96 (Convention refugee) and section 97 (person in need of protection) both of which are assessed within the refugee protection process, i.e., risk of persecution based on grounds set out in the 1951 Convention or risk of torture, or of cruel and unusual treatment or punishment.
 - The legislation now states that the Minister “must consider elements related to the hardships that affect the foreign national”. This amendment is intended to ensure that H&C decision makers consider other types of risk that may constitute hardship**.

**These changes essentially codify existing policy.*

***More detail about the changes to the assessment of hardship as it relates to H&C will be provided in the form of a manual amendment, in the near future.*

Before processing any H&C Applications received on or after June 29, 2010, please contact NHQ/OMC for guidance.

Transitional measures

H&C applications:

All H&C applications received on or after June 29, 2010, are subject to the new provisions as described above. Applications received before June 29, 2010, will continue to have sections 96/97 risks assessed. The following chart provides some examples:

If	Then
A person made an asylum claim prior to the new asylum provisions coming into force and has a pending H&C application.	The H&C application will be considered by a CIC officer. There are no restrictions on access to H&C by refugee claimants.
An H&C application was received before June 29, 2010.	All H&C applications received before June 29, 2010, will continue to be examined according to section 25 as it was prior to Royal Assent. This means, for example, that reference to risk factors that fall under section 96 & section 97 will continue to be considered as part of the application. Such applications should be sent to the PRRA Unit for decision, as is presently the case.
An H&C application was received before June 29, 2010, and the applicant has submitted additional information (e.g. cites risk in section 96 and section 97) in support of the initial application. The new information is received on or after June 29, 2010.	The entire application, including any new submissions, will be assessed under section 25 as it existed before Royal Assent. In the case of the example, section 96 and section 97 risk will be considered. Such cases should go to the PRRA Unit for decision as they are considered "grandfathered".
H&C application received on or after June 29, 2010, cites risk that falls under section 96 and section 97.	The application will be assessed but risks that fall under section 96 and section 97 will not be taken into consideration in the decision. Such cases will no longer be transferred to the PRRA Unit for decision.

Requests for TRPs:

The change made to section 24 bars failed refugee claimants from requesting a TRP for one year. This means that, as of June 29, 2010, failed refugee claimants (including those whose claims were deemed abandoned or withdrawn) whose final decisions were rendered within the last 12 months are immediately subject to the bar on requests for TRPs for 12 months from the date that their claim was rejected, abandoned or withdrawn. However, requests for TRPs

submitted prior to June 29, 2010, will be “grandfathered” and assessed per the previous legislation. For further guidance with respect to issuance of TRPs, refer to IP 1, sections 5.6, 5.7 and 5.8.

If	Then
A claimant was refused refugee status at the RPD on March 1, 2010.	He/She would be subject to a 12 month bar on TRP applications. The earliest that a TRP application could be submitted to CIC is March 1, 2011, (unless the application was submitted prior to June 29, 2010).