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Child poverty & Canada's immigration policies

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This month the Toronto Children's Aid Society (CAS) and others issued a Report¹ revealing Toronto's child poverty rate is the highest in Canada at almost 29%. As in the CAS's similar report last year, "children of colour, Indigenous children, children from single-parent or newcomer families, and children with disabilities are more likely to experience poverty in Toronto." Regent Park has the highest child poverty rate in the country, at an alarming 63%.²

As an immigration lawyer at Neighbourhood Legal Services, a community legal aid clinic in Regent Park, I know that current immigration laws and practices hurt families, waste resources, and contribute to these statistics. As a new federal government takes office that has pledged to reduce inequality and specifically lift children out of poverty, I offer the below 8 suggestions which would make a real difference in many lives and contribute to these goals.

In our neighbourhood, some 43% of people identify as immigrants. We see significant demand for legal help with reuniting families and with obtaining or resisting the loss of permanent resident or citizenship status. Every case is unique but it is those unique facts that drive the simple remedy they seek: secure status in Canada, together with their immediate family members. Our immigration regime of rules and policies do not facilitate this simple remedy. Mostly, it sets up barriers. Resisting immigration enforcement, being without secure status, and having families separated destabilize immigrants. These factors distract energies away from prospering in Canada. In short, they create and maintain poverty.

Decisions in immigration cases take many years. During this wait, employment and educational opportunities stagnate. Currently it takes 4 months to get a work permit, and often those permits have only 6 months' validity. Convention refugees who apply for permanent resident (PR) status won't get a decision for about 3 years. Only PRs and citizens are eligible for provincial student loans. Long delays in family reunification mean that separated children grow up overseas, parented by phone. Any extra money is spent to support family elsewhere. Parents face untold stress. Children here, and overseas, suffer.

¹ <http://www.torontocas.ca/app/Uploads/edms2015/final3.pdf>

² <http://www.thestar.com/news/gta/2015/10/13/toronto-holds-onto-its-shameful-title-child-poverty-capital-of-canada.html>

Above all else, ***NLS urges the new government to fulfill its commitment to increase resources dedicated to applications in Canada and speedy family reunification.***

The overall picture is one of rule-created instability for one segment of our population only (and a racialized segment at that). It is wasteful and expensive.

If you believe that the family - in its many forms - is a key institution of society, and you are also appalled by a 63% child poverty rate in a neighbourhood of Toronto, then we invite you to take a closer look at these **8 recommendations to reverse rules that destabilize immigrant families and contribute to child poverty.**

- 1. NLS urges the new government to repeal s. 117(9)(d) of the Immigration and Refugee Protection Regulations, which excludes non-declared family members from ever joining the family in Canada.***
- 2. NLS urges the new government to reverse the requirement for up-front proof of proficiency in English or French as a prerequisite for citizenship.***
- 3. NLS urges the new government to repeal s. 72.1 of the Immigration and Refugee Protection Regulations, which makes some spouses' status "conditional" on remaining with their sponsor.***
- 4. NLS urges the new government to study the impact of the legal regime regarding criminal inadmissibility, in consultation with community stakeholders.***
- 5. NLS urges the new government to repeal s. 40.1 of the Immigration and Refugee Protection Act, which enables the loss of PR status for any one-time refugee who travelled home, even for a brief visit.***
- 6. NLS urges the new government to commit to selection of refugees for resettlement without discrimination, based on need, as determined by the UNHCR.***
- 7. NLS urges the new government to fulfill its commitment to double the number of parent and grandparent sponsorships. NLS also urges the government to repeal the requirements which exacerbate the barriers to parent/grandparent sponsorship for lower income people.***
- 8. NLS urges the new government to fulfill its commitment to return the cut-off age for dependent children to under-22.***

Greater context is set out in the following pages.

i. **The excluded family member rule**

NLS urges the new government to repeal s. 117(9)(d) of the Immigration and Refugee Protection Regulations.

In 2002, with the enactment of the *Immigration and Refugee Protection Act* (replacing the former *Immigration Act*), the Canadian government introduced a regulation that cemented the separation of many families for years to come. Regulation 117(9)(d) states that if an immigrant fails to disclose an immediate family member, then that family member may never be sponsored in the future.³

At the time, the government stated that this rule was necessary in order to deter fraud (e.g. hiding a medically inadmissible child, who would make the whole family inadmissible to Canada). In fact the vast majority (around 93%) of reported cases have involved no fraud at all. In my practice I see women who did not declare a child due to severe stigma around having a child out of marriage, or due to sexual violence, or due to situations of war or persecution. This rule exacerbates terrible situations that separated children from their parents. Children left behind suffer, and child siblings in Canada suffer. One can only ask for a humanitarian and compassionate exemption from the rule, if lucky enough to find a free advocate to help.

ii. **“Proficient” English or French is required to become a citizen**

NLS urges the new government to reverse the requirement for up-front proof of proficiency in English or French as a prerequisite for citizenship.

In 2010, Citizenship and Immigration Canada (CIC) commissioned a study on language benchmarks among immigrant groups in Canada.⁴ That study concluded that certain family class-sponsored immigrants, namely women from Asian and Southeast Asian societies, fared relatively poorly in English or French language acquisition after immigrating to Canada. Soon after this study was published, the Canadian government required up-front proof of language proficiency with every application for citizenship at the applicant's expense. If proficiency cannot be demonstrated with evidence, the application immediately denied. It doesn't matter if you have enough English to function in your daily life and interact with your bank, your school, your workplace. The Canadian Council for Refugees points out that refugees are particularly impacted by this requirement.⁵ One can ask for a humanitarian and compassionate exemption from the rule if a learning disability or illiteracy in one's own language would make proficiency in English impossible. This language proficiency requirement is

³ S. 117(9)(d) of the *Immigration and Refugee Protection Regulations*

⁴ <http://www.cic.gc.ca/english/resources/research/language-benchmark/section3.asp>

⁵ <http://ccrweb.ca/en/bulletin/12/10/01>; See also <http://ccrweb.ca/en/barriers-citizenship>

now required for all immigrants aged 18-64. Meantime, the settlement sector has seen persistent funding cuts to key programs such as English or French classes.⁶

iii. **Certain sponsored spouses are granted only “conditional” status**

NLS urges the new government to repeal s. 72.1 of the Immigration and Refugee Protection Regulations.

Starting in late 2011, certain sponsored spouses are now subjected to “conditional” permanent resident status for their first two years as permanent residents.⁷ This is to ensure that they continue to cohabit in a conjugal relationship with their sponsor for those two years. Women’s advocacy groups across the country spoke out against this regulatory change when it was proposed,⁸ saying it would place women in abusive relationships at risk. It was enacted nonetheless. If a sponsored spouse faces abuse in the relationship, she must ask for a humanitarian and compassionate exemption to have her condition lifted.

iv. **Non-citizens face deportation for minor criminality**

NLS urges the new government to study with the legal regime regarding criminal inadmissibility, in consultation with community stakeholders.

Any conviction for an offence under the Criminal Code is presumed, under the immigration law, to be the worst possible offence available. For instance, if a permanent resident is convicted of assault with a weapon for throwing a shoe at her neighbour, and the Crown elects to proceed summarily and her punishment is a day of anger management class -- because the “assault with a weapon” provision under the Criminal Code is *punishable* by up to 10 years -- for immigration purposes, she has engaged in “serious criminality”. Since 2012, any permanent resident who is convicted of an offence and receives a 6-month sentence faces loss of status without any right of appeal. A proposed bill currently on hold in Parliament seeks to automatically strip status from so-called

⁶ <http://www.ocasi.org/federal-budget-2011-may-have-future-cuts-immigrant-settlement>

⁷ S. 72.1 of the *Immigration and Refugee Protection Regulations*

⁸ Canadian Council for Refugees, *Statement on Proposed “Conditional Permanent Residence” for sponsored spouses*, April 2011 endorsed by 67 organizations; Metropolitan Action Committee on Violence Against Women and Children, *Statement on Amendment to the Immigration and Refugee Protection Regulations: Proposed Conditional Permanent Residence Period for Sponsored Spouses*, April 6, 2012; Canadian Bar Association, Letter to Director, Social Policy and Programs of CIC dated May 18, 2011 re: Notice requesting comments on Proposal – Conditional Permanent Residence; Canadian Bar Association letter to Deputy Director, Social Policy and Programs, CIC dated April 10, 2012 re: Immigration and Refugee Protection Regulations: Conditional Permanent Residence, Canada Gazette Part 1, March 10, 2012

“serious criminals”.⁹ The Canada Border Services Agency, which enforces the immigration law, continues to act without any accountability despite repeated calls for an oversight mechanism.¹⁰ We see people who arrived as babies in Canada, including former Crown wards, who find themselves deported for minor criminality because they never obtained citizenship as children. We see families split apart because of minor criminality of one member. The overly harsh effects of this regime do not consider the best interests of affected children.

v. **Refugees who become permanent residents remain precarious**

NLS urges the new government to repeal s. 40.1 of the Immigration and Refugee Protection Act.

One-time Convention refugees who now apply for citizenship face extra scrutiny of their applications due to a 2012 change to the law which makes it possible to strip all status (including PR status) from any one-time refugee who travelled to her home country, no matter how many years have passed since the refugee claim. Many refugees believed that PR status meant something more, and so they travelled home to, for instance, visit a dying relative. The government is aggressively pursuing cases where well-established permanent residents have briefly returned to their country of origin.¹¹ The effect is chilling for refugees and their families and provides a real disincentive to applying for citizenship and having such travel discovered. This ensures the destabilization of the refugee because only with Canadian citizenship, the chance of losing status becomes rare. (Or at least it was rare: recent increases in the Immigration Minister’s applications to revoke citizenship may erode this last safe haven.)

vi. **Somali families face fewer options for reunification in Canada**

NLS urges the new government to commit to selection of refugees for resettlement without discrimination, based on need, as determined by the UNHCR.

Canada’s large Somali diaspora was no doubt devastated by the Canadian government’s 2013 decision not to resettle Somali refugees due to poor economic outcomes.¹² Siblings, for instance, cannot be sponsored in a family class sponsorship application, and so government-assisted resettlement is in fact a key pillar of refugee family reunification. Regent Park is home to a significant

⁹ <http://news.gc.ca/web/article-en.do?nid=973409>

¹⁰ <https://bccla.org/2014/03/civil-liberties-association-renews-calls-for-border-services-oversight/>

¹¹ <http://ccrweb.ca/sites/ccrweb.ca/files/cessation-report-2014.pdf>, at page 2: According to an internal document, CBSA has set itself an annual target of 875 applications to strip refugee status (either through cessation, or through vacation, which involves misrepresentation)

¹² <http://ccrweb.ca/files/conference-report-kitchener13.pdf> , at p. 3

Somali population, and this policy decision just foreclosed the hope of family reunification for many. One cannot even ask for an exemption on humanitarian and compassionate grounds, because the government wholly controls that process.

vii. **Sponsoring parents or grandparents is now even more out of reach for low-income people**

NLS urges the new government to double the number of parent and grandparent sponsorships. NLS also urges the government to repeal the requirements which foreclose parent/grandparent sponsorship for lower income people.

Since January 2014, permanent residents or citizens who want to sponsor a parent or grandparent must now be wealthier, and for longer. They meet the Low Income Cut-Off plus 30% for the three years prior to the application. Further, only 5000 parent and grandparent sponsorships are accepted each year and sponsors must now commit to fully supporting their parents or grandparents for 20 years after they arrive. These rules effectively foreclose the option for an extended family support network for many young families in Canada.

viii. **Only under-19 year old children can now join family in Canada**

NLS urges the new government to fulfill its commitment to return the cut-off age for dependent children to under-22.

Finally, in August 2014 CIC lowered the age for dependent children who can be sponsored or included with a family's application to immigrate to Canada from under-22 to under-19 years of age. Compare this with the province of Ontario's recent decision to provide funding to keep Crown wards in care until the age of 21, given the high risk of homelessness among 18+ youth who had previously abruptly aged out of care upon reaching that age.¹³ To get around this new lower age cut-off, one can only ask for a humanitarian and compassionate exemption from the rule.

What does all this have to do with child poverty?

These laws and policies not only affect those directly subjected to them, but also their spouses, children, and extended family. Child poverty exists within poverty faced by families. Families in turn are affected by the larger social context. When there is discrimination, the most vulnerable in that group – children, women, LGBT persons, refugees -- feel it the hardest. There is a persistent gender gap in earnings, and racialized and immigrant women face extra barriers.

¹³ <http://www.thestar.com/news/gta/2015/09/29/high-school-students-in-foster-care-no-longer-face- eviction-at-18.html>

Taken together, the message is clear: if you were not born in Canada, your welcome could be rescinded at any time. Your contributions to Canada are measured by your economic prosperity. Indeed as promised, Canadian citizenship has become “harder to get and easier to lose”. By this an underclass is effectively created: tenuous and vulnerable.¹⁴

As you know, underlying all of these specific legislative changes has been persistent rhetoric which equates immigrants to threats in our society. Refugees have regularly been called “bogus” “queue-jumpers” by a government that knew better.¹⁵ Titles like the “*Faster Removal of Foreign Criminals from Canada Act*” and the “*Zero Tolerance for Barbaric Cultural Practices Act*” have flavoured the recent years of Canadian immigration law-making. We welcome an end to this kind of discourse.

Any poverty reduction strategy must reverse the trend towards destabilization of immigration status. Municipalities and the federal government must work together to make this happen. Indeed this is an urgent nation-building strategy for our new government. NLS looks forward to working to help reverse this discourse, and to help address the immigrant “underclass” and the rules that keep them marginalized.

¹⁴ Wellesley Institute, *Shadow Economies: Economic Survival Strategies of Toronto Immigrant Communities*, October 2013 <http://www.wellesleyinstitute.com/wp-content/uploads/2013/10/Shadow-Economies-FINAL.pdf>

¹⁵ <http://www.macleans.ca/politics/harper-says-only-bogus-refugees-are-denied-health-care-hes-wrong/>