Refugee Healthcare in Canada: Denying Access Based on Origin and Status

By Lane Krainyk

Abstract

In recent years, the Canadian Government has embarked on an aggressive agenda to change policies relating to refugees and asylum seekers in Canada. Most recently, access to healthcare has been denied to asylum seekers coming from 'Designated Countries of Origin'. In this article, I contend that Canada has acted against its international obligations by failing to provide basic healthcare and discriminating against asylum-seekers based on national origin. The troubling (and unlawful) consequence of these changes is that, in certain circumstances, healthcare for asylum seekers will be denied in emergency and life threatening situations unless there is a risk to public health and safety.

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This paper examines Canada's changing approach for providing refugees and asylum seekers access to healthcare. Refugees and asylum seekers often have difficulty gaining access to sufficient healthcare in their countries of asylum. In most cases, this is a result of insufficient resources to provide for the refugees' or asylum seekers' healthcare needs and/or an unwillingness on the part of the State to allocate sufficient resources to these needs. This unwillingness sometimes results from concerns, founded or unfounded, that some refugee claimants are engaging in healthcare tourism. In Canada, voices in government calling for reduced allocation of resources to refugee and asylum seeker healthcare on this basis have

grown louder, particularly since the Conservatives won a parliamentary majority in 2011 (see the photo, above, for an example). Conservative Members of Parliament have advocated for the end of 'unfair benefits' for refugees.

Recently, there have been significant cuts made to the Interim Federal Health Program (IFHP). The IFHP provides 'temporary coverage of health-care costs to protected persons [refugees and asylum seekers] who are not eligible for provincial or territorial health insurance plans' (Service Canada 2013). However, under the government's new approach, access to the IFHP has been denied to asylum seekers coming from 'Designated Countries of Origin' (DCOs). The DCO list contains a list of countries where the Canadian Government has determined that a person is 'less likely… to be persecuted compared to other areas.' (CIC 2013). These countries, the government suggests, 'respect human rights' and 'do not normally produce refugees' (CIC 2005). Notably, the Minister for Immigration, Jason Kenney, has the unilateral discretion to add countries to the list (Mehta 2012).

Claimants from DCO countries are subject to different rules than other claimants. They have access to fewer protections under domestic law and are deprived of many of the benefits that other claimants receive. The current list, effective 15 February 2013, includes 35 countries. Crucially, the implication of the introduction of the DCO list is that *all* funding for healthcare is denied to asylum seekers from DCOs (unless and until they are granted refugee status). The sole exception that has been carved out is for health situations that are deemed to threaten public health and safety (Mehta 2012). Asylum seekers from DCOs have no access to supplemental care (including drug coverage for necessary medications) and have even lost eligibility for basic and emergency healthcare (including maternal healthcare and life-threatening emergencies).

The government's new policies have had, and will continue to have, drastic implications for both asylum seekers and healthcare providers in Canada. There has been a strong reaction to these changes from the Canadian medical community. The organisation Canadian Doctors for Refugee Care (CDRC) has noted that, as a result of these changes to the IFHP, many 'will no longer be covered for necessary medications such as insulin, and some will be denied access to physicians unless their condition is deemed a threat to public health/safety' (CDRC 2013). The organization further notes that prenatal care for pregnant women and mental healthcare (particularly important for claimants who are survivors of violence or torture) are among the healthcare services cut under the new policies (CDRD 2013). On 20 January 2013, a group of doctors wrote an editorial in the Toronto Star arguing that the denial of basic healthcare to claimants based on their origin makes refugee healthcare in Canada more inaccessible than that in refugee camps (Lai, et. al. 2013). Further, on 25 February 2013, CDRC, the Canadian Association of Refugee Lawyers (CARL) and three individual patients filed a claim with the Canadian Federal Court, asking that the health care cuts be declared unlawful and unconstitutional (CARL 2013).[12]

Canada has a legal obligation to provide healthcare to refugees and asylum seekers. In 1976, Canada ratified the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of the ICESCR stipulates that the 'right of everyone to the enjoyment of the highest attainable standard of health', shall be guaranteed to everyone and also calls for

[12] The case had not been heard at the time of publication.

the 'provision for the reduction of… infant mortality and for the healthy development of the child… the prevention, treatment and control of… disease; and the creation of conditions which could assure to all medical service and medical attention in the event of sickness' (*ICESCR* 1966). Article 12 represents what James Hathaway, a noted refugee scholar, describes as an 'affirmative entitlement' to access 'on a timely basis… a system of health protection which is both of good quality and respectful of cultural and individual concerns' (Hathaway 513 2005).

Further, Article 2(2) of the ICESCR requires State Parties to 'guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to… national or social origin… or other status'. At the 22nd session of the Committee on Economic, Social and Cultural Rights in 2000, General Comment 14 on Article 12 was adopted. The General Comment notes that States are under the obligation to respect Article 12 by 'refraining from denying or limiting equal access for all persons, including…asylum seekers and illegal immigrants, to preventative, curative and palliative health services' and 'abstaining from enforcing discriminatory practices as a State policy' (CESCR 2000: 34).

In addition, the Committee observed in an earlier General Comment on Article 2 of the Covenant that State parties have a 'minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [in the Covenant]' including access to 'primary health care'. Failing to do so demonstrates that the State party has failed to 'discharge its obligations under the Covenant' (CESCR 1991: 10).

Therefore, Canada's discriminatory treatment of refugee claimants is in violation of two of its obligations under the ICESCR. First, it violates Article 12 by not providing for healthcare services to all claimants, even in emergency situations. Second, it discriminates between claimants based on their national origin when determining whether or not to provide care at all. Provision of healthcare has been described as a 'core obligation' under international law and a State party cannot, 'under any circumstances, justify its non-compliance' with this 'non-derogable' right (Hathaway 2005: 513).

UNHCR has spoken specifically on the issue of healthcare provision as it relates to asylum seekers. In a discussion paper on the recommended reception standards for asylum seekers, UNHCR noted that while States have:

> [B]road discretion to choose what forms and kinds of support they will offer to asylum seekers, it is important that… at a minimum, the basic dignity and rights of asylum seekers are protected and that their situation is, in all the circumstances, adequate for the country in which they have sought asylum (UNHCR 2000).

Further, UNHCR goes on to note that there is a 'minimum core content of human rights which applies to everyone in all situations' and that this 'minimum core' includes Article 25 of the Universal Declaration of Human Rights. This recognises the 'right of everyone to a standard of living adequate for the health and well-being of himself or herself including... medical care.' Finally, UNHCR goes on to state that asylum seekers 'may suffer from health problems' that 'require prompt professional treatment' and that 'asylum seekers should receive free basic medical care, in case of need, both upon arrival and throughout the asylum procedure' (UNHCR 2000). While the literature does not present a defined scope of this

'minimum core', it can be inferred from this analysis that at least basic and primary medical care that would allow for an adequate standard of living would be required.

Wherever the threshold lies for this 'minimum core', it is clear that a blanket denial of healthcare to all asylum seekers from certain countries contravenes Canada's obligations. With respect to certain subsections of the refugee claimant population, the Canadian Government's actions are even more clearly contrary to its international obligations. Article 24(1) of the 1989 Convention on the Rights of the Child (CRC) states that State parties recognise 'the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health'. It further obligates State parties to ensure that 'no child is deprived of his or her right of access to such health care services' as contained in the CRC or in another human rights instruments to which that State is party (*CRC* 1989). The Canadian Pediatric Society has noted that the Canadian Government's new policies would deprive children of any care, in certain instances, unless their situation is considered to be a risk to public health and safety (Samson and Hui 2012).

The Canadian Government has attempted to minimise the significance of these changes, suggesting that the extent of the losses is felt by a relatively small population. The government has argued that under the reformed IFHP there are only three exceptions to the continuation of previous coverage: refugee claimants who have been rejected, refugee claimants whose claims are suspended, and refugee claimants from DCOs (Mehta 2012). However, by making this admission, the government effectively concedes that it is violating its international legal obligations and discriminating against individuals based on status and origin.

The changes to the IFHP and the introduction of the DCO list treat refugee claimants as if they were tourists visiting Canada for the purpose of taking advantage of its generous social services. However, the Government of Canada has no way to substantiate this claim before processing asylum seekers and determining refugee status. For example, the government has claimed that asylum seekers from Mexico and Hungary often present 'bogus' claims and has, as a result, added these countries to the DCO list. Yet legitimate claims from these countries are far from rare. In fact, from 2008-2012 almost 1,500 asylum seekers from Hungary and almost 8,000 asylum seekers from Mexico were recognised as refugees in accordance with the Refugee Convention, the UNHCR statute, or as people granted 'refugee-like' humanitarian status (World Bank 2013). Accordingly, individuals coming from DCO countries *do*, in at least some cases, present credible refugee claims. These credible claims undermine the primary justification that the government has provided for the introduction of the DCO list.

The Canadian Government has tried to dismiss the significance of the changes it has imposed. Evidence shows, however, that many are already suffering from the effects of these policies. Minister Kenney has argued that his government is merely working to ensure that refugees and claimants do not access better care than Canadians. Yet, for many affected individuals, the government's policies take away *all* coverage. For many, no coverage remains for emergency care. No coverage remains for maternal care. As a result, the government has violated its international obligations and created a system that denies healthcare access to some of Canada's most vulnerable and marginalised populations. The government's narrative has been misleading. They are not denying refugee claimants access to 'unfair benefits', they are denying them the right to basic and emergency healthcare.

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