A comment on Bill S-8

by David Matas

June 2, 2022

Bill S-8 needs amending. In its present form, it will have a harmful effect on the integration of successful refugee claimants in Canada and the resettlement of refugees from abroad. There is no compelling justification for this harm.

The changes the Bill proposes

The Bill and the current law address three types of sanctions - international sanctions, Canadian Special Economic Measures Act sanctions, and Canadian Magnitsky Act sanctions. Under the current law, persons subject to the first type of sanctions are eligible to make a refugee protection claim. Persons subject to the second and third type of sanctions are ineligible to make a refugee protection claim.[1] The Bill would allow persons subject to all three types of sanctions to make a refugee protection claim.[2]

Under the current law, inadmissibility of a person subject to the second and third type of sanctions disappears if the sanctions disappear.[3] Under the Bill, inadmissibility of a person subject to any of the three types of sanctions disappears if the sanctions disappear.[4]

Under the current law, a person subject to any of the three types of sanctions can not apply for permanent residence after and because of a successful refugee protection claim.[5] That

---

[1] Act sections 35 and 101(1)(f)

[2] Bill section 12 enacting a new 101(1)(f)

[3] Act section 35(2)

[4] Bill section 6 proposing Act section 35.1(2)

[5] Act section 21(2)

prohibition remains with the Bill. [6]

Under the current law, a person subject to any of the three types of sanctions can not apply for permanent residence on humanitarian and compassionate grounds.[7] That prohibition remains with the Bill.[8]

Under the current law, a person subject to the first type of sanctions can apply for Ministerial relief.[9] Persons subject to the second and third type of sanctions can not apply for Ministerial relief. Under the proposed law, a person subject to any of the three types of sanctions can not apply for Ministerial relief.[10]

Under the current law, the first type of sanctions applies to a person because of international sanctions on a country.[11] Under the proposed law, the first type of sanctions can apply to a person where there are international sanctions on a country, entity or person. [12]

Under the current law, the second type of sanctions applies to a person because "gross and systematic human rights violations have been committed in a foreign state" or because the person has been responsible for or complicit in significant corruption.[13] Under the proposed

---

[6] Bill section 2 replacing Act section 21(2)

[7] Act section 25(1) and 25.1(1)

[8] Bill section 2 replacing Act sections 25(1) and 25.1(1)

[9] Act section 42.1

[10] Bill section 8 proposing to replace Act section 42.1

[11] Act section 35(1)(c)

[12] Bill section 6 proposing Act section 35.1(1)(a)

[13] Act section 35(1)(d)

law, the second type of sanctions can apply, in addition, to a person where there are international sanctions or where "grave breach of international peace and security has occurred that has resulted in or is likely to result in a serious international crisis".[14]

In sum, the Bill expands the categories of those who can make a claim for refugee protection, but restrict the categories of those who can apply for Ministerial relief. Under the Act only persons subject to international sanctions can make a claim for refugee protection and apply for Ministerial relief. Under the legislation, persons subject to all types of a sanctions can make a claim for refugee protection, but none of them can make a claim for Ministerial relief. The Bill also expands the sorts of persons who can be subject to inadmissibility related to sanctions.

The impact on refugees

Sanctions impact the admissibility of a person in two circumstances - where the person has done something wrong, and where someone else has done something wrong. Where sanctions are imposed on a person who has done nothing wrong, the purpose is to alter behaviour of a state or entity or other person.[15] Because the purpose of sanctions may be only to alter behaviour of someone other than the person seeking status in Canada through a refugee protection claim or application, a person named on the sanctions list may be perfectly innocent of any kind of wrongdoing.

The trouble with the proposed legislation is that it does not make sense when applied to a

[14] Bill section 6 proposing Act section 35.1(1)(b)

[15] See Government of Netherlands, "Sanctions" at

https://www.government.nl/topics/international-peace-and-security/compliance-with-international-sanctions

person whom Canada recognizes inland as a Convention refugee or a person in need of protection or overseas as a Convention refugee or a humanitarian protected person. If a person is on a sanctions list and has done something wrong to merit their being placed on that list that person would, in principle, be excluded, in Canada, from refugee protection and, overseas, from refugee resettlement. In such a circumstance, there would be no need for an inadmissibility provision based on sanctions.

If a person has done nothing wrong and has been found in Canada to be a Convention refugee or a person in need of protection or abroad found to be a Convention refugee or a humanitarian protected person, the notion that maintaining inadmissibility of that person could contribute to altering behaviour of a state is unrealistic. A finding that a person is a Convention refugee or a person needing protection is a finding that the foreign state from which the person claims protection is either unwilling or unable to protect the person from threatened serious human rights violations or armed conflict.

The notion that a state which is unwilling or unable to protect a person from threatened serious human rights violations or armed conflict would be influenced to alter their behaviour in matters that have nothing in particular to do with the person because that person is placed on a sanctions list is farfetched. The proposed law imposes a gratuitous hardship on persons recognized by Canada inland as Convention refugees or person in need of protection or overseas as Convention refugees or humanitarian protected persons.

The Bill sees there to be a problem in treating different person subject to different types of sanctions differently and attempts to rectify that problem by treating person subject to different types of sanctions the same. However, the Bill suffers from over-aggregation. Persons who have been found by Canada inland to be Convention refugees or persons in need of protection or overseas to be Convention refugees or humanitarian protected persons are different and need to be treated differently.

To a certain extent, both the current legislation and the Bill recognize this by providing that, once sanctions are lifted, inadmissibility on the ground of sanctions disappears.[16] Admissibility on this ground is, of course, unlike inadmissibility on any other ground. Inadmissibility on other grounds continues even though the misdeeds of the person or the organization with which the person has been associated have stopped.

According to Senator Peter Harder, the Senator who introduced the Bill, the remedy for someone who wants to avoid the consequence of a finding of inadmissibility based on sanctions is an application for the lifting of sanctions.[17] Yet, that remedy may be slow in coming and in some circumstances may never arrive.

If the Canadian lifting sanctions bureaucracy functions anything like the Ministerial or humanitarian and compassionate relief functions, the wait for a decision on the lifting of sanctions could be years. Moreover, to apply for the lifting of international sanctions is likely to be no easy task. There should be no need for a Convention refugee or a person in need of protection inland or a Convention refugee or a humanitarian protected person abroad to apply for the lifting of sanctions to obtain permanent residence. This is particularly so because the processing of an application to delist a sanctioned person would likely take a long time, and potentially, could drag out indefinitely.

One can question why it should be necessary and legitimately be concerned about delays. Nonetheless, one can assume that sanctions imposed on a person because of something the person allegedly did would, on application, be lifted should the person be found inland

[16] For the Act see section 35(2). For the Bill see section 6 proposing Act section 35.1(2)

[17] https://sencanada.ca/en/content/sen/chamber/441/debates/046db_2022-05-19-e#48

to be a Convention refugee or a person in need of protection or overseas to be a Convention refugee or a humanitarian protected person, since the refugee protection determination listing contradicts the sanctions listing.

However, the situation is different when sanctions are imposed on a person not because of something the person did, but rather in order to alter the behaviour of a third party. The rationale for the imposition of the sanctions listing would continue despite the finding that inland the person is a Convention refugee or a person in need of protection or overseas is a Convention refugee or a humanitarian protected person.

There is a real risk that such an application for lifting of sanctions would be denied, leading to the denial of permanent residence and its consequent denial of either resettlement or local integration. The legislation leaves open and expands the risk of indefinite limbo for refugees on sanctions lists.

The finding that a person inland is a Convention refugee or a person in need of protection or overseas is a Convention refugee or a humanitarian protected person, in principle, should be inconsistent with the imposition of sanctions. The continuation of sanctions and finding of refugee status do not mesh because of, overseas, the obstacle to resettlement and inland, to integration.

Where sanctions were imposed against a person on the basis of something the person did, the continuation of sanctions manifests a particular inconsistency. The refugee protection finding contradicts the determination that the person is sanctions worthy. It is hard to think of a scenario where there is both a justification for the maintenance of sanctions against a person because of something the person did and finding that a person is a refugee. A finding that person is a refugee is a finding that the person is not excluded from refugee protection. Inland it is also a finding that the person has a well-founded fear of persecution

for listed reasons, or is a person in need of protection. Overseas it is also a finding that the person is a Convention refugee or has been, and continues to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights.

When it comes to refugees, the Bill moves in the wrong direction, piling on obstacles to resettlement and integration rather than alleviating them. Sanctions legislation imposes on the person sanctioned limitations on financial dealings.[18] The continuation of sanctions, even without inadmissibility and denial of permanent residence, would pose difficulties for the local integration of refugees. There is no reason to magnify, for refugees, the impact of sanctions with the imposition of inadmissibility and the consequent denial for refugees overseas of resettlement and for refugees inland of permanent residence.

The Bill instead should move in the opposite direction. Rather than having to apply for a sanctions delisting, a refugee, recognized as such by Canada, should, by effect of law, be automatically, as a consequence of the recognition, be removed from any and all sanctions lists. That delisting would in one fell swoop remove the obstacles to resettlement and integration sanctions that the listing poses.

Bill S-8 allows, as noted, persons on sanctions lists to apply for refugee protection. However, this possibility is legislated only for inland claims. It does not apply to the processing by visa officers of resettlement applications abroad. Abroad, when processing an application for resettlement and receiving information on inadmissibility "the officer may choose to refuse or continue processing the case".[19] A person on a sanctions list who

[18] Special Economic Measures Act section 4, Justice for Victims of Corrupt Foreign Officials Act section 4

[19] Immigration Manual OP 5 Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Classes, section 18.1

applies to a visa office for resettlement can be refused on the basis of being on the sanctions list without any consideration of their application for protection. This is contrary to the intent of the Bill and should be addressed in it.

The United Nations High Commissioner for Refugee observes that there are three durable solutions to the plight of refugees – voluntary repatriation, local integration and resettlement. Sanctions inadmissibility prevents resettlement. Local integration "is a legal, economic and socio-cultural process aiming at providing the refugee with the permanent right to stay in the country of asylum".[20] A refugee without permanent residence is not locally integrated.

The Immigration and Refugee Protection Act provides in section 3:
"(2) The objectives of this Act with respect to refugees are
(b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;"
Denying resettlement to refugees overseas and local integration to refugees inland through denial of permanent residence because they have been placed on a sanctions list, in reaction to something they have done which has already been addressed in the refugee protection determination or in order to alter the behaviour of a third party, conflicts with that objective.

Denying resettlement to persons overseas in need of resettlement and prohibiting permanent residence to protected persons inland are no small matters. The rights of these persons should not be forfeited to the need to alter the behaviour of third persons or in order to rehash the exclusion component of the refugee protection determination. Even though a person in Canada recognized as a refugee can remain, despite the inadmissibility, the denial of permanent residence and a route to citizenship causes international travel

[20] UNHCR Refugee Resettlement Handbook, page 34, section 1.3.4

woes, can make work harder to find because of preference given to citizens and permanent residents, and can block family reunification by preventing sponsorship.

Conclusion

A person overseas should not, at a visa office when making an application for resettlement, be denied consideration of the dangers they face in their country of nationality on the basis that the name of the person is found on a sanctions list. The inadmissibility of a person found to be inadmissible on the ground of sanctions, whether inland or abroad, and then determined by Canada inland to be a refugee or a person in need of protection or overseas to be a refugee or humanitarian protected person should cease automatically by virtue of that refugee protection determination. A Canadian refugee determination, whether inland or abroad, should lead automatically to the deletion of the name of the person from any and all sanctions lists. The Bill should so state.

……..

David Matas C.M. is an immigration, refugee and international human rights lawyer based in Winnipeg. He is a former president of the Canadian Council for Refugees and a former Chair of the Immigration Law Section of the Canadian Bar Association.