



## Canadian Doctors for Refugee Care, et al. v. Attorney General of Canada et al.

(2014) FC 651

**Country:** Canada

**Region:** Americas

**Year:** 2014

**Court:** Federal Court

**Health Topics:** Child and adolescent health, Health care and health services, Health systems and financing, Poverty

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to health, Right to life

### Facts

In 2012, the Governor-in-Council passed two orders modifying the Interim Federal Health Program (IFHP), thereby reducing health insurance coverage for refugee and asylum claimants in Canada. Canadian Doctors for Refugee Care (CDRC) and two groups of lawyers challenged the changes to the program to restore better coverage as the changes had a significant negative impact on the physical and psychological well being of the affected individual.

Prior to the modifications, the IFHP had offered the same health care coverage to all eligible groups, including refugees, refugee claimants, failed refugee claimants, victims of human trafficking and immigration detainees. The modifications to the IFHP effectively divided the eligible class of claimants into three groups, each with different levels of health care insurance coverage. Eligibility for the different classes of coverage was dependent on a number of factors, including an individual's refugee application status, status as a national of a Designated Country of Origin and detainee status.

The modifications to the IFHP were challenged under sections 7, 12, and 15 of the Canadian Charter of Rights and Freedoms (the Charter). Additionally, the applicants argued that the modifications breached Canada's obligations under the 1951 Convention Relating to the Status of Refugees and the Convention on the Rights of the Child.

### Decision and Reasoning

The Court granted the application challenging the constitutional validity and legal applicability of the two Orders-in-Council. The Court declared the Orders-in-Council to be of no legal force, as they violated sections 12 and 15 of the Charter. The Court held that the modifications did not violate the applicant's section 7 right to life, liberty, and security of person as section 7 does not include a positive right to government-funded care. No declaratory relief was granted on the international law submissions, as domestic remedies cannot be granted based on international law in Canada.

However, the Court held that section 12 (freedom from cruel treatment) had been violated as individuals affected by the IFHP changes, particularly children brought to Canada by their parents, were subjected to cruel and unusual treatment. The coverage reductions were found to jeopardize their lives and health in a manner that shocks the conscience.

The Court held that section 15 (equality before the law, without discrimination) was violated, as the changes caused refugee claimants from so-called "Designated Countries of Origin (DCO)" to receive less health insurance coverage than those from other countries. The changes effectively created a disparity in health insurance coverage based on refugee claimants' national origins, contrary to section 15. However, the Court did not find that there was a section 15 violation based on immigration status, as immigration status was not found to be an analogous ground for the purposes of section 15.

The Court held that the violations could not be justified under Charter s 1. The respondents failed to establish a rational connection between the goals of the IFHP changes and the limitations of the rights found in breach. The Court did not find that the changes passed the minimal impairment test. The respondents also failed to

establish that the benefits of the changes outweighed the negative impact on the constitutional rights of those affected.

The Court recognized that International treaties and conventions may be used as interpretive aids in determining whether there has been a Charter violation, but do not form part of Canadian law unless they have been implemented through statute. The Court remarked that the Charter should be interpreted in a manner that presumes to offer at least as much protection as the international human rights instruments Canada has ratified.

### **Decision Excerpts**

With the 2012 changes to the IFHP, the executive branch of the Canadian government has intentionally set out to make the lives of these disadvantaged individuals even more difficult than they already are. It has done this in an effort to force those who have sought the protection of this country to leave Canada more quickly, and to deter others from coming here to seek protection. (Para 1079)

I have found that the affected individuals are being subjected to “treatment” as contemplated by section 12 of the Charter, and that this treatment is indeed “cruel and unusual”. This is particularly, but not exclusively, so with respect to children who have been brought to this country by their parents. The 2012 modifications to the IFHP potentially jeopardize the health, and indeed the very lives, of these innocent and vulnerable children in a manner that shocks the conscience and outrages our standards of decency. They violate section 12 of the Charter. (Para 1080)

I have also concluded that the 2012 changes to the IFHP violate section 15 of the Charter inasmuch as it now provides a lesser level of health insurance coverage to refugee claimants from DCO countries in comparison to that provided to refugee claimants from non-DCO countries. This distinction is based entirely upon the national origin of the refugee claimants, and does not form part of an ameliorative program. (Para 1081)

Moreover, this distinction has an adverse differential effect on refugee claimants from DCO countries. It puts their lives at risk, and perpetuates the stereotypical view that they are cheats, that their refugee claims are “bogus”, and that they have come to Canada to abuse the generosity of Canadians. It undermines their dignity and serves to perpetuate the disadvantage suffered by members of an admittedly vulnerable, poor and disadvantaged group. (Para 1082)

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