

A refused claimant can also apply for a Pre-Removal Risk Assessment but can only raise new evidence, not argue that the initial decision by the Immigration and Refugee Board was wrong. Only 3% of decisions at the Pre-Removal Risk Assessment are positive.

At the end of the day, the Minister of Citizenship and Immigration always has the discretion to intervene in individual cases, where circumstances warrant. However, the Minister has chosen not to make regular use of his power to correct errors.

CALLING FOR AN APPEAL TO CORRECT ERRORS

The Canadian refugee system has many positive features, including an independent tribunal (the Immigration and Refugee Board), high quality research and documentation services and an acknowledgment that women need protection from gender-based persecution. But the system is far from perfect, and, like any system, it makes errors.

The Canadian government has been urged to give refugee claimants an appeal by the United Nations High Commissioner for Refugees and the Inter-American Commission on Human Rights, as well as by many Canadians. Until the refugee system has a mechanism to correct errors, no one can be confident that a refused refugee claimant does not in fact need Canada's protection.

"Where the facts of an individual's situation are in dispute, the effective procedural framework should provide for their review. Given that even the best decision-makers may err in passing judgment, and given the potential risk to life which may result from such an error, an appeal on the merits of a negative determination constitutes a necessary element of international protection."

Inter-American Commission on Human Rights,
Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System, February 2000, paragraph 109.

**CANADIAN COUNCIL
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PROTECTING REFUGEES:

WHERE CANADA'S REFUGEE SYSTEM FALLS DOWN

Canada's refugee determination system is in many ways admirable and allows thousands of refugees each year to find protection.

However, significant flaws in the system mean that some refugees fall through the cracks. These flaws lead to refugees being rejected in error. But the biggest flaw in the system is its inability to correct errors. Once a bad decision is made, there is very little that can be done to remedy the situation because the government has not implemented the appeal for refugees, even though the law provides refugee claimants with a right of appeal.

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FLAWS IN THE SYSTEM

Single decision-maker: Decisions on refugee claims are made by the Immigration and Refugee Board. In the past, refugee claimants were heard by two board members and received a positive decision if at least one board member decided that the claimant was a refugee. Since 28 June 2002, decisions are heard by only one board member. The reduction in board members hearing a refugee claimant was supposed to be a trade-off in return for the introduction of an appeal on the merits. But the government failed to implement the appeal, while still reducing board member panels to one. As a result, a refugee claimant's fate now lies in the hands of a single person.

Political appointments of board members: Members are appointed to the Immigration and Refugee Board through a political process that takes account of candidates' political connections, and not just their ability to make good refugee determinations. As a result, levels of competence vary widely. Many board members are highly qualified while others are of questionable competence. As a result, the refugee process can resemble a lottery for refugee claimants: whether you are accepted or rejected may depend on which board member you appear before.

Bad representation: Refugee claimants, unfamiliar with negotiating Canadian systems, are particularly vulnerable to

exploitation by incompetent and unscrupulous consultants or lawyers. At present consultants, unlike lawyers, are not held accountable for their actions by a professional body. Bad representation means that many refugee claimants' cases are not only poorly presented but are actually completely undermined. In addition, the inadequacy of legal aid coverage in most parts of Canada may seriously limit claimants' access to competent lawyers.

Denial of access to a refugee

hearing: Some people seeking Canada's protection never even get a chance to be heard before the Immigration and Refugee Board. Canada's refugee system has a number of eligibility bars which screens out some claimants, including those who have made a refugee claim before in Canada (no matter what the outcome) and those who have been recognized as refugees by another country, even if they face persecution in that country. Anyone who already has removal order issued against them is also unable to make a refugee claim. As a result, some people who fear persecution never have an opportunity to tell the Immigration and Refugee Board about their fears.

Failure to implement the appeal on the merits: The Immigration and Refugee Protection Act provides for a Refugee Appeal Division to which a refugee claimant could appeal a negative decision.

However, the government implemented the Act in June 2002 without implementing those sections of the Act that gave refugee claimants the right of appeal.

In May 2002, the Minister of Citizenship and Immigration promised the Canadian Council for Refugees that the appeal would be implemented within a year. Over a year later, the appeal has still not been implemented, nor has the Minister made any new commitments about when it will be in place.

"I have already made a commitment to the Canadian Council for Refugees that we will have an appeal system in place in one year's time."

Denis Coderre, Minister of Citizenship and Immigration, House of Commons, June 6, 2002. Over a year later, no appeal system is in place.

Inadequacy of other recourses: In the absence of an appeal on the merits, there is no other mechanism that can ensure that errors are corrected. A refused refugee claimant can apply to the Federal Court, but only with leave (or permission) from the Court and only on technical legal matters. Less than 1% of decisions of the Immigration and Refugee Board are overturned by the Federal Court.