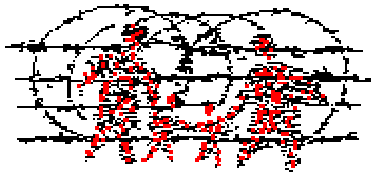

REFUGEES IN CANADA

Canadian refugee and humanitarian immigration policy

1997 to mid-1998

CANADIAN COUNCIL FOR REFUGEES
CONSEIL CANADIEN POUR LES RÉFUGIÉS

In memory of
Nancy Pocock
“Mama Nancy”
died 4 March 1998

Constant friend of refugees
Lover of justice
Lighter of the darkness

TABLE OF CONTENTS

PREFACE

This publication presents an overview of refugee and humanitarian immigration policy in Canada, including a review of developments in the course of 1997 and of 1998 to date, and of the principal concerns of the Canadian Council for Refugees.

The main subject chapters are divided into:

- Summary
- Current and recent developments
- CCR concerns
- Relevant CCR documents
- Detailed information

Because it is intended as a reference tool, readers will find that there is a certain amount of repetition in different sections.

This is the first edition of a review that the CCR is planning to update annually (with improvements). This is in some ways a test-run, so you are very warmly encouraged to make suggestions for changes (corrections, additions, re-formatting etc) for future editions.

October 1998

ACKNOWLEDGEMENTS

Thanks are due to the following people who contributed in various ways to this publication: Beate Andrees, Alistair Boulton, Michael Casasola, Milly Morton and Malvinder Singh.

1. INTRODUCTION

> *In the last analysis, the entire refugee experience, from forcible displacement, through the search for asylum, to the securing of a durable solution, is an important indication of the respect accorded to basic human rights principles worldwide.*
>
> Note on International Protection, Para. 3, United Nations High Commissioner for Refugees, 1998

Refugees, unlike immigrants, are on the move because of human rights abuses. They are seeking not a better life, but life itself. Persecuted in their own country, refugees in flight often find themselves vulnerable to further abuse at the hands of those in other countries who should be their protectors.

At the end of 1997, the UNHCR published *The State of the World's Refugees, 1997-1998*. It presents a largely bleak overview of the world's response to the problems of refugees. The report has this to say about the treatment of refugees by the world's wealthiest countries:

> "Since the middle of the 1980s, more than five million people have submitted requests for refugee status in Western Europe, North America, Japan and Australasia. They have not received a particularly warm welcome. Confronted with growing social problems at home, and claiming that many of these asylum seekers are actually economic migrants, the governments of the industrialized states have introduced an array of different measures intended to prevent or deter people from seeking refuge on their territory" (p. 9).

Canada enjoys a reputation as a defender of human rights and a protector of refugees. Its policies towards refugees are in many ways a model for other countries. It is fitting that Canadians should offer a welcome to refugees, since so many of our ancestors came to Canada fleeing persecution, many of them long before anyone thought of calling them refugees. In 1986, the openness of Canadians was honored when the people of Canada was awarded the Nansen Medal, the only time a whole people have received this prize for service to refugees.

However, Canada's refugee record is mixed. In the years in which the Nazi regime was refining and implementing its genocide of the Jews, Canada's policies were marked by anti-Semitism and its doors were firmly closed on Jews desperately seeking asylum. For much of this century, Canadian immigration policies were racist: the Head Tax on the Chinese being only one of the measures adopted to keep out potential immigrants based on their race or ethnicity. Only in the 1960s was explicit racial discrimination brought to an end.

Today's policies still have some fundamental flaws. Since 1995, all adult immigrants and refugees have been charged $975 for the privilege of permanent residence, making Canada the only country in the

world to charge such a fee to refugees. Refugees whose status has been recognized by Canada are routinely forced to remain separated from their immediate families for years, a situation that is shocking to refugee advocates in countries that are considered far more restrictive towards refugees. The Canadian refugee determination system, for all it is lauded around the world, fails to meet international standards in crucial ways, notably in the absence of the right to appeal on the merits a negative determination. Canada also has in place the kinds of measures to "deter people from seeking refuge" mentioned above. In fact, the Canadian government has boasted of being a world leader in developing strategies against "illegal immigration", strategies that are blind to whether the "illegal migrant" is a refugee fleeing persecution.

If Canada is considered among the world's most generous countries in terms of treatment of refugees, it is an indication above all of the miserable way in which the world is treating refugees.

In recent years, the economic climate and the governments' deficit reduction priorities have had their impact on refugees, always among the most vulnerable when the time comes for cut-backs. Newly arrived in Canada and with very limited resources, refugees and other immigrants have faced reduced services from the Immigration Department, cuts in social assistance and job training programs, reduced medical coverage and legal aid coverage, increased fees in many areas ... Organizations offering services to refugees and immigrants have had to respond to these new difficulties faced by their clients, at the same time that they are themselves often suffering funding cutbacks.

A difficult economic climate also tends to have a chilling effect on public attitudes towards refugees and other newcomers. Certainly few politicians have been prepared to stand up and say that rights need to be respected. And some public figures have played into xenophobic fears, blaming newcomers for problems in society.

Media coverage of refugee and immigration issues is often disturbing. It has become popular with some commentators to claim that "political correctness" prevents people from discussing immigration issues. Review of the papers hardly supports this contention, since journalists, editorialists and other commentators regularly feel free to make unfounded allegations, grossly distort the facts and resort to demagogic xenophobia in discussing refugee and immigration issues. Refugee advocates and refugee lawyers are frequently discredited, on the grounds that they are self-interested and extreme in their demands.

The negative coverage of newcomers is deeply hurtful to those who came as refugees and immigrants to this country. It influences public attitudes, making integration more difficult. It also has a profound impact on policy decisions, as policy-makers scramble to respond not to real problems, but to problems as they are perceived through the media.

Meanwhile, across the country, refugee advocates and human rights defenders work to educate the public about newcomers, to fight xenophobia and racism and press for fairness and compassion in the immigration system. Each year, Refugee Rights Day is celebrated on April 4, the day on which in 1985 the Supreme Court of Canada rendered the *Singh* decision, which recognized that refugee claimants are entitled to fundamental justice. The week in which it falls, known as Refugee Awareness Week, is an opportunity picked up by communities across Canada to celebrate the contributions made by refugees and to raise public awareness about refugee rights. That Canadians are receptive is shown time after time when individual cases of families facing deportation are publicized and elicit broad sympathy and demands that they be allowed to stay.

The purpose of this book is twofold: one, to give fairly detailed information about policy, and, two, to present the perspective of the Canadian Council for Refugees (CCR) on the issues. Since the CCR almost always has a lot to say, this book by no means covers everything: reference is made in the chapters to many other CCR publications which give more detailed information. These can be obtained from the CCR web site or office.

Although this book focuses on policies as they affect refugees (clearly a primary concern of the Canadian Council for Refugees), it also deals with some more general immigration issues. This reflects the CCR's mandate to promote the settlement of both refugees and immigrants. Where immigration policies effectively impede newcomer integration, they are of concern to the CCR. Furthermore, the CCR recognizes that it is not always possible to distinguish clearly between refugees and others more or less forcibly displaced. In addition to advocating for the protection of refugees, the CCR is active in seeking more generally immigration policies and practices that are fair and humane.

Immigration and refugee policies are notoriously complex and constantly changing. It is difficult enough for anyone to follow them, let someone who has been forcibly displaced, who does not speak the English or French and who is vulnerable and traumatized.

Getting information can frequently be difficult. The CCR is privileged to receive information, and increasingly on a regular basis, from Citizenship and Immigration Canada and the Immigration and Refugee Board, which recognize the CCR's role as the NGO umbrella organization. Nevertheless the CCR shares the frustration of others who criticize the lack of transparency. The Legislative Review Advisory Group recently commissioned by the Minister of Citizenship and Immigration made the need for greater accountability a major theme of their report. The Auditor General in his recent report, *The Processing of Refugee Claims*, found that CIC and the IRB "do not provide Parliament with complete and relevant information on the processing of refugee status claims". Despite the fact that the CCR is represented on the IRB's Consultative Committee on Practices and Procedures, the CCR has been refused requests for basic information about IRB functioning.

INTRODUCTION

By law most of the information held by the government can be obtained through Access to Information. Requests do not always however receive prompt and positive responses. According to the 1997-98 annual report of the Information Commissioner, Citizenship and Immigration was, with 207 complaints, the government institution with the second highest number of complaints made against it (National Defence was ahead with 260). 87% of complaints against it were substantiated. In observations based on a study of CIC, the Information Commissioner recognized certain measures adopted by the department to improve its performance, but noted that senior management is not regularly and actively involved in monitoring performance, something that has been key to successful compliance in other departments.

As for the Immigration and Refugee Board, it dropped from the list of the top five institutions complained against (where it had been in 1996-97), but the Information Commissioner refrained from awarding it an honorable mention for improved performance, on the grounds that the problem of delays remains under review.

2. OVERALL FRAMEWORK

International legal framework

The fundamental framework for Canada's treatment of refugees is provided by the international human rights instruments. Fifty years ago, in the wake of the unprecedented human rights abuses committed in the course of the Second World War, the Universal Declaration of Human Rights was proclaimed. At the end of a genocide in which millions of Jews and others died while other countries refused to give them asylum, the drafters of the Declaration proclaimed the right to asylum as one of the fundamental human rights:

> *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
>
> Article 14.1, Universal Declaration of Human Rights

This declaration of the individual's right was complemented in 1951 by the Geneva Convention relating to the Status of Refugees which identified the state's obligations towards refugees. This Convention defines a "refugee" (see page 8) and sets down what are effectively minimum standards for how states must treat refugees on their territory. The most crucial obligation, the principle of *non-refoulement*, is contained in Article 33:

> *No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*
>
> Article 33.1, Convention relating to the Status of Refugees

At the same time the United Nations created the office of the High Commissioner for Refugees (UNHCR), originally as a temporary office to deal with the displaced persons who had been made homeless as a result of the war and the beginning of the Cold War.

As an early instrument, the 1951 Convention is less sophisticated than some of those that came later. For example, it lacks effective reporting and complaints mechanisms. Since those first years after the war, a web of other human rights instruments has been developed. These instruments are in many ways relevant to refugees: in defining the human rights abuses that cause refugees to flee, in setting human rights standards against which refugee claimants' alleged fear of persecution can be evaluated, in encouraging the documentation of human rights abuses (which helps refugees establish the well-foundedness of their fear of persecution), and in setting standards that must guide the treatment of refugees in flight and in a country of asylum, in such areas as detention, due process, and economic and social rights.

There are also instruments other than the 1951 Convention that are relevant to the key refugee principle of *non-refoulement.* The Convention Against Torture, adopted in 1984, contains an important prohibition against *refoulement*.

> *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*
>
> Article 3.1, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Canada only adhered to the 1951 Convention relating to the Status of Refugees in 1969 and did not incorporate it into legislation until certain key parts became part of the current Immigration Act, adopted in 1976[1]. Other relevant human rights instruments, such as the Convention Against Torture or the Convention on the Rights of the Child, have not been incorporated into the legislation.

Canadian Charter of Rights and Freedoms

The Immigration Act, like all other statutes, has however since 1982 been subject to the Canadian Charter of Rights and Freedoms. This soon had a significant impact: in 1985 the Supreme Court of Canada ruled in the *Singh* case that refugee claimants in Canada were protected by the Charter and therefore had to be treated in a manner consistent with the principles of fundamental justice.

Canadian Immigration Act

The basic framework of Canada's immigration legislation is 20 years old and as a result of numerous amendments has become extremely complex. The current Minister of Citizenship and Immigration, Lucienne Robillard, has been heard to complain that studying it gave her a headache.

The 1976 Act recognized refugees for the first time as a distinct category and established provisions for refugees to enter either resettled from abroad or through making a claim in Canada. The Act also made it possible for people in refugee-like situations to be resettled through "designated classes", thus expanding and formalizing the humanitarian potential of the immigration program. Refugee protection is placed within humanitarian immigration, which is conceived as one of three pillars in the immigration program, the other two being family reunification and economic immigration. Among the objectives of the Act, as defined in Section 3 is:

[1] The current Immigration Act, adopted in 1976, came into force in 1978. It is therefore sometimes called the 1976 Immigration Act and sometimes the 1978 Immigration Act.

> *To fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted.*

Important amendments to the Act were made in 1988 and came into effect on 1 January 1989. They created the Immigration and Refugee Board, which was given the responsibility of making refugee determinations in the completely new system for refugee claimants in Canada. This system received some significant modifications in further amendments implemented in 1993.

Immigration Regulations and other directives

In addition to the Immigration Act, a set of Regulations govern the refugee and immigration programs. They can be changed more easily than the Act, but amendments must nevertheless go through a formal process involving layers of approval and publication in the *Canada Gazette.*

Below this, immigration officers are guided by various manuals, operations memoranda and written and oral instructions of various kinds, many of them unknown to those outside the Immigration Department[2] (and not even necessarily known to the immigration officials).

Refugee resettlement and refugee claims

Refugees can find safety and a new home in Canada in two ways: through resettlement from abroad or through making a refugee claim in Canada. "Resettlement" is the process through which refugees are selected abroad and then come to Canada to settle (see pages 17ff for full information). They have permanent resident status from the moment they arrive in Canada. Refugees who arrive in Canada spontaneously enter the refugee claim process (see pages 34ff). While their claim is being determined they are known as refugee claimants[3]. If they are found to be refugees they are protected from removal and can apply for permanent residence. The inland and overseas processes are very different from each other, with the inland process being quasi-judicial and the overseas process administrative in nature.

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[2] Over the years, the name of the immigration department has changed from time to time, as it is joined with or separated from other functions. Currently it is Citizenship and Immigration Canada (CIC), after some years as part of Employment and Immigration Canada. There was a (mercifully short) moment in between when, in 1993 under Kim Campbell's summer government, it was part of Public Security.

[3] "Refugee claimant" is the standard term in Canada. The term "asylum-seeker" is sometimes used in Canada and is the official term in some other countries.

OVERALL FRAMEWORK

In the last 20 years, most refugees came to Canada through the resettlement process, rather than making a refugee claim here (from 1979 to 1997, 367,692 refugees were resettled to Canada, while 106,000 became permanent residents after being recognized as refugees in Canada). However, in recent years the proportion has been reversing itself. For the first time in 1992 more refugees received permanent residence after having made a claim in Canada than were resettled (21,816 inland versus 15,086 resettled).

3. REFUGEE DEFINITION

The word "refugee" can mean many different things, depending on the user and the context. Even in terms of precise, legal definitions, there are many different ones in use. The definition with the greatest international currency is that laid out in the 1951 Geneva Convention relating to the Status of Refugees. It sets the minimum standard of who must be protected from *refoulement* and it is the definition used in the Canadian Immigration Act.

The definition is quite complex, but at its core it states that a refugee is a person who:

> *owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.*

Some of the main elements of the definition are:

> *The person must have a fear* - the subjective test. Generally, it is enough for the person to say "I am afraid", since it is hard to prove that anyone is <u>not</u> afraid.
>
> *The fear must be well-founded* - the objective test. It must be shown that there are real grounds for the fear.
>
> *The danger feared is persecution* - there is no accepted definition of persecution. Key is the nature of the harm: whether the person's fundemental human rights will be violated.
>
> *The persecution must be by reason of one of the grounds listed (i.e. race, religion, nationality, membership of a particular social group or political opinion).* This implies that a person could have a well-founded persecution, but not be a refugee, because of the ground of persecution. In practice, much depends on whether the grounds are interpreted broadly or narrowly. "Social group" and "political opinion" in particular can be considered to cover much ... or little.
>
> *The person must be outside his or her country* - people who leave their homes to flee persecution but do not cross an international boundary are called internally displaced persons (IDPs). The level of international protection offered them is minimal.

Section F of Article 1 of the Geneva Convention lists the **exclusion clauses** which identify categories of people who, even though they meet the elements of the definition listed above, are deemed not to deserve the protections of refugee status. These are people who there are serious reasons to believe

have committed a serious non-political crime, a war crime or a crime against humanity, or a crime contrary to the purposes and principles of the United Nations.

The Convention definition also contains a series of **cessation** clauses which provide for the withdrawal of refugee status, if for example the person voluntarily returns to their country, or the situation in the country has changed such that the person no longer has a well-founded fear of persecution.

The 1951 Convention, which was drafted to meet particular circumstances nearly 50 years ago, is felt by many to be inadequate. One area in which it falls short is its gender bias. The definition was drawn up with the experiences of men in mind: the kinds of persecution suffered specifically or predominantly by women are not reflected in the definition. Gender is not listed as one of the grounds of persecution, even though women are targeted for human rights abuses on the basis of their gender.[4]

This is just one example of how the definition is dated and overly restrictive. Nevertheless, few refugee advocates are pushing for the definition to be revised. This is because, in the current international climate, it seems clear that, were the definition to be re-opened, the governments would narrow it even further, rather than broadening it to cover more of those forced to flee their homes.

Since the 1951 Convention some broader definitions have however been adopted regionally. In 1969 African states developing the *Convention Governing the Specific Aspects of Refugee Problems in Africa* (the Organization of African Unity refugee convention) added to the Geneva Convention definition the following:

> *The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*
>
> Article 1.2, Convention Governing the Specific Aspects of Refugee Problems in Africa

This definition is used by the UN High Commission for Refugees (UNHCR) in Africa.

[4] There are different opinions on whether the refugee definition is fundamentally and irretrievably gender-biased. In practice, in Canada at least, the definition has in recent years been interpreted by the courts to encompass gender-related persecution.

In 1984 states from the Americas meeting in Cartagena, Colombia, decided, based on experiences with Central American refugees, that "it is necessary to consider enlarging the concept of a refugee". They recommended that the definition for use in the region should include:

> *persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.*
>
> Conclusion 3, Cartagena Declaration on Refugees

Geneva convention refugee definition

From the 1951 Convention relating to the Status of Refugees(Article 1):

[A refugee is a person who]:

A. owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

C. This Convention shall cease to apply to any person falling under the terms of Section A if:
(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
(2) Having lost his nationality, he has voluntarily re-acquired it, or
(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under Section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
(6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

4. LEGISLATIVE REVIEW PROCESS

In November 1996 the Minister of Citizenship and Immigration, Lucienne Robillard, announced that she had commissioned three individuals to conduct a review of the Immigration Act. This Legislative Review Advisory Group (LRAG), chaired by Robert Trempe,[5] was asked to review Canada's immigration and refugee legislation, make a comparative review and analysis of other countries' legislation, interview key partners and develop options and recommendations "to strengthen the legislative framework for dealing with immigration and refugee matters". The Advisory Group was expected to submit its report by December 31, 1997.

Throughout 1997 the three members of the Advisory Group gathered information and views by meeting with representatives of the federal and provincial governments and others, soliciting written submissions, travelling abroad and reading available material. They also held a series of roundtables in various cities across Canada, at which selected representatives from a range of sectors (business, police, municipalities, education, immigrant- and refugee-serving organizations, etc) were invited to discuss questions identified by the Advisory Group.

On January 6, 1997 their report was made public by the Minister. Titled *Not Just Numbers: A Canadian Framework for Future Immigration*, it is a document of 168 pages and contains 172 recommendations. It proposes a new immigration and refugee system. The authors declared that they found little in the existing system worth preserving (although in fact many familiar features do appear in the scheme they recommend). Their response to the complexity of the current system and its reliance on discretionary decision-making was to propose a system with clear, simple and rigid rules. They recommended combining the Citizenship and Immigration Acts, but creating a separate Protection Act, which would deal with refugees and others in need of protection.

In making the report public, the Minister also announced that she intended to hold 5 days of consultations in 5 cities in February and March and that she then hoped to table legislation by the end of the year. The very narrow scope of the consultations was immediately criticized, particularly since the Minister's legislative plans suggested that she intended to adopt the bulk of the report's recommendations. The consultations were eventually expanded to 10 days in 7 cities, with numerous groups, however, continuing to complain that many were excluded and that they had so little time to prepare their response to the report.

Overall, reviews of the report in the media could be described as at best mixed and tending towards the unfavourable. Some of the recommendations met with a very hostile response from sectors of the

[5] The other members were Roslyn Kunin and Susan Davis.

public. This was particularly the case with the proposal that all independent immigrants would be required to speak English or French before coming to Canada.

By the time the consultations began, the Minister was at pains to explain that the report was not a government report and did not represent her own views. She specifically rejected the language requirement recommendation, and through the course of the consultations distanced herself from a number of other recommendations. While most presenters backed some of the report's proposals and rejected others, the overall scheme set out by the authors had little support and by the end of the consultations, few of the key elements of the report seemed to be still on the table.

Since the end of the consultations, there has been no official announcement about where the government is heading. By the end of the summer the Minister was no longer hoping to table legislation by the end of the year. Instead she hoped by the end of 1998 to make public the government's intentions for legislative change.

In the meantime, the government is further advanced with plans to amend the Citizenship Act (which will not be combined with the Immigration Act, as suggested by LRAG) and may, if all goes according to plan, table a bill in the fall of 1998.

CCR concerns

The following is the summary of CCR comments on the *Not Just Numbers* (LRAG) report:

Consultation process
The Canadian Council for Refugees is an umbrella organization uniting over 140 groups across Canada. Many of our members have been denied the opportunity to make an oral presentation. The CCR emphasizes the importance of full public discussion and careful study before the drafting of any legislation. There is no justification for rushed and arbitrary deadlines: on the contrary, hurried legislation will be bad legislation. We urge that a consultative process be developed involving input from NGOs and broader public input.

General comments on the report
The principles set out to guide the recommendations are commendable but do not always seem to be followed. We note a lack of explanation in the report about why in some areas radical changes are proposed, while in other areas existing provisions are maintained. The report also raises many questions about practical consequences of the recommendations. We call for the incorporation of international human rights instruments into the legislation. We welcome the proposal to create a separate Protection Act in recognition of the difference between refugees (involuntary migrants) and immigrants (voluntary migrants). However we have concerns about the objectives proposed for the

Protection Act and the way refugee issues are handled under the proposed Citizenship and Immigration Act. Immigration legislation should ensure that non-citizens receive equal treatment with Canadian citizens in comparable contexts. We do not support the proposal to combine citizenship and immigration in a single act, since these matters, though linked, remain distinct and each merit their own separate preamble.

Refugee Protection

A. **The race to the bottom**
Despite its expressed commitment to a leadership role in refugee protection, the report in fact recommends following the example of other countries in closing their doors to refugees. The existing refugee determination system, which has been recognized internationally as a leader in the field, is to be jettisoned and replaced by a refugee determination system that copies inferior measures used by other countries and incorporates the Safe Third Country concept that has been used by many countries to keep refugees away.

B. **International Standards**
We welcome the recommendation that determination of claims consider not merely the Refugee Convention but all other relevant international human rights standards. However, a number of the specific recommendations fail to live up to our obligations under these human rights standards. We are also concerned about an implicit undermining of the 1951 Geneva Convention Relating to the Status of Refugees, which must remain the cornerstone of refugee protection. The concept of "most in need" is ambiguous and potentially contrary to international standards, insofar as Canada must protect from refoulement *everyone* in need of protection, and not simply those "most in need" of protection.

C. **Independence/quasi-judicial decision-making**
The report turns its back on independent, quasi-judicial decision-making, in refugee determination and other areas. This amounts to a rejection of fundamental principles of justice, principles that are integral to a solid, reliable protection system and to fair treatment of non-citizens.

D. **Overseas Protection Process**
We welcome the recommendation for increased focus on resettlement from overseas and the implicit recognition of problems in the current program, without necessarily endorsing the specific recommendations made. We endorse the proposed withdrawal of the successful establishment criterion. Despite the desire to create greater consistency, the overseas process would be in several ways inferior to the in-Canada process and the problems of delays are largely unaddressed. We believe that a reinvigorated resettlement program should be built on the strengths of the existing program. We are firmly opposed to the recommendation to cap the annual numbers of refugees

resettled. The emphasis on the role of NGOs is welcome, although we have concerns about making them responsible for final decision-making.

E. **Timelines**
While a speedier refugee determination is in the interests of refugees, imposing rigid arbitrary timelines within which a person must make a claim and be heard is inconsistent with the realities of refugee determination and the demands of justice. The three-day timeline for presenting oneself at the Protection Agency in order to make a claim is extraordinarily inappropriate.

F. **Appeal**
We welcome the proposal to introduce an appeal into the in-Canada refugee determination system, although some of the provisions fail to meet the necessary standards of fairness. The proposed absence of appeal in the overseas refugee process is unacceptable, and is in contradiction with the declared objective of creating consistency between the inland and overseas systems.

G. **Other**
The CCR calls for the abolition of the Right of Landing Fee and of the article (A.46.04(8)) introduced in 1993 requiring refugees to produce identity documents.

Cost
The proposed model is uncosted but would appear to involve considerable resources, which make some recommendations unrealistic and would likely subvert others from their intended objectives.

Family Reunification
We welcome the commitment to family reunification and the proposal to have a more flexible definition of spouse, increase the age of sponsorable children to 22 and allow sponsors to define family members of most importance to them. The recommendation that immediate family be able to travel to Canada for processing is highly appropriate. Taken literally, this provision does not however apply to the families of refugees in Canada, who have additional protection concerns and therefore should certainly benefit from concurrent processing in Canada. We support the reduction of the sponsorship undertaking duration for immediate family to 3 years and the measures to address domestic violence within sponsorship, although the specific recommendations are flawed. Denial of immediate family reunification on the basis of receipt of welfare is completely unacceptable.

Language Requirements
The CCR opposes any inflexible requirement that immigrants know one of Canada's official languages. We also oppose the imposition of any fees on English or French language classes.

Citizenship and Integration

Questions of citizenship were not part of the advisory group's mandate and have therefore not been the subject of consultation. There needs to be full public discussion about what we are looking for in future citizens. The CCR believes that Canada should not require more of immigrants becoming citizens than we require of the native-born. On that basis we oppose the requirement that potential citizens meet two out of four criteria of participation. We welcome the recognition of the importance of integration although we have reservations about the concept of integration espoused. Reference needs to be made to multiculturalism. Proposed research and data collection on integration success and failure require great caution.

Compliance

We believe that non-citizens should receive equal treatment with Canadian citizens in comparable contexts. The report's recommendations in the area of enforcement amount to a serious erosion of rights. The provisions for detention and automated tracking are of great concern, particularly in their application to refugee claimants.

5. REFUGEE RESETTLEMENT

Summary
Resettlement (the permanent settlement in another country of refugees who are in a place of temporary asylum) is one of the key solutions for refugees. The UNHCR's mandate calls for it to provide protection for refugees and to promote durable solutions for refugees, through voluntary repatriation, local integration or resettlement. Resettlement offers the possibility of ending life as a refugee, and beginning a new life. Resettlement can also be a tool of protection for refugees who are in danger, for example of being sent back to their home country where they risk being persecuted, or are in danger or vulnerable in the country of asylum. Protection through resettlement can also be offered to people who are being persecuted but who are not yet refugees because they are still in their own country.

The UNHCR encourages countries to resettle refugees. Currently there are 10 countries, among them Canada, which have regular resettlement programs. Several other countries accept refugees for resettlement on a case-by-case basis.

The UNHCR refers refugees for resettlement, on the basis of its criteria (see p. 26), which focus on those who need physical protection and those who are in some way vulnerable and whose needs cannot be met in the country of asylum, for example women at risk, refugees with medical needs, and survivors of torture. The criteria also provide for referral for the purposes of family reunion. Some of the refugees resettled to Canada are UNHCR referrals, but many are identified in other ways.

For a refugee to be accepted for resettlement in Canada, a visa officer must be satisfied that the person is a Convention refugee or meets one of the definitions of the Humanitarian Designated Classes (for people in a refugee-like situation outside their home country, or at risk of persecution in their own country). This is called the *eligibility* determination.

Secondly, the visa officer must decide that the person is also *admissible*, meaning that the person is in good health, is not a criminal or a security risk, and is likely, in the view of the officer, to "establish successfully" in Canada.

Refugees can be resettled directly by the government (these are called government-assisted refugees) or can be privately sponsored by a group of Canadians. Each year the government sets a target of how many refugees it will resettle as government-assisted refugees. In recent years the level has been 7,300, down from 13,000 in the 1991-1995 Five Year Plan. To help them resettle, the government contracts non-governmental organizations to offer them temporary housing on arrival, orientation, help with finding accommodation, etc.

In addition, groups in Canada can apply to resettle refugees. These private sponsors may be formal groups, such as faith communities or ethnic associations, who have "sponsorship agreements" with the government, or they may be ad hoc groups of five or more Canadian citizens or permanent residents.

When they apply to sponsor, the private group can ask the government to identify someone in need of resettlement or they can name an individual or family they want to sponsor. In the latter case, the refugees named must still satisfy a visa officer that they meet the eligibility and admissibility criteria.

Once refugees are accepted for resettlement to Canada, they and their immediate dependants can travel here and become permanent residents immediately on arrival. For their first year in Canada (sometimes longer) government-assisted refugees are supported through the Resettlement Assistance Program. Under this program, NGOs are contracted to provide temporary accommodation on arrival, orientation to Canada and help find lodging and refugees receive income support while they are taking language classes or looking for work. In the case of privately sponsored refugees, it is the sponsoring group that provides the emotional, moral and financial support for the period of sponsorship, often offering friendship and a welcoming community in addition to the more impersonal support. Language training and other settlement services are available to all resettled refugees.

In some cases, known as "blended initiatives", both the government and a private sponsoring group are involved. In a **Joint Assistance Sponsorship**, the government provides the financial contribution, while a private group offers moral and emotional support. This form of sponsorship is used for refugees who are expected to have greater difficulty in settling and thus need a greater level of support, because, for example, they have been severely traumatized or because it is a large family with many children. There have also been some other forms of blended initiatives where the government provides the financing for the first months after arrival, after which the private group takes over. In 1995-96 a program of this kind, known as the 3/9, was used to bring into Canada refugees from the former Yugoslavia, in response to an appeal from the UNHCR for emergency resettlement of refugees from the region.

Another way in which refugees may be resettled to Canada is as **Women at Risk**, a program which was designed to assist single women who are either in urgent need of protection or vulnerable or who will need particular assistance in resettling. However, the program is not generally used in cases of urgent protection. Women and their families who come under this program may be sponsored by the government, by private groups or through the Joint Assistance Initiative.

In the case of refugees seeking to be resettled to Québec, the government of Québec plays a key role, setting levels for government-assisted refugees, selecting those refugees to be resettled, administering its own programs for reception, orientation and income support for government-assisted refugees and administering program of private sponsorship for refugees destined for Québec.

Being selected for resettlement to Canada involves a series of expenses: medical examination to determine medical admissibility, travel to Canada and the Right of Landing Fee, imposed by Canada on all adults becoming permanent residents. Refugees generally receive a loan from the government to

cover these expenses - this loan, usually amounting to several thousand dollars, must be paid back after their arrival in Canada. In a small number of special needs cases, where the refugees are deemed to be unlikely to be able to repay the loan, expenses may be covered by the government's non-recoverable loan program.

RECENT AND CURRENT DEVELOPMENTS

In May 1997 the federal government introduced the **Humanitarian Designated Classes** (see page 23), expanding the categories of people eligible for resettlement. The Country of Asylum Class covers people outside their country of origin, who may not meet the Convention refugee definition, but are in a refugee-like situation, having been seriously and personally affected by conflict or massive human rights violation in the home country. The Source Country Class provides for the resettlement of persecuted people who are still in the home country, but only if the country is on a published list. The initial list consisted of El Salvador and Guatemala (the two countries designated for the previously existing Political Prisoners and Oppressed Persons program), Bosnia-Herzegovina, Croatia and the Sudan. In May 1998 three further countries were added to the list: Cambodia, Colombia and Liberia.

The pre-published version of the regulations (published January 1997 in the *Canada Gazette*) contained a provision allowing the government to fix a ceiling on the total number of refugees resettled in Canada in the course of a year. The CCR opposed this measure, which would set a limit on the generosity of Canadians wanting to respond to the needs of refugees. The proposal received negative response in the media and in the House of Commons and was dropped in the final version of the regulations. As part of the revision, the government abandoned the name Resettlement from Abroad Class (RAC) which had been given to the resettlement class (designated classes plus Convention Refugee class).

Also in May 1997 the new sponsorship agreements took effect, after years of consultation, replacing the old master agreements. Private sponsorship groups were required to apply for the new agreement. By August 1998 there were 54 sponsorship agreement holders.

At the same time the Québec government took over administration of private sponsorship applications. Groups wanting to sponsor refugees to resettle in Québec apply to the government of Québec, which offers groups the opportunity to sign agreements similar to the federal agreements.

In March 1997 the government launched the "non-recoverable loan program", which provides for the payment of travel costs and Right of Landing Fees to selected special needs refugees. This responds to situations where refugees, particularly women at risk and large families, are approved for resettlement

to Canada, but then refused travel and ROLF loans, because they are considered to be unlikely to repay the loan.

The Legislative Review Advisory Group in its report proposed a new protection system which would favour refugees applying from overseas. The refugee definition would be broadened to conform to other human rights obligations beyond the Refugee Convention, and a single Protection Agency would be responsible for refugee determination in Canada and overseas. The Agency would be enabled to work in partnership with non-governmental organizations on selection of refugees. Protection officers' decisions would have to be rendered within 6 weeks of the determination interview and would not be subject to appeal. The group also recommended that those resettled not be required to meet the "successful establishment" criterion.

The NGO-Government Committee on the Private Sponsorship of Refugees Program completed nearly 3 years work developing the new sponsorship agreement in the spring of 1997. Elections were held in held in November 1997 at which sponsorship agreement holders choose 6 representatives for the committee (3 continuing, 3 new). The Committee then gave itself an agenda of developing training on refugee sponsorship, revising the sponsorship forms and kits, and pursuing new forms of blended initiatives, all of which will likely result in a number of changes in the near future (including a possible blended initiatives pilot project). Three working groups were established to address these issues.

Two additional working groups were created in the summer of 1998, with representation also from the CCR. One, on special needs refugees, follows on from the international conference on Women at Risk, held in April 1998 in Toronto. A number of proposals for possible improvements came out of the conference, and the "Canada Day" immediately following the conference. Special needs refugees include women at risk, but also other groups for whom there may be special challenges in the resettlement process, such as survivors of torture, the disabled and the elderly.

The second new working group deals with the Refugee Resettlement Model, a project developed by CIC partly as a result of its preoccupation with the difficulty of identifying refugees in need of resettlement. These problems are explained as the result of cutbacks in human resources at the visa offices abroad and the changes in the situation in former Yugoslavia, which mean that CIC no longer expects to be able to process significant numbers of refugees from the region.

A key aspect of the Refugee Resettlement Model is the proposed involvement of non-governmental organizations in some part of the processing overseas, as "service partners". The American model of "Joint Voluntary Agencies" (JVAs) has received considerable attention. A pilot project may follow.

In 1997, there were 7712 government-assisted refugees, of whom 748 were Focus Humanitarian (3/9, ie. partly privately sponsored). 2658 privately sponsored refugees arrived. The total number of

refugees resettled to Canada in 1997 was therefore 10,370. More detailed statistics can be found pages 114, 129 to ?.

CCR CONCERNS

The CCR is committed to the promotion of refugee resettlement in Canada and to maintaining the current programs of government assistance and private sponsorship. The declining numbers of refugees resettled in recent years is a matter of concern. The CCR regularly calls on the government to maintain or increase its commitment to refugee resettlement. The private sponsorship program is founded on the principles of additionality (meaning that the private sector's contribution is above and beyond the contribution of the government on behalf of the people of Canada), naming (meaning the right of private sponsors to identify refugees they wish to resettle) and partnership.

A principal concern of the CCR in relation to refugee resettlement policy is the existence of the "successful establishment" criterion, which evaluates refugees on their integration prospects, rather than their need for resettlement. This requirement has a discriminatory effect on women, who are less likely than men to have the education, professional training and work experience that are factors in determining likelihood of successful establishment.

Decision-making by visa officers on successful establishment and on eligibility seems to the CCR be very inconsistent, with similar cases being treated differently. It is therefore a concern that there is no appeal from a negative decision by a visa officer.

For private sponsorships, the rate of refusal is disturbing (46% of applicants were refused in 1997, going up to 48% in the first part of 1998). Part of the problem is considered to be the lack of adequate training for visa officers. These disappointing results are compounded by problems of communication between sponsors and CIC and between CIC and the refugee applicants.

The CCR also has concerns about the criteria guiding CIC in its selection of refugees. Historically, the government is felt to have chosen refugees who it was felt would make "good" immigrants, rather than those most in need. There is in addition reason to question the regional balance. Despite the heavy concentration of refugees in Africa, the continent continues to be under-represented as a source area for refugees resettled to Canada.

The introduction of the Humanitarian Designated Classes in 1997 was welcome as it expands the categories of displaced and persecuted people to whom Canada can offer resettlement as a durable solution. The effectiveness of the Country of Asylum Class is however reduced by limiting it to privately sponsored refugees. The CCR has called for it to be opened to government-assisted

refugees. Even among privately sponsored refugees, the class seems to be little used (only 22 arrived in 1997 and 55 in the first half of 1998). This is at a time when visa officer refusals of private sponsorship applications are very high. The CCR had hoped on the contrary that the introduction of the Asylum Class would have increased the chances of refugees being accepted.

The existence of a list of countries for the Source Country Class is also a concern, since it reduces flexibility and prevents a response to many individuals in countries around the world that are in need of protection. The CCR has urged the government to drop the list, or, in the alternative, to significantly increase the number of countries on the list.

In terms of resettlement processing, the CCR has long been concerned about the long delays in many cases. It is not unusually for refugees to wait two, three or more years from the time of application to arrival in Canada. In October 1997 the CCR published a report of a study conducted in cooperation with the UNHCR on the processing of a select group of special needs refugees. The study demonstrated the overall trend of slow processing, despite UNHCR involvement (*CCR Report on the CCR-UNHCR Special Needs/Women at Risk Refugee Sponsorship Project*, October 1997).

The CCR is opposed to the imposition of the Right of Landing Fees on resettled refugees, as it is opposed to it for any category of immigrant. In the case of refugees, who in many cases have lost almost everything, it is particularly unfair to burden them with a significant debt load as they start their new life in Canada. Resettled refugees already generally arrive with a debt for their travel to Canada.

Relevant documents

- *Comments on 1999 Refugee Levels*, 31 July 1998
- *Comments on the Report of the Legislative Review Advisory Group: Not Just Numbers*, March 1998
- *CCR Report on the CCR-UNHCR Special Needs/Women at Risk Refugee Sponsorship Project*, October 1997
- *Comments on the Resettlement from Abroad Class Regulations*, February 1997
- *Project Report on the Private Sponsorship of Refugees Program: Comments*, February 1994
- *Private Sponsorship of Refugees Programme: Future Directions*, January 1994

Detailed information

Eligibility
Since May 1997, there are three categories of persons eligible for resettlement in Canada: Convention Refugees as well as two Humanitarian Designated Classes (the Country of Asylum Class and the Source Country Class).

REFUGEE RESETTLEMENT

Convention Refugee class

The person meets the Convention Refugee definition.

> The requirements for Convention Refugees are found in the Immigration Regulations, Section 7.

Country of asylum class

The person is in a refugee-like situation without meeting the Convention Refugee definition. More precisely, the person must be:

- outside his/her country of citizenship or habitual residence (and also outside Canada)
- seriously and personally affected by civil or armed conflict or a massive violation of human rights in the home country

Persons in the Country of asylum class must be sponsored by a private group; they cannot be government-assisted.

The visa officer must also decide that there is no possibility, within a reasonable period, of a durable solution for the person.

> Durable solution means (as defined in the regulations applying to source country and country of asylum classes):
>
> - voluntary repatriation; or
> - resettlement in the country of citizenship or habitual residence, in a neighbouring country or in the country of asylum; or
> - an offer of resettlement by another country.

Source Country class

The Source Country class only applies to countries specified by the government: currently, Bosnia, Cambodia, Croatia, Colombia, El Salvador, Guatemala, Liberia, Sudan.

The person must:

- be still inside his/her country.
- be seriously and personally affected by civil or armed conflict in the country; OR
- be or have been imprisoned or detained or subjected to some other recurring penal control as a result of activities that would be considered in Canada as a legitimate expression of free thought or legitimate exercise of right to dissent or trade union activity; OR
- meet the Convention Refugee definition apart from not being outside his/her country.

In this category, too, the visa officer must decide that there is no possibility, within a reasonable period, of a durable solution for the person.

> The Humanitarian Designated Classes are defined in regulations, SOR/97-183.

The Source Country and Country of Asylum classes, which were introduced in May 1997, replace a previously existing system of designated classes, which defined specific groups. Over the years, the most significant of such classes were the Indochinese Designated Class (Vietnamese, Laotian and Cambodians) and the Self-Exiled Class (for defectors from Eastern Europe). There was also a class of Political Prisoners and Oppressed Persons, which was a precursor of the Source Country Class, and continued in place until the introduction of the new Humanitarian Designated Classes.

Admissibility
Anyone being resettled as a refugee or under the humanitarian designated classes must pass a medical exam, have criminality and security clearance and show that they can successfully establish themselves in Canada.

Medical - Refugees cannot be resettled to Canada if they have a disease or disability or other health problem that could make them a) a danger to public health; b) make excessive demands on health or social services [Immigration Act, Art. 19(a) (i) and (ii)].

The medical evaluation is conducted by a doctor specially authorized by CIC known as a Designated Medical Practitioner. The cost of the medical exam must generally be borne by the refugee, although the Canadian government may loan the money, and the sum will be incorporated into the transportation /ROLF loan (see below).

Once a refugee has received a positive result on a medical examination, the clearance is valid for six months only. If processing is delayed for any reason beyond six months, the medical will need to be re-done.

In some cases, notably if the refugee is found to have tuberculosis, he or she will need to undergo treatment before medical clearance will be given.

Criminality / Security - The visa officer will make basic checks to ensure that the refugee does not have a criminal past or present a security risk [The criminality and security exclusion clauses are found in the Immigration Act, 19 (1) (c) - (l)]. Where there are particular concerns about people potentially inadmissible (for example, in dealing with Rwandans after the 1994 genocide), security checks are more rigorous and are likely to take longer. If the visa officer identifies some security issues, the refugee may interviewed by a CSIS officer who will give an opinion. However, it is the visa officer who makes the final decision about whether the person is admissible or not.

Successful establishment - An immigration officer must decide that the person and all accompanying dependants will be able to become successfully established in Canada.[6] Although it is not a point system, the regulations state that the following factors are to be taken into account:

- ability to speak English/French
- age
- level of education, work experience, skills
- "personal suitability" including adaptability, motivation, initiative, resourcefulness and other similar qualities.

Review of decisions
There is no mechanism for appealing decisions by visa officers. It is, on the other hand, possible to seek judicial review in the Federal Court, where the reasoning of the visa officer can be challenged, for example because s/he has misunderstood the law or ignored evidence. There is no leave requirement (i.e. applicants have a right to a hearing). An application must be made within 30 days of the decision.

Sponsors can also communicate with the CIC Case Management Branch in Ottawa if they are dissatisfied with a visa officer's decision.

Travel documents
The Immigration Regulations generally require anyone immigrating to Canada to have a valid passport, travel document or certain other types of identity document. An exception can be made for Convention refugees seeking resettlement and members of the asylum or source country classes. They do not have to have such a document if the visa officer is of the opinion that "it would, in practice, be impossible for that person to obtain a passport or an identity or travel document" (R. 14(2)).

Processing
Most of the processing of refugees for resettlement takes place at visa offices overseas. All refugees need to be interviewed. Since there are no Canadian visa offices in many countries where refugees are, visa officers make trips, more or less frequently, to conduct interviews in surrounding countries[7]. If the refugee is in the same country as the visa office but in a different city or area, he or she may need to travel to the visa office. While some refugees are processed relatively quickly, in many cases there are long delays, sometimes lasting several years, before refugees are allowed to travel to Canada. Causes for delays include lack of adequate resources at visa offices, difficulties in communication between the visa office and the refugee (because of lack of technological infrastructure or because of the danger to the

[6] Section 6 of the Immigration Act specifically includes Convention refugees in the "general principle of admissibility of immigrants", according to which the immigrant must meet standards established for "determining whether or not and the degree to which the immigrant will be able to become successfully established in Canada" (S. 6 (1)).

[7] A single visa office will cover vast areas. For example, the Nairobi visa post covers some 26 countries or territories. Some countries may be visited only once a year or even less frequently.

refugee, who may for example be in hiding), and problems in coordinating all the required elements (for example, medicals may expire while the security check is being conducted).

There are no established standards for processing times. In practice, most familiar with the process would consider six months fast, and refugees often wait one, two or even more years in the process.

Where the visa officer decides the case is particularly urgent, it is possible for refugees to be issued a Minister's permit, allowing them to travel immediately to Canada and complete processing for permanent residence in Canada. This recourse is however rarely used.

UNHCR

The UNHCR has produced a *Resettlement Handbook* (last revision April 1998) which outlines UNHCR policy and procedures relating to resettlement. It also includes "country chapters" which give information about the resettlement programs in each of Australia, Canada, Denmark, Finland, the Netherlands, New Zealand, Norway, Sweden, Switzerland and the United States of America.

The UNHCR has established the following criteria for determining resettlement as the appropriate solution:

A. Legal and physical protection needs
- immediate or long-term threat of refoulement to the country of origin or expulsion to another country from where the refugee may be refouled
- threat of arbitrary arrest, detention or imprisonment
- threat to physical safety or human rights in the country of refuge analogous to that considered under the refugee definition and rendering asylum untenable.

B. Survivors of violence and torture

C. Medical needs

D. Women-at-risk
- For resetlement purposes, women-at-risk are women with protection problems who are single heads of families or are accompanied by an adult male who is unable to support and assume the role of the head of the family.

E. Family reunification
Priorities to:
- reunification of nuclear family
- unaccompanied minors

F. Children and Adolescents
- Priority to unaccompanied minors

G. Elderly refugees

H. Refugees without local integration prospects

Annual Levels
Each year the Minister of Immigration is required to table in the House of Commons by 1 November a plan for the coming year, including an estimate of the number of arrivals in each immigrant and refugee category (Immigration Act, S. 7). These numbers are estimates rather maximum numbers.[8] Since 1995, the government has for most categories proposed a range, rather than a single number. For example, the plan for privately sponsored refugees in 1998 is 2, 800 - 4, 000. However, in the case of government-assisted there is a single estimate: 7, 300 in 1998 (as it has been since 1994). This number is closely associated with the money set aside for the Resettlement Assistance Program (see below).

The government also makes plans for how the available resettlement places are to be distributed around the world. The visa offices are then expected to identity, select and process the number of refugees assigned to their region. For 1998, the places have been assigned as follows:

Europe: 5395
Africa: 1165
Middle East: 420
Latin America: 250
Asia/Pacific: 890
Management reserve: 8

Québec plans its own levels for refugees, which are counted within the federal total. In 1998 Québec plans to resettle 2,000 government-assisted refugees.

The annual levels setting exercise includes a process of consultation of the provinces and "such persons, organizations and institutions as the Minister deems appropriate" (Immigration Act, S. 7 (1)). In the case of the refugee levels, refugee sponsoring groups and the Canadian Council for Refugees are consulted.

Resettlement Assistance Program (RAP)
Government-assisted refugees receive support for their first year in Canada through the Resettlement Assistance Program, managed by Citizenship and Immigration Canada[9]. This consists of income support, paid to the refugees for the full year or until they become self-supported, and services upon arrival. Non-

[8] The Act does however provide for maximums to be imposed, if the regulations so direct and in 1997 regulations pre-published by the government would have made numerical limits on resettled refugees possible. This proposal met with considerable opposition and was withdrawn from the final version of the Regulations.

[9] Refugees selected by Québec receive similar services managed by the Québec government .

governmental organizations are contracted by CIC to deliver these initial services (for the 4-6 weeks after the refugees' arrival in Canada).

These services include:
- meeting the refugees on arrival
- temporary accommodation (either in a hotel or in a reception centre specially designed for newcomers)
- basic orientation to Canada and to the RAP
- assistance in making to the links to other government programs
- assistance with finding permanent accommodation

There is $44 million annually in the RAP budget.

Private sponsorship
Through the private sponsorship program, Canadians can offer resettlement to refugees, over and above the effort made by the Canadian government on behalf of all Canadians. It is a program that has no equivalent in any other country. Since 1979 when the program began more than 170,000 refugees have been resettled through private sponsorship, and it continues to offer a permanent solution to many refugees who would otherwise continue to be homeless and at risk. In its first few years, the plight of the South-East Asian boat people inspired thousands of Canadians to respond.[10] In 1997, 2,658 refugees arrived under private sponsorship.

There are two ways in which Canadians can organize to sponsor refugees: through a "Group of Five" or through a sponsorship agreement holder[11].

Group of Five
Five or more Canadian citizens or permanent residents can apply to sponsor a refugee or refugee family (or members of the humanitarian designated classes). They need to submit detailed financial information to satisfy an immigration officer that they have the income and other resources to support the refugees that they are sponsoring.

Sponsorship agreement holders
Organizations can sign an agreement with the government which authorizes them to undertake private sponsorships. They will need to satisfy the government that they have the financial resources and the expertise necessary to manage sponsorships. The agreement outlines the respective responsibilities of the government and of the sponsoring group. The current agreement took effect in May 1997, replacing an earlier agreement (called a "master agreement").

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[10] It was in recognition of this response above all that the Canadian people were in 1986 awarded the Nansen Medal, the only time this honour marking service to refugees has been conferred on a whole people.

[11] Since 1997, Québec has administered the private sponsorship program for refugees destined to Québec.

The NGO-Government Committee for the Private Sponsorship of Refugees, created in response to a CCR resolution, has existed since 1994 to allow sponsorship groups and the government to discuss issues relating to the program. The sponsoring agreement holders elect the 6 non-governmental representatives on this committee.

Sponsorship agreement holders can apply directly to sponsor refugees or they can authorize "constituent groups" to submit sponsorships under their agreement.

Naming
Private sponsors have the right to identify a particular refugee or refugee family that they want to sponsor. In such a case (known as a "named sponsorship") the visa office will contact the person(s) named and decide whether or not they meet the eligibility and admissibility criteria. Sponsors can also submit "unnamed sponsorships", in which case CIC will try to match the sponsor with a refugee family identified by a visa officer[12]. The sponsor can indicate preferences, for example of family size or source country or request someone under the Women at Risk program.

Obligations of sponsors
Private sponsors undertake the provide those they have sponsored with the following:

- reception (meeting the refugee on arrival in the community)
- lodging (suitable accommodation, basic furniture, household essentials)
- care (food, clothing, local transportation costs and other basic necessities of life)
- settlement assistance and support (help in learning English/French and finding a job, ongoing friendship, encouragement and assistance to help in the process of adjustment to Canadian society, teaching the rights and responsibilities of permanent residence in Canada and assisting the refugees to participate in everyday life).

The period of sponsorship is determined before the refugees arrive in Canada and is usually one year. However, in some cases, where the visa officer decides that the refugees may need longer to become established in Canada, they can fix a longer period, up to a maximum of 24 months.

If the refugees become self-sufficient before the end of the sponsorship, the sponsors' obligations cease.

The requirements of private sponsorship is dealt with in the Immigration Regulations, Section 7.1.

Blended initiative

a) Joint Assistance for Refugees
Joint Assistance refers to a joint undertaking by a sponsoring group and CIC to sponsor refugees (or members of the humanitarian designated classes) who require special assistance and who would without

[12] CIC runs a "matching centre" in Ottawa to find sponsors for refugees (and vice versa).

this assistance be found inadmissible (unable to successfully establish). The goal is to give the refugees greater support than is available in either a government-assisted sponsorship or a private sponsorship.

Those coming under a Joint Assistance Sponsorship are likely to be:

- refugees with a physical disability (but that does not require institutional care)
- Women at Risk
- disadvantaged by their refugee experience (survivors of torture, long-term camp stays)
- large families that would have unmanageable debt-loads and socio-economic difficulties in their early settlement period.

The government provides the income support for the refugees jointly assisted, while the sponsoring group provides all the support regularly required of private sponsors, as well as other specific and specialized services as jointly agreed to by the sponsor and CIC.

Joint assistance sponsorships are counted as government-assisted refugees for the purposes of the immigration levels.

b) 3/9 blended initiative

Another type of sponsorship involving both government and private sponsors is the "blended initiative", also known as the "3/9 program". Under this form of sponsorship, the government covers the start up costs for the newly arriving refugee (clothing, furniture, rent) and pays income support for the first 3 months. A private sponsorship group gives moral and emotional support from the beginning and covers the costs of income support for the final 9 months of the initial year (or until the refugees become self-supporting, whichever is earlier).

The 3/9 model was used for a specific agreement signed by the government in 1994 with the Ismaili Council for Canada and Focus Humanitarian Assistance Canada, to resettle 1500 Asian refugees, over 3 years. In the event, there were some delays in the project. 259 arrived in 1995, 765 in 1996, 748 in 1997 and 30 in 1998 (to September), totalling 1802.

In 1995 a 3/9 program was launched with the specific goal of responding to an appeal by the UNHCR for the resettlement of refugees from the former Yugoslavia. The Canadian government made a commitment to resettle a minimum of 500. Private sponsors and the government then agreed to use the 3/9 model to increase the number of refugees resettled by adding the private sponsors' contribution. 605 refugees arrived under the program in 1995 and 472 in 1996.

There is no blended initiative running currently, but discussions are underway to have an ongoing blended program, probably on a 4/8 model.

Women at Risk

To become part of the Women at Risk program[13], a woman must be a Convention Refugee or meet the definition in either the Source Country or the Asylum Country Classes. She must also be:

a) in a precarious situation where the local authorities cannot assure her safety.

> This includes women who are experiencing significant difficulties in refugee camps, such as harassment by local authorities or by members of their own communities. Urgent protection cases, such as women in physical danger, or danger of refoulement are to be accorded first priority;

OR

b) not in immediate peril, but existing in permanently unstable circumstances which allow for no other remedy.

> Because of low level of skills, or because they are accompanied by small children, or other factors, these may be women who have been passed over by Canada or by other resettlement countries in the past. At the same time they should show potential for eventual successful establishment in Canada with the assistance available to them through government services and a sponsoring group. It is accepted that the integration of such women into Canadian society can be expected to be difficult.

Women at Risk can be government-assisted, privately sponsored or come under a Joint Assistance Sponsorship (the last is often the case).

Although the program guidelines do not actually state this, it is understood that Women at risk must not have a husband.

The "successful establishment" criterion still applies to women at risk, but visa officers are expected to be more flexible in applying it. Where visa officers feels a woman will have difficulty establishing herself, they generally call for a Joint Assistance Sponsorship and may require a sponsorship period of two years, rather than the standard one year.

Most women accepted under the program are referred by the UNHCR. Others approach the visa office themselves, are identified by visa officers during interviews or are referred by NGOs.

Québec sponsorship

[13] The Women at Risk program was piloted in 1987 and established formally as a program in 1988. From 1988 to the end of 1997, 359 women (with a total of 668 dependants) have been resettled to Canada through the program.

Since 1997 the Québec government has taken over the administration of the private sponsorship program for refugees settling in Québec. It signs with groups agreements similar to the federal sponsorship agreement. Group of five sponsorships are also possible.

While Québec has only been administering private sponsorship since 1997, it had before that had the right to approve or deny all refugees being resettled to Québec. Approval is indicated by the Certificat de sélection du Québec (CSQ) without which a new immigrant cannot settle in Québec. The federal government, through its visa officers, continues to make the refugee and admissibility determinations. The Québec approval is thus an extra stage in the process, which can cause additional delays for refugees waiting for resettlement. However, in some cases the Québec determination is to the advantage of the applicant, since even if the federal visa office decides that the person is not a refugee and does not fit the humanitarian designated classes, Québec can decide to resettle the person under a special category (article 18 c) iii) of the Regulations on the selection of foreigners (Règlement sur la sélection des ressortissants étrangers)).

Parallelling the federal NGO-Government committee, there is in Québec an advisory committee (le Comité consultatif permanent sur le parrainage collectif).

Transportation & ROLF loans

Citizenship and Immigration can make available to Convention Refugees and other categories of persons loans for transportation to Canada, for the payment of the Right of Landing Fee and for satisfying the admissibility requirements (notably the medical exam). The Immigration Regulations specify who is eligible and on what terms. They also set a ceiling on the loan fund of 110 million dollars (45(4)).

Repayment of the loan is normally to be made by monthly installments, beginning 30 days after the person's arrival in Canada, at a rate of $100 a month or less (unless it is over $6000).

An immigration officer can defer repayment or reduce the monthly payment, if the person is not able to afford it.[14]

Interest is charged only if the person defers payment or reduces the monthly payments.[15]

The rules for loans are spelled out in the Regulations, paragraphs 45-48.

Payment of transportation costs and ROLF for special needs refugees

[14] But not for more than an additional 24 months.

[15] If the person has a $2400 loan repayment will be scheduled at $100 a month for 24 months. Interest will begin to be charged on the 25th month on any remaining unpaid part of the loan. NB this "grace period from interest" is only granted to refugees and members of humanitarian classes. Others granted loans are charged interest right from the beginning.

Beginning in March 1997, CIC has had the ability to pay outright the transportation costs, medical exam costs and Right of Landing Fee for some special needs refugees.[16] This is an expansion of a program to pay for transportation and medical costs for disabled refugees: the money set aside for this was being little used, largely because few disabled refugees are allowed to resettle in Canada.

Only refugees coming under Joint Assistance Sponsorship are eligible for this program. However, they are not automatically eligible: visa officers are directed to give them loans in the usual manner if they are of the opinion that the refugees could reasonably be expected to repay a loan.

Visa officers cannot give refugees access to this fund. They are required to write a recommendation and forward it to National Headquarters in Ottawa. There the case will be reviewed and other alternatives will be considered, notably asking the sponsoring group to take responsibility for a loan or make a lump-sum payment. Headquarters can approve access to the fund, direct that the person be given a loan or refuse both the contribution and the loan (thus effectively preventing the person from being resettled to Canada).

The fund has $100,000 annually and was estimated to be enough to cover the needs of between 12 and 20 refugee families.

[16] Since the Right of Landing Fee goes into Consolidated Revenues, this results in the bizarre situation of the government paying itself to resettle refugees in Canada.

6. REFUGEE CLAIMS IN CANADA

Because Canada is obliged by international law not to send (or *refoule*) refugees back to persecution, it must give people on Canadian soil the opportunity to show that they are refugees and therefore need Canada's protection. The authority for deciding who is refugee has since 1989 been given to the Immigration and Refugee Board, an independent quasi-judicial tribunal.

It is possible to make a refugee claim at the border (e.g. at one of the US-Canada border points or at one of Canada's international airports) or from inside the country (e.g. a person in Canada on a student visa or with no status at all). However, the law prohibits a person in Canada from making a refugee claim if a removal order has already been made against the person.

Even though it is the Immigration and Refugee Board (IRB) that makes refugee determinations, refugee claims are not made at the IRB but with Citizenship and Immigration Canada (the Immigration Department) which first determines which refugee claims are eligible to be referred to the IRB. Claims are not eligible if the claimant has previously been found not to be a refugee and has been outside Canada for less than 90 days, has already been found to be a refugee or is found to fit any of various categories of criminality or security risk. The law also provides for excluding claims if the claimant has passed through a "safe third country" on the way to Canada. However, since no "safe third countries" have been named, this provision is not in force. Decisions about eligibility are made by immigration officers, except in the case of criminality or security issues, when an immigration adjudicator makes the decision. Most claims are found to be eligible.

Eligible claims are referred to the Convention Refugee Determination Division, one of three divisions of the Immigration and Refugee Board. It must decide whether or not the claimant is a Convention Refugee. Claimants are asked to fill out a Personal Information Form (PIF) and submit it within 28 days of the claim being referred. A hearing will then be scheduled and the claimant appears before two members of the CRDD who will make a decision. Where the two members disagree about whether to give refugee status or not, the positive decision prevails. Some claims which appear on the basis of the available documentation to be strong and present no difficulties are given a positive decision through the expedited process, which substitutes an interview with a Refugee Claim Officer for the full hearing. A CRDD member must still make the final decision having reviewed the file.

The refugee claim process is intended to be non-adversarial: the idea is that it is an inquiry (a search for the truth) rather than a battle between two opposing points of view between which the decision-maker must decide. At the refugee hearing, besides the CRDD members, claimant and counsel and interpreter, the other player often present is a Refugee Claim Officer, who is there to assist the process by providing relevant information in a neutral manner. However, in practice, in some cases the RCO ends up effectively representing the case against the claimant.

The exception to the non-adversarial principle is when the Immigration Department believes that the claimant should not be recognized as a refugee, in which case they send to the hearing an official as a representative of the Minister who presents the argument against the claimant. This most often happens when the Department believes the person fits one of the exclusion clauses of the refugee determination (for example, has committed serious crimes outside Canada).

If a claimant does not do everything required as part of the refugee claim process (e.g. does not submit the PIF in time, or fails to appear for a scheduled hearing without a valid excuse), the claim can be declared abandoned. It is also possible for the claimant to withdraw the claim.

Claimants have the right to be represented by counsel in the refugee determination process. Strong representation is critical, given that issues of life and security are at stake, complex legal issues are involved and most refugee claimants neither speak English nor French, nor are familiar with the Canadian legal system. Since most claimants cannot afford to pay for a lawyer, they are often dependent on legal aid, which varies from province to province. In some provinces, refugee determination is not covered by legal aid, while in others the legal aid rates are so low that few lawyers will agree to take cases on legal aid.

If the claimant is found to be a refugee, he or she can apply for permanent residence (see page 49).

For those who are found not to be refugees, there is no possibility of appeal. The only recourse available to correct a bad decision is an application for judicial review, meaning a request to the Federal Court to review any legal, technical errors in the way the decision was reached. Although this judicial review is sometimes called an "appeal", it is not an appeal on the merits and cannot consider any new evidence, nor can the Court overturn the Board's decision simply because they believe the decision was wrong. There is no automatic right to even judicial review: the claimant must be granted "leave" or permission. Most requests are refused (perhaps 90%) and no reasons are given by the Court for this decision. If the Federal Court grants leave, a hearing is held for the legal arguments. If the Court overturns the decision of the Board, the case is sent back to the Board for re-hearing.

The other recourse for refused refugee claimants is through the risk review (page 69).

RECENT AND CURRENT DEVELOPMENTS

The summer of 1997 saw an increase in arrivals of Roma refugee claimants from the Czech Republic, reportedly inspired by a TV documentary giving a favourable picture of the haven offered by Canada to persecuted Roma. CIC ordered systematic criminality checks for these refugee claimants, a discriminatory measure that was criticized by the CCR and others. These checks caused significant delays for many of the Roma in the eligibility stage. The order was subsequently revoked.

The numbers of arrivals were not large in the context of regular arrival rates. 1,285 claims from the Czech Republic were received in the first 9 months of 1997, compared to a global total of a little under 25,000 refugee claims for the year. However, the concentration of arrivals in Toronto, combined with the delays imposed in the eligibility stage because of the criminality checks, caused a stress on the Toronto shelter system that had recently been suffered severe cut-backs. Many of the Roma claimants were housed in motels in Scarborough, Niagara and other areas outside Toronto, with considerable press coverage, much of it hostile. Racist demonstrations were held outside the motels. However, other Canadians protested at the racist responses and volunteers and local institutions came forward to help the newly arrived Roma settle.

In October the government re-imposed the visa requirement on citizens of the Czech Republic, effectively preventing further Roma from seeking asylum in Canada. Instead, Roma began to arrive in the United Kingdom. For the refugee claimants in Canada, some refugee determinations began slowly to be made in their cases. While some were accepted, others have been refused. (From January to June 1998, out of 345 cases finalized, 154 (45%) were found to be refugees, 31 (9%) were refused refugee status and 160 (46%) were withdrawn or abandoned.) Regional differences in determination have been noted.

In 1997 CIC implemented a version of the Pearson pilot project at the Buffalo-Niagara border point (the US-Canada border point at which the largest number of claims is traditionally made). Refugee claimants presenting themselves at the border are given an eligibility form and directed back to the US where they must fill it in and return it to CIC by mail, and then await a determination on their eligibility before they are re-admitted to Canada. Much of the burden of assisting refugees in filling out these forms fell on VIVE, a Buffalo organization that helps refugees on their journey to Canada, and which does not have the resources to offer these new services. The new system also presented easy opportunities for unscrupulous agents to offer to fill out the forms for a price.

In February 1998, the Minister of Citizenship and Immigration announced that negotiations with the United States on a refugee determination allocation agreement, which had been suspended since April 1996, were abandoned. The proposed Memorandum of Agreement (MOA) would have enabled the government to designate the US as a "safe third country" for the purposes of eligibility determination. (See page 91)

In February 1998, the US Immigration and Naturalization Service, Buffalo District, began to detain refugee claimants waiting to enter Canada to pursue a refugee claim. Claimants seeking asylum in Canada from the US at the Buffalo-Niagara border crossing must present themselves at the Canadian side where they will be given an eligibility form and returned (directed back) to the US to complete the form (which is then mailed in). Previously the INS accepted these claimants back into the US, knowing that they would be leaving to enter Canada once their eligibility stage was completed. However, the

INS District decided to exercise its right to detain those without status in the US and begin proceedings to deport them (including hearing their refugee claim if they were able to make one). This development was equivalent to implementing the MOA, but without any of the safeguards of the MOA, as was vigorously protested by the CCR. Refugee advocates on both sides of the border worked to encourage the two governments to find a solution to the problem.

The INS explained that they would detain depending on availability of space. The policy change also affected refugee claimants being removed from Canada after a negative refugee determination. A number of refugee claimants, particularly men, but also some women, were detained and in many cases transferred to other regions. Despite these detentions, CIC Niagara refused to change its procedures to avoid directing back claimants to the risk of detention. Word quickly got out about the danger, and the number of claims made at this border point (the largest for claimants entering through the US border) dropped dramatically.

The detention policy also affected claimants crossing at the Blackpool/Lacolle border point south of Montreal, where however practice had been only to direct back claimants in special cases. A few claimants turned back were detained, but CIC Lacolle then adapted to the situation and stopped all turn backs.

Immigration officials in Ottawa and Washington DC expressed concern over the situation without agreeing to take any official action. The UNHCR demonstrated its concern by paying a joint visit from the Ottawa and Washington bureaux to the border at the end of April.

Subsequently, the practice of detaining north-bound claimants directed back abated and several claimants who had been detained (and found eligible for the Canadian refugee determination while in US detention) were released and allowed to proceed to the Canadian border. However, officials on both sides of the border maintained that their policies were unchanged, and detentions of refugee claimants returned to the US after refusal continued. Refugee claimants on their way to Canada continued to risk detention by the INS if caught before they reached the border.

In the fall of 1998, CIC is reviewing its policy and practices in relation to direct backs, to ensure that the law is consistently interpreted and applied at all border points. This review process is to be finalized by the end of November 1998. This may lead to direct backs being discontinued.

The Supreme Court of Canada's decision in the case of *Pushpanathan* was rendered on June 4. The Court ruled that the clause in the refugee definition excluding from refugee status a person who has committed acts contrary to the purposes and principles of the United Nations did not apply to someone who had trafficked drugs. The Canadian Council for Refugees was an intervener in the case.

In December 1997 the Auditor General made public his report on *The Processing of Refugee Claims.* He found that both CIC and the IRB "have serious difficulties dealing with claims quickly and efficiently". The size of the backlog, the lengthy processing times and the difficulty in carrying out removals drew his particular attention. The Board's processing delays were attributed in part to the high turnover of members and their short terms. The Auditor General also found a lack of rigour in certain Board processes and a poor operational climate.

The Legislative Review Advisory Group (LRAG), whose report was made public in January 1998, focused their proposed reform of the refugee determination system on speeding it up. They recommended replacing the Convention Refugee Determination Division with a Protection Agency, staffed by civil servants, which would make decisions within an extremely tight legislated timeframe (3 days for a person to make a claim, 1week to "submit" the claim, 6 weeks within which an interview must be held and a further 6 weeks within which a decision must be rendered). This part of the report was badly received by refugee advocates, including the CCR, who argued for the importance of an independent decision-making body and against making speedy determination a higher goal than fair determination.

Sensitive to the criticisms of delays in the process, the IRB has in 1997 and 1998 been concentrating its efforts on increasing productivity. A number of measures have been undertaken to try to speed up decision-making. Beginning in Montreal, the IRB applied a "last in, first out" policy, giving priority to processing of recently arrived claimants. As a result, claimants who have already been waiting years face further delays. To address their needs, the IRB gave an option for claimants who were ready to proceed to attend an interview with a Refugee Claims Officer, after which a hearing would be scheduled. Claimants were not however systematically informed of this opportunity. The results of the re-ordering of priorities can be seen from statistics which show that on June 8, 1998, Montreal Region had still to finalize 1198 cases referred in 1995, compared with only 170 in Toronto.

The IRB has also begun to rigorously enforce timelier for submission of the Personal Information Form, showing itself reluctant to grant extensions even when convincing reasons are presented. Similarly, adjournments and postponements are less easily granted.

The expedited process is a useful tool for making quick determinations in straightforward cases and its use has been promoted by IRB management. In 1997, 2799 claims were accepted in the expedited process, representing 28% of positives. Nevertheless, Toronto, which has traditionally boycotted the expedited process, continued to use it only minimally (3% in 1997).[17]

[17] See page 141 for detailed statistics.

REFUGEE CLAIMS IN CANADA

In 1997, 24,319 refugee claims were made in Canada. 22,584 persons were referred for determination to the IRB. 24,943 claims were finalized (either through a determination or because the claim was withdrawn or abandoned). 10,031 people were found to be refugees, representing 40% of the claims finalized. See pages 130 to 141 for detailed statistics about refugee claim processing.

On 5 May 1998 the Minister of Justice tabled Bill C-40, proposing changes to Canada's laws on extradition. Provisions in the bill would prevent a person from making or pursuing a refugee claim if s/he was the subject of extradition proceedings. The bill also proposes that after a decision has been taken to extradite a person, the Refugee Division can be deemed to have made a negative refugee determination, if the person has a claim pending. These proposals are opposed by the Canadian Council for Refugees.

CCR CONCERNS

Canada's reputation for fair refugee determination depends significantly on a system that offers claimants an oral hearing before independent decision-makers. The CCR is concerned to protect and improve these crucial elements in the system.

Although the IRB is an independent tribunal and its Board Members are Governor-in-Council appointments wholly responsible for their own decisions, the political nature of the appointments seriously undermines their credibility. Despite the existence of an advisory committee on appointments, relevant experience do not appear to regarded as necessary qualifications. Re-appointments appear to depend more on political connections than competence. The uneven quality of decision-makers and the political pressures on those seeking re-appointment significantly compromises the integrity of Canada's refugee determination system.

To ensure that Canada meets its international *non-refoulement* obligations, all those who may be refugees must have access to the refugee determination system. This is not currently the case.

Firstly, a person cannot make a refugee claim if an exclusion order has been made against him or her. This is a problem in cases where there are changes in circumstances, where the person concerned is misinformed or where an immigration officer abusively rejects to accept a claim.

In addition, the eligibility provisions all have the potential for denying refugees access to the determination system. Although the safe third country provision has not been implemented, it is opposed on principle by the CCR, on the basis that refugees should be allowed to choose their country of asylum and that no safe third country system can be acceptable until and unless there is a meaningful and enforceable international agreement with respect to minimum standards of refugee determination and a common interpretation of the Convention.

Excluding refugees who have been granted refugee status in another country does not provide for a claim against the country of first refuge. There is also the risk that immigration officers may make mistakes in what is a complex determination about the person's status and entitlements in the country in question.

Excluding persons who have returned within 90 days of removal from Canada takes no account of the possibility of change of circumstances or the availability of new information.

The security and criminality exceptions are inconsistent with the exclusion clauses in the Convention. They are defined more broadly than the Convention and should be considered as part of the refugee determination, in order to allow a balancing, as recommended by the UNHCR, of the risk of persecution against the crimes committed by the claimant.

The most significant flaw in the refugee determination system is the absence of an appeal on the merits. The judicial review avenue is completely inadequate because of the narrowness of the scope of the review, because of the leave requirement and because the body conducting the review is not specialized and expert in refugee determination. The CCR has consistently called for a full appeal on the merits as a matter of fundamental justice.

Inadequate and inequitable legal aid coverage significantly limits the ability of refugee claimants to have a fair hearing on a matter affecting their fundamental rights. The inadequacies in legal aid make claimants more vulnerable to exploitation by unscrupulous and incompetent counsel (whether lawyers or consultants).

The current delays in the determination process cause enormous hardship for refugees waiting for status so that they can get on with their lives. The CCR therefore supports the IRB's goal of increasing processing times. However, efforts to increase productivity should not be made at the expense of fairness and it must be recognized that refugee determination is frequently complex, difficult and time-consuming. Nor is it acceptable to the CCR that some claimants should be made to pay the price of efforts to increase speeds by having their claims put to the back of the queue.

The CCR is also concerned that the IRB focus on productivity is made at the expense of attention to sensitivity towards claimants. The IRB has closed down its working groups on refugee women and minor claimants. Training on sensitivity to these groups as well as survivors of torture appears to have been given low priority and the negative effects are being felt in the hearing rooms.

The rights of refugee claimants and their families while in the refugee determination process have declined dramatically in recent years as provincial governments seeking to reduce deficits have found refugee claimants easy targets. The only health coverage offered claimants is emergency services,

despite the fact that claimants may be in the process for years. Access to social assistance and related social programs varies from province to province but is generally less than the general population. Children of refugee claimants awaiting an eligibility determination have been refused access to education, despite laws that guarantee education to all children. There are scarcely any government-funded settlement services for refugee claimants.

Media coverage and much public discourse about refugee claimants continue to be predominantly hostile. Journalists and commentators frequently rely on false information, for example claiming that Canada has a far too generous acceptance rate of 70% long after the acceptance rate fell far below that level. This hostility feeds prejudices against refugees, creating a negative climate that refugees painfully confront in their daily lives. It also has unhappy effects on refugee policy development and implementation.

Relevant documents

- *Non-discrimination in Economic and Social Rights for Uprooted People: Submission with respect to the Examination of Canada, November 1998*, prepared by the Canadian Council for Refugees and the Inter-Church Committee for Refugees, July 1998

- *Brief to the Immigration Legislative Review*, July 1997

- *Comments on the Report of the Legislative Review Advisory Group: Not Just Numbers*, March 1998

- *Position on Essential Principles in response to Hathaway and Davis/Waldman reports*, September 1994

- *"Enhanced" essential principles in response to the IRB's "enhanced" refugee status determination process*, March 1995

- *Comments on Bill C-40*, July 1998

- *CCR refutes myths about refugees*, Press Release, 5 January 1998

Detailed information

Making a claim

Anyone who is in Canada (this includes at the border) can make a refugee claim by speaking to an immigration officer. The exception to this is that a person cannot make a claim if a removal order has been made against the person.

Most claims are made at the border by people arriving by aeroplane, boat or by land from the United States. Claimants will be given an interview by a senior immigration officer, fingerprinted and given instructions to undergo a medical exam. The notes of the interview are subsequently included in the claimant's file at the Immigration and Refugee Board and the claimant may be asked about what he or she is alleged to have said at the initial interview.

Since September 1996, when the Pearson pilot project was first tested, claimants arriving at Pearson International Airport have generally had only a very brief interview: instead they are sent away with a form which they are asked to complete and return. The form is used to determine whether or not the claim is eligible.

A variety of procedures are used at the Canada-US border points. At Niagara, claimants are given the same form as used at Pearson and sent back to the United States to fill it in. From the US they mail in the form and wait for an answer from Immigration Canada on the eligibility of the claim.

At some border points, claimants are admitted immediately (in the same way as if they were at an airport). At others, claimants need to make an appointment in advance or the border is only open to claims on certain days of the week. The border point at Windsor has on occasion refused to accept any claims for a period of several weeks during the summer (this was the case in the summer of 1997. In the summer of 1998 they remained open but processing slowed significantly).

A person making a claim from within the country can be either "in status" or "out of status". Being in status means that one has an immigration status, for example, a student visa.

In the case of claimants without status a senior immigration officer or an adjudicator makes a conditional removal order[18] against the claimant. This removal order automatically comes into force if the claimant receives a negative refugee decision, or the claim is withdrawn, declared abandoned or found ineligible.

Eligibility determination

Although almost anyone can make a claim, not all claims are eligible to be heard by the Immigration and Refugee Board. A Senior Immigration Officer must make a determination on the eligibility of the claim.

Claims are not eligible if the person:

- has been recognized as a Convention Refugee by another country and can be returned to that country.

- came to Canada from a "Safe Third Country".

[18] The removal order may either be a departure order or a deportation exclusion order.

- has already been found by Canada not to be a Convention Refugee and has not been outside Canada for more than 90 since that negative determination.

- has already been found to be a Convention Refugee.

- meets one of a number of definitions relating to criminality and security risks. In this case the case must be brought to an immigration adjudicator who will decide whether the claimant meets any of the definitions.

The eligibility criteria are listed in Section 46.01 of the Immigration Act.

If the claim is found by the senior immigration officer (and the vast majority are) the claim is referred to the Immigration and Refugee Board. However, it is possible for the Immigration Department to re-open the decision on eligibility if it believes the person may be a criminal. There are also provisions allowing the Immigration Department to terminate multiple claims or have fraudulent claims declared ineligible.

Rights of claimants in the process

Once they have been found eligible to make a claim, refugee claimants can apply for a work authorization. Until they have successfully completed a medical examination, there are some restrictions on where they can work.

Refugee claimants are eligible for social assistance in all provinces, although for a period between 1995 and 1996, refugee claimants were not eligible during their first three months in BC. The entitlements of refugee claimants vary from province to province, but are in many cases significantly less than other recipients of social assistance (in terms of rate of assistance, access to employment and training programs, access to medical insurance programs, etc).

Interim Federal Health Program
Refugee claimants are not eligible for coverage under any of the provincial health care programs. Assuming that they don't have the means to pay for their own health care, they are covered for emergency medical services only by the Interim Federal Health program.[19] On the basis of a form from CIC that declares the claimant eligible for the health program, the person should be able to receive "essential health services". The doctor or institution providing the service is re-imbursed by CIC on submission of a bill (to Vegreville Case Processing Centre). The IFH also covers contraception, prenatal and obstetrical care and essential prescription medications.

Refugee determination before the Immigration and Refugee Board

[19] The Interim Federal Health Program falls under the authority of a 1957 Order in Council which directed the federal government to pay the medical expenses of immigrants or others under immigration jurisdiction or responsibility, where they do not have the means to pay for those expenses.

The Immigration and Refugee Board is an independent quasi-judicial tribunal, with three divisions, of which the largest, the Convention Refugee Determination Division (CRDD), is responsible for determination refugee status in Canada. The Members of the Refugee Division are appointed by Cabinet, for terms generally of between two and five years.

Personal Information Form

Once a person's claim has been referred to the IRB, he or she has 28 days in which to submit a Personal Information Form (PIF) to the IRB. The PIF has 41 questions dealing with such things as the claimant's personal history (date and place of birth, education, past employment, places of residence, criminal convictions, etc.), family members, manner of travel to Canada and most crucially, in question 37, the account of how the claimant meets the definition of a Convention Refugee (this answer is often called the "narrative").

Refugee Hearing

The standard process is for a hearing to be held, at which two board members are present as decision-makers. However, a refugee claim can, with the permission of the claimant, be heard by a single board member (S. 69.1(8)). As part of its efforts to increase the rate at which it decides cases, the Board has been encouraging single member hearings.

A refugee claim officer is often, but not necessarily, present at a hearing. The Board provides interpreters where the claimants require interpretation.

In the case of a child (a claimant under 18 years), the Board must appoint a person to represent him or her. The same applies to a claimant who is unable to understand the nature of the proceedings (S. 69 (4)).

Hearings are generally *in camera* (ie. closed to the public). However, anyone can apply for a hearing to be public. The members can reject this request if they are satisfied that anyone's life, liberty or security would be endangered by having the hearing public. (S. 69(2) and (3)).

After preliminaries, a refugee hearing will often begin with the claimants telling their story of why they are refugees, guided by questions by the lawyer (if any). Then the RCO will ask questions. The members may ask questions at any point (some members will intervene much more than others) and they may also identify what they think the issues are (e.g. "I have difficulty believing such and such parts of what you said" or "I believe what you say but why could you not be safe in another part of the country?" - known as the internal flight alternative or IFA). The hearing may have to be adjourned because they run out of time, or because the members decide that they need to wait to get extra information.

The law calls for hearings to be as informal and as expeditious as possible and as fairness allows (S. 68(2)). It also gives broad latitude to the Board on the kinds of evidence it is to consider, as long as it is credible and trustworthy.[20]

Witnesses can be brought to a hearing, either to give information based on personal knowledge of the claimant, or expert witnesses who will testify, for example, about the general situation in the country.

Where Citizenship and Immigration Canada wants to contest the case, the Minister has the right to be represented at the hearing and to question the claimant and other witnesses.

Documentation and information-gathering

The refugee system places the burden of proof on the refugee claimant, who therefore needs to do as much as possible to gather evidence to show that he or she is a refugee. However the IRB also a Research Directorate that collects and makes available information to the decision-makers. The information is also accessible in its documentation centres, located in Ottawa, Vancouver, Calgary, Toronto and Montreal and on its internet site (www.irb.gc.ca). It is also part of the responsibility of the Refugee Claim Officer (RCO) assigned to the case to research and present information relevant to the case. This information may support or undermine the person's claim.

Refugee claimants have the right to know and to respond to any information on which a decision may be based. For this reason, the board members cannot rely on classified information, from, for example, the Foreign Affairs Department. The DIRB will only accept information that can be made public.

Where the member or members hearing a claim decide that they need to make inquiries specific to the claim, they must follow procedures for case-specific research. They must inform the claimant of the research they intend to conduct and how they propose to collect the information. The claimant then has an opportunity to respond to the proposal. Members can authorize the research against the objections of the claimant, but they are instructed that they must be satisfied that "there is no serious possibility that the life, liberty or security of any person would be endangered through the acquisition of the information".

Expedited process

The Board can accept a claim without a hearing, as long as Minister does not contest the claim. This is done through the expedited process. On the basis of the Personal Information Form, claims that seem straightforward and likely to be given a positive decision, can be referred to the Expedited Process. The claimant will be given an interview by a Refugee Claims Officer who will be looking to see whether there are any problems with identity, credibility or other issues that may need to be looked into in detail. The file is given to a board member who can decide either to make a positive determination or to send the claim to a full hearing. Claims that are well-documented have higher chances of being accepted in the expedited process.

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[20] The Refugee Division is not bound by any legal or technical rules of evidence, and it may, in any proceedings before it, it may receive and base a decision on evidence adduced in the proceedings and considered credible or trustworthy in the circumstances of the case. S. 68(3).

Chairperson's guidelines
Section 65(3) of the Immigration Act authorizes the Chairperson of the Immigration and Refugee Board to issue guidelines "to assist the members of the Refugee Division... in carrying out their duties..."

To date, three sets of guidelines have been issued:

Guidelines on Women Refugee Claimants fearing Gender-related Persecution, issued in March 1993, revised in November 1996.

Civilian Non-Combatants Fearing Persecution in Civil War Situations, issued in March 1996.

Child Refugee Claimants: Procedural and Evidentiary Issues, issued in September 1996.

The text of the guidelines can be found on the IRB web site: www.irb.gc.ca

Legal representation
Claimants have a legal right to be represented by counsel at their refugee hearing (S69(1)). Counsel could be a lawyer, an immigration consultant, a refugee advocate or anyone else. Because of the legal and technical nature of the decision-making process and the fact that a person's life and liberty is at stake, it is obviously in the interests of claimants to be represented by a lawyer. Nevertheless, in some provinces, legal aid regimes do not cover refugee hearings. In other provinces, the legal aid rates are so low that few lawyers can afford to accept clients on legal aid. Other barriers and restrictions in the legal aid programs exclude further refugee claimants. As a result, a significant number of claimants are not represented by a lawyer, or represented by a lawyer who is incompetent or unscrupulous.

The decision
The members must decide whether or not the person is a Convention Refugee. If there is a split decision (i.e. one members thinks yes, the other no), the decision is in favour of the claimant.[21]

If the decision is negative, the Board must provide written reasons. In the case of a positive decision, the claimant (or the Minister) can request written reasons, but must do so within 10 days (S. 69.1(11)). From time to time, the Board will ask its members to provide written reasons for positive decisions from certain countries or of certain types (e.g. cases involving gender-based persecution).

[21] This rule, however, does not apply, if both members agree (a) that the claimant destroyed or disposed of identity documents without valid reason; (b) the person has, since making the claim, returned to the country where persecution is allegedly feared; or (c) the country against which the claim is made has been declared a country that respects human rights. In this case, both members must agree that the person is a Convention Refugee for there to be a positive decision (S 69.1(10.1)). This exception is rarely if ever applied and involves a rather unlikely scenario since both members must agree to the finding that would require two positives. In addition, the government has never declared any countries to meet the conditions for (c) and so it is not currently in effect.

In a negative decision, the members (again they must both agree) can decide that the claim has no credible basis, meaning that there was no credible or trustworthy evidence on which that the members could have determined that the person was a Convention refugee (S. 69.1(9.1).[22] If so, this is indicated in the decision and has implications for the rights of the claimant (denied eligibility for a risk review (see page 70) and limited stay of removal in the case of application for judicial review (see page 85).

The board members can also declare a claim abandoned if the claimant fails to appear for a hearing, fails to provide the completed PIF or otherwise fails to pursue the claim. Before declaring the claim abandoned, they must give the claimant a reasonable opportunity to be heard. (S. 69.1 (6)).

Judicial review

Refused refuge claimants can ask for judicial review of the decision by the Refugee Division. The court of review is the Federal Court Trial Division. Although this is often called "appealing the decision" it is not an appeal on the merits. The following are the grounds on which the Federal Court can overturn the decision:

- the Refugee Division went beyond its jurisdiction (ie. made a decision of a sort or in a situation where the law does not so authorize it).

- the Refugee Division failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe.

- the Refugee Division erred in law in making its decision.

- the Refugee Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

- the Refugee Division acted, or failed to act, by reason of fraud or perjured evidence.

- the Refugee Division acted in any other way that was contrary to law.

The grounds for judicial review are listed in the Federal Court Act, 18.1 (4).

For refugee claimants, the process for seeking judicial review comes in two stages: the application for judicial review and the judicial review itself. The application for leave must be filed within 15 days of

[22] The credible basis test was introduced into the refugee determination system in 1989 at which time it was used as a screening test for eligibility to be heard: only claims found by either a Board member or an adjudicator to have a credible basis would be referred to the Board. The test was interpreted by the Federal Court as being a very low threshold and the overwhelming majority of claims were found to have a credible basis. Since this screening was time-consuming and served virtually no purpose, it was dismantled in the changes introduced in February 1993.

receipt of the negative decision. This must be followed up with an application record (ie a detailed explanation of why the court is being asked to intervene). Only a lawyer can argue the case on behalf of the person concerned.

A Federal Court judge will review the application and decide whether or not to give leave (ie hear the case), based on whether there is an "arguable case". Only a minority of applications are given leave and the court gives no reasons for refusing to hear a case.

If leave is granted, a hearing will be held and the applicant's lawyer argues the case in court before a Federal Court judge. The other party is the government, represented by the Justice Department, who may energetically contest the application or concede part or all of the case. If the judge agrees with the applicant, he or she can set aside the negative decision and send the claim back to be re-heard before a different panel. The Federal Court cannot make its own refugee determination.

Decisions by the Federal Court cannot be appealed unless the judge certifies a particular question (i.e. identifies a particular point as being subject to appeal). If a question is certified, it can be appealed to the Federal Court of Appeal, and from that court to the Supreme Court of Canada (although of course very few cases get there).

Positive refugee determinations can also be subject to judicial review, when the Immigration Department is dissatisfied with the decision.

An application for judicial review generally leads to an automatic stay (ie. delay) of removal. (See...)

Appointments to the Immigration and Refugee Board
In March 1995, then Minister of Citizenship and Immigration Sergio Marchi announced the creation of an advisory committee that would review all candidates for appointment to the Board. The chair of the committee was Gordon Fairweather, former Chairperson of the IRB. The Minister also announced that seats on the committee would be given to representatives from the legal community and NGOs involved in refugee matters, as well as members of the general public.

Terms on the committee were expected to be for two years. Despite the fact that it is known that Gordon Fairweather is no longer chair of the committee, the new chair of the committee has never been announced by the Minister.

Consultative Committee on Practices and Procedures (CCPP)
In 1994 the IRB set up a consultative committee with members from the national bar, regional refugee/immigration lawyers' associations and the Canadian Council for Refugees. Originally focusing on CRDD matters, it now addresses issues relating to all three divisions of the Board. Meetings are generally held twice a year.

7. APPLYING FOR PERMANENT RESIDENCE: THE LANDING PROCESS IN CANADA

Summary
Refugees who have been recognized by the Immigration and Refugee Board can apply for permanent residence (also known as "landing"). Although they do not have to do so, refugees almost always choose to, since until they are permanent residents they are denied many important rights and privileges, as well as the sense of permanence which is critical for integration. The most fundamental right dependent on permanent residence is family reunification: it is only through successfully completing the landing processes that refugees can bring their spouse to Canada or parents be reunited with their young children, whom they were forced to leave behind.

Refugees must however satisfy certain requirements in order to become permanent residents. To begin with, it is not free. Applicants must pay processing fees of $500 for each adult and $100 for each child. This must be paid before the process can be begun. In addition, refugees, like all others becoming permanent residents, must pay the Right of Landing Fee (often called the "head tax"), at a cost of $975 per adult. Since April 1997 this fee has been payable at any stage in the process. The government runs a loan program to help applicants, particularly refugees, who cannot pay the Right of Landing Fee up-front. However, applicants must show that they have the capacity to repay the loan. Also, loans are not available to cover the processing fees.

Starting in February 1993, refugees have also had to provide passports, travel documents or "other satisfactory identity documents". This poses enormous difficulties for some refugees, who because of their persecution cannot safely approach authorities for documents, or who come from countries, such as Somalia or Afghanistan, where war has effectively destroyed the authorities that could issue documents. The situation for these refugees is made worse by inconsistent and arbitrary decision-making by immigration officials, and by their unwillingness to accept the genuine identity documents that many refugees from Somalia and Afghanistan possess. As a result of this identity document problem, thousands of refugees have been unable to land.

In January 1997, under pressure to respond to the problem the ID law had caused, the government created the Undocumented Convention Refugee in Canada Class. This provides for refugees from Somalia and Afghanistan to be landed *five years* after being accepted as refugees, if they meet certain conditions. The creation of this class was greeted with anger by the affected communities and refugee advocates, because of its very restrictive terms and above all because of the five year wait.

Refugees cannot become permanent residents if they have committed serious crimes or are considered to be security threats. For some Convention refugees, there are long delays in getting a decision on their security status. Certain groups in particular tend to be affected, notably Kurds and Iranians associated with the Mojaheddin opposition movement.

RECENT AND CURRENT DEVELOPMENTS

The government introduced the Undocumented Convention Refugees in Canada Class (UCRCC) in January 1997. No changes were made to the pre-published version of the regulations, against the advice of the Standing Committee on Citizenship and Immigration (which recommended a number of significant changes) and despite the input from the CCR, the affected communities and many other refugee advocates. The Class imposes a five year wait on Somalis and Afghanis who cannot satisfy CIC with their identity documents.

Landings under the UCRCC were few and slow. By September 1998, only 545 refugees had been landed under the Class (compared to CIC estimates of 2000 refugees eligible to apply in the first year, i.e. 1997). On the other hand, the introduction of the Class appeared to lead to increased refusals of Somali and Afghani documents, with applicants referred to the UCRCC (for which they might be eligible in 5 years).

Among the recommendations of the Standing Committee was the development of guidelines for CIC officers deciding whether or not a refugee's documents were satisfactory. In response, CIC issued an Operations Memorandum (OM) in December 1997 regarding evaluation of documents of Convention Refugees for the purposes of landings. The OM notes that statutory declarations can be submitted by refugees to fulfill the ID requirement. Although it would appear that a large proportion of refugees currently unable to land because of ID should be able to meet the guidelines set out in the OM, it is not clear that the OM is being consistently applied by immigration officers, or even that they are necessarily aware of its provisions.

The government is also exploring measures to deal with another recommendation of the Standing Committee: to allow refugees to be reunited with children who had turned 19 during the five year wait (and would therefore be ineligible for family sponsorship). CIC is proposing to use humanitarian provisions to address this.

A court challenge of the ID requirement is currently being pursued in Ottawa, on the basis that the provision is discriminatory.

In February 1997 the CCR released its study on the *Impact of the Right of Landing Fee*. This study explored the hardships experienced by refugees trying to pay the ROLF, as encountered by refugee-serving organizations. A number of individual case-stories are presented.

In April 1997 the government changed its rules, allowing the ROLF to be paid at any point during the processing of the application for permanent residence.

THE LANDING PROCESS IN CANADA

In its 1997 Annual Report, the Canadian Human Rights Commission reiterated its concerns about the Right of Landing Fee being imposed on refugees. They pointed out: "Refugees often arrive with minimal resources, given the situations they are fleeing. The Right of Landing Fee makes it more difficult for them to apply for permanent residence status, and without this status, it is often difficult if not impossible for them to be reunited with family members who remain behind. This is especially stressful if spouses and children are in danger of persecution or are living in countries at war" (page 12).

According to a 1997 finding of the Security Intelligence Review Committee (as reported in the Toronto Star in April 1998) the case of a Sri Lankan raised some serious concerns about the potential for abuse by CSIS of persons without permanent immigration status. The Sri Lankan had complained that he had been promised permanent residence in retun for spying for CSIS (a promise that had gone unfulfilled). SIRC is currently examining other complaints made against by CSIS by refugee claimants.

In the spring of 1998 Sami Durgun held a vigil in Toronto, to protest the delay in his permanent residence application on security grounds (he was suspected of ties to Kurdish opposition groups). His vigil attracted significant public and media attention.

The Legislative Review Advisory Group proposed that Convention Refugees without satisfactory documents wait for 3 years before applying for landing (rather than 5 years). The Group did not reach a conclusion on the Right of Landing Fee: instead they recommended the creation of a working group with interested organizations to examine its rationale.

CCR CONCERNS

The CCR is concerned to witness the development of a limbo class of Convention Refugees, who face long delays in acquiring permanent residence. Traditionally, refugees have for the most part been able to proceed relatively quickly to permanent residence and later to citizenship. During the waiting period, their rights, as established by the Refugee Convention and by the Covenant on Economic, Social and Cultural Rights, are not always respected. This becomes a very grave problem when the waiting period is extended beyond a few months, as it now is for thousands of refugees.

The most serious effect of refusing or delaying permanent residence for refugees is the fact that they cannot be reunited with their spouses and dependent children, some of whom are in situations of risk overseas. Convention refugees without permanent residence also face discrimination in access to education and employment. Young people finishing high school may be effectively barred from pursuing their studies because they are not eligible for scholarships, loans and bursaries. These refugees also cannot travel outside Canada, even to visit a sick relative. They are ineligible for many employment training programs, from some jobs and from receiving bank loans.

For the CCR, the problems over ID need to be viewed in the context of CIC's increasing reliance on paper processing. While this trend may lead to greater efficiencies for CIC (and for many of its clients) it does not take account of the fact that reliable identity papers are not readily obtained in many parts of the world. Nor does it take account of the fact that many refugees are unable to obtain identity documents, either because of widespread destruction of the institutions of government in the home country or because obtaining personal documents would put the refugee and/or family and friends at risk of persecution.

In addition to opposing the basic policy error in insisting on identity papers, the CCR has also drawn attention to the inconsistent and unfair manner in which the policy is applied. Many refugees in fact have documents which attest to their identity as well as family or neighbours who can identify them. Nevertheless, in some cases, these proofs of identity are found "unsatisfactory", while in another case, similar documents may be deemed sufficient. The problems for Somalis and Afghanis in having their documents accepted increased after the introduction of the UCRCC, apparently since some officers interpreted this measure as meaning that no Somali or Afghan documents were acceptable. The CCR opposed the UCRCC itself as totally unacceptable, since it imposed a five-year limbo (with no family reunification) on refugees, simply because they come from a country destroyed by civil war.

The CCR has never accepted government allegations that the identity document measures are necessary because of the risk of criminals or even war criminals being among those without documents. It is known that many (if not most) of the suspected war criminals found in Canada have entered using their own name and with documents. On many occasions, it is the community that has identified the suspected war criminal. No evidence has ever been presented that criminals are hiding themselves among the undocumented. Furthermore, the Immigration Act contains provisions that allow the government to remove someone's permanent residence if it was obtained under false pretences.

In its submission to the Legislative Review Advisory Group, the CCR said the following: "Immigration Canada's insistence on paper identity creates formidable barriers to immigration, permanent residence and family reunification for certain populations. The effects of these exclusions are of profound significance, for the individuals directly affected, for the communities most concerned and for Canadian society as a whole. It should not be ignored that the policies are experienced and perceived as racist. In throwing into question the identities of whole communities and in rejecting their mechanisms for establishing who they are, the Canadian government is in a fundamental way dehumanizing members of our society."

From the time that it was announced, the CCR has vigorously opposed the imposition of the Right of Landing Fee because of its discriminatory potential and its particular burden on refugees. In February 1997 the CCR published the results of a study it conducted on the impact of the Right of Landing Fee on refugees in Canada. It showed the very serious consequences on refugees struggling with significant

financial burdens as they try to establish themselves in a new country. Even where refugees are able to get a loan, the payments on the loan can cause great hardship. It is not known how many refugees have been forced to delay their own landing or reunification with family members abroad because of the ROLF.

The CCR is concerned that the broad definition of the security inadmissibility categories and the lack of a fair process mean that people who present no security threat to Canada have their permanent residence withheld. There is no right to a hearing and very little information is given about the grounds of suspicion, because of the government's concerns for not revealing sources and not giving information that provides insights into the working national security agencies (either Canadian or foreign). There is no right to a decision within a reasonable time, and refugees wait indefinitely.

The security issue does not only affect Convention Refugees in Canada: refugees overseas seeking resettlement and family members of persons in Canada can also be refused or given no answer, on the same grounds.

Relevant documents

- *Impact of the Right of Landing Fee*, February 1997
- *Comments on the Report of the Legislative Review Advisory Group: Not Just Numbers*, March 1998
- *Non-discrimination in Economic and Social Rights for Uprooted People: Submission with respect to the Examination of Canada, November 1998*, prepared by the Canadian Council for Refugees and the Inter-Church Committee for Refugees, July 1998
- *Using the Charter to Challenge Discrimination against Refugees and Immigrants*, Workshops November 1997
- *Brief to the Immigration Legislative Review*, July 1997
- *Comments on proposed regulations creating the Undocumented Convention Refugees in Canada Class*, December 1996
- *Refugees and Identity Documents*, October 1996

Detailed information

Application for landing by Convention Refugees

After being determined to be a refugee by the CRDD, a person has 180 days[23] in which to apply for permanent residence (R. 40). The application can include immediate family members (spouse and minor children), whether they are in Canada or overseas.

Convention Refugees will not be landed if they or their dependants, meet any of a long list of categories covering criminality, terrorism, security risks, espionage, etc.

Convention Refugees, but not their dependants, must also be "in possession of a valid and subsisting passport or travel document or a satisfactory identity document".

If a refugee fails to apply within this time period, he or she can apply subsequently to be landed under humanitarian and compassionate grounds. However, in such a case, he or she loses the right to the special terms on which refugees are landed (e.g. the right to include immediate family members overseas on the application).

Applications for landing by Convention Refugees are dealt with in Section 46.04 of the *Immigration Act*.

To apply for landing, refugees must complete an application form and send it in complete with proof of payment of processing fees ($500 per adult, $100 per child) to the Vegreville Case Processing Centre (the Immigration Act Fees Regulation, SOR/97-22, lists all the fees).

Right of Landing Fee (ROLF)
The Right of Landing Fee, or Head Tax, was introduced as part of the February 1995 federal budget. No matter what the category under which the person is landed, all adults must pay the fee of $975 in order to be granted permanent residence. It is justified as part of a government decision to shift more of the costs of government to those who specifically benefit from the programs provided. The fee is for the privileges that in general come with permanent residence in Canada, and more particularly as a contribution towards the costs of the settlement services offered newcomers. The money collected goes into the consolidated revenues and is in no way tied to any services offered.

At the same time the fee was imposed, the government introduced a loan program, intended primarily for refugees and their immediate dependants. Applications for loans are evaluated based on the need for a loan and the ability to repay the loan.

ID requirement
Since February 1993, the Immigration Act has required that Convention Refugees have "a valid and subsisting passport or travel document or a satisfactory identity document" before they can be landed (S.

[23] Until October 1995 refugees had only 2 months within which to apply. The application period was extended because of the difficulties experienced by refugees in coming up in time with the fees (or even getting a response to a request for a loan for the Right of Landing Fee).

46.04(8)). Previously, Convention Refugees were exempted from the requirement to produce ID, consistent with Article 27 of the Geneva Convention relating to the Status of Refugees which requires states to issue identity papers to any refugee on their territory who does not possess a valid travel document.[24]

This has affected Somali and Afghani refugees especially, since most institutions have broken down in these countries.

Undocumented Convention Refugee in Canada Class (UCRCC)
Since January 1997, Convention Refugees who are citizens of Afghanistan and Somalia and who have been deemed to have no "satisfactory identity documents" can apply to be landed as members of the Undocumented Convention Refugee in Canada Class if they meet certain conditions. They must:

- have been determined to be Convention Refugees 5 years ago;
- not have had their refugee status removed under the provisions for cessation or vacation;
- have applied for permanent residence as a Convention Refugee and not landed solely because of the lack of ID;
- have paid all the fees in effect at the time of application.

The opportunity to be landed under this Class is only given to citizens[25] of countries specifically listed, which currently are Somalia and Afghanistan. The regulations contain a sunset clause, so that Somalia and Afghanistan will be automatically removed from the list in January 1999 unless they are renewed.

To be landed under the UCRCC, a refugee must:

- make an application
- make a solemn declaration attesting to the truthfulness of the information in the application and confirming his or her identity and the identity of any dependants.
- not meet any of a series of definitions of criminality and security risk.

Unlike the landing provisions for Convention Refugees, where spouse and children can be included even if they are abroad, applications under UCRCC can include only dependants who are in Canada. More specifically, the dependants must have been living in Canada since November 16, 1996.[26] If the

[24] It has never been shown that the exemption from having ID caused any significant problem.

[25] Or, in the case of a stateless person, "former habitual residents".

[26] According to the Regulations, in the case of applicants determined to be refugees after January 30, 1997, the dependants must have been in Canada since the date of the original application for landing (thus excluding family members who came to Canada a year, say, after the applicant's positive determination). However, these refugees won't be eligible to apply under UCRCC until 2002 (if the Class

dependants are overseas, the refugee in Canada must first be landed and then begin the process of sponsoring the family members overseas.

The UCRCC is defined in the Immigration Regulations, S. 2 (1). The landing requirements are found at 11.402.

Security checks
Certain criminality and security checks are required for Convention Refugees by s 46.04(3) of the Act. While the criminality inadmissibility clauses are generally fairly straightforward, those relating to security risks are far more contentious in the application, partly because they come down to a matter of opinion, rather than fact, and partly because they deal with matters of international politics.

The relevant clauses are:

- 19(1)(e) - persons who may engage in espionage, subversion or terrorism or are members of an organization that may engage in anything of these things.
- 19(1)(f) - people who have in the past engaged in espionage, subversion or terrorism or are or were members of an organization that has engaged or is engaging in anything of these things (unless the Minister is satisfied that it is not against the national interest to admit them).
- 19(1)(g) - persons who may engage in acts of violence endangering people in Canada or are members of or may participate in an organization that may engage in such acts of violence.
- 19(1)(k) - other persons who constitute a danger to the security of Canada.

Where the Immigration Department thinks that someone might be a security risk under 19(1)(e), (f) or (g), they will ask the opinion of the Canadian Security Intelligence Service (CSIS). The person will be called for an interview with one or two CSIS agents, generally without being told in advance that they will be meeting with CSIS. After CSIS gives Immigration its opinion (which it is required to do within 2 years), it is up to the Immigration Department to make the decision. There is no obligation on them to reach a conclusion within any particular timeframe. Whether because of a lack of resources, or whether because Immigration prefers to err on the side of caution, once a security issue has been raised refugees can wait indefinitely for a decision.

In the case of a 19(1)(k) case, both the Minister of Citizenship and Immigration and the Solicitor General must issue a security certificate.

Landing requirements for applicants other than refugees
For applicants who are members of the Post-Determination Refugee Claimant in Canada Class (PDRCC) the same landing requirements apply as for Convention Refugees, except that applicants must also not have left Canada since being found to be a member of the Class. (See Immigration Regulations, S. 11.4)

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is still in effect by then).

THE LANDING PROCESS IN CANADA

People other than those recognized as Convention Refugees or landed under PDRCC must meet certain additional requirements in order to become permanent residents (these are applicable to all immigrants).

Medical issues - 19(1)(a)
Applicants must not have any health problems that would either:
a) cause a danger to public health or public safety; or
b) cause the person to make "excessive demands" on health or social services

Ability to self-support - 19 (1)(b)
Applicants must be able and willing to support themselves and their dependants, or show that adequate arrangements have been made for their care and support.

Criminality exclusions
There are also broader powers to exclude based on criminality than for Convention Refugees.

> The categories of inadmissibility are listed in the *Immigration Act* in Section 19.

Passports and Travel Documents - Reg. 14(1)
Applicants must have a valid passport, travel document or certain specified types of identity documents.

Certificat de sélection du Québec (CSQ)
According to the terms of the Canada-Québec agreement on immigration, Québec's consent is required for immigrants and resettled refugees, but not for refugees recognized in Canada. Consent is indicated by the issuance of a Certificat de sélection du Québec (which is also issued to accepted claimants). On occasion humanitarian and compassionate cases may be refused by Québec, in which case the people will generally try to land outside Québec.

8. FAMILY REUNIFICATION

Summary

Refugees who are determined to be refugees in Canada can put their immediate family members (spouse and minor children) on their application for permanent residence, whether the family members are in Canada or abroad.[27] This means that the family members are not sponsored, but are considered dependants of the principal applicant. The applications for permanent residence are processed simultaneously, in Canada and overseas and no member of the family can be granted permanent residence until all are ready (although it is possible to drop one or more members of the family from the application, so that the rest can be landed). Family members must satisfy the basic requirements for permanent residence: they must undergo a medical exam (although a medical condition is not a bar to landing), and clear criminality and security checks. In addition, family relationship needs to be shown (e.g. through a marriage certificate for spouses or a birth certificate for children). Just as refugees often have difficulty producing identity documents for themselves, so Immigration's requirements of documents to prove family relationship is problematic for refugee families. Increasingly Immigration has been proposing to families that they undergo DNA testing to establish relationship.

Apart from this particular provision for refugees, anyone in Canada wanting to be reunited with their family members overseas will need to sponsor them.[28]

Family sponsorship means that the sponsor undertakes to support the sponsored family members for 10 years after their arrival in Canada (during which time they should not go on welfare). For spouses sponsored by residents of Québec, the period of sponsorship is 3 years. In May 1997 Québec reduced the length of sponsorship for fiancées to 3 years. Sponsors need to satisfy CIC that they have enough

[27] This possibility has existed since 1993. Prior to 1993, refugees had to first become permanent residents and then apply to sponsor their spouse and/or children.

[28] Despite the possibility of putting family members on the permanent residence application, there are many circumstances when refugees will need to submit a sponsorship to bring their spouse and/or children. For examples, refugees recognized in Canada may have missed the 180 day deadline for applying for permanent residence, or may have been unable to include the family members on their application either because they did not know where because of war, or because they could not afford the fees. Refugees who, not having "satisfactory" identity documents, have finally been landed under the Undocumented Convention Refugee in Canada Class, are also obliged to go through sponsorship in order to bring their family members. In addition, refugees who have come to Canada through resettlement may have family left behind, perhaps in the home country. As well, refugees often want to bring to Canada other members of their family, particularly when they are in refugee camps, at risk in the country of origin or otherwise affected by the same abuses and disruption that caused the refugee to flee.

income to support themselves and the family members they are sponsoring. The financial criteria do not apply in the case of sponsorship of spouses and minor children. However, the Act requires that the applicants for immigration to Canada are willing and able to support themselves or have adequate arrangements made to look after them (19(1)(b). This provision is being used in some cases to refuse spouses and children based in part at least on the financial situation of the sponsor.

The categories of family members that can be sponsored are quite limited: apart from spouses and dependent children, only parents, grandparents and fiancés can be sponsored. Any family member sponsored can also bring along their own dependants. There is also a category of "last remaining family member". Brothers and sisters, aunts and uncles etc are not sponsorable family members. Same sex and common law partners are also not sponsorable.

Processing for family sponsorship is done partly in Canada, and partly overseas. The first step is to have the sponsorship undertaking accepted. Sponsors in Québec must apply to the Québec government which approves the sponsorship undertakings. Sponsors outside Québec apply to CIC via the Mississauga Case Presenting Centre. CIC will check whether the sponsor meets all the financial and other requirements.

Once the sponsorship is accepted, the family members being sponsored will be processed. They need to pass medical tests and criminality and security checks. A medical conditions is a bar for sponsored family members, unlike dependants of in-Canada refugees, and the criminality exclusions are broader. Spouses and dependent children have priority in terms of processing. Like refugees being resettled, delays can be considerable. However, unlike refugees family members being sponsored do not need to be interviewed by a visa officer.

If a family member is refused (for example as medically inadmissible), the sponsor can appeal to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board, which can hear new evidence and grant the appeal on humanitarian considerations as well as on the grounds of a mistake in law.

Family members ordinarily need to be abroad to be sponsored. It is, however, possible to make a request for humanitarian consideration in order to have an application for sponsorship processed while the person being sponsored is in Canada. Decisions are routinely positive for spousal sponsorships, as it is recognized that separating spouses necessarily entails undue hardship. In the case of parents and grandparents, applicants must argue why they simply couldn't go back to the home country and await processing there (see page 66).

RECENT AND CURRENT DEVELOPMENTS

In January 1997 the government adopted amendments to the family sponsorship regulations. The regulations had been pre-published in December 1995, but were delayed as substantial re-working was done. A number of the proposed amendments, including some of the most restrictive measures, were dropped from the final version. Nevertheless, the effect of the amendments was to tighten the requirements that family class sponsors had to meet.

The Canadian Council for Refugees has continued to put pressure on CIC to address barriers to speedy family reunification for refugees. In September 1997, at the CCR's request, a meeting was held on the issue, attended by CIC, CCR and other organizations. Since then, CIC has undertaken to study the problems and develop measures to address them. Most recently the CCR has been told that some plans may be ready for discussion in the fall of 1998.

The issue of family sponsorship breakdown has attracted considerable attention recently. The Québec government brought in measures to force defaulting sponsors to repay money paid out in social assistance to sponsored relatives. In May 1998, the Québec Protecteur du citoyen (ombudsman) published a report criticizing some of the ways in which the measures have been implemented.[29]

The Legislative Review Advisory Group declared that the family is "essential for success" and recognized the state's international obligation to protect the family unit. Their recommendations broadened the range of family members that could be sponsored, creating 3 tiers, from immediate family to more distant, with progressively more demanding requirements placed on both the sponsor and the family members. All sponsored family class applicants would have to speak English or French or pay language tuition fees to be admitted. The sponsorship period for spouses and dependent children would be reduced to 3 years (which it already is for spouses in Québec), but sponsors could not apply if they had been on welfare in the past 12 months. The definition of "spouse" would be expanded to cover common-law and same-sex relationships, and children sponsorable up to age 22. Immediate family would be permitted to come to Canada for processing.

CCR CONCERNS

Family unity is a fundamental right and the state has an obligation to protect the family unit.[30] Families that have been separated should be reunited as quickly as possible. The CCR has therefore long been deeply concerned at the delays in and barriers to family reunification, particularly for refugees, many of

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[29] *Le parrainage des immigrants: Pour un régime juste,* mai 1998.

[30] "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" Article 16.3, *Universal Declaration of Human Rights,* and Article 22.1, *International Covenant on Civil and Political Rights.*

whom are forced to separate from their families in the course of their flight from persecution. As a result of these concerns, the CCR in 1992 struck a task force to explore the problems and make recommendations (its report, *Refugee Family Reunification*, was published in July 1995).

Although the Canadian immigration system in principle provides for family reunification for immediate families, and gives priority in processing to such cases, in practice there are frequently long delays, before visas are issued and family members can travel to Canada. The problems of delays are particularly acute in areas, notably Africa, where visa offices are few and far between. Refugees may already have been separated from their families for years while in flight and while waiting in Canada for the refugee claim to be determined. Until they are reunited with their family, they cannot properly begin to integrate, and the longer the separation, the more difficult the reunification is likely to be. For all of these reasons, the CCR calls on the government to allow immediate family members of Convention Refugees to travel to Canada at once, so that the whole family can be processed for permanent residence together.

This solution would address one of the worst injustices caused by the various barriers to permanent residence affecting refugees (identity document requirement, fees and security issues). Refugees prevented from landing by one of these obstacles face long or indefinite separation from their dependent children and spouse. The Undocumented Convention Refugee in Canada Class not only forces a wait of five years from the granting of refugee status on refugees who cannot provide ID, but requires them to become permanent residents first before beginning processing of their family members overseas, an additional completely unnecessary hardship.

As lack of identity documents is a barrier to permanent residence, so lack of documents establishing family relationship is an obstacle to family reunification. The CCR is concerned about the effect of CIC's requirements on people from parts of the world where such documentation is not easily available (for reasons of culture or political disruption). A particular concern relates to the ever-increasing use of DNA testing, at considerable expense to the applicants and causing further delays.

The definition of who can be sponsored is very limited, and excludes many whom refugees would consider close family. When, as is often the case for refugees, these relatives have been seriously affected by war and human rights abuses, the sense of responsibility and need for reunification are clearly much stronger. The CCR therefore urges the government to introduce a more flexible definition of family, particularly for refugees.

Relevant documents

- *Refugee Family Reunification*, Task Force on Family Reunification

- *Comments on the Draft Amendment to the Immigration Regulations published in the Canada Gazette, Part I, December 23, 1995*, January 1996
- *Brief to the Immigration Legislative Review*, July 1997
- *Comments on the Report of the Legislative Review Advisory Group: Not Just Numbers*, March 1998

Detailed information

Family definition

Members of the family class, as defined in the Regulations (S.2) are:

(a) the sponsor's spouse
(b) the sponsor's dependent son or dependent daughter
(c) the sponsor's father or mother
(d) the sponsor's grandfather or grandmother
(e) the sponsor's brother, sister, nephew, niece, grandson or granddaughter, who is an orphan and is under 19 years of age and unmarried
(f) the sponsor's fiancé-e
(g) a child under 19 years of age whom the sponsor intends to adopt
(h) any relative where the sponsor does not have a family member who is a Canadian citizen or permanent resident or whom the sponsor could apply to bring to Canada.

A **spouse** for immigration purposes refers to a legally married spouse only: common law[31] and same sex spouses are excluded. The legality of a marriage is determined by the laws of the country in which the marriage was performed, although polygamous marriages are not recognized. Spouses can also be refused on the basis that the marriage was entered into primarily to gain admission Canada and not with the intention of living together permanently (R. 4 (3))

Fiancé-e-s can be sponsored if there are no legal impediments to the proposed marriage under the laws of the province in which they will live. They must get married within 90 days of the person's arrival in Canada. Visa officers can refuse fiancé-e-s if they believe that they do not intend to live together permanently but have become engaged primarily so that the fiancé-e can gain admission to Canada. (R. 6(1)(d)).

Children must be unmarried and aged 19 or younger at the time of the application for permanent residence or sponsorship. Adult or married children can be included if they are full-time students and have been continuously supported financially by the parents, or have a physical or mental disability and

[31] One way for common law spouses to be reunited is by submitting a sponsorship of a fiancé-e and marrying legally once both are in Canada. In some cases this is not possible where one of the partners was previously married and cannot get a divorce.

are incapable of supporting themselves. (Reg. S. 2) Adopted children are also eligible provided they have been legally adopted before reaching age 19 (R. 6(1)(e)).[32] There is no recognition of relationships that fall short of adoption. These may exist where a country does not recognize adoption (e.g. most Moslem countries don't) or in other circumstances.

Same-sex couples
There is no provision in the law for a person to sponsor a same-sex partner as an immigrant to Canada. The recourse for same-sex couples is to apply for humanitarian and compassionate grounds. Unpublicized instructions to visa officers allow them to give positive consideration to such applications, but decision-making is inconsistent.

Requirements to sponsor
The following are the requirements that a person must meet in order to be able to sponsor family members.[33] The sponsor must:

- be a permanent resident or Canadian citizen.
- give an undertaking (to support the family members sponsored).
- not be under a removal order (in the case of a permanent resident)
- not be in jail.
- not be bankrupt.
- not have defaulted on any previous family sponsorship undertaking.
- have made a written agreement with the person to be sponsored (where the person is over 18 or in the case of a spouse or fiancée, no matter what the age) undertaking to provide for the essential needs of the person for 10 years.
- have had for the 12 months preceding the undertaking sufficient income, worked out according to a formula that takes into account the size of the sponsor's family in Canada as well as the number of family members to be sponsored. (This requirement does not apply in the case of sponsorship of a spouse or dependent children[34] - R. 6(3)).

The sponsor's spouse (including a common law spouse) can co-sign the undertaking, meaning that he or she will also be fully responsible, but allowing a second income to be taken into account.

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[32] Where the province the sponsors are going to has signed the Hague Convention on Protection of Children in respect of Intercountry Adoption, the adoption must be in accordance with this Convention. (R. 4 (4))

[33] The Regulations on Family Class sponsorship were amended in April 1997, at which time the requirements were made stricter than they had been previously. However, these amendments are not as restrictive as the proposed amendments, pre-published in December 1995.

[34] The exception does not, however, apply if the child, or a child of the spouse, is over 18 years old, is married or has a child.

If in the course of the processing, word comes to the visa officer that the sponsor's financial situation has changed for the worse, a new calculation is to be made, based on the 12 months preceding the date on which the family members were approved to come to Canada.

If in the process of sponsorship, the sponsor is charged with a serious crime, CIC will delay making a decision, either on the application to sponsors, or on the admission of the family members, until a final decision has been made in the criminal case (R. 5(6) and R. 6 (3.4)). Similarly if proceedings are begun to remove the sponsor, processing of the sponsorship will be interrupted.(R. 5(7) and R. 6 (3.5))

Fees

Whether family members are being sponsored or included on the application of a refugee in Canada, processing fees must be paid of $500 for each adult, including children over age 19, and $100 for each child under age 19. Thus a refugee with a spouse and two minor children must pay at least $1200 before he or she can begin the process for becoming a permanent resident and bringing immediate family to Canada.

In addition, at some point in the process, the Right of Landing Fee must be paid. This fee of $975 is charged on each adult included in the application (for a family with minor children, $1950 per family on top of the processing fee). The government runs a loan program for which refugees in Canada can apply. However applications may be refused if it is felt that there is not a capacity to repay the loan. See page 54 for further details about ROLF.

Processing

Processing for family reunification can be lengthy, involving aspects in Canada and abroad.

If a sponsorship undertaking must be submitted, this first stage is handled by the Mississauga Case Processing Centre, which may however refer it to a local CIC office if they have any difficulties with it.

Once the sponsorship undertaking, if any, is accepted, the application is sent overseas to the relevant visa post overseas, which is responsible for checking that the applicants overseas are in fact the family members of the sponsor or refugee in Canada and that they are admissible (on medical and criminality/security criteria). Family members may be required to attend an interview with a visa officer. Even though immediate family members cannot be excluded on medical grounds, they must have a medical exam before a visa is issued (at the expense of the applicants).

Delays are reported throughout the process, especially where the family is in Africa: arrival of the forms from Canada at the visa post; contacting the family member, holding the interview; establishing satisfactory proof (to the visa officer) of relationship, and obtaining security clearance.

CIC's capacity for processing family applications in Africa is small, even though the continent is a source of many refugee family applicants.

Finally, results of the medical exam are valid for one year only; if the rest of the process takes longer than the relevant year the medical may have to be done again, with further delays and at extra cost.

Establishing family relationship

Where CIC finds it difficult to determine the identity of the refugee, it may also find difficulties in accepting proof of the spousal or child relationship: there may be no available marriage or birth certificates because the relevant document issuing authorities may no longer exist, or marriage or birth may not be recorded through documents in the society. In the case of children, CIC increasingly relies on DNA testing, which is expensive and a source of considerable delay since the tests are run in Canada and precautions must be taken to ensure the integrity of the blood sample.

9. RISK REVIEW AND HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS

Summary
Since the current refugee determination system came into effect in January 1989, there has been some kind of review of the risks that might be faced by refused refugee claimants should they be sent back. This review was introduced in recognition of the fact that there are risks of human rights abuses that fall outside the scope of the Convention Refugee definition. In 1993 the review was formalized through regulations which created the Post-Determination Refugee Claimant in Canada Class (PDRCC).

To meet the definition a refused refugee claimant must, if removed to the home country, face a risk to his or life or a risk of extreme sanctions or of inhumane treatment. The decision is made by an immigration officer known as a Post Claim Determination Officer (PCDO). However, not all refused refugee claimants are eligible for the review. Since May 1997, refused claimants must apply within 15 days of a negative decision on their refugee claim or they forfeit the right to the review. There is also a series of categories of persons who are not entitled to the review, including people who have left Canada temporarily and people who meet certain definitions of criminality or security risk.

The risk review is done on the basis of written submissions and other information on file or otherwise available to the PCDO: there is no hearing or interview. Claimants have 30 days from the time of application to make submissions, although submissions received at any time before the decision must be taken into account.

If a refugee claimant applies for a risk review, or is automatically entitled to one because the negative refugee determination was made before May 1997, he or she cannot be removed from Canada until a decision on the risk review has been made.

Claimants found to meet the PDRCC class can apply for permanent residence, which will be granted unless the person meets certain definitions of criminality, has left Canada since being found at risk or fails to provide an identity document.

Refugee claimants, and others, can apply at any point in the process for humanitarian and compassionate consideration (commonly referred to as H&C). This is a request to be exempted from the usual requirements of the Immigration Act for granting permanent residence. There are no rules about what situations do or do not call for H&C to be granted: the immigration officer making the decision must consider all arguments submitted and use his or her discretion. In practice, most of the cases accepted involve family relationships (especially spouses, where H&C is almost automatically granted). Convention Refugees who apply for permanent residence after the 6 month deadline are also routinely accepted. Acceptances on other grounds are less common.

An application for H&C costs $500. There is no limit to the number of requests that can be made, apart of course from the applicant's finances. The fact that a person has applied for humanitarian and compassionate consideration and has not yet received an answer does not prevent the person from being removed.

Even after a person has been accepted on H&C, a decision must be made on admissibility criteria (medical, criminality, and security issues). Thus it is possible for a person to be found to merit humanitarian consideration (for example as the physically disabled mother of a Canadian who has no other family to whom she could turn), but then to be deemed inadmissible on medical grounds. In such a situation, the person would generally be given a Minister's permit.

RECENT AND CURRENT DEVELOPMENTS

In May 1997 the government introduced amendments to the PDRCC regulations that limited the right to a risk review to those refugee claimants who applied for one within 15 days of a negative decision. Claimants are then given 30 days within which they can provide their submissions, after which a decision may be made, whether or not a Federal Court application is being pursued simultaneously. However, CIC will take into account any information submitted before a decision is rendered and the policy is to make risk reviews as close as possible to removal (but the claimant will not necessarily know when the decision is going to be made).

The amendments also expanded the categories of persons excluded from a right to a risk review to include persons meeting various definitions of criminality and persons found excludable from refugee protection on the basis of Section F (see page 8). In addition, persons who make a second claim after waiting in the US for less than 6 months cannot have a risk review.

The CCR and many other NGOs opposed the proposed amendments. Despite the fact that many comments were received, the pre-published regulations came into force without any change. The amendments reflected the Minister's commitment, reported in the media in September 1996 to remove the automatic right of refused refugee claimants to a risk review.

From 1 July 1997 to 30 April 1998, 4478 PDRCC decisions were made. 1006 (22%) were found to be not eligible, 3364 (75%) were found eligible but not at risk and 108 (2.4%) were found to be at risk. Of those found not eligible, a significant number (358 = 35%) were refused on the basis that the application was late. Full information on PDRCC for 1997 is not available, due to difficulties experienced in one of the CIC regions.

At the same time as the changes to PDRCC, the government cancelled the Deferred Removals Orders Class (DROC) which had been created in November 1994. This Class allowed refused refugee

claimants who met certain conditions to be granted permanent residence if they had not been removed three years after the negative refugee determination, in recognition of the fact that after several years people have begun to integrate into Canadian society. The goverment argued however that the existence of the DROC program created an incentive for people to try to remain in Canada. Following the cancellation of DROC, CIC provided new guidelines to its officials making H&C decisions. They were told that positive consideration might be warranted where the person has been in Canada for a significant period of time as a result of either a temporary suspension of removals or an inability to obtain a travel document despite the applicant's full cooperation. The applicants would also be expected to have become successfully established.

In 1996 a little over 3000 people were landed under DROC.

Decision-making on requests for humanitarian and compassionate (H&C) consideration has long been widely criticized and has been the subject of various reviews and proposals for reform. It was addressed by Susan Davis and Lorne Waldman in their March 1994 report, *The Quality of Mercy*, commissioned by then Minister Sergio Marchi. Susan Davis subsequently did a follow-up paper[35] on discretionary decision-making while working as a consultant for CIC. The paper, submitted in July 1996, was never made public nor even shared with those consulted in its preparation (although it is available through access to information).

Both the risk review and the H&C processes attracted the attention of the Auditor General in the course of his study of the processing of refugee claims (report published December 1997). He had questions about the efficiency and results of the risk review and was perturbed by the overlap between the PDRCC definition and the Refugee Convention definition. The report also found a lack of rigour in humanitarian decision-making: "In our view, the use of the discretionary power in connection with applications for permanent residence on humanitarian and compassionate grounds lacks sufficient monitoring to ensure consistent decision-making" (25.128).

CIC has responded to criticisms (internal as well as external) of the H&C process by preparing a new draft of guidelines. The CCR was consulted in May 1998 (although the draft already existed in November 1997). CIC is also working on providing its decision-making officers with training.

LRAG proposals

The Legislative Review Advisory Group (LRAG) proposed that the grounds for granting protection be broader than the Convention refugee definition, to include other human rights obligations (the Convention Against Torture is in particular referred to). The risk review would in effect be

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incorporated into the refugee determination. The LRAG report however also recognized the need for a pre-removal risk review, to take account of any changes in circumstances since the protection decision was made. Persons about to be removed would be given 48 hours to make submissions.

In terms of humanitarian and compassionate decision-making, the LRAG report virtually excluded it, on the basis that the clear, efficient and transparent system created would for the most part eliminate the need for discretionary decision-making. However, the Advisory Group foresaw two categories where there might be a need for special measures: cases involving the national interest, and cases of dependency.

CCR CONCERNS

The CCR recognizes that Canada has *non-refoulement* obligations that go beyond the Refugee Convention. Important among these is the obligation under the Convention Against Torture not to send anyone back to a situation where there is danger of torture. These obligations have never been incorporated into the Immigration Act.

The current risk review (the PDRCC) is inadequate to ensure that Canada complies with these obligations, because of the restrictions on access to the review, because of the narrow definition and because of the inferior decision-making process. Many categories of persons are excluded from the right to a risk review, as are, since last year, those who fail to apply within 15 days of a negative refugee determination. A survivor of torture, traumatized by a refusal on the refugee claim, might well fail to meet this deadline. Excluding those with criminality issues ignores the fact that the Convention Against Torture prohibition against *refoulement* is absolute and allows no exception, no matter how undesirable the person.

The PDRCC definition is complex, mirrors the refugee definition (when it should complement it) and fails to incorporate the relevant human rights obligations. Decision-making is in the hands of civil servants, rather than an independent decision-maker, and depends entirely on written evidence, with no hearing provided.

The CCR calls for risk reviews to be conducted by the Immigration and Refugee Board, after refugee determination. The IRB is an independent tribunal, with specialized knowledge about country conditions, and could conduct risk reviews very efficiently for claimants already heard on the refugee claim.

The CCR believes that a strong humanitarian and compassionate process is necessary in order to ensure that everyone is treated humanely, and in a manner that respects the individual circumstances of their case.

The current humanitarian and compassionate process is unsatisfactory, because in practice it lacks consistency and compassion. Decisions vary dramatically from case to case, from officer to officer and from region to region. Often negative decisions appear to betray a total lack of compassion. The numerous cases of rejected H&C applicants who win favourable media coverage and broad popular support are evidence of the degree to which H&C decision-making is out of touch.

The fact that applicants must pay $500 per adult for H&C consideration is an unfair barrier that discriminates against those without means. In some cases, the very circumstances that make them deserving of humanitarian consideration mean that the applicants will have great difficulty paying the fee.

Relevant documents

- *Comments on Draft IP5 -Processing Inland Applications for landing on Humanitarian and compassionate grounds*, June 1998

- *Comments on PDRCC Regulations*, February 1997

- *Comments on Abolition of DROC*, February 1997

- *Position on Essential Principles in response to Hathaway & Davis/Waldman reports*, September 1994

Detailed information

Post-Determination Refugee Claimant in Canada Class
To have a risk review, a refused refugee claimant must:

- apply within 15 days of receiving notice of the negative determination by the Immigration and Refugee Board (Reg. 11.4 (2)(b))[36]
- not have withdrawn the refugee claim
- not have had the refugee claim declared abandoned
- not have had the refugee claim declared to be without credible basis
- not have left Canada since the negative refugee determination
- not have been found to fit the Section F exclusion provisions of the 1951 Geneva Convention
- not meet any of a series of definitions of criminality and security risks

[36] This provision was introduced in May 1997 - previously the review was as of right for all refused claimants, without their applying. Claimants who were refused before May 1, 1998 are "deemed applicants" i.e. they don't need to apply.

- (in the case of a claimant who was in Canada, was removed from Canada and then returned and made a (second) claim) not have remained in the United States for six months or less before returning.

(The last category is intended to deprive second-time claimants from a second risk review: some claimants after being refused are removed to the United States and wait there 90 days after which they return to Canada, as the law allows, and make a second claim. The argument made by the government is that in such cases claimants have already had a risk review fairly recently and so it is unnecessary to do another one).

Having decided that an applicant is eligible to have a risk review, the Post-Claim Determination Officer (PCDO) decides whether the person meets the definition of a member of the Class.

Meeting the definition means that, if removed[37]:

- the person would be subjected to an objectively identifiable risk
- the risk would apply in every part of the country
- the risk would not be faced generally by other individuals in or from the country[38]

The risk must be:

- to the person's life (but not a risk to life caused by lack of adequate health or medical care)
- of extreme sanctions
- of inhumane treatment

The PDRCC definition appears in the Immigration Regulations, Section 2 (1).

Deferred Removal Orders Class (DROC)

On 7 July 1994, then Minister of Citizenship and Immigration announced the creation of the Deferred Removal Orders Class, which allowed refused refugee claimants that met certain conditions to be landed, if three years after their negative refugee determination they had not been removed. This initiative came together with a re-orientation of removal resources towards removing criminals and a new "last-in, first-

[37] The test applies to the country "to which the immigrant could be removed". This means that if the person cannot be removed to his or her home country (because, for example, Canada is not currently deporting to that country on account of the human rights situation there), the person cannot be found to be at risk and landed under the PDRCC.

[38] The requirement in the definition that the applicant face a risk that is not generalized leads to the perverse consequence that the worse the situation in the home country, the more difficult it is for an applicant to be accepted. If atrocities, repression and deprivation are widespread and tormenting almost everyone in the population, how can the applicant show that he or she would be *worse affected* than everyone else?

out" (LIFO) policy that refugee claimants who had already been waiting several years to be removed would be low on the list of priorities. DROC allowed people to stay permanently where, through no fault of their own, they had been in Canada long enough to be settled here.

The Class was however cancelled in May 1997. CIC recognized that this would leave a gap and therefore gave additional guidelines for officers considering humanitarian and compassionate requests. These suggest that a positive decision on H&C may be given where the person has been in Canada "for a significant period of time" as the result of:

- a temporary suspension of removals; or
- an inability to obtain a travel document despite full cooperation with the Department.

The person must also have become successfully established.

10. DETENTION

Summary

The *Immigration Act* provides for the detention of persons on the grounds that they would pose a danger to the public or that they would not present themselves when next required by Immigration. The decision to detain can be made either by an immigration officer (the more usual case) or by an immigration adjudicator. Once a person has been detained, he or she must be brought before an adjudicator within 48 hours for a detention review. At this hearing, a representative of Citizenship and Immigration Canada will present arguments about why detention should be maintained or if release should be allowed, on what conditions. The detainee, with counsel (if any), can make the arguments for release. The adjudicator, who is a member of the Adjudication Division of the Immigration and Refugee Board, then makes the decision and gives reasons. The adjudicator can order release, conditional release (normal conditions are bonds - either cash or performance) or continued detention. If the person continues to be detained, another review is held in 7 days time and after that every month.

People detained under the *Immigration Act* can be detained in immigration detention centres (there is one in Toronto, the *Celebrity Inn*, and another in the Montreal area, located in Laval) or they can be held in jails. Jails are used when there is no local immigration detention centre or when the detainee has criminal convictions, is considered dangerous or in need of special attention in some way.

People in a wide variety of circumstances are detained. Some are visitors who did not satisfy the immigration officer when they arrived at the airport that they were genuine visitors. Some are refugee claimants who have just arrived and who in some way aroused the suspicion of the immigration officer. Some have been living without status in Canada and are arrested when someone in authority discovers they have no status. Some are immigrants who have committed a crime and are kept in immigration detention after serving their sentence because the Immigration Department is preparing to deport them. Many are people on the point of being removed from Canada who are suspected of not being likely to show up for their deportation.

RECENT AND CURRENT DEVELOPMENTS

The Enforcement Branch of CIC, responsible for overseeing detention, has recognized since at least the beginning of 1996 the lack of national consistency in detention decisions and, motivated no doubt in part by financial considerations, has been concerned to reduce unnecessary detentions. The Pearson Pilot Project (see page 42, 42), which circumvented the long interviews of refugee claimants that used to take place at Pearson International Airport, was one measure that reduced detention levels in Toronto, since claimants were often detained while they waited for the interviewing process to be completed. In the fall of 1996, CIC was preparing to release directives to its officers that would clarify when detention was appropriate. The guidelines were however leaked, to the Globe and Mail, which ran a story on 2 October 1996 headlined *Immigration may detain fewer: Illegal entrants, bogus refugees would get easier access to Canada, officers warn*.

The Minister's response was to distance herself from the guidelines. Plans to issue the guidelines were withdrawn and instead CIC headquarters began a process of reviewing the proposed policy in discussion with their officers. Two years later, in the fall of 1998 the guidelines are being issued.

In 1997 CIC was reviewing and implementing many of the recommendations made in the Coroner's inquest into the death of Michael Khabho Deno (aka Michael Akhimien) who died in December 1995 while in detention. Mr Deno died as a result of diabetes when the detention centre failed to give him appropriate medical services.

In the summer of 1997, over a hundred people detained under the Immigration Act in Toronto's Metro West jail went on hunger strike. They were protesting against indefinite detention, arbitrary deportation, lack of access to legal services, human rights abuses, racism and poor living conditions. Some of the detainees had been in jail for up to three years while awaiting deportation.

In response to concerns raised by the Canadian Council for Refugees, and echoed by other members of the IRB's Consultative Committee on Practices and Procedures, the IRB Chairperson issued on 12 March 1998 guidelines for adjudicators making decisions on detention (see page 76, 78).

In February 1998, the Detention Committee of the Toronto Refugee Affairs Council published *Is this Canada? A Report on Refugee Detention in the Celebrity Inn Immigration Holding Centre*. This is the result of a research project undertaken by Joan Simalchik into who was being detained in the Celebrity Inn and the conditions in the detention centre. Among those detained were refugee claimants, including some who had experienced violent persecution in their home countries. Also were detained were persons trying to enter Canada as visitors, passengers in transit, people who had overstayed their visas and people in Canada without any status. Detainees are children, women and men and length of detention varied from one day to three years. In the period studied, the majority of detainees originated from Africa or South Asia. Findings in relation to conditions included poor air quality, lack of independent complaint mechanism, lack of educational, religious and recreational services for long-term detainees and inadequate health care. The report also includes a series of recommendations.

CIC is currently drafting standards for detention, dealing with such things as the information to be given detainees, medical services, food, access to telephones and disciplinary measures. The CCR was invited to comment the draft. While the project of establishing standards is welcome, the draft raised concerns in a number of areas. CIC has proposed a meeting with NGOs to discuss standards, possibly to be held in October 1998.

6,400 people were detained in financial year 1996-97, increasing to 7,080 in 1997-98.

DETENTION

In 1998 the Vancouver immigration detention centre was closed down, because the number of detainees was not sufficient to justify it.

LRAG proposals

The *Not Just Numbers*' report of the Legislative Review Advisory Group acknowledged that one of the most common criticisms of the current system is the arbitrary nature of detention decisions. As part of a new enforcement model, they proposed using detention as a means to encourage compliance with immigration requirements. Because the conditions for compliance would be clear, it was felt that detention decisions would no longer be arbitrary and could be made administratively by an immigration officer, rather than in an inquiry by an adjudicator. *Not Just Numbers* also however recommended that the question of detention and removals be referred to the Standing Committee on Citizenship and Immigration.

Standing Committee Report

At the request of the Minister, the Standing Committee conducted the study in the spring of 1998. Witnesses appearing before the committee for the most part rejected the key LRAG recommendations, as leading to an increase in detention and an increase in injustice. Committee members heard many witnesses who spoke about current unfairness in detention. The Committee released its report, *Immigration Detention and Removal*, in June 1998. It took the position that existing problems in enforcing the Immigration Act are not so serious that extreme measures can be justified and rejected the main LRAG recommendations. They called for a reduction in the numbers of immigration detentions, stated as a principle that detention should only be used as a last resort and recommended a limit to long-term detention. They were also concerned about conditions in detention centres, particular in the Mississauga centre (*Celebrity Inn*), which they said needed to be improved or shut down. In a somewhat confused section of the report, the Committee also recommended that persons be detained if their identity is not established (although at the same time they said that they don't want this to lead to more people being detained).[39]

CCR CONCERNS

CCR concerns with detention relate to two main areas: decision-making about detention and release, and conditions of detention.

Detention decisions

[39] The report can be found on the parliamentary internet site (www.parl.gc.ca). The CCR's comments on the report are available on the CCR web site.

The right to liberty is a fundamental human right, yet those detained under the Immigration Act find that the system gives their right to liberty very little weight. Despite the widely acknowledged problems of arbitrariness, little has been done to address this. The IRB Chairperson's recently released guidelines for adjudicators are a step in the right direction, although their limited scope is regrettabled. They only briefly refer to refugees and do not mention the UNHCR's Guidelines on the Detention of Asylum-Seekers. Important questions relating to minors are similarly given only cursory treatment. The guidelines' focus on long-term detention ignores the need to address problems relating to initial decisions by adjudicators to detain or maintain detention. Nevertheless, the IRB's guidelines highlight the important principle of the right to liberty and provide a framework for adjudicators making decisions involving long-term detention, danger to the public, alternatives to detention and evidence and procedure.

The main CCR concerns with decision-making on detention are:

a) Detention of refugee claimants. (According to the UNHCR's Guidelines on Detention of Asylum Seekers, "the use of detention against asylum seekers is, in the view of UNHCR, inherently undesirable.")

b) Detention of minors. (Minors should only be detained in exceptional circumstances. The Convention on the Rights of the Child needs to be a central point of reference. In cases where parents of young children are detained, attention needs to be paid to family unity. The UNHCR Guidelines on Detention of Asylum Seekers also has comments on the detention of persons under the age of 18.)

c) Long-term detention (once people have been detained for some time the regular detention reviews can become pro forma with the same arguments repeated. As a result, people have been detained for months or even years).

d) Detention of people for whom no enforcement action is expected within the foreseeable future.

e) Wide regional variations in detention decisions.

Detention conditions
Concerns with conditions include:

1. Inadequate access (for visitors, NGOs, lawyers, family members).

2. Lack of availability of legal aid, with the result that many detainees go to their detention reviews unrepresented.

3. Minors detained in centres for adults (with or without their parents).

4. Lack of access to education for minors.

5. Lack of adequate medical care.

6. Detention of individuals in criminal detention centres.

7. Lack of adequate facilities for women.

8. Lack of provision for families to spend time together.

9. Excessive use of restraints (handcuffs and/or leg irons), including for people who have been cooperative.

Relevant documents

- *Comments on Detention and Removals addresssed to the Standing Committee on Citizenship and Immigration*, March 1998

- *Comments on "Immigration Detention and Removals": Report of the Standing Committee on Citizenship and Immigration*, June 1998

- *Problems on the Path to a Just Society: A Human Rights Analysis of Canadian Immigration Detention Law and Practice*, June 1990

Detailed information

Grounds for detention
The provisions in the Immigration Act for arrest and detention (S. 103 and 103.1) are quite complex and give quite broad powers police, immigration officers and adjudicators to detain people, with or without an arrest warrant.

For a person to be detained, there must be a removal order against him or her, or some kind of inquiry, examination or other proceeding pending. The grounds for detention are (S. 103 (1)(b); 103 (3)(b); 103 (3.1)(b)):

- there are reasonable grounds to believe that the person poses a danger to the public.

- there are reasonable grounds to believe that the person will not appear for examination, inquiry, proceeding or removal

In the case of people arriving in Canada, they can also be detained if:

- the person is unable to satisfy an immigration officer as to his/her identity.

- there is reason to suspect that the person may be a member of one of the criminality or security inadmissibility classes. (103.1(b))

If a person is detained under this provision it is for a period of no more than 7 days, renewable every 7 days by bringing the person before an adjudicator for review of the reasons of detention. This provision in the Act, however, is rarely used.

Detention Reviews
If 48 hours after being detained, the person is still in detention (e.g. has not already been deported), he or she must be brought before an adjudicator for a detention review. Adjudicators are members of the Adjudication Division of the Immigration and Refugee Board.[40] The detainee has a right to be represented by counsel, although many detainees are not. An interpreter is provided when necessary. A representative of the Minister, an immigration officer, will make CIC's arguments about why the person should be detained. The detainee (or counsel) can argue for release. The adjudicator makes a decision based on the same grounds for detention: is the person a danger to the public? Is the person likely to appear? The adjudicator has 3 options: to continue detention, to release the person unconditionally, or to release the person with conditions (usually a cash or performance bond).

In March 1998 the chairperson of the IRB issued guidelines for adjudicators making detention decisions. They focus on 4 areas: long-term detention, danger to the public, alternatives to detention and evidence and procedure. [41]

If the person remains in detention after the 48 hours, there is another detention review after 7 days and then every 30 days. There is no limit to the length of time a person can be detained under the Immigration Act.

It is also possible for Senior Immigration Officers to release people from detention and to impose terms and conditions for their release.

Detention under "Safety and Security Provisions"

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[40] Adjudicators were part of Citizenship and Immigration Canada, until the 1993 changes to the Act moved them over to the IRB, in order to reinforce their independence.

[41] The guidelines on detention can be found on the IRB's web site www.irb.gc.ca.

DETENTION

Sections 39-40 of the Act are intended to provide for the expeditious removal of persons in cases where Canadian security is felt to be at risk or where there is a need to protect sensitive security and criminal intelligence. When a certificate is made against a person under these provisions, the person is to be detained (S. 40.1(2)(b)). The person can be ordered released by the Minister in order to be removed (S. 40.1 (7.1)) or after 120 days may apply to the Chief Justice of the Federal Court (or substitute). The judge may release the person if he or she is satisfied that the person will not be removed within a reasonable time, and the release would not be injurious to national security or the safety of person's. In order to make this evaluation, the judge may hear sensitive evidence in camera and then give the detainee a summary of that evidence and an opportunity to respond. (S. 40.1 (8)-(11)).

11. REMOVALS

Summary

When an immigration officer decides that a person in Canada has no right to be here, he or she will issue a removal order against the person, who can then be removed. According to the *Immigration Act* (52 (2)) people can be removed to their country of citizenship, of birth or of residence or to the last country they were in before they came to Canada. There is also an escape clause in the Act that allows a person to be removed to any other country if none of these countries are willing to receive the person.

There are three kinds of removal orders: voluntary departure orders, exclusion orders and deportation orders. Under the voluntary departure order a person is given 30 days to leave the country. If the person has not left after 30 days, the departure order automatically becomes a deportation order. In the case of both exclusion and deportation orders, it is CIC that arranges for the person to be removed from Canada. The difference between the two is that someone who has been "excluded" cannot return legally without the Minister's permission for a period of one year, whereas a person who has been "deported" can *never* return to Canada without the Minister's permission.

A person who comes to the Canadian border and claims refugee status is given a conditional removal order right at the beginning of the process. (This is not the case for claimants applying inland if they have some kind of status within Canada: for example, a student visa). If and when the person's claim to refugee status is refused, the removal order becomes effective. However, the person will not be immediately removed if he or she applies to the Federal Court for leave for judicial review or applies for the risk review (PDRCC). In both these cases there is an automatic stay (or deferral) until these matters have been concluded.

In other cases it is possible to ask the Federal Court for a stay in the removal order while some matter is being decided (for example, a humanitarian and compassionate application). However, it is necessary to convince the Court that "irreparable harm" would be done if the person was removed - something that the Court does not tend to be easily persuaded of.

Most people are removed to their country of citizenship. The exception to this general rule is people who entered Canada from the United States (this is the case for more than a third of refugee claimants). Canada has a *Reciprocal Accord* with the United States, according to which each country will, subject to certain conditions, accept the return of inadmissible people who have gone into the other country.

There are a few countries to which Canada does not generally remove, because of the generalized situation of violence and massive human rights abuses. The current list of "moratorium" countries consists of Afghanistan, Algeria, Burundi, the Democratic Republic of Congo (former Zaire) and Rwanda. Citizens of these countries may however be removed to the United States if they passed through that country on their way to Canada. In addition, the government reserves the right to remove serious criminals to moratorium countries.

REMOVALS

One of the obstacles to removal in some cases is getting the presumed country of origin to agree to accept the person. This is particularly the case where the person does not have any identity documents. However, lack of identity documents in itself does not prevent the person from travelling, since Citizenship and Immigration Canada can supply "Single Journey Forms" - a kind of travel document used, as the name suggests, for a one-way trip.

In most cases, persons being removed are simply put on a plane and sent on their way. In some cases, particularly where they fear that the person may be violent, Citizenship and Immigration Canada sends escorts for part or all of the journey.

In the last few years there has been an increased number of permanent residents among those being removed. Recent changes to the Immigration Act have meant that permanent residents who are convicted of certain types of crimes can be automatically stripped of their permanent residence and deported, if they are labelled by the Minister "a danger to the public". Some of these people have lived in Canada since they were young children and find themselves complete strangers in the "home" country to which they are removed.

RECENT AND CURRENT DEVELOPMENTS

In February 1996 Roger Tassé completed his report *Removals: Processes and People in Transition*. He had been commissioned by Citizenship and Immigration Canada to investigate removals processes, in response to the revelation that the Manager of the Winnipeg CIC office had committed forgeries in order to facilitate removals. Tassé reported on the concerns of the various players (CIC officials with different functions, NGOs, lawyers) and made a long series of recommendations. His central call was for greater emphasis on "people".

Few of the Tassé recommendations have however been implemented by CIC.

The Auditor General's report on the refugee claim process, published in December 1997, drew attention to CIC's difficulties in carrying out removals.

The Legislative Review Advisory Group pursued the same theme, identifying the major problem with removals as being the difficulty in enforcing removals. To address this, the *Not Just Numbers* report proposes a new system of incentives and disincentives for compliance, intended to ensure that those who are to be removed can in fact be removed. This system is based on the creation of a provisional status, which would be given to people in the process as long as they complied with certain conditions, such as keeping CIC informed of their address and applying for a travel document, if they don't already have one. Those who lost their provisional status by failing to meet the conditions would be subject to detention. The Advisory Group also endorsed a number of the Tassé recommendations in the areas of

mission statement, accountability, ethics, selection, training and deployment of removal staff and communications.

As mentioned above, in response to a recommendation in the *Not Just Numbers* report, the Standing Committee on Citizenship and Immigraton conducted a study of detention and removals in the spring of 1998. In their report, *Immigration Detention and Removal*, they concluded that the problems in immigration enforcement were not as dire as *Not Just Numbers* suggests. However, committee members expressed concerns about who was being removed, commenting for example on risk review and humanitarian and compassionate reviews. They questioned the degree of accountability within Enforcement, calling for CIC to develop a specialized enforcement code of conduct and to establish an independent oversight body to deal with complaints.

In March 1997, Algeria was added temporarily to the list of moratoria countries (i.e. countries to which Canada does not generally deport). The addition of Algeria was made permanent in September 1997. Zaire was added in April 1997.

In February 1998, in response to a CCR resolution calling for formal notification of changes to the list of moratoria countries, the Minister told the CCR that the Enforcement Branch has undertaken to provide the CCR with formal notification of any changes.

In February 1998, the Buffalo District[42] of the US Immigration and Naturalization Service increased detentions of refused refugee claimants returned from Canada. Not everyone was detained (consideration was reportedly given to whether detention space was available). Adult males are particularly vulnerable. Families are liable to be separated. Detainees are frequently transferred to other parts of the country. Detention conditions in the US are sometimes horrific. Whether a detainee can get release depends on a number of factors, including whether US immigration proceedings had already been begun against the person before entering Canada and whether the person can find a lawyer and pay a bond.

CIC practice has been not to remove from Canada citizens of moratoria countries. In February 1998, however, CIC decided to begin removing to the United States such people if they had entered Canada from the US and could therefore be removed there. This decision coincided with the decision in the the

[42] The Buffalo District in northern New York state covers the two main points through which refugee claimants enter Canada from the US: Niagara (for Toronto) and Lacolle (for Montreal). The Windsor-Detroit border crossing is in a different INS district where apparently there has been no change in the detention policy. Nevertheless, refugee claimants may be at risk of detention in any area, particularly since recent changes in US immigration policy have significantly increased the emphasis (and budgets) for enforcement measures.

US to step up detentions of refused refugee claimants removed from Canada. In response to NGO concerns about this move, which would initially affect some Algerians and Zairois (Congolese), mostly in Québec, CIC suspended these removals.[43] In April 1998, the CCR received a letter from CIC indicating that these removals to the US would be resumed, based on a newly developed policy. According to this policy, persons who have not claimed refugee status can be removed to any third country, on the basis that they have not sought Canada's protection. Persons who have been refused refugee status can be removed to a third country, if they have citizenship or permanent resident status or another kind of temporary resident status (e.g. Convention refugee status, de facto refugee, indefinite leave to remain) in the third country and came to Canada from that country. In addition, refused refugee claimants can be removed to a third country if the country is a party to either the 1951 Convention relating to the Status of Refugees and/or the 1967 Protocol.

CCR CONCERNS

The CCR is not opposed to removals, but holds that they should only take place after a fair process to ensure that the person's rights would not be violated and that humanitarian considerations have been taken into account. The CCR does not believe that such a process currently exists, because of concerns about persons excluded from the refugee claim process, the inadequacies in the current refugee determination system, notably the lack of appeal, the failure of the Immigration Act to incorporate provisions of relevant human rights instruments (notably the Convention Against Torture), and the flaws in the risk and humanitarian reviews.

Where removals take place, they should be carried out in a manner that respects the dignity of the person. This is not always the case. The following are some of the CCR's concerns with the way removals are carried out:

1. Some people are removed without being given any notice or the opportunity to pack their bags, say goodbye to family and friends and in other ways conclude their business. This happens not only to people who have eluded removal, but also to people who have conformed with all the requirements made of them. Sometimes they are invited to CIC offices under false pretences and immediately detained. In other cases, immigration enforcement officers come and arrest them at their home or at their place of work.

2. Some of the techniques of enforcement are excessive, including the use of handcuffs and leg irons, even for people who have shown no violence or lack of cooperation. In the past there

[43] One Algerian was removed before the suspension. He was immediately detained, but was subsequently released.

have been cases of drugging of persons being removed: this is completely unethical. There have also been allegations of physical violence against persons being deported.

3. There are breaches of confidentiality where CIC informs the receiving government that the person is being removed, sometimes by the escorting officer who personally hands over the person's travel documents to authorities. In many repressive regimes this puts refused refugee claimants at risk: even if they were not in fact refugees, they may be suspected simply because they are known to have made a refugee claim.

Overall, CCR concerns relate to the culture within Enforcement, which too often takes a cynical and disrespectful attitude towards those with whom it is dealing. This is not necessarily seen in all regions: in fact, there tends to be striking regional variation, with much greater sensitivity shown in smaller centres.

The failure of CIC to give clear and decisive follow up to the recommendations in the Tassé report means that NGO confidence in the removals function continues to be very low.

A fundamental issue is the lack of clear accountability. Immigration officers are the only Canadian officials with the power of arrest that are subject to no independent oversight. When allegations of abuse by immigration officials are made, there is no external mechanism for investigating the allegations. Such a mechanism is urgently required so that corrective action can be taken where there has been improper behaviour, or on the other hand, so that the officers involved can be exonerated if they have been wrongly accused.

The CCR is opposed to the "danger to the public" process, introduced in 1995, by which permanent residents can be denied the right to appeal the decision to remove them, and Convention Refugees can be removed from Canada, despite their well-founded fear of persecution. The administrative process by which people are designated a "danger to the public" is unfair in principle and in practice.

Relevant documents

- *Comments on Detention and Removals addresssed to the Standing Committee on Citizenship and Immigration*, March 1998

- *Comments on "Immigration Detention and Removals": Report of the Standing Committee on Citizenship and Immigration*, June 1998

- *Comments on CIC draft "danger to the public" policy and procedures*, August 1998

Detailed information

Stays

Removal orders are automatically stayed (temporarily suspended) in a number of circumstances. One situation is where a refused refugee claimant applies for judicial review at the Federal Court. However there are a number of exceptions to this rule:

- if the person has been found by an adjudicator to meet any of the definitions of criminality or security risk

- if the person's claim has been found not to be eligible.

- if the person's claim has been found to have no credible basis.

In these cases the removal order is stayed 7 days from the time it became effective.

In addition, if the person entered Canada from the United States, having "sojourned" there (which could mean simply transited through), there is no stay at all. However, in practice this is not necessarily enforced.

The fact that a person is removed does not in theory prevent them from pursuing review by the Federal Court of the negative decision, although of course in practice it makes it more difficult. If they win at Federal Court, they can return to Canada.

Stays to removal orders are discussed in Section 49 of the Immigration Act.

Danger to the Public

When permanent residents are convicted of certain kinds of crime, they become inadmissible and a removal order will be made against them. They can appeal to the Immigration Appeal Division (one of the divisions of the Immigration and Refugee Board) for a stay of the removal order. The Appeal Division needs to decide whether "having regard to all the circumstances of the case, the person should not be removed from Canada" (S. 70(1)(b)). Among the circumstances that may be relevant are whether the person is rehabilitated, how serious the crime committed was, whether the person had a previous criminal record, how integrated the person is and whether the person has family members in Canada that depend upon him or her. If the Appeal Division decides the person should not be removed, they will order a stay, imposing terms and conditions (for example, that the person report regularly to CIC and not get into any trouble with the law).

Since July 1995 when Bill C-44 amended the Immigration Act, permanent residents are excluded from an appeal to the Immigration Appeal Division if the Minister is of the opinion that the person is a danger to the public in Canada (S. 70(5)). The process by which a decision is made on whether or not to declare a person a danger to the public is internal.

Advisory Committee on Country Conditions for Removal

The Minister of Citizenship and Immigration receives advice from time to time from a departmental committee that reviews the situation in a country and the degree of security for people removed to that country.[44]

The committee's mandate has been described as to:

a) identify countries for which the removals policy should be reviewed;
b) review conditions in each country identified;
c) recommend to the Minister the imposition or lifting of a suspension of removals to a particular country;
d) provide background information and rationale, along with the recommendation.

Its guiding principle has been enunciated as follows:

Where it is found that conditions throughout a country seriously endanger the lives or safety of the general population, a suspension of removals will be recommended.

In deciding whether conditions "seriously endanger" the population, the committee considers the following factors:

a) the level of danger and instability (and whether generalized or limited to certain regions; whether violence random; whether non-combatants are being killed or seriously injured);
b) whether large numbers of people are forced to flee for their lives and to abandon their homes and belongings;
c) whether starvation is prevalent;
d) whether commercial international transportation companies are operating and whether persons are entering the country for family visits, business or tourism;
e) other social, economic, political and environmental factors;
f) whether other countries are removing to the country.

The committee is headed by the Director General of Enforcement and made up of representatives of various CIC branches and regularly seeks the participation of CIC or Foreign Affairs officers knowledgeable about the country under review. Information sources used to prepare written reports for the committee's consideration include Canadian diplomatic missions, media reports, IRB Documentation Centre, UNHCR and NGOs.

The committee does not make decisions, but rather provides advice to the Minister, which is subject to the usual rules of confidentiality covering advice to a Minister.

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[44] The following information is drawn from an outline of the committee prepared by CIC Enforcement Branch in 1996.

Even where the general policy is not to remove to a country, exceptions are made for persons who pose a serious threat to Canadian public safety and security. Decisions about whether to remove such people is made by the Director General, Enforcement Branch.

12. INTERDICTION

Summary
In addition to the enforcement measures of removals and detention, the Canadian government seeks to enforce the Immigration Act by preventing people who have no right to enter Canada from ever getting here. This is known as interdiction.

Interdiction is practiced internationally, with countries of the north developping increasingly sophisticated mechanisms over the last decades, as the growth in air travel affected people's mobility. Within the European Union, the move to open internal borders has been accompanied by efforts to reinforce control of external borders, thus creating "Fortress Europe". The interdiction at sea of Haitian refugees by the United States gave licence to other countries to ignore their non-refoulement obligations.
Movements of persecuted peoples across international borders have been discouraged in various regions by the creation of "safe zones" within the country of origin, initiatives that may be less motivated by concern for the right of people to remain within their own country than by states' reluctance to have refugees enter other countries.

As states erect evcr higher fences, those who are desperate to travel, including refugees, have been forced to resort to people smugglers, who charge vast sums of money for organizing an often perilous journey. Migrant trafficking has become a hot topic on the agenda of international meetings, with governments increasingly turning their attention towards measures to catch and punish people smugglers.

Among the interdiction measures practiced by Canada, visa requirements are key. Citizens of most countries must obtain a visa before presenting themselves at a Canadian port of entry. In deciding whether or not to issue a visitor's visa, visa officers will consider such things as the applicants' reasons for wanting to visit Canada, their financial means, whether they are likely to make a refugee claim and the degree to which they have ties to their current place of residence.

The visa requirements are combined with carrier sanctions to prevent "improperly documented" travellers from arriving in Canada. Transportation companies, notably airline companies, but also bus, train and shipping companies, are obliged by Canadian law to ensure that the passengers they bring into Canada are properly documented. This means not only that all passengers must have a passport, but that all those that require a visa to enter Canada have a visa. If the transportation companies do bring in passengers without all the right documents, they are fined.

The Canadian government also has a network of Immigration Control Officers working around the world to prevent those who are "improperly documented" from travelling to Canada. They help to train airline personnel in recognizing false documents, monitor smuggling operations and work with other

governments on controlling "illegal migration". From time to time, they will launch intensive efforts in particular airports from which people travel to Canada: these are known as "Short-Stop operations".

Refugees are often forced to flee without proper travel documents, let alone visas. This is recognized in the Immigration Act, which exempts refugees from penalties for having used false documents to get to Canada. Nevertheless, the interdiction measures used by the Canadian government do not consider whether the persons interdicted are refugees fleeing persecution. On the contrary, interdiction measures are often specifically directed at known refugees. Almost all countries from which significant numbers of refugees come have visa requirements imposed upon them. The worse the human rights situation in the country, the less likely are visa officers to give visitors visas to its citizens, particularly if they are members of a persecuted group. The sanctions on carriers make no exceptions for bringing refugees into the country, meaning that airlines will do their best to prevent refugees from boarding, if they are improperly documented. As a result, many refugees are interdicted and may be jailed in the country of transit or forcibly returned to the country from which they fled. Interdiction measures also force many refugees to use false documents. The more effective the interdiction, the higher the prices of the smugglers who exploit the desperate circumstances of refugees, and the more refugees will resort to life-threatening methods, such as travelling as stowaways.

The Canadian Immigration Act contains another form of interdiction, directed specifically against refugees: the "safe third country" provision. Many countries, particularly in Europe, use a "safe third country" measure to exclude refugee claimants from being heard in that country: instead they are sent back to a country through which they passed, on the basis that the intermediate country is "safe" for the refugee and the claim should be made in that country. Although the Canadian law has had such a provision since 1989, no country has ever been designated as "safe". However, the Canadian government has for a number of years been attempting to negotiate an agreement with the United States of America, which would allow the US to be made a "safe" country. A preliminary draft Memorandum of Agreement was developed in 1995. In April 1996 discussions were suspended, on the basis that the US was in the process of adopting new legislation affecting the US refugee determination system. In February 1998 the Canadian government announced that talks had been abandoned.

RECENT AND CURRENT DEVELOPMENTS

In March 1997 a Nova Scotia judge found that he did not have the authority to order the extradition of the Taiwanese officers of the Maersk Dubai, accused of throwing overboard to their death three Romanian stowaways. It has been suggested that the desire to avoid the fines payable to the Canadian government for bringing stowaways into Canada gave the officers the motive to commit murder. Because the alleged crime was committed in international waters, with the victims of one nationality, the accused of another, and the accusations made in a third country (Canada), it proved impossible to

pursue the case in the courts. (The Taiwanese government promised to prosecute the matter in their courts, but after many months there has apparently been little movement).

Even though Immigration Canada reports that it has had an "enhanced control strategy" since 1990, its 1998-1999 *Report on Plans and Priorities*, declares that "CIC will seek to develop an international enforcement strategy. Increased cooperation among affected countries will be pursued through partnership agreements with public and private sector bodies, coordination of immigration control activities, and the sharing of information on security threats, trends in illegal migration, and the activities and movements of criminals. Special emphasis is being placed on enhancing cooperative arrangements with the United States and the United Kingdom" (page 17).

In August 1998 the Solicitor General of Canada, Andy Scott, made public the highlights of the *Organized Crime Impact Study*. Among the key findings of the study was the following: "the impact of migrant trafficking on Canada is estimated at between $120 million to $400 million per year and accounts for approximately 8,000 to 16,000 people arriving in Canada per year illegally". Despite the fact that, according to the study, the costs of migrant trafficking are tiny compared with other forms of organized crime, media coverage of the announcement focussed disproportionately on this aspect. The Canadian Council for Refugees wrote to the Solicitor General on 10 September to say that it was "extremely disturbed by the parts relating to refugees, which are very weak in terms of fact and analysis, fail to take account of Canada's international human rights obligations and tend to promote xenophobia against refugees."

CCR CONCERNS

The CCR is deeply concerned about the impact of interdiction measures on refugees attempting to exercise their basic human right to seek asylum. For the most part, the effects on refugees tend to be unknown here because those interdicted are far from Canada and in situations of extreme vulnerability. It is however known that interdicted refugees have been jailed or refouled.

The case of the alleged murders of the Maersk Dubai stowaways is a chilling example of the possible consequences of Canada's carrier sanctions. Did the ship's officers throw the Romanians overboard to avoid paying the fines?

Interdiction measures also have an impact on some Canadian citizens and permanent residents, as well as genuine visitors, who are subjected to intensive and harassing interrogation before being allowed to board a plane for Canada - or who may even be prevented from boarding. Those treated in this way are generally picked out on the basis of their colour, ethnicity or national origins.

INTERDICTION

The CCR's concerns about interdiction led to the publication in May 1998 of a 61-page document, *Interdicting Refugees*, which explores interdiction methods and their impact on refugees, focusing on the Canadian experience in the global context.

The CCR was fundamentally opposed to the proposed US-Canada agreement on the allocation of refugee claims. Experience in Europe shows that safe third country provisions work to the disadvantage of refugees, at best removing the right to choose one's country of asylum, after having lost everything else, at worst depriving refugees of any asylum at all. While the proposed agreement with the US provided more safeguards than many other such agreements, any agreement would be unacceptable given that US standards of refugee protection are lower than Canadian, and have recently been further reduced.

Relevant documents

- *Interdicting Refugees*, May 1998

- *Canada-US Agreement on Examination of Refugee Claims: Comments*, February 1996

- *Letter to Andy Scott, Solicitor General of Canada, re. Organized Crime Study*, 10 September 1998

Detailed information

Visa requirements
The general rule is that everyone travelling to Canada must apply for a visa before arriving in Canada. Immigration Regularions 13 (1) allows an exception to be made for citizens of certain countries, who do not need a visa if they are only coming to visit.

The list of countries is set out in Schedule II of the Regulations. The following are the countries whose citizens do NOT need a visitor's visa:

Andorra, Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Botswana, Brunei, Costa Rica, Cyprus, Denmark, Dominica, Finland, France, Germany, Greece, Grenada, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Republic of Korea, Liechtenstein, Luxembourg, Malaysia, Malta, Mexico, Monaco, Namibia, Nauru, Netherlands, New Zealand, Papua New Guinea, Norway, Portugal, San Marino, Saudi Arabia, Singapore, Slovenia, Solomon Islands, Spain, St. Kitts and Nevis, St. Lucia, St. Vincent, Swaziland, Sweden, Switzerland, Tuvalu, United Kingdom (but not all British citizens if they do not have right to live in UK), United States, Vanuatu, Western Samoa and Zimbabwe.

In addition, visitor's visas are not required by anyone with permanent residence in the United States and by various categories of persons in transit or other special circumstances.

Anyone who requires a visitor's visa to visit Canada must satisfy a visa officer that he or she is a genuine visitor (i.e. not intending to remain in Canada or work or study here), is not inadmissible (e.g. on criminal grounds) and will be able to return home or enter another country after leaving Canada.

13. SETTLEMENT AND INTEGRATION

Refugees and immigrants who make a new home for themselves in Canada go through a process of adaptation to their new country. This process begins with the basic adjustments made on arrival (finding somewhere to live, beginning to learn the local language, getting a job, and learning to find their way around an unfamiliar society). These initial stages are often called "settlement". In the longer term, newcomers and the host society go through a complex process of integration, in which on each side adaptations are made to the other.

Although every newcomer's experience is unique, many new Canadians will face similar challenges in making a home for themselves here, and share feelings of excitement, disorientation, loneliness and frustration. The experiences of refugees are often particularly difficult, because their arrival was not planned or chosen, but a matter of survival. They may be deeply traumatized by their past experiences and often arrive separated from their immediate families whom they have had to leave behind, perhaps in the country of origin, perhaps in a refugee camp.

The greatest part of the work of settlement and integration is undertaken by the refugees and immigrants themselves. In the process they may be assisted by a wide range of individuals and organizations. Friends, family, new acquaintances, faith communities, Canadians with origins in the same part of the world, employers and officials of all kinds may offer new Canadians help as they establish their new lives.

There are, in addition, specialized "settlement services" offered to newcomers by non-governmental organizations whose mission, in whole or in part, is to serve refugees and immigrants in their process of adjustment to Canadian society. These community-based organizations vary greatly in size and in their clientele (some serve newcomers of all nationalities, while some respond to a particular community or focus on a particular area of need, such as finding employment or learning English or French). Funding comes from a variety of sources, including governments (federal, provincial and municipal), foundations, United Way, private fundraising, income generating projects, resources of a parent agency and (in some cases) fees for services.

The federal government recognizes its responsibility to assist in the settlement process by providing funding for services. Three programs have existed for a number of years: the Immigrant Settlement and Adaptation Program (ISAP) for general settlement services, the Language Instruction for Newcomers to Canada (LINC) program for language training, and the Host program, which matches Canadian volunteers with newcomers. Refugee claimants are not eligible for any of these services.

Since 1991 the Québec government has had full responsibility for settlement services and runs programs similar to ISAP, LINC and Host. In 1995, as part of a process known as Settlement Renewal, the federal government decided to devolve to regional partners the administration of

settlement services across the country. Its first choice of partner was the provincial governments and discussions have been pursued since then with the provinces.

In March 1997, the Prime Minister of Canada announced additional settlement funds would be spent in certain provinces that had traditionally been underfunded in per capita terms in relation to the numbers of immigrants arriving. The provinces receiving extra money were Newfoundland, Nova Scotia, New Brunswick, Ontario, Manitoba, Alberta and BC. The additional funds were given for the year just ending (1996-97) and would be incorporated into proposed allocations for the following 3 years. The provinces seeing the greatest proportional increase were Nova Scotia (107%), British Columbia (96%) and Ontario (52%). Re-adjustment of funding proportions was seen as necessary pre-condition to some provinces agreeing to consider Settlement Renewal.

In May 1998 the government of British Columbia signed an agreement with the federal government, giving it the responsibility of administering settlement services in BC. Manitoba signed a similar agreeement in June 1998.

Canada's Multiculturalism Act of 1988 recognizes the multicultural nature of Canada and commits the Canadian government to the promotion of diversity. Among the goals of multiculturalism policy are the promotion of full and equitable participation of individuals and communities of all origins in Canadian society and the elimination of barriers to such participation. As part of the Multiculturalism Program, run by the Department of Canadian Heritage, funding is provided to organizations working towards its key objectives which are "to foster mutual respect among Canadians, to encourage equitable participation in society of citizens of all ethnic and racial backgrounds, and to promote a sense of attachment and belonging to Canada among Canadians".

CCR CONCERNS

As part of its mandate, the CCR is committed to the settlement in Canada of refugees and immigrants.

The CCR takes the position that the successful integration of newcomers is closely tied to the immigration and refugee policies in place. In its submission to the Legislative Review Advisory Group, the CCR argued as follows: "Even though the goal of integration is officially supported and promoted, some aspects of immigration policy (and other government policy) work in ways that undermine successful integration. Denial of or delays in access to rights and services slow settlement. Delays in family reunification are known to put enormous stresses on refugees and immigrants, inhibiting their ability to establish themselves in Canadian society. Narrow definitions of family keep newcomers separated from family members who are crucial to their well-being. New Canadians who are consistently singled out for special interrogation when travelling back to Canada after a visit abroad come to feel that they are not fully accepted as Canadians. Access to employment is limited by closed

professional associations and barriers to recognition of credentials. Recent restrictions on newcomers' eligibility for job-training programs reduce their opportunities for equipping themselves to participate fully in the labour market.

"It is a mistake to think that only the individuals directly affected will suffer in terms of integration. A spate of aggressive deportations, especially to countries at war, can leave whole communities traumatized. Persistent difficulties with immigration processing from certain parts of the world cause groups to feel marginalized and unwelcome. A focus on enforcement measures and the rhetoric of control sends destructive, divisive messages to all Canadians, fostering xenophobia on one side, and alienation on the other.

"Immigration and refugee policy should always be developed with a view to promoting integration."

As well as calling for fair and open policies that promote integration, the CCR supports the provision of strong and effective settlement services that assist both newcomers and the host society in their mutual process of adaptation. Many of these settlement services are delivered by a network of community-based organizations. The CCR believes that community-based organizations are the best providers of settlement services, because they are accountable, flexible, experienced sensitive to the communities served, committed to the long-term, cost-effective, and have a holistic approach.

As the additional settlement dollars given to certain provinces are used, the CCR is concerned that the money be spent in the most effective way possible and for the purpose for which it was intended, namely settlement services.

As the administration of settlement services is devolved from the federal level (first in 1991 in Québec and in 1998 to BC and Manitoba), the CCR is concerned that there be national settlement standards, to ensure that newcomers are guaranteed a certain minimum level of services, no matter where they are in the country.

Relevant documents

- *Brief to the Immigration Legislative Review*, July 1997
- *Best Settlement Practices: Settlement services for refugees and immigrants in Canada*, February 1998

14. CITIZENSHIP

After three years in Canada immigrants can apply to become citizens. Apart from the three-year residency requirement, immigrants must show that they speak either English or French, pass a test on their knowledge of Canada and its institutions and not have committed any crimes or be charged with crimes.

For many immigrants, acquiring Canadian citizenship is a critical step in the process of integration into Canadian society. This is particularly true for refugees, who often have an acute sense of homelessness as a result of having been forced to flee persecution in their home country. Important rights also come with citizenship: the right to vote, the right to a Canadian passport (very necessary for refugees who can't get a passport from their country of origin). In addition, citizens can't lose their status (unless they got it on false pretences), unlike permanent residents who can lose their status, for example through living abroad or through being convicted of certain kinds of crime.

REFUGEES IN CANADA

Canadian citizenship is granted to anyone born on Canadian territory, without reference to the status of the parents.

Canadian refugee and humanitarian immigration policy

RECENT AND CURRENT DEVELOPMENTS

1997 to mid-1998

On a number of occasions the current Minister of Citizenship and Immigration, Lucienne Robillard, has suggested that the law should be changed to remove the automatic right to citizenship by birth in Canada, so that children of parents without immigration status would not be Canadian citizens. The rationale given for this proposed change to a fundamental principle of Canadian citizenship was that some women deliberately come to Canada to give birth so that their children will be Canadian citizens, and that there may be obstacles to removing people without status from Canada if the best interests of a child, as a Canadian citizen, have to be considered.

Although citizenship issues were not part of its terms of reference, the Legislative Review Advisory Group chose to make recommendations in this area, arguing that immigration is a process that should lead to citizenship. They proposed that there be a single piece of legislation for both citizenship and immigration. In order to encourage immigrants to become citizens, certain disincentives would be given to permanent residents, who would symbolically be called landed immigrants, rather than permanent residents. At the same time, the requirements for becoming a citizen would be made more demanding. For example, applicants would need to show that they were active participants in Canadian society.

CANADIAN COUNCIL FOR REFUGEES
CONSEIL CANADIEN POUR LES RÉFUGIÉS

The government has indicated that plans are underway to table a bill proposing changes to the Citizenship Act. These changes are expected to include measures which tighten the residency requirements for naturalization, but not to take away the automatic right of citizenship by birth in

Canada. The Minister of Citizenship and Immigration has said that she hopes to table the bill in the fall of 1998.

CCR CONCERNS

In 1996, the CCR took a leadership role in opposing proposals to remove the automatic right to citizenship by birth in Canada. Over 230 organizations signed a letter of opposition. The letter took the position "that defining citizenship is central to defining Canada. Canada has always adhered to the principle of citizenship by place. We do not believe that the concept of citizenship by blood, with Germany and the Turkish guest worker population as an extreme example, is reflective of Canadian values. We do not want Canada to move towards citizenship by blood." The letter also pointed out that "a move to end automatic citizenship for babies sends xenophobic messages to the public. It creates the impression that there are significant numbers of non-residents who come to Canada with the intention of "getting around" the immigration law by having a baby. It feeds negative images of newcomers as people whose children are none of our concern."

In response to the LRAG recommendations, the CCR took the position that Canada should not require more in terms of "participation" from immigrants becoming citizens than it requires of native-born citizens.

Detailed information

Becoming a citizen
To become a citizen, a person must:
- be at least 18 years old
- be a permanent resident
- have been resident in Canada for at least 3 years within the last 4 years (calculating only half any time the person was in Canada before becoming a permanent resident)
- have an adequate knowledge of English or French
- have an adequate knowledge of Canada and of the responsibilities and privileges of citizenship
- not be under a deportation order or believed to be engaged in activities that are a threat to security or part of some organized criminal activity.

Children can become citizens through their parents' citizenship.

The Minister can waive a number of the requirements on compassionate grounds (for example the requirement to have an adequate knowledge of English or French, or of Canada).

Grants of citizenship are covered in Section 5 of the Citizenship Act.

15. SUMMARY OF EVENTS 1997 - MID 1998

The following summary of events provides a selective overview of refugee- and immigration-related events, as they appeared in the media.

January 1997

Patrick Ward deported. Ward, a former member of the Irish National Liberation Army, had claimed refugee status in Canada. His case went up to the Supreme Court of Canada but he was finally refused refugee status.

The Undocumented Refugee Claimant in Canada Class came into effect January 31.

The Minister of Citizenship and Immigration authorized the resumption of removals to Zaire, after a temporary suspension was imposed in December 1996. The CCR criticized the move, pointing to the war, instability and human rights abuses occurring in Zaire.

The Federal Court of Appeal overturned a decision of the Federal Court ruling that deportation proceedings against three alleged Nazi war criminals should be halted because of improper communication between the deputy justice minister and the Chief Justice of the Federal Court.

Closing arguments were heard in the Maersk Dubai extradition case (in which Taiwanese officers of the Maersk Dubai were charged with murdering Romanian stowaways).

February 1997

The Supreme Court ruled that all children born to Canadians living abroad have an automatic right to citizenship, regardless of whether it is their mother or father who is Canadian.

The Canadian Judicial Council reprimanded Justice James Jerome over delays in the cases of 3 alleged Nazi war criminals, Helmut Oberlander, Erichs Tobiass and Johann Dueck.

According to a report of a CIC task force, there were at least 250 modern-day war criminals in Canada. Of 300 cases studied, only 15% had resulted in deportation.

Liberal MP Eleni Bakopanos resigned as Chair of House of Commons Standing Committee on Citizenship and Immigration. Her resignation was believed to be a protest against government immigration policies.

March 1997

The government announced a 6-month suspension of removals to Algeria.

Peel Region decided to cut refused refugee claimants off welfare.

New family sponsorship regulations announced (draft amendments were pre-published in December 1995). Income cut-offs are maintained at the same levels, but other restrictive measures limit the numbers of people able to sponsor family members.

Police arrest Hani Al-Sayegh, who entered Canada in August 1996, on suspecion of involvement in the bombing of American servicemen in Saudi Arabia.

The federal government made available an additional $63 million for settlement activities in 96/97 and in each of the following three years, to go to provinces that have been underfunded, based on the number of immigrants they receive.

Canada ratified the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The convention seeks to establish safeguards so that international adoptions are carried out in the best interests of the children and prevent abduction, slavery of or trafficking in children.

Government plans to put new limits on refugee sponsorship came to public attention. The media reported that this would be the first refugee quota in 50 years. The Minister of Citizenship and Immigration then decided to withdraw the planned limits.

A Nova Scotia Supreme Court Judge ruled that he had no jurisdiction to recommend the extradition of the Maersk Dubai officers accused of murdering two Romanian stowaways.

Refugee advocates, including the CCR, denounced plans to deport two Zairois back to Zaire.

April 1997 Deportations to Zaire were suspended.

It is reported that refugee status was granted to a 12 year old British boy who was sexually abused by his father. Both Britain and the United States were found to have failed to protect the boy's rights.

Bill C-84 is passed. This provides for a retired judge to replace the Security Intelligence Review Committee when the committe is of the opinion that it cannot fulfill its mandate because of the appearance of bias, conflict of interest or any other reason.

The government announced that the number of minister's permits issued had gone down from more than 16,000 in 1992 to 4007 in 1996.

Rules regarding payment of Right of Landing Fee were changed, allowing applicants to pay the fee at any point in the process, from application to landing (rather than on application, as was previously the case).

May 1997

Citizens of Portugal no longer required visitor visas in order to visit Canada, effective May 1, 1997.

The regulatory changes creating the Humanitarian Designated Class, changing the rules for Post-Determination Refugee Claimants in Canada Class, and cancelling the Deferred Removal Orders Class came into effect May 1.

The Federal Court upheld the security certificate against Hani Rahim al-Sayegh, the man accused of involvement in the Saudi bombing.

The appeal of Léon Mugesera, accused of inciting genocide in Rwanda, began before the Immigration Appeal Division. An adjudicator had earlier ordered his expulsion.

The case of the Guatemalan brother and sister holed up in a church basement in New Brunswick became an election issue. Federal election candidates marched for their freedom.

Québec changed rules requiring sponsorship of fiancés for three years, instead of ten. The change was made under pressure from women's and cultural groups who argued that the ten-year sponsorship period effectively forced immigrants involved in abusive relationships to stay with their spouses.

June 1997

Quebec took over responsibility for private sponsorship of refugees. Seven groups signed agreements.

Four Filipino sailors who testified against their officers on the Maersk Dubai in the case of the murdered stowaways had their refugee claim hearing.

Hani Rahim al-Sayegh was deported to the United States. He was reported to have agreed to give information in return for protection.

Canada was criticized for its treatment of refugees in the Amnesty International 1997 report, which argued that rich countries are shirking their responsibilities towards refugees. Canada was specifically targetted for its carrier sanctions. The Maersk Dubai case was cited.

Gabriel and Dalila Grey marked a year spent in sanctuary in a church in Dieppe, New Brunswick.

Responding to public pressure, the Minister of Citizenship and Immigraton stayed a deportation order against Gladys Moyano, an Argentinian mother of a severely disabled Canadian born child, Daysy. The child was reported to be too fragile to travel to Argentina.

July 1997

Over 100 immigration detainees being held in Metro West Detention Centre in Toronto went on hunger strike to protest prolonged detention and conditions.

August 1997

Gazi Ibrahim Abu Mezer, a Palestinian arrested in New York and charged with plotting a terrorist bombing, was found to have spent 4 years in Canada, where he was recognized as a refugee, without a security screening being completed. The BC Attorney General called for tighter screening of potentially dangerous immigrants.

A heated controversy about Roma (Gypsies) arriving in Canada. The Roma from the Czech Republic were reportedly motivated by a television program which portrayed Canada as a refugee haven. Prejudiced views of Roma as thieves and people without morals were aired. CIC imposed universal criminality checks on all arriving Roma. Neo-Nazi demonstrations outside a motel in which Roma were residing led to protests. Pressure on hostels for homeless in Toronto was blamed on this influx.

The BC Supreme Court ruled in the *Mangat* case that non-lawyers could no longer handle immigration cases.

Lucienne Robillard admitted that a mistake had been made in allowing a Hong Kong triad leader to immigrate to Canada.

A Federal Court judge upheld the security certificate against Manickavasagam Suresh, a man linked to the Liberation Tigers of Tamil Eelam, who had been held in jail in Toronto for nearly two years.

September 1997

Québec Immigration Minister André Boisclair claimed that Ottawa was hampering Quebec's efforts to recruit immigrants. Immigrants to Quebec have to pay both Quebec and Ottawa to have their cases examined. He also complaned about delays in processing business immigrant visas. Minister Robillard retorted that the security of Canadians could not be sacrificed in the interests of rapid processing of immigrants bringing money.

CIC was accused of fixing immigration quotas by visa post, thus limiting the number of Chinese immigrants who can come to Canada.

Czech Roma continued to arrive.

The Supreme Court of Canada ruled that deportation cases against three suspected Nazi war criminals should proceed, despite the inappropriate contacts between the Federal Court Chief Justice and a justice department official.

October 1997

Visa requirement re-imposed on citizens of the Czech Republic visiting Canada, effective October 8, in response to continuing arrivals of Czech Roma refugee claimants.

CIC released a report on modern-day war criminals in Canada (information from the report was already in the news in February 1997. The report claimed that 300 war criminals live in Canada. The Minister commented that she is frustrated by how long it takes to deport them. Reform Party critic John Reynolds proposed that refugee claimants be detained at the border to solve the problem.

The Inter-American Commission on Human Rights made a three-day visit to Canada to determine whether the rights of refugees and immigrants are respected. Advocates presented cases of rights violations to the delegation.

The Minister of Citizenship and Immigration announced the 1998 immigration levels. The overall target went from 225,000 in 1997 to 220,000 in 1998. The economic category was increased slightly at the expense of the family and refugee categories.

The Québec Minister of Immigration announced plans to increase immigration from the current 27,000 annually to 32,000 in the year 2000.

November 1997

The four Filipino sailors from the Maersk Dubai who testified to seeing officers throw stowaways overboard were denied refugee status. Their claim was based on fears of reprisals.

Dalila and Daniel Grey, Guatemalans who spent 16 months in sanctuary in a church in New Brunswick after their refugee application was turned down, left Canada on the understanding that they would be able to apply for permanent residence from abroad.

A series of crimes in Vancouver area that led to murder charges against refugees resulted in accusations by commentators that Canada's refugee system is lax and accepts people with patently fraudulent claims.

December 1997

The Auditor General's report on the refugee claim system was made public. Main criticisms reported were the size of the backlog, the delays in processing, the costs of slow processing and the high percentage of refused claimants not deported. A string of commentaries and editorials followed, recommending that the "mess" be cleaned up.

The 1997 edition of the UNHCR's *State of the World's Refugees* was published. It reported that doors are being slammed on refugees.

A convicted Sikh hijacker was deported to India, despite a request for a stay from the UN Committee against Torture that wanted to look into his case, because of fears that he would be tortured. He was arrested on arrival in Delhi.

Ryszard Paszkowski, a native of Poland who had been brought to Canada to spy for the RCMP and later CSIS, took sanctuary in an Ottawa church, to avoid deportation.

January 1998

The Minister of Citizenship and Immigration released the report of the Legislative Review Advisory Group, *Not Just Numbers*, and announced that she would be holding consultations on the report over 5 days in February and March.

The limited nature of the consultations was criticized. The report's proposal to require knowledge of English or French from immigrants was energetically opposed, particularly in BC. Editorial comment on the report as a whole was at best mixed.

News that Anna Terrana, defeated Liberal candidate in the 1997 federal elections, had been named to the Immigration and Refugee Board sparked heated outcries about patronage.

The Federal Court ruled that suspected Tamil terrorist Manickavasagam Suresh could be deported back to Sri Lankan, tossing out arguments that he would be killed if returned. The Ontario Court, General Division, then stayed his deportation to allow arguments on whether rights had been breached to be heard.

The Ontario Court, General Division ordered the release of Rodolfo Pacificador, jailed for 6 1/2 years in Toronto while awaiting extradition to the Philippines.

Mary Odonkor, a Ghanaian woman facing deportation, was allowed to remain in Canada on humanitarian grounds after a coalition of women's and human rights groups protested against her removal. She had been the victim of multiple rape while imprisoned in Ghana.

February 1998

The government announced that it was extending the consultation period on the Legislative Review Advisory Group report.

An immigration adjudicator maintains Rodolfo Pacificador in immigration detention,despite the ruling of the Ontario Court's General Division that he should be released on bail.

Chilean refugee claimants begin a hunger strike in Montreal to fight deportation.

It was announced that Canada will take in 19 Cuban prisoners of conscience under an agreement with the government of Cuba. Fidel Castro agreed to free more than a 100 political prisoners from among a list of names presented by Pope John Paul during his visit to Havana in January.

At the opening of the consultations on the Legislative Review in Vancouver, the Minister announced that she does not support the language requirement recommendation, attempting to defuse angry protests.

March 1998

A demonstration was held in Toronto against the Legislative Review and the narrow scope of the consultations. Other protests were made during the Minister's cross-country feedback tour.

Some of the 19 Cuban political prisoners tentatively offered asylum in Canada were said to have criminal records and have not been jailed simply because of political activity. The federal government insisted that any violent criminals would be weeded out.

The federal government signed an immigration agreement with the government of Saskatchewan, providing for closer cooperation between the two governments and establishing a provincial nominee program. Under a 2-year pilot, the province may nominate up to 150 individuals for immigration, based on skills and entrepreneurial assets that they possess.

Sami Durgun, who had been waiting for permanent residence status for five years staged protest by standing day and night in front of an immigration office in Toronto to draw attention to his situation. His landing was delayed because of security checks.

The case of a blind 11-year piano-playing prodigy and his family drew broad support in Montreal. The Bucionis family faced deportation back to Lithunia after their refugee claim was refused. Despite a temporary reprieve to allow them to look for a job guarantee they were removed.

Canada's refugee acceptance rate was reported to have fallen dramatically, to 40%, the lowest since the IRB was established in 1989.

Karen Alvarado, a 16-year resident of London, fought deportation back to her native El Salvador, which she left at the age of 10 when her family claimed refugee status in Canada. She decided to leave behind her Canadian-born baby.

Rudy Pacificador was finally released from Toronto's Don jail after nearly 7 years in prison without charge.

Guatemalans Gabriel and Dalila Grey, who had spent nearly 17 months in sanctuary in a church in New Brunswick, finally return to Canada as permanent residents.

The Bahsous family, a stateless family ordered deported to the US, took sanctuary in the basement of a church in Toronto. The father left Palestine in 1948, the children were born in refugee camps in Lebanon and their long stay in the United Arab Emirate yielded no passports. Three of the children suffer from a hereditary disorder and require wheelchairs and walkers.

The Chileans ended their hunger strike after almost 38 days. 7 of the original 20 hunger strikers remained to the end and were joined during the strike by six others. Several hunger strikers were hospitalized when they became too weak to continue. The strike was called off when a support committee was formed to work on the Chileans' behalf. The committee included Cardinal Jean-Claude Turcotte and Gérald Larose, president of the Confederation of National Trade Unions.

April 1998

Media reported on the effects on Canadians of tightened US immigration law. Canadians attempting to enter US are being harassed and face five year bans on entering the US. According to the US, Canada, Mexico and Central American countries are the biggest sources of illegal immigrants to the US. An estimated 100,000 Canadians live there illegally.

Ramon Mercedes, a man from the Dominican Republic who had stowed away in a boat, had both his feet amputated because of the effects of frostbite. He was almost immediately removed from Montreal, allegedly handcuffed to a stretcher and left at the airport in the Dominican Republic without medical attention. The Minister commented that the Department acted legally but could have shown more compassion.

The Toronto Star made public information from a secret report of the Security Intelligence Review Committee on the case of Thalayasingam Sivakumar, a refugee claimant who said that he was promised permanent residence in return for working for CSIS. The Committee concluded that CSIS had endangered and abused him. Minister Robillard said that she would ask the Solicitor-General to look into allegations of use of threats and coercion by CSIS against refugee claimants. The accusations were denied by the head of CSIS, Ward Elcock, in a presentation to the Commons Justice Committee.

The Cuban dissidents began to arrive. Five persons from the original list of 19 were turned down after security and health checks.

April 4: Celebration of Refugees Rights Day.

Immigration Minister Lucienne Robillard reported that 4,509 Minister's permits were granted in 1997, a 1.3% increase over 1996.

Refugee claimants trying to enter Canada were being detained by the US and threatened with deportation, as a result of direct-backs by the Canadian authorities. The CCR called on the Canadian government to allow refugee claimants in directly if they risked detention.

Immigration Minister Robillard reported that her department had succeeded in deporting 7,986 illegal immigrants and refugees in 1997, an increase of 36.5% over 1996. Of those, 4,800 were refused refugee claimants, an increase of 95%. The Edmonton Sun ran the story under the title "Deportations cheer immigration boss".

Mansour Ahani, an Iranian granted refugee status in 1992 and living in Toronto, was to be deported following charges from CSIS that he was a trained assassin working for the Iranian government.

According to a leak, the Ontario government throne speech was going to target immigrants who break the law and sponsors of immigrants who fail to live up to their responsibilies. The information provoked widespread condemnation of the government for promoting xenophobia. No such references were included in the speech as delivered.

May 1998

The Minister of Justice tabled a bill amending Canadian legislation on extradition. Among the proposed amendments are provisions to allow Canada to extradite to the international war crimes tribunals.

The federal and BC government signed an agreement, giving BC more control over immigration and making BC responsible for the design and delivery of settlement services. Federal funding for settlement services totalling $45,8 million for eah of the 1998-99 and 1999-2000 fiscal years will be transferred to the province.

A judge in the Ontario Court, General Division, ruled that Joyce Francis should not be deported to her native Grenada without giving consideration to the best interests of her Canadian-born children. Minister Robillard responded by suggesting that Canada should reconsider its policy of giving automatic citizenship by birth in Canada.

Media reports that Canada is considering taking in 8 refugees currently in Israeli jails, allegedly including an Iranian hijacker and several Iraqi spies. The Ontario

premier Mike Harris PM made inflammatory comments, equating refugees with criminals, and was condemned for his remarks.

June 1998

The Supreme Court of Canada ruled in the *Pushpanathan* case that drug trafficking does not count as a act "contrary to the purposes and principles of the United Nations" for the purposes of refugee determination. Under pressure from the Reform Party who called on the government to remove Pushpanathan immediately, the Minister noted that she had other tools in the Immigration Act to deny him refugee protection.

The number of minister's permits issued in 1997 attracted the attention of opposition MPs and media. The Sun chain ran an article opening: "Almost 400 rapists, murderers and others convicted of serious crimes were allowed into Canada last year under special permits..." A series of commentaries followed arguing that Canada has its door wide open to criminals.

A report prepared for the City of Toronto declared that Toronto is the most ethnically diverse city in the world and is rapidly becoming a majority non - white city. Although immigrant communities represent 48% of the population, they are underrepresented in important positions.

The governments of Canada and of Manitoba concluded an agreement on provincial nominees and immigrant settlement services. The federal government will provide $7 million over the next two years for the delivery of settlement services.

July 1998

Three refugee claimants detained in Toronto went on a hunger strike to protest against the immigration system. They claimed that they did not know what was happening to them, a claim denied by a CIC spokesperson.

BC announced that Convention refugees waiting for permanent resident status will now have access to the full range of income-assistance programs offered by the provincial government (health care coverage, child-care subsidies, provincial employment and training programs, and other benefits). Previously refugees were only entitled to hardship assistance.

The four Filipino seamen in the Maersk Dubai fought a last-ditch battle against deportation.

The federal government announced new measures (including more money: $46.8 million over the next three years) to deal with war criminals in Canada.

A Honduran police officer who admitted to helping an army death squad was deported back to his homeland. Concerns were raised that he risked torture.

It is reported that Honduran children are being used by a smuggling ring to sell drugs in Vancouver. The Immigration and Refugee Board acknowledged an increase of young Honduran refugee claimants.

A Federal Court judge ruled, in the case of Luis and Elena Carty-Risco, that deporting a family to the United States could cause irreparable harm, because of the danger of detention in the US since the tightening of US immigration laws.

August 1998

Iranians in Vancouver demonstrated against deportations to Iran.

The four Filipino seamen who testified against their officers in the Maersk Dubai case were granted permission to stay in Canada on humanitarian and compassionate grounds. They had been refused refugee status, which they claimed based on threats against their families in the Philippines, and were threatened with deportation.

Six Iraqis in jail in Israel went on hunger strike after Canada refused them refugee resettlement. Israel suspected them of being spies, but the UNHCR had referred them to Canada for resettlement.

The Taiwanese officers accused in the Maersk Dubai cased had still not been charged in Taiwan. The Taiwanese authorities claimed that they were still waiting for information from Romania. Romanian officials retorted that they had promptly sent all information requested by Taiwan.

A church in London offered sanctuary to an Iranian family facing deportation to Iran where they feared for their lives. After two weeks, during which they won considerable support, they received permission to stay in Canada on humanitarian and compassionate grounds.

The Solicitor General announced results from a study on organized crime. As many as 16,000 illegal immigrants are said to enter Canada each year with the help of smugglers, costing taxpayers hundreds of millions of dollars.

September 1998

Complaints about a “Sieg Heil” comment made by the IRB Deputy Chairperson became public. The IRB appointed a lawyer to make an independent inquiry, on the grounds that the apology offered was deemed insufficient. Other complaints against various problems within the IRB were raised.

The Bahsous family, in sanctuary in a church in Toronto since March, received a negative response to their request for permanent residence, supported by job offers and $100,000 in trust.

Seven Hispanic children aged between 11 and 15 years were arrested for acting as drug courriers in the Vancouver area. They are believed to be part of a smuggling ring involving Honduran children who enter Canada to make refugee claims.

Some of the Chilean refugee claimants who held a hunger strike in February-March occupy the same church to protest against threats of deportation. Despite the efforts of the support committee, progress in the files was slow and only a small number of the group had been given any prospect of resolution of their case.

16. ABOUT THE CCR

The Canadian Council for Refugees is the umbrella organization of Canadian NGOs concerned for refugees and newcomer settlement.

As declared in its mission statement, it is committed to the rights and protection of refugees in Canada and around the world and to the settlement of refugees and immigrants in Canada. The Council serves the networking, information-exchange and advocacy needs of its membership.

Founded in 1977, the CCR is led by an Executive Committee elected by the membership. The President is Francisco Rico-Martinez, elected in November 1997. The Past President is Sharry Aiken, president from November 1995 to November 1997.

The CCR's membership, currently about 140 organizations, include a wide range of groups, including ethnospecific associations, refugee- and immigrant-serving organizations, refugee sponsorship groups, associations of refugee lawyers, unions, church organizations and many others. New members are welcomed.

The CCR fulfils its mission in two main ways: through facilitating networking, information-exchange and joint strategizing and through advocating actively for the members' positions.

The CCR organizes two conferences a year, for members and others.[45] Conferences are regularly attended by between 175 and 250 participants, from across Canada and beyond, including refugees and immigrants, representatives of NGOs, governments and inter-governmental organizations (usually UNHCR and IOM), academics and others.

Members participate in all aspects of the work of the CCR, principally through its three working groups: Refugee Protection, Overseas Protection and Sponsorship, and Settlement. The Settlement Working Group is led by a Core Group made up of representatives selected by the provincial and regional umbrella organizations. The CCR also has core groups on Gender Issues and Anti-Racism, whose role is to ensure that these issues receive high profile throughout the work of the CCR.

The policies for which the CCR advocates are guided by resolutions, adopted by the membership at the twice-yearly general meetings.

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[45] June 1997, Edmonton, *Best practices: Settlement, Sponsorship and Protection*, November 1997, Toronto, *Women and Children*, May 1998, Montreal, *Human Rights and the Family*, November 1998, Ottawa, *Human Rights and Multicultural Access*.

The CCR meets with CIC twice a year at roundtables, where a wide range of issues are discussed. Other meetings are held on specific subjects, in addition to continuous correspondence.

17. STATISTICS

The statistics that follow are drawn from a number of different sources: the UNHCR, the Intergovernmental Consultations, the US Committee for Refugees, Citizenship and Immigration Canada and the Immigration and Refugee Board.

List??

NUMBER OF REFUGEES AND OTHER PERSONS OF CONCERN TO THE UNHCR

Estimated number of persons of concern who fall under the mandate of UNHCR, by rergion		
Region	**Total of concern 1 Jan. 1997**	**Total of concern 1 Jan. 1998**
Africa	8 091 000	7 385 100
Asia	7 925 000	7 458 500
Europe	5 749 000	6 056 500
Latin America and Caribbean	169 000	103 300
North America	720 000	1 294 900
Oceania	75 000	78 000
TOTAL	**22 729 000**	**22 376 300**

Persons of concern to UNHCR, at 1 Jan. 1998, by category					
Region	**Refugees**	**Asylum seekers**	**Returnees**	**IDPs* and others of concern**	**TOTAL 1 Jan. 1998**
Africa	3481700	37 700	2 171 700	1 694 000	7 385 100
Asia	4 730 300	15 000	824 100	1 889 100	7 458 500
Europe	2 940 700	267 400	459 400	2 389 000	6 056 500
Latin America and Caribbean	83 200	600	17 800	1 700	103 300
North America	668 500	626 400	-	-	1 294 900
Oceania	71 100	6 900	-	-	78 000
TOTAL	**11975500**	**954 000**	**3 473 000**	**5 973 800**	**22 376 300**

* IDPs = Internally displaced persons. Note these figures only cover internally displaced persons assisted by the UNHCR. There are an estimated 30 million internally displaced persons worldwide.

These figures are from *UNHCR by numbers, 1998*, published by the UNHCR Public Information Section, July 1995. The numbers include refugees, returnees, and internally displaced persons.

REFUGEES AND ASYLUM-SEEKERS WORLDWIDE
(as of December 31, 1997)

Africa	2 944 000
Europe	2 020 000
Americas	616 000
East Asia and Pacific	535 000
Middle East	5 708 000
South & Central Asia	1 743 000
TOTAL	13 566 000

These figures include 2 categories of people: refugees who are unable or unwilling to return to their home country because of fear of persecution or armed conflict there, and who lack a durable solution; and asylum seekers awaiting a refugee determination.

Totals by year	
1989	15 100 000
1990	16 700 000
1991	16 600 000
1992	17 600 000
1993	16 300 000
1994	16 300 000
1995	15 300 000
1996	14 500 000
1997	13600000

Proportion of refugees to total population		
Courntry/territory	Proportion	Refugees
Gaza Strip	1:1	746 000
Jordan	1:3	1 413 800
West Bank	1:3	543 000
Lebanon	1:11	362 300
Armenia	1:17	219 150
Guinea	1:17	430 000
Yugoslavia	1:19	550 000
Kuwait	1:20	90 000
Liberia	1:23	100 000
Djibouti	1:27	22 000
Azerbaijan	1:31	244 100
Iran	1:36	1 900 000
Syria	1:42	361 000
Belize	1:50	4 000
Côte d'Ivoire	1:74	202 000
Sudan	1:76	365 000
Zambia	1:80	118 000
Central African Republic	1:87	38 000
Bosnia and Hercegovina	1:90	40 000
Croatia	1:96	50 000
Tanzania	1:100	295 000
Uganda	1:111	185 000
Pakistan	1:113	1 215 650
Congo-Brazzaville	1:124	21 000

These figures are from the US Committee for Refugees 1997 *World Refugee Survey*, a widely respected source of information about refugees and other displaced persons.

IGC 1983-1989

IGC 1990-1998

Landings - Canada
1860-1997

Immigration chart, 1860-1997

Immigration and Refugee totals + chart

Proportions, refugee-immigration

Refugee categories

Annual immigration plan

GAR targets and landings, 97-98

Privately sponsored, by mission and class, 1997

Privately sponsored, by destination, 1997

also HDC

Resettled refugees 1997 by country of citizenship

Privately sponsored - refusal rates A

Privately sponsored - refusal rates B

Privately sponsored - refusal rates C

Privately sponsored - refusal rates - D

Gender

AWR

Refugee claims made, 1989-97

Refugee claims made, charts

Eligibility

Claims referred - chart - 96-98

IRB refugee claim determination

Claims finalized

Claims pending

IRB Claims determination by country of persecution (1997)

IRB Claims determination by country of persecution, by IRB office (1997)

Cases pending, by year referred

Cases of gender-related persecution
+ UAM

Expedited positives

PDRCC

Detention

Removals??

18. ACRONYMS

3/9	Joint (blended) sponsorship model (government covers first 3 months, private sponsorship group the next 9 months)
AAISA (ay-sa)	Alberta Association of Immigrant Serving Agencies
AAP	Adjustment Assistance Program (now replaced by RAP)
AMSSA	Association of Multicultural Societies and Service Agencies of BC
ARAISA	Atlantic Region Association of Immigrant Serving Agencies
AWR	Women at risk
C-40	Bill tabled May 5, 1998 to reform law on extraditions
C-44	Immigration bill dealing with criminality. Effective 10 July 1995.
C-49	Bill that died on the order paper when 1997 elections called. Would have brought in single-member panels at IRB and change the status of IRB chairperson.
C-55	Legislation embodying the refugee determination system. Effective 1989.
C-86	Amendments to the Immigration Act, effective February 1993.
CAT	Convention Against Torture
CCPP	Consultative Committee on Practices and Procedures (of the IRB)
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
CCLB	Centre for Canadian Language Benchmarks
CPC	Case Processing Centre
CR	Convention refugee
CR1	Government-assisted refugee
CR3	Refugee sponsored by a private group
CR5	Joint Assistance Sponsorship
CRDD	Convention Refugee Determination Division (of the IRB)
CSIS	Canadian Security Intelligence Service
CSQ	Certificat de sélection du Québec
DC	Designated class
DFAIT (d-fate)	Department of Foreign Affairs and International Trade
DIRB	Documentation, Information and Research Branch (of the IRB)
DMP	Designated Medical Practictioner

DROC	Deferred Removal Order Class (cancelled)
ESL/FSL	English/French as a second language
EXCOM	Executive Committee (of the UNHCR)
H & C	Humanitarian and compassionate
HDC	Humanitarian Designated Classes
HRD(C)	Human Resources Development (Canada)
ICCR (icker)	Inter-Church Committee for Refugees
ICVA (ik-va)	International Council of Voluntary Agencies
IDP	Internally displaced person
IFA	Internal Flight Alternative
IFH	Interim Federal Health Program
INS	Immigration and Naturalization Service (U.S.)
IOM	International Organization for Migration
IRB	Immigration and Refugee Board
ISAP	Immigrant Settlement and Adaptation Program
JVA	Joint Voluntary Agency
LINC	Language Instruction for Newcomers to Canada
LRAG	Legislative Review Advisory Group
MAH	Master Agreement Holder (replaced by Sponsorship Agreement Holder)
Mississauga	Case Processing Centre for family sponsorship applications
MOU/MOA	Memorandum of Understanding/Memorandum of Agreement
NGO	Non-governmental organization
NHQ	National Headquarters
NIHR	Network on International Human Rights
OCASI	Ontario Council of Agencies Serving Immigrants
OM	Operational Memorandum
PCDO	Post-claim determination officer
PDRCCC	Post-Determination Refugee Claimant in Canada Class
PIF	Personal Information Form - completed by refugee claimants
POE	Port of Entry

RAC	Resettlement from Abroad Class (name - now abandoned - of new class for people in refugee-like situations abroad. See HDC)
RAP	Resettlement Assistance Program (formerly AAP)
RCO	Refugee Claim Officer (employee of IRB)
RHO	Refugee Hearing Officer (old name for RCO)
ROLF	Right of Landing Fee
SAH	Sponsorship Agreement Holder
SIO	Senior Immigration Officer
TESL	Teaching English as a Second Language
TCMR	Table de Concertation des Organismes de Montréal au Service des Réfugiés
UNHCR	United Nations High Commission for Refugees
UCRCC	Undocumented Convention Refugee in Canada Class
Vegreville	Location (in Alberta) of Case Processing Centre for permanent residence, work permit and other applications
WCAISA	Western Canadian Association of Immigrant Serving Agencies

19. BIBLIOGRAPHY

The following is a very limited bibliography only. The web sites listed below are useful starting points for further research. The many publications of the CCR referred to in this book are available either on the CCR web site or from the office.

CANADIAN COUNCIL FOR REFUGEES, *Best Settlement Practices: Settlement services for refugees and immigrants in Canada*, February 1998

This publication presents an overview of settlement services in Canada and identifies elements that make for successful settlement programs. It explores the meaning of "settlement" and "integration" and presents guidelines for best practices as well as examples of programs worth emulating.

CANADIAN COUNCIL FOR REFUGEES, *Interdicting Refugees*, May 1998

This document explores the practices of governments, especially the Canadian government, aimed at preventing the arrival of "improperly documented" travellers, and examines their impact on refugees fleeing persecution in their home country.

LEGISLATIVE REVIEW ADVISORY GROUP, *Not Just Numbers: A Canadian Framework for Future Immigration*, 1997

This report of the Immigration Legislative Review Advisory Group, commissioned by the Minister of Citizenship and Immigration, makes broad-ranging recommendations for changes to Canada's refugee, immigration and citizenship legislation.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *The State of the World's Refugees: A Humanitarian Agenda*, 1997, Oxford University Press.

An overview of the reasons refugees flee, the barriers they face in flight, the refugee definition and regime, the responses of states to refugees, and refugee repatriation, with chapters on internal displacement and statelessness.

U.S. COMMITTEE FOR REFUGEES, *World Refugee Survey*, Washington DC

The U.S. Committee for Refugees produces an "annual assessment of conditions affecting refugees, asylum seekers and internally displaced people". Widely respected and quoted, it contains useful statistics, articles on current and emerging issues and a review of the situation of refugees in each country over the preceding year.

Useful web sites:

Canadian Council for Refugees: www.web.net/ ˜ccr

Citizenship and Immigration Canada: http://cicnet.ci.gc.ca/

Immigration and Refugee Board: www.irb.gc.ca

Inter-Church Committee for Refugees: www.web.net/ ˜iccr

Intergovernmental Consultations: www.igc.ch

Standing Committee on Citizenship and Immigration: access through the parliamentary page www.parl.gc.ca

UNHCR: www.unhcr.ch/

US Committee for Refugees: www.refugees.org

The provincial governments are on the pattern www.gov.bc.ca, www.gov.on.ca, www.gov.pe.ca, etc, apart from Québec, which is instead www.gouv.qc.ca.

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