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## CAUTIOUS KINDNESS: CANADA'S REFUGEE LAW

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*By Bill Johnston, The Spectator*

Not since the Second World War have there been as many refugees as there are today. The United Nations conservatively estimates eight million people are outside their homelands to avoid persecution. Such numbers pose an immense challenge to the commitment to justice of nations able to offer refugees either asylum or a new home.

Canada's response has been contradictory: generous, yet cautious and self-serving at the same time.

No nation has accepted more refugees per capita than Canada since the Second World War, immigration officials say proudly. And the 60,000 Southeast Asians now being absorbed are the largest number of refugees from one place we have accepted since the war.

Yet, looking behind the numbers at whom we accept as refugees convinces major church and humanitarian groups that Canada tends to be quite selective. We tend to take the fittest and most qualified, those most able to foster our economic growth, and not those most in need of our social and medical services. We tend to reject those who have fled right-wing regimes.

### **Running for their lives**

According to the United Nations Convention on Refugees, a refugee is "any person who by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion" is outside his or her country of nationality or normal residence and, because of that fear, is unwilling to return or to seek the protection of that country. Canada's Immigration Act, which went into effect in April, 1978, uses the same definition.

Because of Canada's location, refugees do not swarm over our borders as they do in other places. Most refugees who enter Canada are selected by immigration officials in overseas refugee camps. Far fewer choose Canada (for example, boarding a direct flight from Latin America) to ask for asylum.

A refugee who escapes has been through a harrowing experience, described in a brief given to Employment and Immigration Minister Lloyd Axworthy in May 1980 by a delegation of concerned church, medical, legal and humanitarian groups. He has just fled a situation in which he was likely to have been detained and interrogated at any time, often by uniformed authorities, often in government buildings. Torture or murder was always possible. He may have been warned, on pain of death, not to reveal his persecution.

He may have had to bribe officials to obtain a passport. He arrives exhausted, perhaps in need of medical aid. He speaks only a foreign language, knows little of Canadian law or refugee procedures and is deeply afraid of being sent back. He faces questioning by a uniformed person and may well lie about why he is here, saying he is just visiting - anything just to get into the country and to find people who can help him make a refugee claim.

Too often, the refugee's plight is forgotten by those administering the legal process that determines whether a person is a refugee and entitled to remain in Canada.

### **The refugee screening process**

The process should, but doesn't, "facilitate entry to Canada of the legitimate refugee claimant," the delegation said in a March, 1979 brief. "This is an obligation under the U.N. Convention" Canada signed in 1969.

The process begins when a person, lacking any other legal claim to stay in Canada, says he would face persecution if he were forced to return home. The person must prove the claim or be deported.

The person will be interviewed, under oath, by an immigration official about why he cannot return home.

A transcript and translation of that interview is given to the Refugee Status Advisory Committee, which considers them along with information it has about the the country the person has fled. The committee advises the immigration minister whether or not the person is a refugee. In 1978, the committee advised in favour of less than 40 percent of applicants, according to McMaster sociology professor Rhoda Howard.

If the minister says the person is not a refugee, the person must leave the country or appeal to the Immigration Appeal Board. The appeal is actually only a written request for an oral hearing, which the board often refuses. From April to December, 1978, it allowed 37 but denied 57 hearings. If the board refuses a hearing, or if, after holding one, it decides a person is not a refugee, the person will have to leave Canada.

Appeal board decisions can be appealed to the Federal Court of Appeal but only on questions of law, not on the facts of the case.

Even those whom the minister or appeal board say are refugees need security clearance. The Immigration Act forbids entry to persons who might engage in subversion or violence or commit any offence under a federal act. If the immigration

minister or solicitor-general suspects a person violates that section of the act, a hearing will be held by the Special Advisory Board to weigh the evidence and advise the minister. There are no guarantees that refugee claimants may speak to this board and they will not be given any information considered "dangerous to national security."

Those rejected as refugees but cleared for security have one other chance to stay. The Special Review Committee, which isn't part of the refugee process, can recommend that the minister let a non-refugee stay for purely humanitarian reasons.

### Flaws in the process

Critics see serious problems with this process. A refugee claimant can be returned to his country of origin without a face-to-face hearing.

"This situation is contrary both to our notion of fairness and to the rules of natural justice which are fundamental to the Canadian legal system. It is all the more disturbing when considering the serious consequences of rejecting a *bona fide* refugee," the delegation of concerned organizations said in its March '79 brief.

Oral hearings are automatic in many other countries, lawyer Lorne Waldman said in Hamilton in May, 1979.

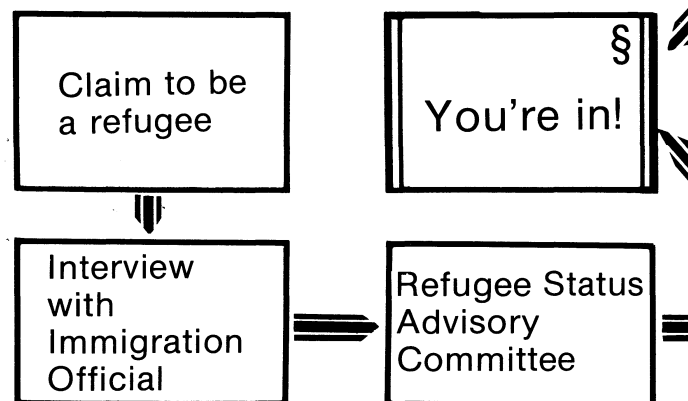
The lack of oral hearings violates Article 32 of the U.N. Convention on Refugees, according to Raul Vincenzo, a director of the Amnesty International Canadian section. The article says refugees can only be expelled on national security or public order grounds and only "in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself and to appeal to and be represented for the purpose before competent authority."

Due process concepts are also violated by the Immigration Act sections which forbid entry to people "who there are reasonable grounds to believe will" engage in subversion or crime, Vincenzo argues. Waldman says those clauses prescribe "guilt by clairvoyance."

An oral hearing is necessary to judge the credibility of a refugee's story. A transcript cannot adequately reflect the tension a claimant feels nor can it record his fear. Without oral hearings, good decisions depend on good transcripts from the original interview. Yet, the delegation and others note serious problems with transcripts, including bad jobs of recording the interview and poor translations, plus the difficulty a highly anxious refugee has in clearly stating his case - a problem compounded if he or she has no lawyer.

The original transcript can be supplemented with

## The Refugee Application Process

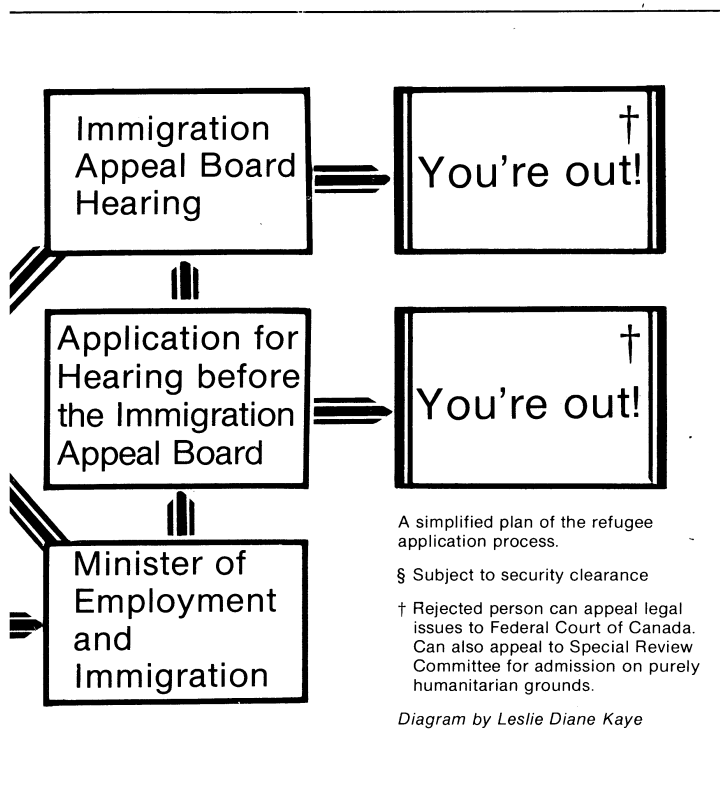


more information for appeals to the Immigration Appeal Board. Seven days are allowed for filing an appeal. The reasons for the decision being appealed are not always available at that time. The delegation recommends a 30-day period.

The Immigration Act limits the board to allow hearings only if there are reasonable grounds to believe a person can prove his or her case. "In any other case it shall refuse to allow the application to proceed and shall thereupon determine that the person is not a Convention refugee."

The delegation's 1980 brief says that the board has been reluctant to give the benefit of the doubt to refugee claimants. The board often seizes on inconsistencies or errors in the written material or on admissions of lying (usually claims to be visitors when first entering the country) as reasons for doubting the credibility of persons requesting hearings and thus, as reasons for not granting hearings. The board often displays great lack of knowledge about conditions in refugee-producing countries and does not have a research staff, as the Refugee Status Advisory Committee does.

"Many of the problems would be avoided if refugee claimants, assisted by counsel, were entitled to an oral hearing before a tribunal experienced in refugee matters, with access to accurate information about conditions in major



refugee-source countries, well versed in international law relating to the refugee Convention, and, most importantly, sensitive to the unique position and problems of the refugee," the delegation argued. The government has refused to act on this suggestion.

Steve Jeffrey, an immigration public relations officer, noted that most of the criticisms, including those about due process of law, had been made in parliament, yet a majority of parliamentarians voted for the new act although it ignored these problems. Refugee bodies, he stressed, are not courts of law. And refugee claimants do get to state their cases in writing "and if it's oral or written, the material would be the same."

Given the "overarching influence of economic priorities" on refugee policy, Canada has never adopted a policy of granting political asylum, Howard notes. "Political asylum implies that when an individual is in danger of persecution he ought to be removed from danger as quickly as possible, without consideration of his suitability as a settler in the country of asylum."

David MacDonald, Andrew Brewin and Louis Duclos, Canadian MPs who visited Chile, Argentina and Uruguay in 1976, reported in *One Gigantic Prison* that several Chileans on the urgent list of the United Nations High Commission for Refugees "have been refused entry to Canada because they

lacked the requisites for 'adaptation' to Canada."

Former Liberal Cabinet minister Robert Andras had told parliament in 1973 that Canada wanted to assist Chileans who sought "to make their homes in Canada" but not those seeking "a temporary safe haven in another country."

The Report to Parliament by The Special Joint Committee on Immigration in 1975 explicitly rejected the idea of making legal provision for Canada to be "a temporary safe haven" or country of first asylum. It did say the immigration minister ought to be able to grant asylum in specific cases. These proposals are in the new act.

As one improvement in our refugee policy, the Canadian Council of Churches proposes a complete separation of refugee and immigration policies and programmes to recognize the vast differences between the two groups - a proposal also made in the 1966 White Paper on Immigration.

### Political bias

The immigration department also seems biased against accepting as refugees people who have been politically active in opposing right wing regimes like those of Argentina and Chile, Howard says.

For instance, she noted processing of refugee applications from Chile took an average of four weeks in 1973-74, during which time applicants were in danger of being seized by Chilean police. No similar delays were encountered in bringing in Hungarian refugees in 1965, Ugandans in 1972 or Vietnamese in 1975.

Our government was able to grant refugee status to 6,000 Ugandans in two months in 1972, yet took 18 months to admit the first 1,500 Chileans after the Allende government fell, according to the United Church paper, *Issue 9: The Politics of People*.

Our government did not do away with prior medical, security and immigration procedures to speed removal of Latin American refugees, but did for Vietnamese and Ugandan refugees. George Hanoff wrote in the *Canadian Journal of Latin American Studies*, "The R.C.M.P. officers in Santiago (Chile) turned down a high proportion of the initial wave of applications (in 1973-74) on the basis that they comprised security threats for Canada."

But Warren Allmand, solicitor-general from 1972-1976, told the McDonald Commission on R.C.M.P. wrongdoing, that the Mounties unfairly branded many would-be refugees as subversives and "accepted without question" American Central Intelligence Agency reports on these people. Allmand said he told the Mounties that, had he been a Chilean, he might well have opposed the military junta though he is neither a Communist nor a subversive.

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## Why?

Why is this screening process so tough on refugee claimants - especially in light of one of the ten goals of the Immigration Act: allowing Canada to meet its international treaty obligations and to uphold its humanitarian tradition with respect to the displaced and persecuted?

The critics agree the answer lies in what Vincenzo calls "a basic misunderstanding by the Canadian government of what a refugee is." Unlike immigrants, refugees do not choose to leave their homeland and settle permanently in Canada. Refugees are forced to flee and look to Canada for protection until it is safe to return home, if that is ever possible.

But our immigration officials tend to admit refugees if they would be good immigrants, choosing those most able to help Canada rather than those most needing Canada's help. The Immigration Act is set up that way, Vincenzo says.

Immigrants get into Canada if they gain enough points in an assessment based on their age, finances and job and language skills - measures of their ability to adapt to Canada and contribute to its economy. But that same assessment, in a relaxed form, is also applied to refugees. In *Refugee Provisions* of the new Immigration Act, the department says two tests are applied in selecting refugees overseas, where most of our refugees are chosen. First, eligibility - is the person a U.N. refugee? Second, admissibility - is the refugee able to become successfully established in Canada? "The selection criteria for immigrants are used as a guide but points are not assigned." In case of doubt, account is taken of "any offers of assistance by interested organizations." This selection programme "recognizes that Canada cannot accept all of the world's refugees, and also recognizes that not all refugees can benefit from resettlement in Canada."

This means the act's humanitarian goal takes second place to all the other goals of ensuring Canada's economic prosperity and national security, Vincenzo states. Our immigration teams go after "the cream of the crop" - words he says a refugee official used proudly in describing Canada's success in choosing Ugandan refugees in 1972.

The Canadian Council of Churches says that the emphasis on refugees' ability to settle in Canada, rather than on their needs, meant that "during 1979 the more difficult Indochinese cases were scarcely touched." The Malaysian government's decision last fall to turn away boat people was a protest against the selectivity of rich countries like Canada, said George Cram of the Inter-Church Committee on Human Rights in Latin America. When rich nations pick the best, the real problems are left with the countries with the least resources to cope.

Vincenzo thinks the Immigration Act is "strictly anti-humanitarian" in relation to those who need medical help. It denies admission of persons suffering health impairments which "would cause or might reasonably be expected to cause excessive demands on health or social services." If a provincial government agreed to pay the medical costs, a crippled person could get in. But people who lost limbs or sight from Chilean torture have not been admitted, Howard says.

"If our policy is humanitarian we should give preference to them. People in places like Russia or Indonesia get long prison terms and "in most cases are completely broken by it. They are much more in need than many of the refugees Canada does accept," Vincenzo argues.

## What ought to be done?

The critics have many proposals for changes, several of which have been described. But Vincenzo stresses that changes in policies or regulations are not enough, because they could be reversed overnight by the minister.

"What is required is a change of attitude. The majority of people who have come here have come because Canada needs them. I think in at least some cases, refugees should be able to come to Canada because they need Canada."

Changed laws must embody that change of attitude. But Vincenzo also feels agencies, financed by the government, are needed to find jobs, housing, medical care and temporary income for refugees. Canada is weak in providing this help, which is promised in the U.N. Convention, he says.

The critics agree pressure is needed on the government to produce change. There is disagreement on the most effective means of pressure.

Vincenzo argues against any participation in activities which might indicate endorsement of the present refugee policy. When church and other groups sponsor refugees, the immigration department will use that as evidence of support for the whole refugee policy, making it harder to change, he argues.

Cram is also critical of sponsorship programmes but feels they can be used for good. Church and other groups could insist on sponsoring those the government wouldn't normally accept. Through sponsorship, groups could also learn a great deal about our refugee policy and might join those pressing for reform.

One thing is certain. There will be refugees who need Canada if Canada will take them. □

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