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CANADA'S PERIODICAL ON REFUGEES

# REFUGEE

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Volume 11, Number 2

December 1991

## Refugee Determination

### *Bill C-55 Revisited*

#### Introduction

Bill C-55 is to be revisited, again! Once more we are going to debate whether the refugee determination system is being abused, and in danger of being overrun. What is one to do with the people who arrive at an immigration officer's desk at Pearson Airport and claim to have no documents?

This won't be the only question raised by those critical of the number of refugees entering the refugee determination system. Should the Safe Third Country provision be implemented, at least for the United States, even if only to put pressure on the Americans to introduce visas for Somalis and Sri Lankans? Can't the process be altered so that rejected claimants actually get deported?

For those who support refugees, the issue will not be rebutting the

assumptions behind such questions, but ensuring these are not the central questions. It will be important to formulate the issues so that *all* aspects of the problems are dealt with and not

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just the problems of enforcement, or humanitarianism for that matter. Even if the proposal is to strike a balance between these two poles, it could mean fairness is sacrificed to control. What is really needed is fairness period. Enforcement is a critical ingredient of ensuring fairness.

C-55 once again. But let's not all rush out to work the ramparts for either side. Let's cooperate together to find a system that is even fairer than the present one; fair not only to the refugees but to all Canadians and to those who carry the primary responsibility for guarding the entry into Canada.

#### Compassion Versus Control

Where are immigration and refugee issues going in the 1990s? On the 19th and 20th of November, for the first time in nineteen years, the Deputy Minister of Immigration invited

all Canada Immigration Centre managers to Aylmer, Quebec to meet with headquarters management and their partners from other branches and departments for an Immigration Strategic Planning Conference. They came to help set the department's direction. The central issue repeated at all the

"pavilions" was the spontaneous arrival of refugees. Preparations are underway again to change immigration legislation in Canada, particularly Bill C-55.

What is the department's view of the problems Canada faces? First, they see millions of people on the move. Second, they regard their freedom to develop policy limited by three constraints: the Charter of Rights and Freedoms, Federal-Provincial relations and the budget. Third, they view strategic planning, based on innova-

tive approaches, as the means to finding answers.

Strategic planning entails a partnership with other stakeholders — not only those employed to deal with immigration and refugee issues, but those committed to the same goals. That is why it is crucial that people committed to refugees help define those goals. Strategic planning, as the Associate Deputy Minister Peter Harder has said, involves both poetry and plumbing; both the vision and the operational plan to achieve that vision.

Positive precedents are already in place. The extensive planning exercise to develop the five-year plan on immigration is over. So is the Canada Immigration Centre Equals Service (CIC=Service) task force which set in place a plan to improve services to clients. For instance, nannies and other clients no longer have to line up at 4:00 a.m. to get their permits renewed or to become landed. It is now handled by mail. Strategic planning entails a set of targets and an analysis of the means to reach them. Unless both dovetail, strategic planning is a waste of time.

That is why the immigration department managers are critical. Unless they share the goals and see that the instruments are in place to deliver fair and efficient services, the hallmark of immigration and refugee policy will be incoherence.

There is a need to reconcile an immigration levels policy and a heartfelt commitment to quality of service.

This can never be achieved as long as the method of setting such targets ensures the impossibility of providing quality service. The department has set goals on integration for those who arrive here as immigrants. They also have interdiction and deterrence programs to prevent others from getting here. A coherent goal concerning refugees still has to be worked out. No integration policy is in place for those who arrive spontaneously, claim refugee status and get accepted. At the same time, genuine refugees are clearly prevented from arriving here by an interdiction and a deterrence policy directed at any illegal movements. A major Case Management branch preoccupation concerns legal challenges to refugee determination and the handful of sensational cases of "criminals" claiming refugee status. A goal has yet to be articulated that integrates our legislated commitment to humanitarianism and the necessity for controls. How we deal with and revise the refugee determination system will be the fulcrum upon which all immigration policy for the nineties will be decided.

Is the refugee determination system "overburdened and in danger of collapse" as depicted in the briefing booklet provided to the managers and then repeated by the port of entry managers in their feedback to National Headquarters? Or is the system in balance, as indicated at the Immigration Strategic Planning Conference itself, processing as many claims as enter the system and needing only

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**REFUGE**

*Refuge*  
 York Lanes Press, York University  
 351 York Lanes  
 4700 Keele Street  
 North York, Ontario M3J 1P3  
 Telephone: (416) 736-5843  
 Fax: (416) 736-5837  
 Electronic Mail via Bitnet Address:  
 REFUGE@YORKVMI

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*Editor: Howard Adelman*  
*Managing Editor: Carol Greene*  
*Circulation Manager: Ruth Dworin*

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fine tuning to make it work even better?

Is the goal of the whole system to deter as many refugee claimants as possible from reaching our shores, whether genuine or not, while providing a reasonably fair system if the claimants are ingenious enough to traverse all the hurdles put in their way? Or is the goal to ensure that all refugees in need of protection are fairly and considerately treated and that Canada accepts a fair share of the burden of this obligation?

This is a very different goal than one based on the spectre of loss of sovereign control, masses of economic migrants abusing the refugee determination system and impossible burdens on our social and economic structures. It is a very different vision than one in which the media, spurred on by refugee advocacy groups, is viewed as an enemy more concerned with the risk to individual claimants than the danger to Canadian society and institutions. A very different strategic plan will be developed if one sees the main challenge as assuaging irrational fears that can give rise to a backlash versus ensuring that refugee determination is fair and expeditious.

Bill C-55 again. New proposals will soon go to Cabinet. How does the Minister view this challenge?

In his opening address to the conference, the Honourable Bernard Valcourt hit the following themes: a strong commitment to immigration: Canada's need for immigrants of the highest quality; an unwillingness to be compromised by self-selection and disrespect for the law — enforcement is not a dirty word; compassion is both a goal and a legal requirement that requires good judgment to main-

# A MAJOR CASE MANAGEMENT BRANCH PREOCCUPATION CONCERNS LEGAL CHALLENGES TO REFUGEE DETERMINATION AND THE HANDFUL OF SENSATIONAL CASES OF "CRIMINALS" CLAIMING REFUGEE STATUS.

tain the integrity of the system.

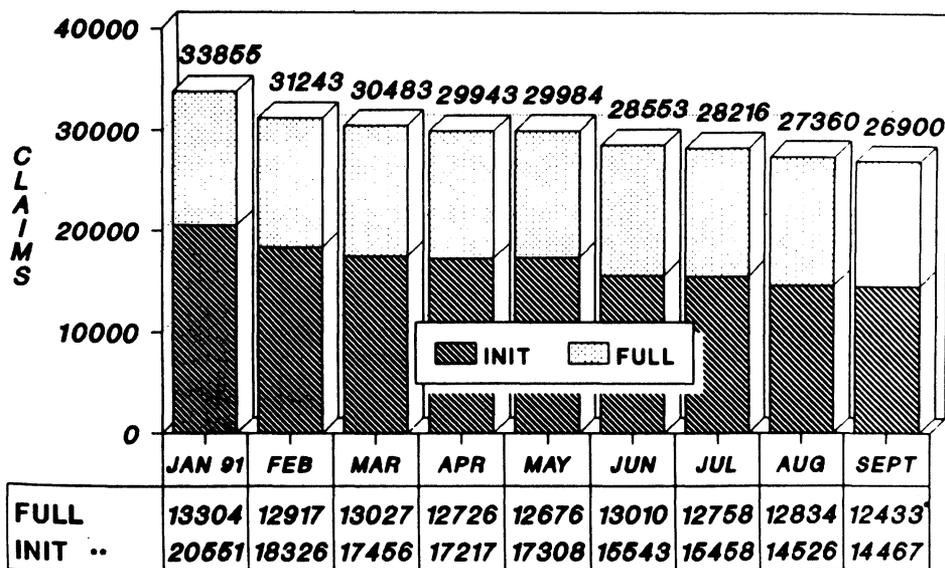
Stan Oziewicz, *The Globe and Mail* immigration specialist, told me he was struck by the repeated stress on enforcement by both the Minister and senior staff. Certainly, the stress was on control over compassion. But in examining my notes on the speech, the vision was not clear. Was it necessary to ensure enforcement and then allow fairness to be dispensed only to those who got through the controls?

Or was enforcement an aspect of ensuring fairness, both for the refugee claimants and for Canadians? Or did fairness to those refugees *really in need*, as some of the immigration managers told me, require restricting the refugee determination system and its enormous costs as much as possible? Further, if there was a commitment to "qual-

ity" immigrants, did this goal mean that spontaneous arrivals, whose quality could not be checked in advance, should be restricted in their access to the Canadian system as much as was legally and internationally possible?

The emphasis on control and enforcement emerged in several of the workshops I attended, most clearly, as would be expected, in the workshop run by the enforcement branch. Their display dealing with the prob-

## CLAIMS PENDING (INITIAL + FULL HEARING STAGES)



\* ESTIMATE (Includes approx. 2,500 decisions pending)

\*\* ESTIMATE (based on EIC data, Includes 3,000 claims not yet referred to hearing offices)

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All charts and graphs in this issue, unless otherwise indicated, are reproduced courtesy of the Immigration and Refugee Board.

blems they faced and the instruments being developed to detect phoney visas and passports, and to interdict illegal movements was impressive. But their absolute commitment to enforcement without any apparent consideration of the humanitarian obligations of our legislation was a matter of distress. Those in the enforcement branch face huge challenges — people using every illegal means possible to get into Canada, huge numbers and far too few resources to protect Canadians and their legal system. Bleeding-heart journalists and refugee advocates are often viewed as enemies undermining enforcement officers' efforts. And it is true that most refugee advocates rhetorically grant a need for enforcement but pay little or no attention to how one can reconcile the problem of control with humanitarian concerns.

If the enforcement people displayed a sense of discipline and go-get-em-gung ho spirit, the managers concerned with ports of entry were frustrated and demoralized. They are responsible for controlling entry into Canada, but a large group of individuals, who they believe are largely economic migrants, enter Canada without documents simply by saying they are refugees from country X. Most of them are fast-tracked without anyone satisfactorily confirming whether or not they actually come from the

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## LEEDING-HEART JOURNALISTS AND REFUGEE ADVOCATES ARE OFTEN VIEWED AS ENEMIES UNDERMINING ENFORCEMENT OFFICERS' EFFORTS.

country they say they do and, when they are given the benefit of the doubt, that they are indeed refugees. Hardly anyone is deported.

This is how a port of entry manager views their situation:

*The refugee determination system in place prior to January 1989 was considered unworkable. C-55 gave the promise of regaining control. The results thus far have been disappointing in that Canada continues to attract large numbers of economic migrants. The "pull factor" is highly evident at our airports. Our generous social services and the all-encompassing rights accorded by the Charter are incentives to attracting claimants to Canada. These factors support the statements that Canada stands in the forefront as one of the most tolerant and generous countries to refugees, be they economic migrants or genuine asylum seekers. The lack of a Safe-Third Country policy combined with our inability to remove in a timely fashion com-*

*pound "the pull-factor" [my emphasis]. At some of our major international airports staff are bombarded with refugee claimants, most of them without passports or airline tickets, arriving at peak traffic times.*

Of course, the managers have no evidence that these claimants include large numbers of economic migrants. Nor do they have evidence that social

welfare acts as a pull factor. Their frustration at the wide disparities between their control responsibilities and their obligation to allow entry to refugee claimants, even if they destroy or pass on their ticket stubs and passports, emerges in an expression of demoralization. What they claim to be facts may be the inherited myths of the department, but they also may be true. Unless one develops a refugee determination system that establishes the "facts" and takes into account, in its structure, the frustrations of officers responsible for controlling the borders, we will not have developed a system that is both fair to refugees and to the staff responsible for meeting those refugees in the first place.

The challenge may not be to construct better enforcement mechanisms, nor to ensure the refugee determination system is fairer to all refugees in need of protection. The challenge is to ensure that we have a better enforcement mechanism so that refugees can be fairly treated, so that the Canadian immigration system serves guests and immigrants who we want and who want to come to Canada, and so that Canadians who are here can extend the hand of justice without that hand being twisted by criminals and those who would abuse our hospitality and our legitimate interest in our own welfare and improvement.

This issue of *Refuge* is dedicated to providing material so that those concerned with refugee issues can enter the debate on refugee determination system reform with a better understanding of some of the issues at stake.

### REMOVALS

|         | NOT CONVENTION REFUGEES |      |      |       | REMOVED          |      |      |       |
|---------|-------------------------|------|------|-------|------------------|------|------|-------|
|         | January - August        |      |      |       | January - August |      |      |       |
|         | 1989                    | 1990 | 1991 | Total | 1989             | 1990 | 1991 | Total |
| INITIAL | 570                     | 966  | 991  | 2527  | 325              | 401  | 587  | 1213  |
| FULL    | 562                     | 2913 | 4700 | 8175  | 24               | 162  | 399  | 585   |
| TOTAL   | 1132                    | 3879 | 5691 | 10702 | 349              | 563  | 986  | 1898  |

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