

The New Refugee Advocacy Staff Office

Ontario Legal Aid Plan

The Ontario Legal Aid Plan will be establishing a staff office in Toronto to represent refugee claimants at hearings before the Refugee Division of the Immigration and Refugee Board. This office will be established on a three year pilot project basis, and it is estimated that the office will represent about 1,150 refugee claimant cases annually. Refugee claimants who are entitled to legal aid retain the right to choose representation by staff counsel or counsel of their own selection retained on a legal aid certificate.

The feasibility of the delivery of legal aid to refugee claimants by a staff model clinic was examined by the Refugee Pilot Sub-Committee, a group of refugee lawyers, legal aid committee members and executive members of the Ontario Legal Aid Plan. Those representing the refugee lawyers bar were Joyce Chan, Greg James, Karen McCullough, Peter Showler and Lorne Waldman.

The Sub-Committee concluded that there is not a problem of access to legal services for refugee claimants in Ontario that would justify a method of delivery of those services different from the current method. However, there is to some extent a problem of access to competent legal services. Furthermore, the Sub-Committee is of the view that the provincial government is committed to undertaking a pilot project to deliver legal services to refugee claimants through a staff model as a cost-saving initiative. In those circumstances, the Sub-Committee believes that the Ontario Legal Aid Plan is in the best position, with the expertise and assistance of the private bar, to ensure that legal services delivered through a staff model are independent and of good quality and that proper resources are made available. It is within

this context that the Sub-Committee made the recommendations that follow.

Quality of Service

The Sub-Committee concluded that the issue of paramount concern in refugee law cases was the quality of legal representation available to refugee claimants. There is often no remedy available for refugee claimants who have received incompetent representation. They face speedy deportation back to the country from which they fled.

There is a wide range of competence among lawyers representing refugee claimants. Members of the refugee bar who do appellate work have expressed concern about the lack of adequate preparation by some lawyers who represent refugee claimants at Board hearings. Comments about the competence of the representation of some lawyers should not, however, be taken to derogate from the overall contribution of the private bar to the body of refugee law that has developed rapidly in the last few years.

Refugee cases are becoming more vigorously contested. Counsel require greater advocacy skills and more detailed country knowledge to address arguments related to issues such as change in country conditions and the existence of an internal flight alternative. That is, as political changes occur in the countries from which refugee claimants have fled, their counsel must be familiar with those changes and must search out and submit to the Board information about the likely durability of the changes in order to address the reasonableness of the refugee claimant's continued fear of persecution should he or she return to that country. In addition, many arguments arise around what is termed the "internal flight alternative." In countries such as India and Sri Lanka, the Board may conclude that the refugee claimant would be likely to be safe in another part of the country other than the area from which he fled and accordingly, reject his or her refugee

claim. Those are two examples of the many issues that now confront refugee lawyers in representing their refugee clients.

The newly amended *Immigration Act* permits the minister of immigration to intervene more often, and, as a result, cases will become lengthier and more complex legally. At the same time, the percentage of refugee claimants determined by the Immigration and Refugee Board (IRB) to be Convention refugees, and thus subject to Canada's protection, has fallen more than 75 percent from 1989 to 1992.

Monitoring Quality of Service

Monitoring the quality of representation of refugee claimants presents unusual difficulties that do not generally arise in other areas of practice. There are a number of reasons.

Hearings before the Refugee Division of the IRB are generally conducted *in camera* and do not permit the informal peer review of counsel's competence that occurs naturally in criminal and family court where hearings are conducted in open court.

In addition, refugee claimants themselves are generally not knowledgeable consumers of legal services as are persons who have a greater connection with the structure of society in this culture. They are less likely to know that they are not being well served and to have knowledge of their ability to make a complaint to the Law Society of Upper Canada. Refugee claimants are vulnerable in a number of ways. As a result of their experiences in the country from which they have fled, they are often distrustful and do not wish to call themselves to the attention of anyone in a position of authority in this country. If they are not well served and are determined not to be Convention refugees, they may well be deported before they are able to make a complaint about the quality of representation they received.

Extracted from the "Report to the Legal Aid Committee of the Refugee Pilot Sub-Committee, June 1993," Ontario Legal Aid Plan.



Guiding Principles

The Sub-Committee recommended that the following five principles be adhered to:

1. Access to a staff office in refugee cases must not derogate from the freedom of choice of counsel. Refugee claimants who are eligible for legal aid assistance must be entitled to choose between representation by staff counsel and representation by counsel of their own selection retained on a legal aid certificate.
2. Staff counsel must be independent in all aspects of their relationship with their client to the same extent as in a relationship between a solicitor and a legally aided client.
3. There must be assurance of necessary resources, including both sufficient resources for the full and proper preparation of each case by lawyers and paralegal staff and sufficient resources for necessary disbursements.
4. The existence of a staff office must not in any way result in less recognition by the plan and the government of the importance of continuing the private bar delivery of legal aid services to refugee claimants or any lesser remuneration to those lawyers in the private bar providing legal aid services to refugee claimants than to other lawyers. As part of the evaluation of the pilot project, there must be an assessment of the impact of the staff office on access to legal services in refugee law delivered by the private bar.
5. The practice of refugee law has an inherent community advocacy function that should be part of any pilot project.

The Sub-Committee recommended that the refugee pilot staff office focus primarily on representing refugee claimants at hearings before the Refugee Division of the IRB. A secondary aspect of their work would be on internally generated appellate work and test-case appellate work. The staff office should also make available through the Legal Aid

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Empower the Most Vulnerable: A People-Oriented Planning Workshop

Véronique Lassailly-Jacob

This workshop, sponsored by the Reconstruction and Rehabilitation (R and R) Fund of the Canadian Council for International Co-operation (CCIC), was held in Ottawa, April 19-20, 1993.

This very informative workshop conducted by Mary B. Anderson and Tim Brodhead regrouped many Canadian NGO representatives involved in refugee programs. The main target of this training session was to discuss ways of improving the efficiency and effectiveness of international assistance provided to refugees in the context of developing countries. Improving refugee programs implies using resources more efficiently, increasing the opportunities for refugees to assume responsibility for their own management and programs and ensuring that programs benefit everybody in the community—men, women, children and the most vulnerable.

The audience was introduced to two concepts presented as compulsory prerequisites of successful programs. The first concept discussed was change—change in the customary social and economic roles of each individual in a refugee context—"it is essential in planning activities for refugees that you have an in-depth understanding of the dynamics of change working within the society. These determine, to a great extent, the acceptance and success of any project." Second, the concept of refugee participation was defined as "recognizing that full participation requires the involvement of refugee women, men and children."

The ways of assessing socioeconomic changes in a refugee community as well as determining the ability of refugees to participate in and benefit from the programs was then examined. We were invited to discuss a framework

built as an analysing tool for socio-cultural and economic components in a refugee community. This three-step framework, based on a UNHCR report,¹ is conceived as "a new analytical framework which combines elements of gender analysis and capacities-vulnerabilities analysis."

The first step focuses on the profile and context of a refugee population. Refugee workers should remember that the overall population profile has been distorted by the refugee situation and major demographic distortions must be taken into consideration when delivering programs. The second step of the framework is an Activities Analysis. "It is essential to find out what people were doing before and what they are doing or are able to do now in the refugee situation for which you are planning." The old patterns as well as the refugee situation pattern of the female/male division of social and economic roles and responsibilities should be investigated. As for the third step, it is devoted to what resources refugees controlled and used before they became refugees and what resources they control and use now: what they have lost, what they have brought with them and what they have been provided with in their refugee situation.

Finally, we were invited to test this framework on some typical refugee situation managed by the UNHCR. Discussions focused on two study cases, the Ukwimi Refugee Settlement set up in Zambia for Mozambican refugees and the repatriation of Cambodian refugees from Thailand.

As far as I am concerned, two main points were not sufficiently mentioned. The first one is related to the great amount of time required for such an in-depth analysis; refugee workers are usually very busy in implementing their programs. Will they have the time for conducting this survey? The second

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point is linked to a major component, not sufficiently tackled during the workshop, the socio-political context of a refugee situation. Planning refugee programs without having an in-depth knowledge of the host society, the host government's refugee policy or the country of origin at the time of repatriation is prone to failure.

However, this framework will be a very useful tool which will facilitate program and project planning, implementation and evaluation. It points out some critical components too often overshadowed. "It reminds us that women, as well as men, are active producers in the economy and society and that one critical variable in program planning is change in the gender division of roles, responsibilities and resources". ■

Notes

1. Anderson, M. B., Howarth, A. M. and Overholt, C. : "A Framework for People-Oriented Planning in Refugee Situations, Taking Account of Women, Men and Children. A Practical Planning Tool for Refugee Workers," UNHCR, Geneva, December, 1992.

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Research Facility to the refugee bar precedents and materials supporting refugee claims and appeals, particularly in test cases. This latter recommendation is aimed at improving the quality of the representation generally available to refugee claimants through the private bar and as also saving legal aid costs that would otherwise be incurred by the production of those arguments and materials in individual lawyers' offices.

The refugee pilot project staff office will operate for the next three years at the provincial office of legal aid on University Avenue in Toronto. It is estimated that about 1,150 cases annually, including hearings and expedited cases before the IRB and applications for judicial review in the Federal Court, could be handled by this office. It is projected that some cost savings on a per-client basis to the Ontario Legal Aid Plan should be realized over the three years. ■

"God Has Left Me."

Lloyd Jones

The day blossomed as Canada celebrated its 126th birthday. The early morning Thunder Bay sunshine gave us a sigh of relief after days of rain, cloud and below normal temperatures. Biniam was our Ethiopian guest. Sponsored a few months back, Biniam came to us through Greece as a refugee. Escaping the horrors of civil war, Biniam was only fourteen when he was sent to Athens by his mother and brother. Now in Canada, we had noticed Biniam retreating inside himself. His replies to questions were barely a few words or short sentences. For long periods, he stared into space as he sat on a bench outside our home. The grass was velvet green, thicker than usual because of the rain. The petunias, marigolds and lilacs glistened with the early morning dew. The birds sang their cheery songs. Such was the beginning of Canada Day, 1993.

Our house already had the buzz of activity. As our home is also an international hostel, travellers were up and about, toileting, packing, preparing breakfast and planning their day's activities.

Our home is very close to the 11-17 highway, the two-lane, 80 kilometre stretch of roadway where all trans-Canada traffic is funnelled leading to and from Thunder Bay. Traffic was heavier than usual going west. Many were tourists crossing Canada. Others were locals going to Old Fort William where Canada Day is celebrated in grand style. Still others were Thunder Bayites heading to their cottages along Lake Superior or to Dorion Bible Camp or to Sleeping Giant Provincial Park. Some local people stayed home to tend their gardens, receive family friends and relax at home.

"We're having pancakes, Biniam," I shouted. "Would you like some?" No response; but then, that was like Biniam

sometimes. The night before, for some strange reason, Biniam had been pouring over our National Geographic atlas. He had also shown me two New Testaments in the Ahmaric language. I commented to him that one was a Gideon Testament, to which he acknowledged with a slight smile, something rare in Biniam's behaviour. During one of his many moments of sitting and staring on the white bench by the front lawn, I tried to find out more about his solitary, meditative behaviour. He replied several times, "God has left me."

Biniam had wandered away before but had returned after walking long distances. But somehow on that day, we became concerned after a few hours and called the Ontario Provincial Police to be on the lookout for him. He had not taken his belongings, and had left his running shoes where they had been the night before. He had carefully made his bed. That he had wanted to go back to Ethiopia was apparent. He had even sent his passport to the Ethiopian embassy for renewal. Our thoughts had wandered back to a church outing the weekend before in nearby Sleeping Giant Provincial Park. Biniam joined us, and we were impressed with his skill, agility and strength as he played volleyball on the beach of Lake Marie-Louise. We had spent a happy time touring the new visitor centre, with Biniam taking interest in the exhibits.

He had been interviewed for a "Futures" program with Youth Employment, and his prospect of being accepted was strong. He had never shown academic promise in his tests to enter high school in Thunder Bay, and we felt this would buoy him. His morose and depressed condition continued to gnaw at us, and this good news cheered us up considerably, hoping that Biniam too, would rejoice.

It was 10:30 p.m., the sun having just set in the northern sky. I remember the relief when the squad car rolled into the

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