



CANADA'S PERIODICAL ON REFUGEES

# REFUGEE

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## DIVERSE PERSPECTIVES ON REFUGEE ISSUES

### Racism and Canadian Refugee Policy

Sharryn Aiken

#### Introduction

This issue of *Refuge* provides a space for both participants and faculty of the 1999 Summer Course on Refugee Issues to share ideas on the broad themes related to the seven day intensive programme. Now in its 8th year, the Summer Course hosted a remarkably diverse group of participants and faculty from around the world. In addition to Canada, participants came from South Africa, Uganda, India, Australia, Belgium, Portugal, Germany, the United

Kingdom as well as the United States and reflected the full spectrum of institutional, academic, legal and non-governmental sectors. The papers included in this special issue reflect the diversity that is intrinsic to the course itself.

Michael Bossin identifies the current issues or trends affecting refugees around the world and highlights, in particular, the increasingly restrictive responses by governments in both the North and South. Jason King provides an in depth case study of Ireland's policies, tracing the historical transforma-

tion of a nation best known for its out-migration to one that receives growing numbers of refugees. King demonstrates how an emergent discourse of Social Darwinism and competition for limited resources has manipulated public opinion about asylum seekers and refugees. In "Notes from the Field in Kigoma" Paul Spiegel and Mani Sheik contribute a public health analysis of the conditions in refugee and displaced persons camps in the "post-emergency phase." Spiegel and Sheik aim to ensure that programs implemented by NGOs in the field are more effective in improving the quality of life and addressing the "post emergency" needs of camp residents. Lúcio Sousa provides a short note on the evolution of refugee policies in Portugal. From the perspective of medical anthropology, David Lumsden considers the dimensions of "exile." Lumsden explores the current uses and misuses of the diagnosis of "Post-traumatic Stress Disorder" and urges us to avoid the presumption of pathology for populations in exile. The last word in this issue has been reserved for Iris Almeida, who offers her reflections on the newly minted Statute of the International Criminal Court as a tool for enforcing international justice.

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## Racism and Canadian Refugee Policy

One topic which surfaced in a number of sessions during the Summer Course was the question of racism. Guest faculty member Rudhramoorthy Cheran spoke of the relationship between "race," labour and migration and the extent to which systemic racism continues to inform exclusionary refugee policies, particularly in settler societies of the North. In this regard, Anthony Richmond poses the following questions:

... are we creating a system of global apartheid based on discrimination against migrants and refugees from poorer developing countries? Or are we simply acting rationally to protect the integrity of our social systems and harmonize our immigration policies? Will the emerging new world order ensure justice and equality of treatment for immigrants and refugees, or will it create a system that privileges some and deprives others of their rights? <sup>1</sup>

My contribution to this issue of *Refuge* represents an attempt to elaborate on Professor Richmond's concerns in the context of contemporary Canadian refugee law, policy and practice. After a brief review of the historical record, the focus of this inquiry will be the defining elements of the refugee program, the impact of selected Supreme Court of Canada decisions in the area of refugee law as well as the current agenda for legislative and policy reform.

**Canada's Historical Record** One of the central myths of our national identity is that Canada is an egalitarian, pluralist society free from the scourge of racism that exists in the United States and throughout most Western societies. Indeed, the Commission on Systemic Racism in the Ontario Criminal Justice System noted that racism has "a long history in Canada" and remains a defining feature of Canadian society.<sup>2</sup> While the primary focus of the provincial study was the criminal justice system, the commissioners emphasized that "(r)acism has shaped immigration to this country and settlement within it..."<sup>3</sup> The Immigration Act of 1910 gave

Cabinet wide discretion to exclude prospective immigrants on the basis of "race" and circumscribed the power of the courts to review any decision of an immigration officer (including decisions concerning which "races" could be deemed genetically unsuitable and therefore excluded) by a privative clause.<sup>4</sup> Among measures adopted to deter immigrants from Asia and other "alien" parts of the world in the early part of this century, the federal government imposed a "continuous journey rule" which permitted entry to only those persons who arrived in Canada from "one continuous journey" and "through ticket" from their country of origin.<sup>5</sup> The explicit racism of the government's immigration policy was reinforced in the reasons provided by a judge of the British Columbia Court of Appeal when he dismissed a challenge of the continuous journey rule:

Better that peoples of non-assimilative- and by nature properly non-assimilative-race should not come to Canada, but rather, that they should remain of residence in their country of origin and do their share, as they have in the past, in the preservation and development of the Empire.<sup>6</sup>

A combination of law and policy aimed at sustaining the British character of Canada and excluding those who were deemed incapable of contributing to the government's assimilationist project of nation building was responsible for a relatively static population of racialized groups in Canada through to the 1950s. Census figures indicate that prior to 1961, only 3 % of immigrants were persons of colour.<sup>7</sup>

### The Contemporary Context

Canada became a signatory to the United Nations Convention relating to the Status of Refugees in 1969. In 1972 the government welcomed Ugandan refugees of Asian ancestry fleeing the barbarism of Idi Amin and the next year, thousands of Chileans who sought refuge after Pinochet's coup. In 1978 a new Immigration Act came into force, described by Kelly and Trebilcock as the beginning of a new era of Canadian immigration law.<sup>8</sup> For the first time

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the objectives of Canada's immigration policy were explicitly spelled out. These included the attainment of Canada's demographic goals, promoting family reunification, upholding Canada's humanitarian tradition with regard to refugees and displaced persons and fostering the development of a strong economy. Enshrined in the preamble, the Act recognized the need to, "...ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex."<sup>9</sup>

The new Act created four classes of immigrants: refugees, family class, assisted relatives and independent immigrants, each of which would be selected separately. The incorporation of key provisions of the Refugee Convention directly into the Immigration Act was an important milestone.<sup>10</sup> The elimination of the language of discrimination and racism that had characterized Canada's immigration law since the first immigration bill was passed in 1869,<sup>11</sup> together with the express commitment to values of universalism and equality appeared to represent a paradigmatic shift. Yet despite these lofty ideals, systemic racism persisted in Canadian refugee policy and practice. As suggested by Simmons, the government merely shifted from a neo-colonial, racist immigration strategy to one which could be described as "neo-racist" - one which "reveals significant racist influences and outcomes within a framework that claims to be entirely non-racist."<sup>12</sup>

Since the overhaul of Canada's immigration program in 1978, Canada opened its doors to thousands of racialized refugees from "non-traditional" source countries in Africa, Asia and the Americas. In 1979, Canada played a leading role in resettling tens of thousands of Vietnamese refugees in the aftermath of a decades-long war. As a result of these efforts the United Nations awarded the people of Canada the prestigious Nansen Medal, "in recognition of their major and substantial contribution to the cause of refugees." However,

Canada's record of compliance with international human rights standards and the Refugee Convention in particular has been uneven. The government's responsiveness to refugee crises around the world has frequently been informed by geo-political considerations and racism rather than respect for international legal obligations and the spirit of humanitarianism which the Immigration Act allegedly enshrines.

### Refugee Resettlement

While human rights tragedies were unfolding in the apartheid regime of South Africa, in Sudan, Ethiopia, the Great Lakes region and more recently, Sierra Leone, Canada has resettled no more than 1,000 refugees from all of Africa in any year since the 1980s. The distribution of Canadian visa posts around the world and the allocation of resources to these offices continue to reinforce these trends. In 1998 there were only four immigration offices to service all of sub-Saharan Africa.<sup>13</sup>

The current rules for selecting refugees from abroad make use of "establishment criteria" as defined in the points system for selecting skilled workers. In addition to demonstrating that they are at risk of persecution as a convention refugee or are facing a refugee-like situation, applicants must convince a visa officer that they will be able to adapt to life in Canada and will be able to successfully establish themselves within one year of arrival.<sup>14</sup> Subjective and highly discretionary considerations with regard to the refugee's "personal suitability" frequently supplant the assessment of the refugee's need for protection. Despite widespread criticism of the government's refugee resettlement program,<sup>15</sup> the government is committed to maintaining the establishment criteria in overseas selection.<sup>16</sup> Officials suggest that a more "flexible" approach may be adopted with refugees needing to demonstrate the potential to establish within three years rather than the current one year.<sup>17</sup> Nor does there appear to be any intention of eliminating the nine hundred and seventy five dollar "Right of Landing Fee" imposed on all adult refugees and immigrants

since 1995. The fee, resonant of the Chinese head tax imposed in the earlier part of this century, has been defended by the government as "a small price to pay to come to the best country in the world" and necessary to offset at least some of the costs of settlement programs (arguably, the success of the government's deficit reduction strategy makes this argument less persuasive in 1999). The government claims that the fee is not discriminatory because it applies to everyone. Yet given the disparities between Canadian currency and currencies in the South as well as between the rich and the poor in most countries of the world, the fee amounts to a regressive flat tax that violates fiscal fairness.<sup>18</sup> While statistical data is unavailable, there is anecdotal evidence to support the contention that among those disproportionately impacted by this modern day head tax are racialized refugees from the South, where the fee very often represents up to three years salary.<sup>19</sup>

For 2000 the government is projecting that refugees will represent approximately 12 per cent of total immigration, consisting of 7,300 government assisted and 2,800 to 4,000 privately sponsored refugees as well as between 10,000 and 15,000 refugees who will arrive in Canada on their own and successfully proceed through the in-land determination system.<sup>20</sup> The current system for selecting refugees from abroad has resulted in systemic discrimination for poor refugees from poor countries (a population that is largely, if not exclusively, racialized). It is in this context that Canadian visa officers routinely reject urgent and deserving protection cases referred by legal officers from the United Nations High Commissioner for Refugees. It deserves mention in this regard that neither the Canadian Human Rights Act nor the Charter of Rights and Freedoms apply to visa officer decisions outside of Canada.<sup>21</sup> In the absence of any independent monitoring mechanism, the Department of Citizenship and Immigration's most significant sphere of activity is almost immune from scrutiny. The Department is the only Canadian authority that has the power of arrest without the concomitant



safeguard of civilian oversight or recourse to Charter remedies. Complaints about racist treatment by immigration officers are supposed to be addressed by the very department that is the subject of the complaint.<sup>22</sup>

### The Supreme Court and Refugees in Canada

In 1985 the Supreme Court released its decision in *Re Singh and Minister of Employment and Immigration and 6 other appeals*,<sup>23</sup> holding that where a serious issue of credibility is involved, fundamental justice required that credibility be determined on the basis of an oral hearing. Wilson J. found that the system for determining refugee status inside Canada failed to meet the procedural guarantees of section 7 of the Charter of Rights and Freedoms. Prior to *Singh* refugee claimants did not have an oral hearing or an opportunity to address the evidence the government might have with respect to their claim. Instead they recounted the events that led to their departure from their country of origin in an examination under oath with an immigration officer who then forwarded the transcript of that examination to the "Refugee Status Advisory Committee", which made a decision on the claim without ever hearing from the claimant. Three of the six justices in the Supreme Court's ruling in *Singh* confirmed that everyone present in Canada as well as anyone seeking admission at a port of entry was entitled to protection of the Charter.<sup>24</sup> Refugee advocates and lawyers celebrated the decision and each year continue to commemorate the date of the decision's release in April as "Refugee Rights Day" across the country. In the short term, the implications of *Singh* were quite dramatic. The government had to spend millions of dollars to set up a refugee determination system that included procedures for a full oral hearing and the right to counsel. Pursuant to Bill C-55, which established the Immigration and Refugee Board, refugee claimants inside Canada were now afforded a "quality" status determination by an independent, quasi-judicial tribunal. Developments in the wake of *Singh*, however, clearly demonstrate the

extent to which legal victories so easily slide into irrelevance. In the aftermath of the decision the government took swift steps to limit access to the refugee determination system by limiting the appeal rights of claimants in Canada, and increasing measures of interdiction to ensure that fewer refugees actually reached Canada in the first place. Introduced in 1987, Bill C-84, known as the Deterrents and Detention Act, authorized the government to turn away ships in the internal waters of Canada, the territorial seas or twelve miles beyond the outer limit of the territorial waters when there are "reasonable grounds" for believing the vessels are transporting anyone in contravention of the Act. Another provision of the Bill made it an offence to assist anyone to come to Canada who was not in possession of proper travel documents, regardless of whether they were bona fide refugee. Transportation companies were subject to fines (or technically levied administration fees) if they brought any improperly documented passenger into Canada. Since 1990 the government has maintained an "enhanced control strategy", consisting of a network of immigration control officers stationed around the world to prevent migrants without proper documents from reaching Canada.

In 1992 the Supreme Court narrowed the application of *Singh* in the case of a permanent resident seeking to challenge a provision which denied an appeal on "humanitarian and compassionate grounds" to residents who were ordered deported for organized criminal activity. Sopinka J. held that "the most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country."<sup>25</sup> A year later, in *Dehghani v. Canada*, the Supreme Court extended the citizen/non-citizen distinction in holding that the questioning of a refugee claimant in a "secondary examination" at the border was equivalent to the routine procedures to which any non-citizen seeking entry was subject. Consequently the implied compulsion and questioning did not constitute detention within the meaning of the

Charter and did not attract any procedural rights to due process or the right to counsel.<sup>26</sup> As a result of this ruling, statements made by refugee claimants at the port of entry in the absence of counsel were increasingly introduced in the refugee hearing. For some decision makers, these "prior inconsistent statements" were considered compelling proof of a claimant's lack of credibility, regardless of the circumstances under which the evidence was obtained and even in the face of indications that the claimant had misunderstood questions posed by the immigration officer. In the same year amendments to the Immigration Act (Bill C-86) were introduced which centred on abuses to the system by outsiders. Included in the package of amendments was a provision which required convention refugees to produce "satisfactory" identity documents in order to be landed.<sup>27</sup>

Prior to the passage of Bill C-86, the Immigration Act exempted convention refugees from the requirement to provide identity documents. Among those disproportionately affected by the new requirement have been Somali refugees. Since the collapse in 1991 of the Siyad Barre regime in Somalia, there has been no central government and thus no institutions to issue identity documents. The last legal Somali passports were issued in 1989 and by 1994 all of the valid Somali passports had expired. Even before the collapse of the government, however, a large majority of the population did not register their births, marriages or divorces, a cultural reality that is shared by many other countries, especially in Africa.<sup>28</sup> Three years after Bill C-86 was implemented, in a professed effort to address community concerns, the government set up the "Undocumented Convention Refugee in Canada Class", imposing a mandatory five year waiting period on all Somali refugees seeking permanent residence. The five year period is calculated from the date of receiving a positive decision from the Immigration and Refugee Board, with the result that the total period of time that "undocumented" refugees have to wait prior to landing is at least seven years. There are

currently some 13,000 refugees, primarily Somali women and children and a comparatively smaller group of Afghans, in legal limbo as a direct result of the identity document requirement.<sup>29</sup> While protected from refoulement, refugees without landed status are unable to be reunited with family members whom they would have otherwise been able to sponsor, or even leave the country for the purpose of a temporary visit in another country. Due to the age restrictions of the family class sponsorship program (subject to a few, narrow exceptions, dependent children can only be sponsored when they are under 19 years of age), parents who may have been forced to leave children behind in refugee camps in an effort to secure safety for themselves and their family in Canada, will never be able to sponsor any child who was over the age of eleven years when left behind. In addition refugees in the "Undocumented Refugees in Canada Class" are denied access to post-secondary education, professional training programs, bank loans for small business and in many cases even employment. These restrictions have produced the social marginalization of a whole community of refugees. Both the United Nations High Commissioner for Refugees and the United Nations Committee on Economic, Social and Cultural Rights have expressed concern about the plight of thousands of convention refugees in Canada who have been denied permanent residence status.<sup>30</sup>

The government has justified section 46.04(8) and later, the Undocumented Convention Refugee in Canada Class, using the rhetoric of maintaining the safety of Canadian society, suggesting that without identity documents, there is no way to confirm whether or not the refugee is a war criminal or a terrorist. Former Citizenship and Immigration Minister Lucienne Robillard stated somewhat equivocally that these measures are about "balancing risk to Canada against compassion." Yet there is no evidence of widespread danger. The refugee hearing itself provides an opportunity for extensive examination of identity issues. Refugee applications

are routinely turned down if it is found that the individual is not who she or he claims to be. Prior to landing, every refugee is routinely subjected to a security screening process conducted by the Canadian Security Intelligence Service. For the few who have managed to obtain refugee status on the basis of misrepresentation or concealment of any material fact, proceedings can be initiated against the particular individual pursuant to existing provisions in the Immigration Act.

In 1998 the Supreme Court of Canada had another opportunity to consider the question of refugee rights, this time in the context of the interpretation of the "exclusion clause" set out in Article 1F(c) of the Refugee Convention. Mr. Pushpanathan was a Sri Lankan national who had been convicted in Canada of conspiracy to traffic in a narcotic. The government sought to deny him refugee protection on the basis that drug trafficking was against the "purposes and principles of the United Nations" and therefore within the ambit of the grounds set out in the Refugee Convention for exclusion. The Court held that even though international drug trafficking was an extremely serious problem that the United Nations had taken extraordinary measures to eradicate, in the absence of clear indications that the international community recognized drug trafficking as a sufficiently serious and sustained violation of human rights as to amount to persecution, individuals should not be deprived of the essential protections contained in the Convention for having committed those acts. Bastarache J. emphasized that the "overarching and clear human rights object and purpose" was the background against which interpretation of individual provisions of the Refugee Convention should take place.<sup>31</sup>

The *Pushpanathan* case is a good example of a how a seemingly progressive decision can be rendered relatively meaningless as a result of the broader political context. While Mr. Pushpanathan's case was wending its way to the Supreme Court, rules implemented pursuant to Bill C-86 established a system of refugee eligibility

determination which gave immigration officers the power to exclude refugee claimants based on recognition in another country and broadened grounds of criminality accompanied by certification as a "public danger." In addition, claimants who came to Canada by way of a prescribed "safe third country" were to be inadmissible, a measure that would have a disproportionate impact on non-European refugees who are subject to Canadian visa restrictions and the lack of direct routes to Canada (although no safe countries have been designated to date). What the Court afforded in terms of procedural protection to refugee claimants at the stage of the status determination hearing – the right not to be excluded from consideration as a refugee, once determined eligible by an immigration officer to make a refugee claim, had already been addressed at the front end of the process. Section 46.01(1)(e)(i) of the Immigration Act authorizes immigration officers to find any refugee claimant ineligible to claim refugee status based on being criminally inadmissible and includes within its ambit persons who have been convicted either in Canada or another country of an offence that is punishable by a term of imprisonment of ten years or more and are designated by the Minister as a "public danger." Should Mr. Pushpanathan attempt to seek asylum in Canada today, it is likely that an immigration officer would deny him access to the refugee determination system. There would be no appeal from that decision – just judicial review on narrow, restrictive grounds. Even if an individual could establish that there were substantial grounds for believing that they were at risk of torture if returned to their country of origin (the test set out in the United Nations Convention against Torture), the government may act to deport them without access to a refugee hearing. In the past few years the deportation of persons at risk of torture and other serious human rights violations has become increasingly common.<sup>32</sup> The African Canadian Legal Clinic has documented that the common denominator among persons who have been subject to removal based on a

public danger opinion is that they are members of racialized groups.<sup>33</sup>

### The Current Agenda for Legislative Reform

"New Directions", the government's white paper released in January 1999, reinforces and extends the government's apparent preoccupation with security. Apart from the modest proposal to reduce the waiting period from five to three years for the Undocumented Convention Refugee in Canada Class, a series of new measures have been recommended aimed at addressing the "problem" of undocumented refugees. These measures include enhanced interdiction to intercept "improperly documented" people before they arrive in Canada, increased disembarkation checks as passengers leave aircraft, collaboration with other countries to develop a system of data collection on illegal migration and the prospect of detention for refugee claimants who refuse to "cooperate" in establishing their identity. In the introduction to this section of the white paper the government describes the current situation:

In reaffirming its commitment to an open immigration system and to the protection of refugees, the government wishes to ensure a sound immigration and refugee system that is not open to abuse.

Canada, together with other major Western industrialized countries, has committed to developing a multi-disciplinary and comprehensive strategy to address the common problem of illegal migration.<sup>34</sup>

What seems clear from the foregoing is that despite a stated commitment to refugee protection, the government's agenda for reform is predicated on stereotypes of refugees as criminals and threats to the security of Canada.<sup>35</sup> More specifically, the proposals reinforce the myth that refugee claimants who arrive with forged documents (often the only feasible way for an individual to escape a situation of danger and travel to a country of asylum) or "unsatisfactory" documents (i.e., that do not conform to Western standards), are "queue jumpers" and not genuine refugees.<sup>36</sup> Apart

from a refugee intake that has remained relatively constant over the past decade, representing between nine and twelve percent of the country's overall immigration levels in any given year,<sup>37</sup> there is no evidence that Canada has an illegal migration problem that could possibly account for the measures suggested in the white paper. The arrival this summer of 590 Chinese migrants on boats from Fujian province sparked a national debate reminiscent of the controversy surrounding the arrival in 1986 of a group of Tamils from Sri Lanka off the coast of Newfoundland and then, the following summer, a boatload of refugee claimants from India.<sup>38</sup> Back in 1987 Parliament had been called into a special emergency session to introduce the Detention and Deterrents Act. In an address to the Canadian Club in Vancouver in September this year, Minister Caplan acknowledged that she shared the frustrations of many Canadians who "believe that the migrants are not genuine refugees but queue-jumpers."<sup>39</sup> She also stated:

Our shared sense of compassion and fairness has been enshrined in our Constitution. It is embodied in our Charter of Rights and Freedoms, in our immigration and refugee laws, and in the legal judgments that serve and protect everyone in Canada.<sup>40</sup>

In her speech the Minister made many references to Canadian's generosity, citing the recent case of the Kosovar refugees (in which the government undertook an emergency airlift of approximately 7,000 ethnic Albanians and subsequently provided returnees with generous repatriation allowances). However, the solution she proposed to address the problem of human smuggling was to strengthen worldwide intelligence and tracking systems. In this vein she noted that last year Canadian immigration control officers overseas successfully prevented 6,300 people lacking proper documentation from getting to Canada; "but we can do better." In endorsing these measures, there has been no reference to the need for adequate safeguards to ensure that people fleeing persecution will be assured their right to seek asylum. As out-

lined above, Canada already operates an aggressive interdiction program that subjects Canadian citizens and residents, as well as refugees and visitors, to degrading treatment on their way to Canada on the basis of their colour or national origin.<sup>41</sup> With the imposition of visa requirements<sup>42</sup> and carrier sanctions to the stationing of immigration officers abroad, vast numbers of bona fide refugees are being caught up in the web of immigration control with devastating results.<sup>43</sup> Canadian law, policy and practice with regard to refugees represent a classic example of systemic racism. By using the logic of sanitary coding (the law is framed in neutral, objective language), and the technique of equivocation (the rationale for the law is framed in terms of keeping out system abusers while at the same time upholding the principles of the Constitution and international law), the government has been able to avoid any accountability for the adverse effects of its efforts to manage the immigration program on racialized refugees.<sup>44</sup> Viewed from the lens of recent experience, the due process guarantees achieved through the *Singh* decision have failed to protect substantive rights for refugees.<sup>45</sup> Furthermore, in the hands of judges these guarantees have merely served to reinforce a neo-racist, anti-refugee policy agenda.

The content and objectives of Canadian refugee law and policy have been shaped by a multiplicity of factors, including economic requirements, ideological and political considerations as well as international human rights obligations.<sup>46</sup> As emphasized by Jakubowski, the relationship among these factors is exceedingly complex, particularly now, as the country's population grows more diverse.<sup>47</sup> In the contemporary context, refugee law and policy are informed by competing and often contradictory philosophies. Nevertheless, as the text of the law and legal discourse in the general area of immigration has evolved from its explicitly racist orientation to one of "objective" neutrality, racism in its less obvious, systemic forms has persisted. As we approach the new millennium, the

project of anti-racism in Canada remains a "work in progress." My response to Richmond's questions, is that here in Canada we are quite far from the vision of an anti-racist refugee program. Building a society in which all persons, including refugees, are accorded justice and equality should be a critical priority for both Canada and the emerging new world order. ■

## Notes

1. Anthony H. Richmond, *Global Apartheid, Refugees, Racism and the New World Order* (Toronto: Oxford University Press, 1994), at 208.
2. See F. Henry et al., *The Colour of Democracy: Racism in Canadian Society* (Toronto: Harcourt Brace & Co., 1995) at 59-101.
3. *Report of the Commission on Systemic Racism in the Criminal Justice System* (Ontario: Queen's Printer, 1995) at ii.
4. Canada, Statutes, 9-10 Edward VII, C.27, s. 38(c).
5. Other measures included the Chinese Immigration Act of 1885 which imposed a head tax on all Chinese men arriving in Canada and set shipping conditions intended to make it more difficult to transport people from China; and the Chinese Immigration Act ("Chinese Exclusion Act") of 1923 which effectively prohibited any Chinese immigration from 1923 until it was repealed after the Second World War, in 1947. Chinese Canadian National Council, *It's Only Fair!*, 1988; See also B. Singh Bolaria and P. Li, *Racial Oppression in Canada*, 2nd ed., (Toronto: Garamond Press, 1988).
6. In 1914 an Indian businessman chartered a ship, the Komagata Maru, from Hong Kong to Vancouver carrying 376 Indian passengers. Upon arrival in the Vancouver harbour, the government promptly issued deportation orders against the passengers. The passengers hired a lawyer to challenge the validity of the deportation orders, the Immigration Act of 1910 and its continuous journey regulation. Arguments in support of the passengers were dismissed by all five justices of the British Columbia Court of Appeal. Two months after it arrived the Komagata Maru with its Indian passengers on board was escorted out of the Vancouver harbour by naval ship. *Re Munshi Singh* (1914) 20 BCR 243.
7. N. Won, "Section 15 Race Litigation," Unpublished Paper prepared for the Race Issues Sub-Committee of the Court Challenges Program, 1999, at 21.
8. N. Kelly and M. Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998), at 390.
9. *Immigration Act*, 1976, S.C. 1976-7, c.52, s.3
10. Not all of the *Convention's* provisions were incorporated into domestic law. The *Convention's* important provisions with regard to the social and economic rights of refugee claimants and convention refugees have not been fully implemented. Article 34, for example, requires states to "facilitate the assimilation and naturalization of refugees... and make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."
11. Numerous authors have documented the extent to which exclusionary language in the legislation itself together with practices which permitted immigration officers wide discretion to reject applicants on the basis of "race" or national origin characterized Canadian immigration law from Confederation until well after the second world war. See for example, D. Matas, "Racism in Canadian Immigration Policy" in C. James ed., *Perspectives on Racism and the Human Services Sector* (Toronto: University of Toronto Press, 1996); L.M. Jakubowski, *Immigration and the Legalization of Racism* (Halifax: Fernwood Publishing, 1997); V. Knowles, *Strangers at our Gates: Canadian Immigration and Immigration Policy, 1540-1997* (Toronto: Dundurn Press, 1997); J.W. St.G. Walker, "Race", *Rights and the Law in the Supreme Court of Canada* (Canada: The Osgoode Society for Canadian Legal History and Wilfred Laurier University Press, 1997), at 303-305.
12. A. Simmons, "Racism and Immigration Policy" in V. Satzewitch ed. *Racism and Social Equality in Canada* (Toronto: Thompson Educational Publishing, 1998), at 91.
13. Citizenship and Immigration Canada, "A Stronger Canada: 1998 Annual Immigration Plan" at 6-8.
14. *Humanitarian Designated Classes Regulations*, SOR/97-183 as am. SOR/98-271, s. 4(1) (c).
15. See, for example, W. Giles, "Aid Recipients or Citizens?" in W. Giles et al. (eds.), *Development and Diaspora: Gender and the Refugee Experience* (Dundas, Ont.: Artemis Enterprises, 1996), at 45. Ten countries in the world are actively committed to refugee resettlement programs on an annual basis: Canada, Denmark, Finland, The Netherlands, New Zealand, Norway, Sweden, Switzerland and the United States. The American refugee resettlement program does not import immigration criteria into overseas refugee selection.
16. This is confirmed in the government's white paper released in January 1999. See *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation* ("New Directions").
17. Statement by a senior CIC official at the NGO Consultation on the Refugee Resettlement Model, Ottawa, October 25-26, 1999. It is interesting to note, however, that at this meeting a majority of immigration officials voted to eliminate the use of establishment criteria from overseas refugee selection. Unfortunately the group itself has no authority to actually implement this view.
18. Citizens for Public Justice, "What would it cost to remove the \$975 Right of Landing Fee," December 1998.
19. Canadian Council for Refugees, "Impact of the Right of Landing Fee," February 1997.
20. The Minister made the immigration levels announcement on November 1, 1999 pursuant to s. 7(1) of the Immigration Act. Citizenship and Immigration Canada, "Canada... The Place to Be, Annual Immigration Plan for the Year 2000."
21. *Lee v. Canada (Minister of Citizenship and Immigration)* (1997), 126 F.T.R. 229; *Ruparel v. Canada (Minister of Employment and Immigration)*, [1990] 11 Imm. L.R. (2d) 190; See also, C. Tie, "Only Discriminating Visa Officers Need Apply: Visa Officer Decisions, the Charter and *Lee v. Canada* (Minister of Citizenship and Immigration) 42 Imm. L.R. (2d) at 197-209.
22. The Canadian Council for Refugees has highlighted this problem in a draft document entitled *White Paper: Anti-Racism Analysis*, February 1999. The CCR has recommended that the *Immigration Act* be amended to incorporate an independent, external mechanism to monitor the Immigration department and receive complaints.
23. [1985] 1 S.C.R.177.
24. This was the view of Justices Wilson, Dickson, and Lamer. Although the Court was unanimous in result, it was split on the question of the Charter's applicability to the case. Nevertheless, over time Wilson J.'s reasoning became the accepted point of departure for the Court in terms of refugee cases.

25. *Chiarelli v. Canada* [1992] 1 S.C.R. 711; 16 Imm L.R.(2d) 1 at 20.
26. *Dehghani v. Canada (Minister of Employment and Immigration)* [1993] 1 S.C.R. 1053. For an analysis of the Supreme Court decisions in *Chiarelli* and *Dehghani*, see Pearl Eliadis, "The Swing from Singh: The Narrowing Application of the Charter in Immigration Law" (1995) 26 Imm. L.R. (2d) at 130.
27. Section. A46.04 (8) of the amended *Immigration Act* states: "An immigration officer shall not grant landing either to an applicant under subsection (1) or to any dependent of the applicant until the applicant is in possession of a valid and subsisting passport or travel document or a satisfactory identity document."
28. A. Brouwer, "What's in a Name?: Identity Documents and Convention Refugees" (Ottawa: Caledon Institute of Social Policy, 1999), at. 4.
29. Brouwer, op cit., at.5.
30. D. McNamara, Letter to Canadian Council for Refugees, from Dennis McNamara, Director, Division of International Protection, UNHCR, 14 May, 1997; United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee of Economic, Social and Cultural Rights*, E/C.12/Add.31 United Nations Economic and Social Council, December 4, 1998. Note that a section 15 *Charter* challenge of section A46.04(8) of the *Immigration Act* is currently pending as an action before the Federal Court, Trial Division.
31. *Pushpanathan v. Canada (Minister of Employment and Immigration)* (1998), 206 N.R. 76 (S.C.C.)
32. In 1997 Canada ignored a request from the Committee against Torture in the case of *Tejinder Pal Singh v. Canada* and in 1998, from the Inter-American Commission on Human Rights in the case of *Roberto San Vicente v. Canada*. See "Canada deports Venezuelan", *The Globe and Mail*, 13 March 1998, A7; and Amnesty International, "Refugee Determination in Canada: The Responsibility to Safeguard Human Rights," Response to the Government of Canada's White Paper, February 1999.
33. African Canadian Legal Clinic, "No Clear and Present Danger", Unpublished Draft Discussion Paper, Toronto, 1999.
34. *New Directions*, op cit., at. 46.
35. Numerous studies have confirmed that there is no established connection between immigration and crime. Immigrants are actually less likely to commit major crimes than the Canadian-born, and are under represented in the national prison population. According to the most recent available statistics, 20.5% of the Canadian population over 15 had been born outside the country, while only 11.9% of the total prison population were foreign born. See D. Thomas, "The Foreign Born in the Federal Prison Population", Paper presented at the Canadian Law and Society Association Conference, Carleton University, 8 June, 1993 (figures are for 1993); and J. Samuel, "Debunking Myths of Immigrant Crime", *Toronto Star*, June 17, 1998.
36. African Canadian Legal Clinic, "Brief to the Legislative Review Secretariat" March 1999, at. 9.
37. Citizenship and Immigration Canada Statistics compiled by the Canadian Council for Refugees, October, 1998.
38. See, "Boat People Need a Return Ride", *The Globe and Mail*, July 13, 1999, A 10.
39. "Remarks by The Honourable Elinor Caplan, Minister of Citizenship and Immigration, to the Canadian Club", Vancouver, British Columbia, September 9, 1999, at. 3. It deserves mention that Fujian province is a region in which Canadian government and business have invested heavily. A situation of high unemployment, low wages and few government supports has been exacerbated by Canadian policies promoting mega- development projects, deregulation and privatization of the state run industries in Fujian and elsewhere in China. See Kelly D' Aoust, "Canada's policies on refugees: an issue of responsibility" and Nandita Sharma, "Exposing the real snakeheads" (Oct./Nov.1999) *Kensis*, at. 9-11. Fujian province has one of the highest levels of state corruption in China. An immigration lawyer reports that the average resident of Fujian province would have to pay the equivalent of between \$30-40,000 to "buy" an exit visa in order to leave the country legally. The corruption, together with the exceedingly slow processing times of the Canadian visa office in Beijing (an average of 31 months to process a skilled worker application compared to 15 months in Hong Kong visa office) act as additional "push" factors for illegal migration. Processing statistics are from *Lexbase*, September 1998.
40. "Remarks by The Honourable Elinor Caplan", *Ibid.*, at.2.
41. Canadian Council for Refugees, "Comments on Building on a Strong Foundation for the 21st Century", March 1999.
42. In the first nine months of 1997 there were 1,285 refugee claims form the Czech Republic, primarily from Czech Roma, who were fleeing persecution at the hands of neo-nazi skinheads. The European Roma Rights Centre, the International Helsinki Federation and even Canada's own Research Directorate of the Immigration and Refugee Board documented the growing racist violence as well as the police complicity in attacks against the Roma community. Close to half of the Roma claims considered by the Board were accepted but in October 1997 the Canadian government imposed a visa requirement for all citizens of the Czech Republic, effectively preventing any other Roma refugees from seeking asylum in Canada. Canada currently imposes visa requirements on nationals from over one hundred countries. As human rights abuses increase in particular countries, the less likely it is that a Canadian visa officer will even grant a visitor's visa to an applicant. See Canadian Council for Refugees, "Refugees in Canada: Canadian Refugee and Humanitarian Immigration Policy", 1998; — "Interdicting Refugees", May 1998; Research Directorate, Immigration and Refugee Board, Issue Paper, Roma in the Czech Republic: State Protection, November 1997.
43. A recent example of Canadian interdiction practices occurred in February 1998 when the government funded the chartering of an airplane which returned a boat load of 192 Tamil asylum seekers to Sri Lanka. Soon after their boat was intercepted off the coast of Senegal, the Tamils were "voluntarily" on their way home where they were all arrested and held in detention for several weeks. At least one of these individuals was subsequently rearrested and tortured. In the only public acknowledgement of this interdiction action almost a full year later, a Canadian government spokesperson boasted of the success in saving the country from "illegal economic migrants." Sri Lanka is a country in which the arrest, abuse and torture of Tamils by state security forces continues to be widespread. The government's comments were reported in an article in the *Globe and Mail*, 16 January 1999. The real story, however, had surfaced some five months earlier in two Amnesty International bulletins: AI Index, ASA 37/19/98; ASA 37/21/98.
44. See Jakubowski, op cit., p. 88 for a discussion of "ideological deracialization" in the context of the "Safe Third Country" rule, a provision introduced in Bill C-86.
45. M. Mandel, "The Charter and Immigration" in *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thomson Educational Publishers, 1994), at. 240-257.
46. J.E. Elliott and A. Fleras, *Unequal Relations: An Introduction to Race and Ethnic and Aboriginal Dynamics in Canada*, 2nd edition (Scarborough: Prentice-Hall Canada, 1996), at 290.



47. Jakubowski, "Managing Canadian Immigration: Racism, Ethnic Selectivity, and the Law" in E. Comack et al. *Locating Law, Race/Class/Gender Connections* (Halifax: Fernwood Publishing, 1999), at 100. □

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