



CANADA'S NATIONAL NEWSLETTER ON REFUGEES

# REFUGEE

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## THE REFUGEE STATUS DETERMINATION PROCESS: TASK FORCE REPORT

The report on Canada's refugee status determination process prepared by the Task Force on Immigration Practices and Procedures which was established by the Honourable Lloyd Axworthy, Minister of Employment and Immigration, was released in November, 1981. The report provides a comprehensive examination of the policies and practices employed by Canada both at home and overseas in determining who is a refugee and who may come to Canada as a refugee, in the context of Canada's international obligation with respect to refugees.

The Task Force establishes that Canada's refugee determination procedures ought to reflect "Canadian standards of procedural fairness as they have become manifest in our general legal concept of a 'fair hearing'." In a decision on refugee status, a person's life may be at stake; and our standards for procedural fairness in refugee determinations, and our willingness to allocate the resources necessary to achieving that standard, ought to be comparable to those we demand of our other tribunals charged with decisions of equally serious consequence.

### Procedures for claims in Canada

The bulk of the report deals with the process of making a refugee claim in Canada. This process currently involves an examination of a claimant by a senior immigration officer; the review of a transcript of that examination by the Refugee Status Advisory Committee (RSAC); the giving of advice by the RSAC to the Minister; a decision by the Minister or his delegate with respect to refugee status; and in some cases an appeal to the Immigration Appeal

Board and possibly to the Federal Court of Appeals.

The report recommends many specific changes in these procedures which could be implemented without emendation of the Immigration Act, including the appointment of sufficient members to the RSAC for it to discharge its duties fairly and cease such current time-saving practices as screening out "manifestly unfounded" claims. The Task Force also stresses the need for the members of the RSAC to be independent of any government departments, lest they be influenced by such foreign policy considerations as what effect a finding of persecution might have on Canada's relations with the country involved, or such immigration considerations as a claimant's ability to settle in Canada successfully, which are not proper considerations in refugee determinations.

The report also observes that the "give and take" of oral argument is important to our concept of a fair hearing, and suggests ways that oral hearings could be incorporated into the existing process at various stages.

However, the report suggests that it would ultimately be preferable to amend the Immigration Act to replace the present fragmented refugee determination process with a central tribunal which would hear and determine refugee claims.

### Overseas Policy

The report also discusses some of the inequities inherent in our system for processing claims abroad. For example, a handicapped or unskilled refugee could not legally be expelled from Canada. However, such a person *could* be denied admission

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to Canada on the grounds that he would be unable to settle here successfully or would be too much of a strain on health services. The report acknowledges Canada's obligation to "cooperate with other countries in the world to share the refugee burden" and recommends that the government "pursue with private sponsorship groups and the provinces greater support for the admission of handicapped and unskilled refugees."

Similarly, the report observes that the current practice of denying a visitor's visa to a person on the grounds that he may intend to claim refugee status indirectly denies refuge which could not legally be denied directly; and the report recommends that a person should not be denied a visa *solely* on the basis that he intends to claim refugee status.

However, the report does suggest that a visitor's visa should not be granted for the *sole* purpose of claiming refugee status and that, in cases of large-scale abuse of Canada's immigration and asylum policies, the government should "impose a visa requirement on the citizens of any country

generating a significant volume of frivolous refugee claims, where the government of that country is not a gross and flagrant violator of human rights."

The report also commends Canada's special humanitarian programmes which have provided temporary refuge in situations of crisis, most recently for individuals from Poland and El Salvador.

Copies of the full report - well worth reading - are available from:

Distribution Unit  
Public Affairs Division  
Employment & Immigration Canada  
12th Floor, Phase IV,  
Place du Portage,  
Hull, Quebec K1A 0J9

The implementation of the recommendations in the report and other issues will be discussed at a national symposium on the protection of refugees in Canada, tentatively scheduled for February 19, 20 and 21, 1982, in Toronto. □

#### REFUGEE DEFINITION: DRAFT GUIDELINES PROPOSED

*The report recommends that the Minister of Immigration issue guidelines to the Refugee Status Advisory Committee with respect to the application of the definition of a refugee, and suggests draft guidelines for this purpose. These include:*

- When the application of the refugee definition to a claimant is in doubt, the claimant must receive the benefit of the doubt.
- In addition to the definition provided in the Immigration Act, account shall also be taken of the remainder of the U.N. Convention which has not been incorporated into the Act, but to which Canada is signatory. A person who no longer has a well-founded fear of persecution will still be recognized as a refugee if, arising out of previous persecution, he has compelling reasons for refusing to avail himself of the country of his nationality.
- Looking, as it does, to the future, the refugee definition is concerned with possibilities and probabilities rather than with certainties. A well-founded fear may be based on what has happened to others in similar circumstances. Where a person has not been persecuted simply because he has not yet come to the attention of the authorities, he need not wait until he has been detected and persecuted before he can claim refugee status. Nor need he be under the threat of imminent persecution.
- Interference with personal freedom is not the only form of persecution within the refugee definition. Arbitrary interference with a person's privacy, family, home or correspondence may constitute persecution. Deprivation of all means of earning a livelihood, denial of work commensurate with training and qualifications, or pay low out of all reason may

constitute persecution. Relegation to substandard dwellings, exclusion from institutions of higher learning, enforced social and civil inactivity, denationalization, passport denial, constant surveillance and pressure to become an informer may all constitute persecution.

- Persecution may take the form of indiscriminate terror. Persons may be persecuted for no apparent cause at all, other than for the purpose of instilling fright in a population at large. Persons with a well-founded fear of becoming victims of governmental terrorist tactics are refugees.
- Immigration considerations must not be brought to bear on the application of the refugee definition. The possibility that, if one person is given refugee status, many others might also be entitled to claim refugee status, is not relevant to whether the claimant is a refugee.
- A person is a political refugee if he has a well-founded fear based on political opinion. He need not have a well-founded fear based on political activity. Political opinion means what is political in the opinion of the government from which the refugee flees, not what is political in the opinion of the refugee, or in the opinion of Canadian officials. A person may have been totally inactive politically and have no political opinions of his own. Yet he may, nonetheless, be a political refugee.
- A well-founded fear of persecution need not arise before the claimant has left his country. It may be based on what has happened in the country since the claimant has been abroad.
- In determining whether there is a well-founded fear of persecution, what is relevant, is the practice in the country the refugee flees. The legal structure in the country is not, in itself, conclusive.