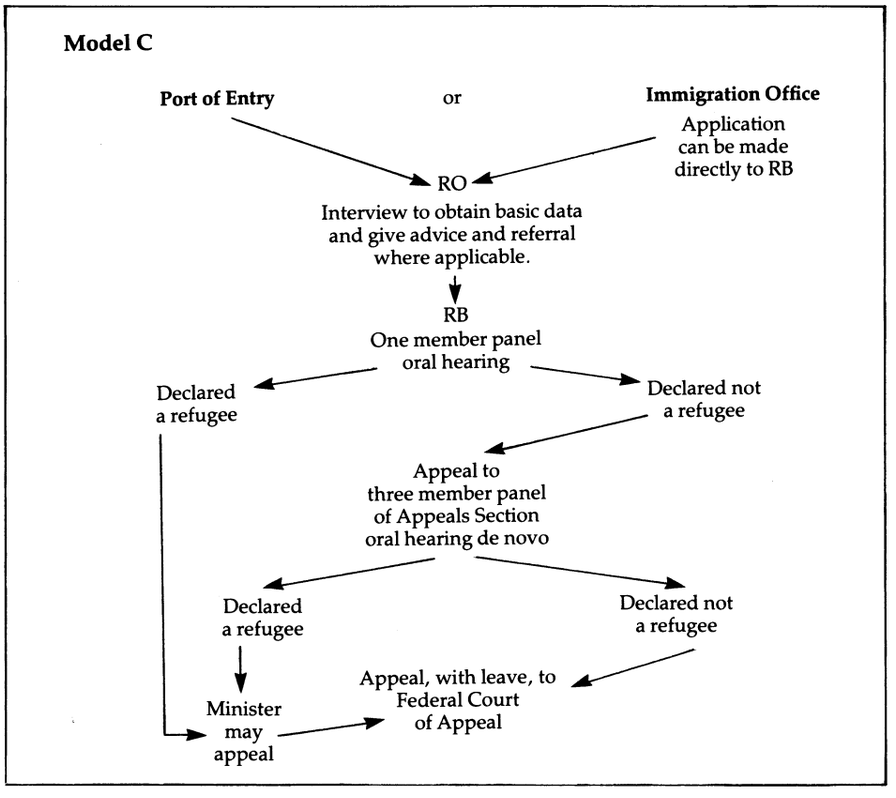

scheduling, publication of rules of procedure, the provision of written reasons for rejecting claims, the provision of adequate time for appeal and guarantees to ensure confidentiality especially in situations which pose dangers for the claimant and his/her family.

Humanitarian Cases

The Plaut Report notes that many refugee claimants are borderline cases. It recommends that both the ROs and the RB be allowed to refer cases on humanitarian and compassionate grounds to the Minister's Office. The RB may recommend favourable consideration. It is here that one can anticipate the new frontier of debate in the refugee area as delegates make pleas on behalf of fairer and institutionalized procedures governing special programs and consideration of individual cases which do not fall within the strict guidelines of the Convention Definition.

But the most contentious current debate is what to do about the 12,000 to 18,000 cases that are backlogged in the system. The Plaut Report recommended that CEIC process for landing the bulk of cases who come "from countries to which we do not return individuals, unless, of course, they represent a risk to our national security. Examples would be claimants from Afghanistan, Iran, El Salvador, Sri Lanka and most of the East Bloc countries." Similarly, special programs should be available to those individuals in the backlog who are "from areas of the world experiencing civil disorder, racial tension or violence." Finally, for those "who are presently involved in refugee determination . . . where there is a **reasonable likelihood that the claimant may indeed be a refugee,"** Plaut recommends that "such doubt be resolved in favour of the claimant."

We would not need Bill C-55. The process would be relatively quick and inexpensive without giving into pleas for a universal, non-selective amnesty. We could also get on with the job of introducing the comprehensive legislation, based on the Plaut Report, that the Minister promised for this fall.

At the time of its release Flora MacDonald commended the report for its excellence. There is a 95 percent consensus on the recommendations by those involved in the refugee issue. The time for comprehensive legislative action is now.

Howard Adelman *is Director of the Refugee Documentation Project at York University and Editor of Refuge.*

Oral Hearings — A Right

On April 30, 1985, the Supreme Court of Canada handed down a landmark decision requiring refugee claimants to be given an oral hearing. The following extract from the 72 page decision provides only the highlights.

Background

Appellants claim Convention refugee status as defined in s. 2(1) of the *Immigration Act, 1976*. The Minister of Employment and Immigration, acting on the advice of the Refugee Status Advisory Committee, determined pursuant to s. 45 of the Act that none of the appellants was a Convention refugee. The Immigration Appeal Board, acting under s. 71(1) of the Act, denied the subsequent applications for redetermination of status and the Federal Court of Appeal refused applications, made under s. 28 of the *Federal Court Act*, for judicial review of those decisions. The Court considered whether the procedures for the adjudication of refugee status claims set out in the *Immigration Act, 1976* violate s.7 of the *Canadian Charter of Rights and Freedoms* and s. 2(e) of the *Canadian Bill of Rights*.

Rationale

Appellants, in the determination of their claims, are entitled to assert the protection of s. 7 of the Charter which guarantees "everyone the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." The term "everyone" in s. 7 includes every person physically present in Canada and by virtue of such presence amenable to Canadian law. The phrase "security of the person" encompasses freedom from the threat of physical punishment or suffering as well as freedom from such punishment itself. A Convention refugee has the right under s. 55 of the *Immigration Act, 1976* not to ". . . be removed from Canada to a country where his life or freedom would be threatened. . . ." The denial of such a right amounts to a deprivation of "security of the person" within the meaning of s. 7. Although appellants are not entitled

Continued on p.6

Oral Hearing *(cont'd from p.5)*

at this stage to assert rights as Convention refugees, having regard to the potential consequences for them of a denial of that status if they are, in fact, persons with a "well-founded fear of persecution," they are entitled to fundamental justice in the adjudication of their status.

The procedure for determining refugee status claims established in the *Immigration Act, 1976* is inconsistent with the requirements of fundamental justice articulated in s. 7. At a minimum, the procedural scheme set up by the Act should provide the refugee claimant with an adequate opportunity to state his case and to know the case he has to meet. The administrative procedures, found in ss. 45 to 48 of the *Immigration Act, 1976*, require the Refugee Status Advisory Committee and the Minister to act fairly in carrying out their duties but do not envisage an opportunity for the refugee claimant to be heard other than through his claim and the transcript of his examination under oath.

Further, the Act does not envisage the refugee claimants being given an opportunity to comment on the advice the Refugee Status Advisory Committee has given the Minister. Under section 71(1) of the Act, the Immigration Appeal Board must reject an application for redetermination unless it is of the opinion that it is more likely than not that the applicant will be able to succeed. An application, therefore, will usually be rejected before the refugee claimant has even had an opportunity to discover the Minister's case against him in the context of a hearing.

Such procedures do not accord the refugee claimant fundamental justice and are incompatible with s. 7 of the Charter. Respondent failed to demonstrate that these procedures constitute a reasonable limit on the appellants' rights within the meaning of s. 1 of the Charter. Pursuant to s. 52(1) of the *Constitution Act, 1982*, s. 71(1) of the *Immigration Act, 1976* is, to the extent of the inconsistency with s. 7, of no force and effect.

Section 24(1) of the Charter grants broad remedial powers to "a court of competent jurisdiction." This phrase premises the existence of jurisdiction from a source external to the Charter itself. These are appeals from the Federal Court of Appeal on applications for judicial review under s.28 of the *Federal Court Act*. Accordingly, this Court's jurisdiction is no greater than that of the Federal Court of Appeal and is limited to decisions made on a judicial or quasi-judicial basis. Only the decisions of the Immigration Appeal Board were therefore reviewable. All seven cases are remanded to the Board for a hearing on the merits in accordance with the principles of fundamental justice.

Inter-University Consortium for Refugee Research

The Inter-University Consortium for Refugee Research was initiated in August 1985 as a means to establish an information network of scholars engaged in refugee research. It was initiated during an international symposium, "Twentieth Century Refugees in Europe and the Middle East," held in Oxford.

It received very wide support among the participants who represented refugee research programs in Canada, Great Britain, Europe,and the United States. Researchers at any university, university institute, or local inter-university research unit engaged in refugee research are invited to join this consortium.

The main functions of the consortium include the following:

1) To inform scholars, governmental and non-governmental bodies about the range of research currently undertaken by academics in the refugee field.
2) To facilitate contacts and exchange of researchers and staff among various refugee research units.
3) To plan short courses and other instructional programs on refugee matters.

The consortium is headquartered at Queen Elizabeth House, Oxford and is coordinated by Dr. Barbara Harrell-Bond, Refugee Studies Program, Queen Elizabeth House, 21 St. Giles, Oxford OX1 3LA, England.

Beyo

The Plaut Report, released this summer, is the latest of three reports commissioned by the Canada Employment and Immigration Commission (CEIC) to recommend changes in the refugee status determination process. Following CEIC (1981) and Ratushny (1984), Plaut makes 89 recommendations for the reform of refugee status determination. Many of these are proposals meant to fulfill the humanitarian ideals entrenched in Canada's immigration law and prominent in the rhetoric of many official pronouncements.

This essay attempts to assess those aspects of policy which are central to making Canada's refugee policies truly humanitarian. The first task of this essay is to point to areas where the Plaut Report provides an adequate framework to reform or at least substantially improve the existing refugee determination process.

The second task is to recommend changes in the new structures that could fill in some important policy gaps largely ignored by the Plaut Report. Finally, this paper will discuss some of the wider problems beyond the mandate of the Plaut Report that should be key aspects of a humanitarian refugee policy.

Oral Hearings

One point central to the Plaut Report is that the refugee claimant should have the right to an oral hearing before the actual decision-making body. As did two earlier CEIC-commissioned reports (Ratushny, 1984 and Robinson, 1981), Plaut argues that a recent Supreme Court decision should be put into practice:

> Procedural requirements at the level of re-determination by the IAB were dealt with by the Supreme Court of Canada in Habbajan Singh *et al* v. The Minister of Employment and Immigration. The appellants argued that natural justice, the Canadian Bill of Rights, the Charter of Rights and Freedoms require that they be permitted to present their case at an oral hearing before the IAB reaches a decision. . .
> The decision of the Supreme Court in favour of the appellants mandates a new level of procedural fairness.