CANADA'S PERIODICAL ON REFUGEES

REFUGE

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SPECIAL DOUBLE ISSUE

Refugee Status Determination

EDITORIAL

In preceding issues, we have concerned ourselves with individuals who have been given landed immigrant status prior to their arrival in Canada because a Canadian Visa Officer has found them to be refugees or members of a "designated class". Their problems relate to Canada's laws and policies concerning, among other issues, selection criteria, application of those criteria, integration programmes and family sponsorship.

This issue of *Refuge* focuses on the law and policy of refugee status determination within Canada. The problems examined concern people who are in Canada with some kind of temporary status (such as *visitor* status) or who have no immigration status whatsoever. These are individuals who seek the protection which Canada, as a party to the 1951 Convention and 1969 Protocol relating to the Status of Refugees, is obliged to give to each person who fulfills the components of the Convention definition of the word "refugee".

Before Canada can provide protection, it must first identify the beneficiaries — hence, the need for a procedure to determine refugee status. The articles in this issue deal with the history of the determination procedure, a description of the procedure itself, critical analyses of both the procedure and ancillary matters which touch "refugee claimants", and finally, a model for change.

Recently, the Supreme Court of Canada heard arguments concerning whether or not the procedure used in Canada for determining refugee status is fair according to certain legal standards and the Charter of Rights. The Court has reserved its judgement of this landmark case. However, the contributors to this issue make it clear that the question of the fairness of the procedure (according to the *layman's* definition of fairness) has preoccupied individuals and non-governmental organizations in Canada for some time.

It is likely that the concern and discussion surrounding the refugee status determination procedure will not abate until the procedure itself, and all issues relating to it, are thoroughly examined. More important, any serious and comprehensive examination should, given the already long period of dissatisfaction, lead immediately to a model for change that is equally comprehensive. The Minister of Employment and Immigration is expected to announce the appointment of Rabbi Gunther Plaut (a refugee from Nazi Germany with a distinguished scholarly and human rights record) as an external consultant to examine the process and develop a new model.

We look forward then to that time when the appropriate authorities develop a constructive response to the many ideas for improvement of the procedure, which NGOs and concerned, expert individuals have placed before them.

REFUGE

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TABLE OF CONTENTS

Letters

To the Editor

The International Institute of Humanitarian Law is an independent, non-governmental institute incorporated under Italian law which seeks to promote international law and co-operation in the prevention of disasters, whether man-made or natural, and in the protection of the victims of such disasters. It regularly holds conferences working groups and lecture courses at its headquarters, the Villa Nobel in San Remo.

In the coming summer months, it is holding a series of meetings on human rights, humanitarian law and refugee law. These will concern such matters as improved regional co-operation, the detention of refugees and fundamental principles in the protection of victims of all disaster situations.

The Institute publishes a yearbook as well as the reports of its various meetings and studies by different experts.

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A Refugee Claims Procedure: An Overview

by David Matas

There are two striking features of the refugee-claims procedure. One is its complexity. The other is its incompleteness. The process is filled with inquiries and examinations, determinations and redeterminations, applications and appeals. Yet a refugee claimant can go through the whole system without ever having been heard by anyone deciding on or advising on his claim. He may never have a chance to respond to any objections that are made to his claim.

A refugee claimant is faced with the intricacies of the Canadian system as soon as he arrives at a Canadian airport. On his arrival, without access to counsel, he must decide whether to claim refugee status immediately, or attempt to obtain visitor status and make an inland refugee claim. If he gets visitor status, it may be only at the cost of a bond that is subject to forfeiture should he go *out-of-status* to make a refugee claim. If he claims immediately, and his port of entry is not his ultimate destination, he may be stuck with several trips between his port of entry and his destination in order to process his claim. (A refugee claimant is not entitled to have his claim processed by the Immigration office nearest his destination.)

If a refugee claimant enters as a visitor, he is then faced with the conundrum of making his claim *in-status* or *out-of-status*. The law contemplates refugee claims only *out-of-status*, at an inquiry, when someone is reported for a violation of the Immigration Act. Needless to say, many refugees come to Canada with no intent or desire to violate Canada's law.

The Department of Immigration, not wanting to force refugee claimants into Immigration Act violations simply in order to make their claims, has allowed the making of *in-status* claims. Since the Act does not provide for these claims, there are no statutory criteria indicating when the Department should permit such a claim to be made.

In determining whether or not to permit the making of an *in-status* claim, departmental officials look at the *bona fides* of the claim, the ability of the claimant to sustain himself if his status is extended, how soon the claimant's status expires, and whether the intention to make a refugee claim was formed before or after arrival. Depending on the office, the official and the occasion, the making of an *in-status* claim will be permitted if the claim is not frivolous, if the claimant can sustain himself financially should his status be extended, if the status of the claimant is not expiring shortly, or if the claimant formed his intention to claim refugee status only after his arrival in Canada.

For the claimant, the decision to claim either *in-status* or *out-of-status* is complicated by the issue of bonds, work permits and redeterminations. If a claimant posts a bond on entry and makes an *out-of-status* claim, his bond is subject to forfeiture. An *in-status* claimant (again depending on the office, the officer and the occasion), may be denied a work permit simply because he has made his claim *in-status*. An *in-status* claimant is denied the right to apply to the Immigration Appeal Board (I.A.B.) for a redetermination. However, if he goes *out-of-status* after a negative Ministerial determination and makes a second claim, he gets, in effect, three chances to put forward his claim — twice before the Minister and once before the I.A.B., rather than the two chances he would have had if he had made an *out-of-status* claim at the start.

A claimant making an *out-of-status* claim will normally wait until the day after the expiry of his status and appear voluntarily at the local Immigration office. An Immigration officer will report the claimant to inquiry for overstay. The officer in charge will direct an inquiry into the issue of whether the claimant has indeed overstayed. An adjudicator conducts an inquiry into whether there was an overstay. Once the adjudicator decides that the claimant did overstay, he adjourns the inquiry to allow for the making of the refugee claim. There is no possibility of avoiding this procedure for an *out-of-status* claim even though the claimant does not contest his overstay. The requirement of this inquiry can, depending on the office, add months of delay to the refugee-status determination process.

Once the inquiry is adjourned, the refugee examination is scheduled. Depending on the examining officer, the refugee exam is either presided over or conducted by the examining officer. Some examining officers attempt to elicit the nature of the claim through their own questioning, even though they have no prior knowledge of the claim. Questioning by counsel is relegated to the end. Others allow counsel to examine the claimant from the very beginning of the examination. Witnesses are not allowed to testify at the examination in support of the claim, although, depending on the case, the testimony of witnesses could bolster the claim.

(Continued on p. 4)

Refugee Claims
(continued from p. 3)

A transcript of the claim is sent to the claimant and his counsel. They are given from two weeks to a month to correct the transcript before it is sent to the Refugee Status Advisory Committee (R.S.A.C.) in Ottawa for consideration. Counsel may add written submissions. Affidavit evidence of others may be forwarded.

Until recently, the R.S.A.C. had members of the Department of Immigration and the Department of State for External Affairs as part-time members of the Committee. The R.S.A.C. did not consider the transcripts of claims the R.S.A.C. Secretariat believed to be manifestly unfounded. The R.S.A.C. had no guidelines under which to operate.

Now, members of the R.S.A.C. appointed from the Department of Immigration and Department of State for External Affairs must serve full time and be free of departmental responsibilities. The screening of manifestly unfounded claims has ceased. Credibility and refugee-definition guidelines have been announced.

The R.S.A.C. does not hear the claimant before advising the Minister on the claim. The R.S.A.C. does not present the claimant with apparent objections to his claim and give him an opportunity to respond before advising the Minister on the claim. There are pilot projects operating in Montreal and Toronto allowing claimants, at their option, to have an oral hearing before a member of the R.S.A.C. The R.S.A.C. can, and sometimes does, examine information other than that submitted by the claimant. Occasionally, when that additional information is considered important by the Committee, the examination will be reconvened to allow the claimant to comment on the information.

The R.S.A.C. advises the Minister. It is the Minister who decides on the claim. He has delegated his power to decide to several departmental officials. If the Minister denies a claim, he gives written reasons for the refusal.

A refused claimant may apply to the I.A.B. for a redetermination. The request for a redetermination is simply a paper application. The I.A.B. may grant an oral hearing. It may, and often does, deny the request without a hearing and without an opportunity to respond to objections the I.A.B. may have to the claim.

While the R.S.A.C. may and does examine information additional to that submitted by the claimant, the I.A.B. is restricted by law to examining the transcript of the claim and the material submitted by the claimant. While the R.S.A.C. is a specialized body knowledgeable about the political and social conditions of the countries from which claimants seek refuge, the I.A.B. is not. In an application to the R.S.A.C., the claimant need say little about country conditions. In an application to the I.A.B., the claimant is well-advised to detail country conditions.

At the Ministerial level, the claimant receives the benefit of the doubt. The Minister has announced guidelines for the R.S.A.C. that state the claimant is to be given the benefit of any doubt there might be both about the claimant's credibility and about the application of the refugee definition to the claimant. At the I.A.B. level, any doubt must be resolved against the claimant. The Federal Court of Appeal has said of refugee determinations by the I.A.B. that claimants do not have the benefit of the doubt.

A person refused by the I.A.B. may apply to the Federal Court of Appeal (F.C.A.) to set aside the decision of the I.A.B. It is here, for the first time, that the claimant is entitled to appear before someone deciding his case. It is here, for the first time, that the claimant gets an opportunity to answer apparent objections to his position. However, the F.C.A. hears no evidence. It cannot determine the claimant to be a refugee. Its powers are limited to setting aside the decision of the I.A.B., for failure of the I.A.B. in law or fact or natural justice, and referring the matter back to the I.A.B. for reconsideration.

From the F.C.A., the claimant can go to the Supreme Court of Canada (S.C.C.) by way of an application for leave to appeal. The S.C.C. suffers from the same restrictions as the F.C.A. It can hear no evidence. It cannot find the claimant a refugee. All it can do is send the matter back to the I.A.B.

Until recently, the practice was to postpone resumption of the inquiry until after the F.C.A. or S.C.C. disposition. Now inquiries are resumed immediately after the I.A.B. redetermination.

The refugee-claims process ends for the claimant, as it began, with a dilemma. If the claimant wants to stay until his F.C.A. case is heard, he will be ordered deported as not willing to leave. If the claimant is willing to leave before his F.C.A. case is heard, gets a departure notice, and does leave, he has, in effect, abandoned his claim. Even if he should win at the F.C.A. and the matter is sent back to the I.A.B., even if the I.A.B., the second time around, should determine him to be a refugee, he is not entitled to re-enter Canada. A refugee lawfully in Canada is entitled to remain. A refugee outside of Canada is not entitled to enter.

Should the claimant be ordered deported, he may apply to the F.C.A. a second time, this time to have the deportation order set aside. Departmental policy is to stay execution of deportation orders pending applications to the F.C.A., where, in their opinion, the applications are not frivolous.

If the claimant wins on his first application to the F.C.A. (i.e., to set aside the determination of the I.A.B.), he will automatically win on his second application (i.e., to set aside the disposition of the adjudicator). Once the I.A.B. determination is set aside, then the adjudicator is without jurisdiction to proceed.

There is one final twist. A person recognized as a refugee, whether by the Minister or the I.A.B., is not entitled to remain. In order to be entitled to remain, he must be given a Minister's Permit. Departmental policy is to give Minister's Permits to every refugee not already given refuge by another country. Once given a Permit, the refugee will be processed, in Canada, for landing.

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David Matas is a lawyer in private practice in Winnipeg. He was a member of the Task Force on Immigration Practices and Procedures established by the Minister of Employment and Immigration in September, 1980.

Refugee Status Determination Procedure in Germany, France, the U.S.A. and Australia

by Jean-François Durieux

Canada is not the only country that feels uneasy about its refugee-status determination procedures, if recent debates within international fora — notably the Executive Committee of the UNHCR — are any indication. Indeed, most industrialized nations today face the challenge of having to adjust their immigration policies to changing realities. The issue of granting asylum is a particularly sensitive part of that policy, with the extra burden of accumulated inadequacies and imperfections.

Among those countries that, together with Canada, have led the debate on the international stage and continue to do so at home, I have selected four for examination: the Federal Republic of Germany, France, the U.S.A. and Australia. The history and geography of the two European nations have made them lands of asylum, and they have entrenched the principle of political asylum in their constitutions. The latter two, like Canada, are traditional immigration countries, built to a large extent by people fleeing persecution. I have chosen a descriptive rather than a critical approach to the respective procedures and related matters. My purpose is only to provide some points of comparison and to give food for thought to all those who are interested in revising the Canadian procedures.

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U.S.A.

For the first time in *United States* history, the Refugee Act of 1980 established a statutory basis for asylum, consistent with the UN Convention. Prior to passage of the Act, grants of asylum were usually limited to those fleeing Communist nations or certain areas of the Middle East. Today, anyone seeking to enter at a U.S. border, or physically present in the U.S., can apply for recognition of refugee status, irrespective of his/her immigration status. The procedure is widely decentralised.

Unless exclusion or deportation proceedings have been initiated, applications for asylum are filed with the District Director of the Immigration and Naturalization Services (INS). In 1983, however, the INS modified its regulations to limit access to the District Directors (DD) and in many of the cases allowed transfer of original jurisdiction to the Immigration Judges (IJ).

The review procedure at the DD level may take anywhere from three months to two years, depending on the district's workload. However, applicants from the Soviet Union and Eastern bloc countries receive "immediate action". In each case the DD is required to seek the advice of the Bureau of Human Rights and Humanitarian Affairs, a branch of the State Department. The DD decision cannot be appealed. However, in a loophole (no doubt familiar to Canadian readers), the applicant whose *in-status* claim is denied is entitled, during the course of deportation proceedings, to bring up again the question of political asylum before the Immigration Judge. Asylum claims are adjudicated by the IJs in an adversarial setting, very much in the same way as normal enforcement cases. The decision of the IJ may be appealed by either party to the Board of Immigration Appeals — a body independent of the INS within the Department of Justice. A BIA determination does *not* entail a hearing at which the applicant appears personally — it may be appealed again in a federal court. Since the procedure was established, only a small number of individual cases have reached this level.

No claim is deemed inadmissible, nor is there any mechanism to expedite the process when a case appears manifestly unfounded. On the other hand, the refusal rate is fairly high, both at the DD (65%) and at the IJ (75%) levels. The administration has resorted to such measures as returning asylum seekers at land ports of entry to the contiguous foreign territory from which they came, or "interdicting" potential Haitian immigrants at sea from reaching the U.S. coast.

Clearly, the U.S. system is in serious trouble. The current backlog of claims at the DD level is around 165,000. This, however, includes the claims of 115,000 Cuban "Marielitos" (ironically, this unprecedented mass influx coincided with the passage of the Refugee Act) and of 5,000 Haitians, who for the most part enjoy special status. On the other hand, thousands of Salvadorans, Haitians and others living illegally in the country may decide to apply for asylum if apprehended.

The U.S. administration has reacted very harshly to this situation in matters ancillary to the asylum process: illegal entrants are routinely detained pending an asylum determination, and so are some applicants already within U.S. territory; the INS is permitted to withhold employment authorizations from those asylum claimants whose claims

(Continued on p. 6)

Germany, France, the U.S.A. and Australia
(continued from p. 5)

are deemed to be "frivolous". Generally speaking, asylum seekers in the U.S. do not have much of a status in the pre-asylum period and have no access to federally funded legal aid, welfare or medicare.

Once recognised, a refugee is granted a temporary resident status; the Refugee Act permits up to 5,000 "asylees" a year to adjust their status to permanent resident alien.

Amendments to the existing procedures are under careful consideration. Notably, the "Simpson-Mazzoli" bill, adopted by the Senate in 1983, will, if endorsed by the House, introduce provisions for a single-stage appeal to a specialized administrative entity, the continuation of deportation proceedings while the suggested abusive claim is still being adjudicated, etc.

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Europe

A general characteristic of European systems is to make an *in-status* claim the rule, and an *out-of-status* claim the exception. This attitude reflects a different approach to the granting of asylum than is the case in other sections of the world. The dichotomy does not always appear in terms of admissibility of the claim, but the credibility of an *out-of-status* claim will often be seriously diminished — apart from the obvious case of an undocumented alien seeking admission at a port of entry. Where the asylum seeker finds himself or herself illegally in the country after crossing the border unchecked, he/she is expected to report spontaneously, and at any rate without delay, to the authorities.

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Federal Republic of Germany

The Asylum Procedure Act of 1982 has brought about significant revisions to the refugee-status determination procedure in the *Federal Republic of Germany*, which used to be famous for its endless avenues of appeal.

The core of the procedure remains the Federal Office for the Recognition of Foreign Refugees (hereafter the Federal Office), which is located in Zirndorf, land (province) of Bavaria, with a few suboffices in other parts of the Republic.

In the new format, the Aliens Police and the Border Police have a limited prescreening authority, in that the former may choose not to refer the claim to the Federal Office and the latter may deny entry if the asylum seeker has already found more than temporary protection in another country. The refusal by the Aliens Police to forward the claim to the Federal Office entails an expulsion order, which can, however, be appealed to the local Administrative Court in a summary procedure.

The applicant, who has gone through a preliminary interview at the police level, will usually be invited for a more intensive interview by the Federal Office, which the UNHCR representative has a right to attend as an observer. The Office's decision on refugee status is not collegial, but it must be motivated. If the Office rejects the application as "manifestly unfounded", a removal order ensues, which the claimant may appeal in the same summary procedure as described above in the case of non-forwarding by the Aliens Police.

A negative decision by the Federal Office without the qualification that the claim is "manifestly unfounded" may be appealed to the provincial Administrative Court and further, by permission only, to the Administrative Court of Appeal; finally, cases of principle may be brought to the Federal Administrative Court, *voire* to the Federal Constitutional Court.

All appeals have a suspensive effect regarding the removal of the claimant. The Federal Office takes an average of six months to decide upon a case in the first instance. Delays in the Administrative Court may take up to two and a half years. The rate of acceptance by the Federal Office was 16% in 1982. By the end of April, 1983, applications pending before the Federal Office amounted to some 16,000. Since 1981, the backlog is steadily decreasing due to a considerable staff reinforcement both at the Federal Office and the Administrative Courts levels.

Pending determination of their refugee status, asylum seekers in the FRG are obliged to stay in the land (province) where they submitted their application; accommodation in reception centres is favoured by several *Länder*. During the first two years of residence in the country, asylum seekers are not authorized to work; if in need, they receive public relief, preferably in kind, at the reception centres. Once recognized, refugees in the FRG enjoy a wide range of rights and benefits. They are issued with a residence permit of unlimited validity.

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France

The *French* procedure for determining refugee status presents many similarities to the German one. Though its main features date back to 1952, it has undergone significant administrative "adjustments" in recent years.

An undocumented alien seeking asylum at a port of entry is normally admitted into France; however, if he/she arrives from a third country where asylum could have been requested, and where the alien does not run the risk of being returned to the country of origin, or if the person has already been granted asylum in a third country, he/she can be denied admission by the Minister of the Interior. A claim made subsequent to clandestine entry may be declared inadmissible by the police or the municipal authorities for the same reasons. Once these obstacles are cleared, the asylum seeker must register with the Office Français pour la Protection des Réfugiés Apatrides (OFPRA) and file an affidavit documenting his claim. The OFPRA is an independent office headed by a Director, who makes decisions on all refugee claims. While OFPRA frequently makes its decisions on the basis of written documentation, the applicant may be invited for an interview.

The OFPRA currently examines over 20,000 files per year; its acceptance rate is particularly high, around 75%. If the claimant has not been notified of OFPRA's decision within four months of his application, he/she is entitled to bring the claim to the Commission des Recours, which also deals with appeals against negative determinations by OFPRA. The Commission des Recours, a highly specialized quasi-judicial appellate body, is chaired by a member of the Council of State and is further composed of a representative of the OFPRA Board and the UNHCR representative in France. The appellant is always entitled to a personal hearing and may be represented by counsel. The backlog of cases is close to 7,000, though the Board hears some 6,000 cases per year. Further appeal, to the Council of State, is only possible in cases of principle.

During the pre-asylum period, an asylum seeker receives a temporary residence permit, usually valid countrywide, and a provisional work authorization — both of which the person will retain until a final decision is made on his or her claim. Recently, however, some local authorities have tried to prevent access to work authorizations for nationals of certain countries, whose claims are deemed to be frivolous. If unemployed, a claimant is entitled to welfare subsidies for up to one year, free medical assistance and vocational training if available. Voluntary organizations run accommodation centres for asylum seekers throughout the country.

In many respects a recognized refugee enjoys the same rights as a French citizen. After three years' continuous residence in France, he/she is considered a "privileged resident".

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Australia

Applications for refugee status in *Australia* may be made at any time and are decided upon by the Minsiter for Immigration and Ethnic Affairs upon the recommendation of a standing interdepartmental Committee for Determination of Refugee Status (DORS), established in 1978.

Examinations under oath are usually carried out by senior immigration officers in the field, and the transcript thereof is forwarded to the Committee for review. If, however, the processing officer considers that the claim is abusive or manifestly unfounded, or yet incompatible with Convention and Protocol (particularly with regard to the exclusion clauses of Article 1 of the Convention), a short synopsis of the case is forwarded with the officer's assessment to the Committee. If at least one Committee member (including the UNHCR observer) requests that the application be fully reviewed by the Committee, normal processing will be initiated. (In practice, this is often the case.)

The DORS Committee is composed of senior officials from the Departments of Immigration and Foreign Affairs and the Offices of the Attorney-General and the Prime Minister, with the UNHCR representative attending as an observer. The procedure does not provide for a formal appeal, but the Minister may, in the light of additional information, refer any case back to the Committee for reconsideration. The Committee presently has a backlog not exceeding 100 applications.

Asylum seekers in Australia are usually granted a temporary residence permit with no geographical restriction. Only in cases of extreme hardship are work authorizations granted. Once recognized, a refugee is expected to apply for permanent residence; the processing of the application takes an average of six months, during which time work authorizations are easier to obtain.

Compared with the other country procedures we reviewed, the Australian procedure appears both relatively unsophisticated and fairly efficient. But one must bear in mind that Australia's geographical isolation and strict entry controls have succeeded in preventing the overload that affects asylum procedures in most other industrialized nations.

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The Refugee Claims System

by Raphael Girard

The determination of claims to refugee status did not become a public issue in Canada until well after the revocation of universal appeal rights against deportation in 1973. In the period between the enactment of the 1967 New York protocol — which gave global expression to the 1951 refugee definition — and the revocation of Section 34 of the immigration regulation in 1972, it had been possible to apply for immigration to Canada from within the country. This possibility, coupled with universal access to appeal from deportation orders and the practice of non-deportation to countries in turmoil (particularly those in Eastern Europe), subsumed within larger flows the small numbers of asylum seekers who were beginning to come to Canada without having first been selected through immigration offices overseas.

Amendment to the Immigration Appeal Board Act in 1973 led to the first mention of refugees in an immigration statute. Refugees, along with sponsored dependents and a few other classes of visitors, were singled out to retain appeal rights when general eligibility was restricted. This in turn gave rise to the Interdepartmental Committee on Refugee Status, initially an ad hoc group of officials from the Immigration Division and the Department of External Affairs, which was charged with predetermining meritorious cases that would otherwise go to appeal.

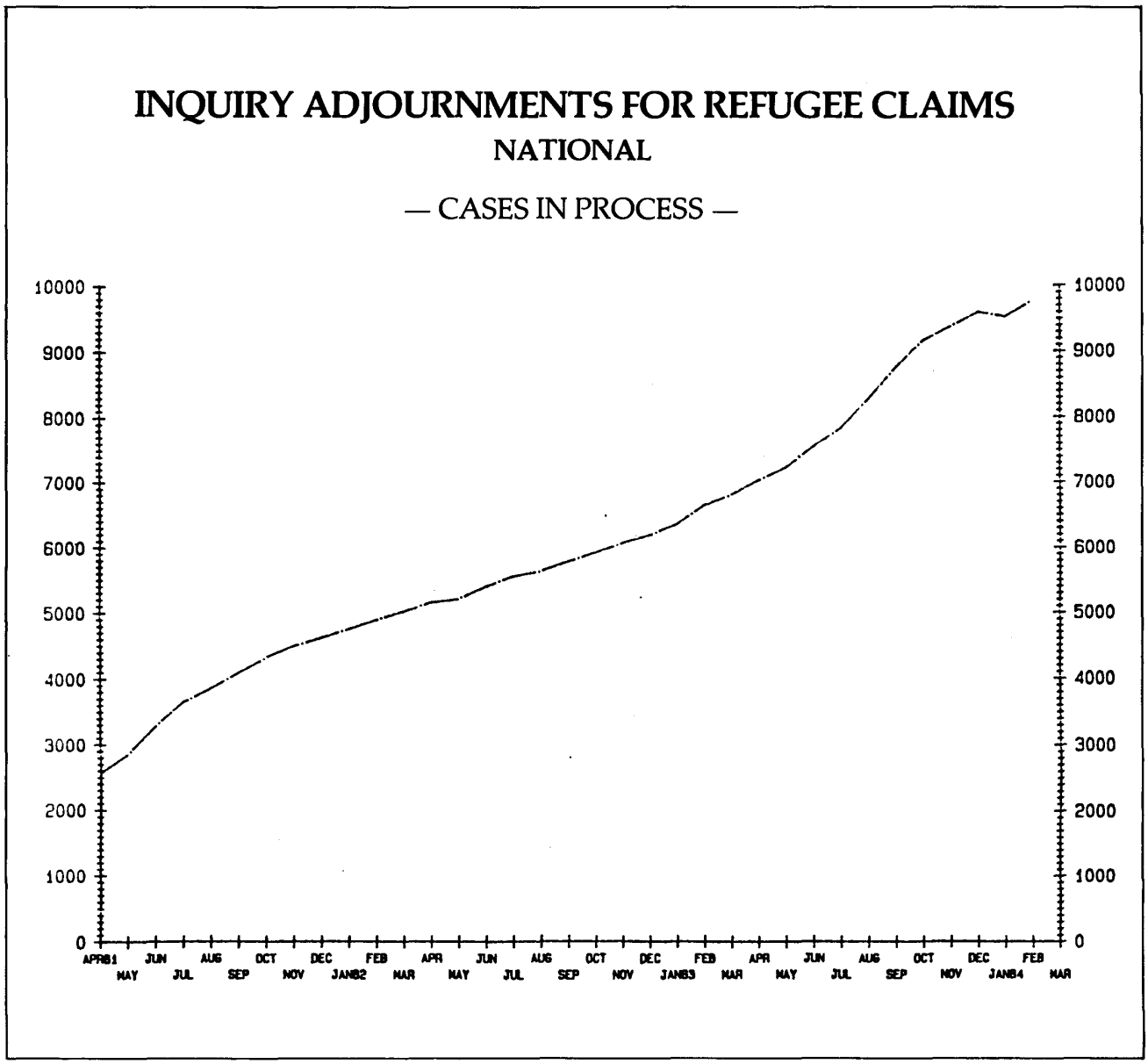
By the mid 1970s, a number of individual case decisions had aroused such controversy that the concept of special review on humanitarian grounds was extended to cover all cases which had been rejected by the Interdepartmental Committee on the grounds that the applicant did not meet the Convention definition of a refugee. This special review was intended to ensure that deserving cases which did not meet the full rigour of the Convention would be identified and acted upon under the special relief provisions of immigration law. This was a discretionary mechanism grounded neither in law nor regulation in the specific sense of refugee processes.

Concurrently, more and more requests were being made under Section 28 of the Federal Court Act for judicial review of deportation cases. Between 1973 and 1978, therefore, an ad hoc system of refugee protection had emerged which comprised two levels of review for refugee claims, a further review of refused claims to determine humanitarian merit, and, finally, a provision — of which claimants were increasingly availing themselves — for seeking judicial review under Section 28 of the Federal Court Act. The volume of claims, however, remained small. As late as 1977, the annual intake was only a few hundred cases.

In the policy discussions on the refugee question during the Green Paper review and subsequent parliamentary debate (culminating in the Immigration Act of 1976), the focus was very clearly on the resettlement of refugees selected abroad, along with measures facilitating voluntary repatriation or local integration. Although the question of first asylum in Canada was fully considered at every stage of policy and legislative development, it was not debated at great length. In an address to the Commons, the Opposition immigration critic noted that some voluntary groups were urging greater access to Canada for people who intended to seek refugee status in this country. He rejected this concept as one not relevant to the Canadian situation. In addition, the United Nations had given notice of the need to negotiate a new convention on territorial asylum, a development which accounted to some extent for the brevity of the debate. It was felt, in some quarters, that the territorial-asylum discussions would cause Canada to take another look at the problem in the period following the enactment of the new law. The conference on territorial asylum, however, adjourned without conclusive results.

Several aspects of the legislation that was enacted in 1976 signalled a minimum response from Canada to its obligations under the 1951 Convention and 1967 Protocol on Refugee Status. First, all persons other than certain visitors were required to obtain visas before coming forward — a clear indication that Canada was not to be made accessible to asylum seekers. Secondly, the recognition of refugee claims by the Minister did not automatically lead to any form of immigration status. Thirdly, durable refugee status as such was not created in immigration law.

Nevertheless, the protections afforded refugees against *refoulement* were comprehensive. Although the provisions of the Immigration Act of 1976, which established the current claims system, did not break any new ground, the Act formalized the function of the Refugee Status Advisory Committee as an advisory body and retained provision for a second review of claims by the Immigration Appeal Board. The Immigration Act also continued to provide for special relief to be granted on humanitarian grounds. At the same time, the practice by claimants of seeking legal review of refusals from the Federal Court became even more widespread. As a result, this combination of law and practice created a refugee-determination system which afforded the claimant four distinct levels of review on request — regardless of the strength or weakness of the claim.



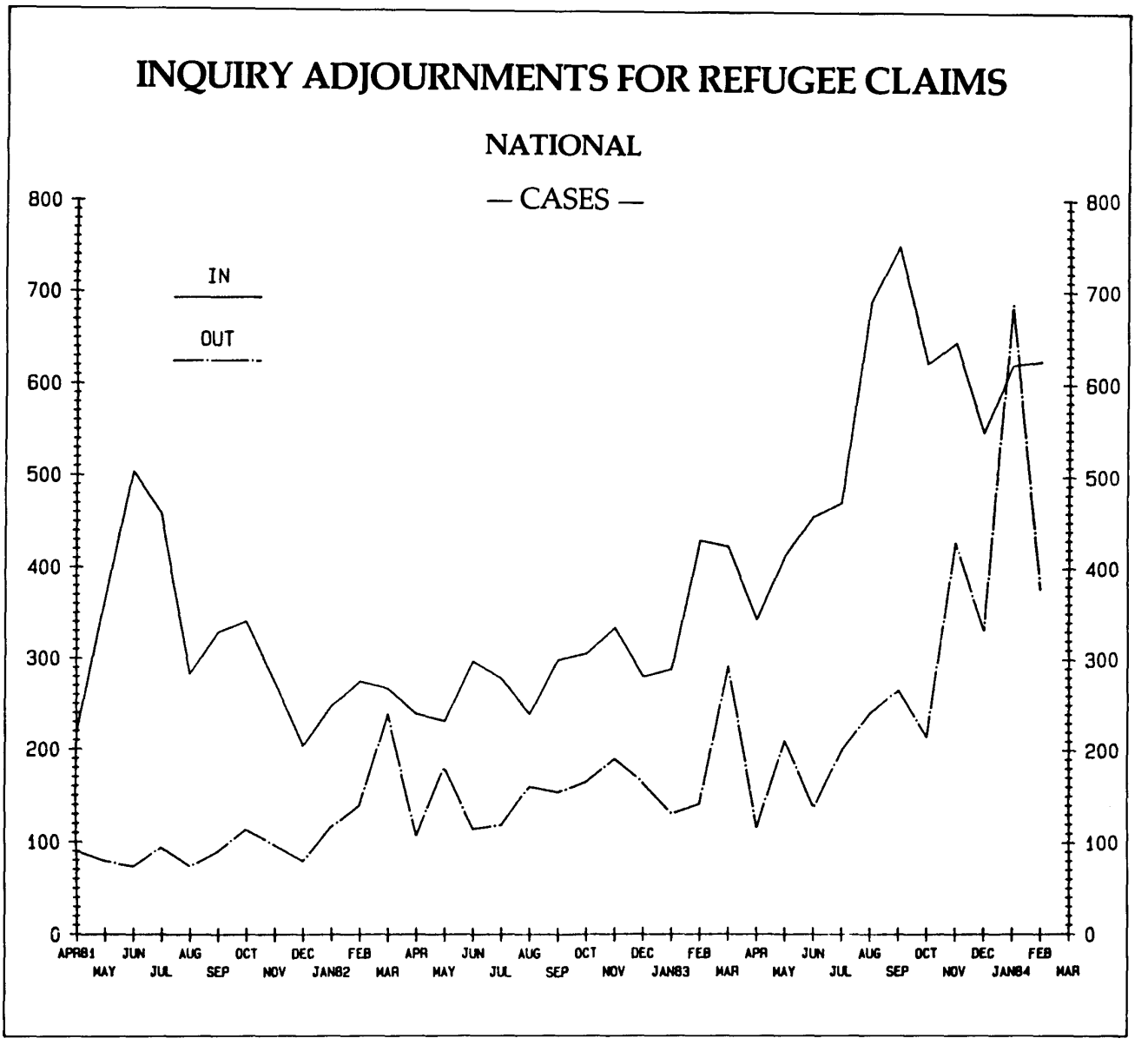
It is clear that this system does not and cannot work in the face of even a modest volume of claims. At the onset, claims were able to pass the first level of review in a reasonably short period, but it was quite another matter to move cases through all levels speedily, particularly when some marginal claimants stood to gain by such delays.

In the face of a large volume of claims, however, even the capacity for expeditiously determining claims at the first level was lost. By late 1980, an influx of claimants from India began in earnest, clogging the system at the immigration-inquiry state and later, at the transcription of the claimant's statement under oath. By June, 1981, after three years of a relatively low-volume intake, there were 3,400 claims in the system, and this accumulation of claims was gathering speed. The average time for taking a claim to the first level was lengthening from only a few months to at least a year, owing to the growing volume and the fact that the claims were concentrated in Montreal and Toronto.

The growth in claims between 1981 and 1983 is vividly illustrated in Tables A and B. During 1983 alone, some 6,300 inquiries were adjourned for the purpose of allowing the person concerned to make a refugee claim. In 1983, as well, only 3,300 transcripts were completed and forwarded to the RSAC. Less than 2,500 cases were finally determined.

The decision-making process was improved by experiments with oral hear-

(Continued on p. 10)



ings of claims and by the implementation of new guidelines at the RSAC, but productivity still declined — largely because fewer claims were rejected as manifestly unfounded under guidelines approved by the former Minister, the Honourable Lloyd Axworthy.

At the Immigration Appeal Board, the wait for a full hearing now averages one year, despite the fact that 95% of claims are rejected in chambers.

Beyond this stage, there are an estimated 2,000 cases in the judicial system.

As a result, Canada has an extremely elaborate system for the review of refugee claims — one which is too slow in identifying genuine refugees and consumes an inordinate share of administrative and judicial resources in dealing with issues which are not essentially of a judicial nature.

It is important not to lose sight of the fact that the determination of refugee status is a serious matter, and that the consequences of error can be drastic. Nevertheless, it is patently obvious that the current Canadian system needs to be amended, both in order to protect the interests of the *bona fide* refugee and to maintain Canada's control over the entry of those migrants who would seek to remain by any means.

Mr. Girard is director of Refugee Affairs for Employment and Immigration Canada.

A Lawyer's Perspective on Canadian Refugee Policy

by Michael Schelew

The comments below reflect my own experiences in Metropolitan Toronto and may or may not coincide with the experiences of other lawyers in Toronto or the rest of Canada. Though some observations arise from my former position as a refugee co-ordinator for the Canadian Section (Anglophone) of Amnesty International, any opinions expressed in this article are personal to me and may or may not be the official position of Amnesty International.

There have been many important administrative changes in the inland-refugee determination procedure over the past few years. For the most part, these changes have made life easier for the refugee claimant going through the inland process. As a lawyer representing refugee claimants in Canada, my major concerns are that the internal-refugee determination procedure be fair, and that the process not create undue hardship for the refugee claimant and his/her family.

With respect to fairness, inland claimants are permitted to be represented by counsel in dealings with the Department of Immigration. However, this right of representation does not extend to the port of entry. Even if counsel happens to be present at the port of entry, counsel is not permitted to attend the interview. A claimant's right to counsel should be effective immediately upon indication of his/her intention to seek refugee status and the claimant should be so informed.

Some claimants arrive at ports of entry other than Metropolitan Toronto and wish to have their claims heard in Metropolitan Toronto because that is where their family resides or a support system exists. I am not aware of any policy or guidelines which facilitate a refugee's claim being held at an Immigration Centre nearest to the person's intended destination, if requested.

In addition to rights to counsel and the facility to hold a hearing near support systems for the claimant, justice delayed is frustrating as well as unjust. I remember the time, not so long ago, when a person claiming refugee status at the Pearson International Airport could have an inquiry within one week. Now, refugees have to wait six to seven months. Furthermore, as has happened to me on several occasions upon my arriving at an Immigration Centre for a long-awaited inquiry, I was told that, due to scheduling problems, the inquiry had to be rescheduled to a later date which inevitably meant another lengthy period of waiting.

With regard to claims for refugee status that have been made after claimants have entered the country as tourists and are consequently *in-status*, I have had to wait more than six months at Toronto Central for an inquiry. Another difficulty with *in-status* claims is that such claimants do not have the right to work or appeal. These two rights are extremely important and I believe legislative amendments are necessary to guarantee them.

Right to Work

During the waiting period for an inquiry, a refugee claimant cannot obtain a work permit. If a person arrives in Toronto with no family or other support system to assist him or her, or if a person or family arrives in Toronto and their family or relatives residing in Toronto do not have sufficient resources to provide adequate financial support, then the claimant and his/her family are in serious difficulty. Furthermore, in Ontario, welfare is not available to refugee claimants until they have made a claim at an inquiry. (Of course, the Department has no jurisdiction over welfare.) Thus, there is no safety net for claimants until they have had their inquiry. After I explained to one immigration official the difficult financial circumstances of a claimant and his family who were waiting for an inquiry, he telephoned me a day later with an inquiry date arranged; there had been a cancellation. Departmental officials should be commended for their understanding in such situations.

Another problem that refugee families face when they arrive in Canada is education for their children. Although this is not within the jurisdiction of the Immigration Department, it would be helpful if a consistent policy were formulated regarding the schooling of the children of refugee claimants.

Once the day for the claimant's inquiry has arrived, the claimant can officially claim refugee status and request an employment authorization. The Department has instituted a new procedure whereby a pre-employment letter is given to a claimant if immediate need can be shown. This is an excellent administrative practice because the refugee claimant can obtain an employment authorization as soon as a job offer becomes available.

Immigration officials are very co-oper-

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ative regarding work permits after an inquiry. Often, a claimant has come to an inquiry with an offer of employment, and the Immigration official representing the Department at the inquiry has arranged to have the person interviewed immediately after the inquiry in order to obtain a work permit.

Nevertheless, there are often misunderstandings regarding the criteria for granting a work permit. I recently attended an expedited interview regarding a claimant's request for a work permit, given the serious financial situation of the refugee and his family. The interviewing officer recognized the need but was about to deny the permit because the claimant had been here for only three weeks and was already applying for a work permit. When I reminded the official that we were dealing with a *bona fide* refugee claimant, it was agreed that an employment authorization should be issued. The issue is not whether the claimant was *bona fide*, nor is it the time it took for the claimant to arrive at such an interview. The criterion for issuing a work permit is, simply, *need*.

Based upon my experience, there appears to be a general attitude among Departmental officials that once an employment authorization has been given to a male refugee claimant, it is unreasonable to expect that his wife should also be granted a work permit. Proving *need* so that the other spouse can obtain an employment authorization is extremely difficult.

Examination under Oath

At the inquiry, a refugee claim is made. Then the inquiry is adjourned for an "Examination under Oath" to take place at a future date. It is at this Examination that the claimant has the opportunity to make the claim. The delay between an inquiry and an "Examination under Oath" is increasing: a few years ago, one could obtain a date for the Examination within a week or two of the inquiry. Now, waiting two to three months is not uncommon.

There has been an improvement over the years in the professionalism of the Senior Immigration Officers (S.I.O.'s) that preside at "Examinations under Oath". Although there is no consistency regarding the procedure on these occasions, I have always been allowed to develop the claim of the refugee with the S.I.O. clarifying various parts of the claim after I have finished my questioning. S.I.O.'s are very co-operative and try to ensure that claimants have the best opportunity to present their claims. Occasionally, an S.I.O.'s attempt to clarify certain points verges on cross-examination. Though this is not the function of the presiding official at an "Examination under Oath", I also recognize that the line between *clarification* and *cross-examination* is a fine one.

Two disappointing aspects of the "Examination under Oath" are 1) the quality of the interpreters, and 2) the delay in receiving the transcript from the Examination. Recently, I actually had to adjourn an "Examination under Oath" because the interpreter was doing such an incompetent job. At other times, I have been on the verge of adjourning but continued because I believed the Examination could be saved by written submissions. (Since I speak Spanish, and in fact represent many claimants using that language, I can judge the accuracy of a translation.) A correct translation is essential to a fair hearing. The Department should pay what is necessary to attract competent interpreters and establish guidelines regarding the hiring of such interpreters.

Although I am generally satisfied with the *quality* of the transcripts, I am disappointed with the *delay* in receiving them. In the past, it would take approximately four weeks to receive a transcript, compared to the current three- or four-month delay after the "Examination under Oath".

R.S.A.C.

Once a copy of the transcript has been received, I usually prepare written submissions that are sent to the Refugee Status Advisory Committee (R.S.A.C.) in Ottawa, which reviews the transcripts with my submissions and makes the final decision. I have noticed a great deal of improvement in the R.S.A.C.'s decision-making. It is no secret that I have been disappointed in the past with the quality of the decisions emanating from the Committee. I had very little confidence in the R.S.A.C.'s ability to identify accurately a *bona fide* claimant. Important administrative changes, however, have resulted in more accurate decisions. I now have a degree of confidence in the R.S.A.C.'s ability to recognize a legitimate claimant. Furthermore, the R.S.A.C. is extremely co-operative in situations where a refugee claimant receives relief from a non-governmental organization or from private individuals. When I have brought this state of affairs to the R.S.A.C.'s attention, the Registrar has always expedited the case.

Another welcome development on the part of the Committee is its new policy of forwarding prejudicial information about a claimant who has no knowledge of such information. The claimant is now given an opportunity to respond. In two recent cases, I received notice from the Committee of the existence of prejudicial information unknown to the claimant, with the request that the "Examination under Oath" be reopened to give the claimant an opportunity to respond.

My most serious concern about the R.S.A.C. is its ability to make adverse findings of credibility on the basis of written material alone. If a claim is not manifestly unfounded, the R.S.A.C. should not be making a credibility assessment without being able to witness the demeanour of the claimant.

A response to this concern has been the establishment of pilot projects in Montreal and Toronto, where a member of the Committee is present when the claimant is giving testimony. At such hearings, a credibility assessment is made and forwarded to the Committee. This pilot project is most welcome as a temporary or interim measure. However, until an oral hearing before those who will decide whether or not a claimant is a Convention refugee becomes an integral part of the inland-refugee determination procedure, this serious procedural deficiency could result in a miscarriage of justice with alarming consequences for the refugee claimant.

Another concern I have with the R.S.A.C. is the delay it takes between

the time the transcript arrives in Ottawa and the time the decision is made. Its internal procedures should be streamlined.

Special Review Committee

If the R.S.A.C. is of the opinion that the claimant is not a refugee, the matter is referred to a Special Review Committee to ascertain if there are sufficient humanitarian and compassionate grounds for allowing the claimant to remain in Canada. I am disappointed with the Special Review Committee. I have referred cases to it, cases which I believed, on a cautious and conservative interpretation of the Committee's guidelines, fell within its mandate, only to be disappointed with a negative decision. I believe a review of the Special Review Committee is necessary.

Immigration Appeal Board

The treatment of refugee cases by the Immigration Appeal Board (I.A.B.) is not free from difficulty. The I.A.B. must decide, on the basis of written materials, whether a claim, if allowed to proceed to an oral hearing, would be successful.

Like the R.S.A.C., the Board is placed in a position where it must make adverse findings of credibility on the basis of written materials only. For reasons previously stated, I believe that this practice is procedurally unfair. The Board is preoccupied with the question of credibility, and rightly so. Often, refugee claimants will lie in order to obtain a tourist visa in a Canadian embassy, which will allow them to come to Canada and claim refugee status. Some claimants will lie at a Canadian port of entry in order to enter for the purpose of finding a trusted source of reliable information about how best to make a claim for refugee status.

In my opinion, such a course of conduct is consistent with the refugee's well-founded fear of persecution. I believe that this type of misrepresentation ought not to be relied upon as a basis for rejecting a claim for lack of credibility.

The I.A.B., at oral hearings, attaches too much weight to evidence from our officials abroad who have been requested by a representative of the Department to verify a claimant's story. I have been involved with two cases where officials of the Department have telexed offices abroad to interview witnesses whom the claimants mentioned. In each case, the witnesses denied knowing the refugee claimant in question. Such denial makes perfect sense in that the witness abroad is probably concerned about his or her own security and would worry about saying anything for fear of getting the claimant "in trouble" in Canada or elsewhere. It is unfair to accept as evidence these unsigned telexes from abroad and to give them any serious evidentiary weight. It is extremely difficult for counsel to come up with an adequate explanation if no one can be cross-examined on the contents of the telex. These examples indicate that perhaps the Immigration Appeal Board is not as sensitive as it could be with respect to the reliability of such evidence.

With regard to delays, the Board is behaving in an exemplary fashion. Its response to applications for redetermination is well within a reasonable time period. The scheduling of oral hearings can take up to six months.

Federal Court Appeals

Although a claimant can appeal a decision to the Federal Court of Canada, I believe that this is not the answer. The Federal Court has very narrow grounds for review and is not the appropriate forum for correcting miscarriages of justice.

Appeals to the Office of the Minister of Employment and Immigration

I do not hesitate to appeal to the Office of the Minister of Employment and Immigration if I believe that a breakdown in the inland-refugee determination procedure has occurred, resulting in a miscarriage of justice. The Minister's Office has consistently dealt with my appeals in a serious and thorough manner. The willingness of the Minister's Office to perform this function is deeply appreciated; it constitutes a crucial safety valve in an inland-refugee determination procedure that may break down from time to time by incorrectly rejecting a legitimate refugee claimant who, if returned home, could be exposed to a dangerous situation.

Delays in Family Reunification

Those claimants who wish to bring their family members to Canada to join them after the claimants have been accepted face serious delays. This is indeed tragic, given that they have already been separated from their families for a lengthy period of time. Many families cannot survive these delays; family breakdowns often occur. I do not know how many times I have had to encourage the Immigration Centre, where the claim had been made, to transfer the file to an inland office, whereupon I had to encourage the inland office to contact the embassy in the country where the family was located to begin the processing of the family to Canada. The Department says that family reunification is given priority. However, family-class and designated-class applications are also given priority. When everything is given priority, then nothing really has priority.

Problem of Non-*Bona Fide* Claims

I have consistently mentioned the delays that take place at every stage of the procedure. These delays are created, in part, because there are many claimants who are not *bona fide*. They abuse the inland process by making refugee claims in order to remain in Canada for a long period of time. These abusive claims have created a backlog and affect *bona fide* claimants. Making a refugee claim can be an extremely stressful experience. Long delays mean that a refugee claimant may suffer long periods of stress or anxiety.

Abusive claims have caused sympathetic and co-operative Immigration officials to become cynical and indifferent. I am extremely frustrated that the Department has not established procedures that can quickly identify abusers and remove them from the procedure as quickly as possible. (I say this with

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trepidation because I am fearful that the Department may over-react by implementing procedures that will lead to the removal, not only of abusers, but also of legitimate claimants.) When dealing with abusive claims, the Department must ensure that the interests of legitimate refugee claimants are not adversely affected.

Unethical Lawyers and Immigration Consultants

I am equally frustrated with unethical lawyers and immigration consultants who knowingly take an abusive claim just to earn a fee. These lawyers and immigration consultants are highly irresponsible and they threaten the integrity of our inland-refugee determination procedure.

Overseas Refugee Determination Procedure

With regard to Canada's overseas-refugee determination procedure, I am not satisfied at all that Canadian embassy officials have the necessary training to identify accurately a *bona fide* refugee claimant. Furthermore, a refugee claimant in an embassy does not have the same procedural safeguards as a claimant in Canada.

I recently became involved with a Yugoslav dissident from Germany who made a claim in our embassy in Bonn. The person was denied the opportunity of presenting medical evidence that was fundamental to his claim. Furthermore, his wife was not provided with an interpreter even though she requested one, given her unfamiliarity with English. The claim was *bona fide* but denied. The dissident arrived in Canada and made a claim for refugee status. His claim was recently accepted by the Refugee Status Advisory Committee. The case illustrates the inadequacies of refugee determinations abroad.

Visa Requirements on Refugee-Producing Countries

Visa requirements often block an important escape route to Canada which may be the most logical and accessible country of refuge for the claimant. The Department must realize that Canada is primarily a country of resettlement, but to a lesser and limited extent, it is also a country of first asylum. After all, that is why we have an elaborate inland-refugee determination procedure.

With respect to the imposition of visa requirements on refugee-producing countries, if persons from a country in question were significantly abusing Canadian immigration procedures, visa requirements would of course be necessary. However, in the absence of any significant immigration abuse, it is contrary to Canada's humanitarian tradition to impose a visa requirement on a refugee-producing country. I can only conclude that if a visa requirement is so imposed, the Department does not want to accept any refugees from that country. I realize that Canada cannot accept all the world's refugees. But if the numbers from a particular country are manageable, why not?

The recent imposition of a visa requirement on Guatemala is a good case in point. There is no significant immigration abuse from Guatemala (to my knowledge,) and the number of Guatemalan refugee claimants in Canada is relatively small. People who engage in legitimate dissent in Guatemala are often tortured and executed. Canada is a logical and accessible country of refuge for Guatemalan claimants. It is mean-spirited to impose a visa requirement on Guatemala; the visa requirement prevents Guatemalans whose lives are in danger from escaping their government tormentors and attaining peace and security in Canada.

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I have attempted to highlight some of my own concerns as a lawyer representing refugee claimants. The last thing I would want to do is to give the impression that the inland-refugee determination procedure is all wrong. On the contrary, there is a lot right about our procedure. As Canadians, we should be proud of our Senior Immigration Officers when they show flexibility on procedural matters in order to soften the impact of administrative procedures on the claimants. We can also be proud of their professionalism in conducting "Examinations under Oath". We can be proud of the R.S.A.C. Its decision-making is more accurate. It is prepared to expedite claims for just cause, and it has instituted a pilot project on oral hearings in Montreal and Toronto.

One of our major challenges, however, is to eliminate the abuse from our system, because this abuse affects *bona fide* claimants. Another challenge is to eliminate the delays that have adverse psychological affects on *bona fide* refugee claimants and also attract abusers. The solution to these two serious problems is to institute an oral hearing for all claimants at an early stage in the procedure, which will not only identify *bona fide* refugee claimants but also abusers. We must not forget the relief needs of claimants. It is the responsibility of the federal government to ensure that a claimant and his or her family can survive during the time it takes to make a claim.

I have attempted to identify certain areas that create hardships for refugees. Delays in the procedure are very stressful for claimants. Their difficulty in obtaining work permits is not conducive to their successful integration and establishment in Canadian society. The lack of an adequate relief program leaves refugee claimants particularly vulnerable if they are unable to find work. The lack of a co-ordinated policy between the federal government and the provinces over areas of jurisdiction affecting the lives of refugee claimants is also a concern. The fact that refugee claimants must flee to Canada and claim refuge for what would be considered legitimate dissent in Canada is tragic. It is also tragic when their problems are compounded by administrative procedures in Canada that are not sensitive to their needs.

The Department of Immigration must look at the inland-refugee determination procedure as a humanitarian problem and not one of enforcement. It must ensure that the procedure is fair and not unduly harsh on refugee claimants. After all, by definition, *bona fide* refugee claimants have suffered enough.

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Refugee Protection

by Kathleen Ptolemy

The Symposium on Refugee Determination held in Toronto on February 20, 1982, was one of the most memorable events in Canada's history of concern for refugees. Speaking to an assembled body of refugee-interest groups, Mr. Lloyd Axworthy, Canada's then Minister of Employment and Immigration, directed himself to the very heart of the refugee issue: "There is no other policy area which reveals so much about the humanitarian instincts of our people, and our moral stance as a nation. An equal test for a nation is how it treats those who are not its own citizens . . . those who find themselves in desperate circumstances and need compassion and help . . . we can set achievable objectives for ourselves that may, in turn, help to set new international standards."

Mr. Axworthy set a tone and established a vision and a will for Canada to assert the fundamental moral goals concerning the protection of refugees, and to reflect those goals in refugee-determination procedures that are fair and accessible to all claimants seeking protection in Canada.

It is distressing that in the short two years since that milestone in our history, the mood of the western world towards refugee claimants has become more inhospitable and suspicious. The situation has, in fact, reached crisis proportions. Canada is not insensitive to this shift, nor to its consequences for Canada. More refugees are turning to Canada for protection and a new community.

Canada's response to this reality is a matter of great interest to all Canadians concerned for refugees, because the consequences are profound for the refugees who seek a safe haven in Canada. Refugee-status seekers are forced to flee their homeland because they have experienced events ranging from uncontrolled violence and gross violations of human rights to selective persecution. The waiting period on a claim for an opinion from another country is often equally traumatic. Constant signals convey a lack of welcome, suspicion of immigration abuse, and likelihood of rejection. For the refugee-status seeker, this can be a miserable experience, but a safe existence is, at least, temporarily assured.

Mechanisms are being developed by countries to deter spontaneous flows of asylum seekers. As western countries link their economic depression and unemployment to the time-honoured scapegoat of unwanted immigrants, it is becoming politically popular to characterize refugee-status seekers as illegal entrants and unwanted job stealers. This allows governments to introduce policy changes that deter refugee flows at both the point of entry and the country of origin, and for those who do manage to arrive, to restrict the opportunity to the claimant for a fair hearing and appeal, and to admit only on a temporary basis.

Denial of Admission at Points of Entry

Policy changes that seek to deter refugee flows at points of entry erode the principle of non-refoulement. In its narrowest sense, this principle imposes an obligation on a country not to expel refugees but is open to various interpretations regarding the duty of a country to admit. By and large, most countries in their practice have regarded the *duty to admit* as part of their *duty not to refoule*. However, current parlance now includes mention of *elements* needed to *trigger* the principle of non-refoulement at the border.

It is often difficult to know how many refugee-status seekers are being denied admission at points of entry because these individuals may be summarily removed by border police, customs or immigration officials without ever having established contact with a source inside the country. Reasons for border rejection of such refugee claimants can be based on a number of factors such as protection capability of the country from which the person is arriving, human-rights violations of the country of origin, security threat or a language barrier that prevents the claimant from stating his or her intention to claim refugee status. This practice, which has produced the phemonema of *refugees in orbit*, flies in the face of all norms of natural justice and the spirit of non-refoulement. It prejudges an individual claim with no recourse to the facts of the individual's claim.

Very few countries in the world today can be said unequivocally to be free of serious human-rights problems. Very few countries can be prejudged on their willingness and ability to provide protection and solutions to the refugee-status seeker. It would be a serious step backward to deny admission on these grounds when the consequences for the refugee are so serious.

Denial of Need to Depart Country of Origin

Another dangerous trend which is growing in popularity is the creation of administrative barriers that go even beyond denying admission to the border — denying the refugee the opportunity to leave his or her country of origin! The barrier in question is the tourist visa — a piece of paper that more and more would-be travellers must obtain in the local embassy or high commission of the country in which they intend to seek protection. Visa requirements are generally imposed on coun-

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tries with rigid exit controls and on countries that are producing significant flows of people who are not considered to be *bona fide visitors*. There is an understandable logic in requiring would-be visitors to undergo the inconvenience of applying abroad for a tourist visa if they are going to be denied admission upon arrival or will make fradulent refugee claims. This visa requirement does, however, impose profound problems on people fleeing refugee-producing countries.

The Canadian government, in its October, 1983, address on protection to the 34th Executive Committee of the United Nations High Commissioner for Refugees, maintained that the consequences of the imposition of the visa requirement on citizens of refugee-producing countries are not necessarily all bad. The address noted that "It is normal practice in Canada to offset the effect of visa requirements by implementing special immigration measures to ensure refugees in need of resettlement will still have access to Canada through our embassies abroad. This allows us to target our help to those in most need while forestalling the spontaneous influx of those who are perhaps the best informed or the most resourceful, but not necessarily those most in need."

However, recent experiences incorporating this practice of making provisions for would-be refugees to apply for admission to Canada from their country of origin have not provided strong support for its effectiveness, except for the processing of special visible groups such as amnestied prisoners.

In individual cases, refugees experience great difficulties in presenting themselves at foreign embassies, where they feel exposed and visible to local authorities and where they have no protection while waiting for a decision from the embassy — a process which can take several months. The only other option for the refugee is to ask for a tourist visa in order to claim refugee status in Canada — a request that would be denied if there were any reason to suspect that the person might make a claim for refugee status upon his arrival in Canada. The refugee claimant who needs to leave the country immediately is therefore, in desperation, forced to lie about the reasons for a visit to Canada — lies which can seriously affect the credibility of subsequent claims.

Immigration controls, such as visas, that deny a persecuted person the right to leave his/her country, are not acceptable. Visa impositions on refugee-producing countries create barriers that result in the denial of fundamental human rights — the right to leave a country and to seek and enjoy in other countries protection from persecution. A policy that justifies itself as "not all bad" is just not good enough!

There are no easy answers to the problem, but solutions must be found that uphold a refugee's right to leave his or her country of origin and seek protection elsewhere.

Denial of Right to a Fair Hearing

Canada is seeking ways to ensure a fair hearing for refugee claimants that include the right to an oral hearing but discourage abuse of the process by people with fraudulent or manifestly unfounded claims. At the same time, many western refugee-receiving countries are applying more restrictive criteria to their interpretation of the Convention definition, denying some applicants access to determination procedures on the grounds that their claims would be manifestly unfounded, and restricting appeal procedures. In several European countries, applications are taken by police authorities who, in some cases, make decisions and, in others, pass on the transcript to central authorities. (The question of the *competence* of police or immigration-enforcement officers to properly assess refugee claims has become a matter of growing concern to the international community.) Applications are rejected in some countries as inadmissable on the grounds that protection is available elsewhere. In other countries, appeal procedures are not available to people who entered the country illegally, and in some cases, rights of appeal may be exercised only after the claimants have left the country.

Considerable amounts of energy are being applied to tightening up of procedures: the result is the denial of universally accepted norms for the determination of refugee status, i.e., personal interviews of all refugee-status seekers by fully qualified central authorities and appeal procedures for unsuccessful applicants before rejection from the country.

The obvious solution to the problem is to allocate sufficient personnel and resources to refugee-status determination bodies to enable them to accomplish their task fairly and within a reasonable period of time. One needs to ask seriously whether a country's refusal to take this logical step is based on lack of resources or lack of will to fulfil international responsibilities.

Denial of Permanent Residence

Different countries use various administrative procedures to keep the refugee in limbo. There is a growing tendency to provide refugees with authorization to remain temporarily, pending either their settlement in another country or their return to their country of origin. Temporary protection then becomes a rather shaky bridge or holding arrangement between flight and return to country of origin. All refugees want to return, and many do, in time, but this bridging period poses serious problems for the refugee when normal residency rights are withheld. It curtails, in varying degrees, freedom of movement, the right to work, the right to acquire property, the right to family reunification and the right to belong to a new community. Most advocates for refugees continue to support the principle of ensuring that the recognized refugees be given the right to apply for permanent residence — a right that recognizes the intense need of the refugee to establish new roots and to resume normal ways of life, even if only until such a time as he or she decides to return to the country of origin. The choice should be the refugee's.

Conclusion

Mr. Moussalli, the Director of International Protection, in his statement to the 34th Executive Committee of the UNHCR, made a comment that sums up in part the increasingly apparent reluctance of the Canadian government to make changes to its already over-

burdened and generally respected determination procedures. "Fortunately for refugees, and for the development of refugee law, many countries have successfully resisted this restrictive current and continue to maintain their liberal policies on behalf of refugees. But it must be recognized that it will become more and more difficult for these countries to maintain this attitude if the other States in their region continue to raise obstacles and to send on to other countries the asylum seekers whom they are no longer willing to accept.

Canada's concern that its "liberal policies" will attract increasing numbers is a real one, but the solution is not to become part of the problem, but part of the *solution*. Canada has a critical role to play in assuming dynamic leadership for creating a climate that supports the collective efforts of all states to uphold and strengthen principles for the protection of refugees on the basis of international solidarity and co-operation.

As long as the world continues to produce refugees for whom Canada is a logical and accessible country of asylum, the arrivals of spontaneous asylum seekers will persist. The days of Canada's response to refugees only as one of resettlement of carefully selected refugees from first-asylum situations is over. The need now is to ensure admission and fair procedures for all refugee claimants. Canada must also provide desperately needed international leadership in establishing adhered-to norms for fair and humane admission and determination procedures.

The primary issue is the refugee's need for protection and a new community. For it is the refugee, of course, who will bear the consequences of new measures of restrictiveness — a tragedy in light of the constant waves of refugees emanating from all parts of the world. They face the terrible decision to flee and the precarious future of an unwelcome, suspect, asylum seeker.

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Kathleen Ptolemy is a refugee consultant with the Anglican Church of Canada.

Toronto Refugee Affairs Council

On April 25, 1983, several agencies met to develop procedures to facilitate the access of Toronto agencies serving refugee claimants to federal funds that had been received to assist indigent claims.

It became apparent at this meeting that there was a strong concern to deal with the policy issues underlying the indigent claimants' situation and a need for a larger group to monitor and advise on the Claimants' Assistance Program. For this reason, and given the fact that Toronto is a major claimant and refugee settlement centre, the agencies decided to establish a coalition of Toronto-based agencies and groups serving the refugee community to strengthen each other in their shared work and concerns.

The *Toronto Refugee Affairs Council — TRAC* has emerged from this process. It is composed of voluntary agencies and groups providing settlement, legal and admission assistance to refugees and refugee claimants in the metropolitan Toronto area. It's purpose is to act as a focal point for sharing of information among Toronto-based agencies/groups; to exchange information with other regional or local groups; and to promote public awareness of refugee needs, collective advocacy on specific issues, and co-ordination of services and advocacy. The Council meets once a month and convenes one annual general meeting per year. The following is a sample of issues/concerns the Council has looked at to-date:

- family reunification — status of common-law wives and children
- refugee claimants' work authorizations
- welfare assistance for refugee claimants
- an emergency shelter for refugees
- improvements to existing English-language courses for refugees.

The Executive Committee of the Council consists of four officers and two members at large:

Chairperson
ANTONIO SARZOTTI
(Catholic Charities — Immigrant & Refugee Services)

Vice Chairperson
NANCY POCOCK
(Friends Service Committee)

Secretary
EMILY CARTWRIGHT
(St. Peter's Centre)

Treasurer
MIRANDA PINTO
(St. Boniface Multicultural Centre)

Member at Large
STEPHANIE THOMAS
(Centro de Gente de Habla Hispana)

Member at Large
ADOLFO PURICELLI
(United Menonite Church).

Models of Change in Canada's Refugee Status Determination Process

by Barbara Jackman

It is not possible here to outline all criticisms of the refugee-status determination process. Many of these criticisms are directed at secondary issues arising from the actual practices followed by the Immigration Commission — problems with work authorizations, welfare, settlement assistance and other such matters. Rather, I will attempt only to outline the primary concerns with the present process and to put into context the proposals for change.

The concerns fall primarily into two categories — the need for a fair process, which has been characterized fundamentally as a need for an oral hearing, and the need to control frivolous or abusive claims made to gain time in Canada or to work in Canada legally. In these cases, the primary criticisms have centred on the following problems:

1) Unless the claimant is allowed an oral hearing on the second stage of the process, he/she has no opportunity to present his/her claim in person to the tribunal who ultimately considers it.

2) Claims to refugee status can only *lawfully* be made when the claimant is in the immigration-enforcement stream, i.e., in an inquiry. Therefore, violations of the Immigration Act (1976) are implicitly encouraged in order to bring the claimant within the inquiry stream. Further, enforcement officials are responsible for the handling of refugee claims, although a determination of refugee status is a decision that is separate from immigration-enforcement decisions.

3) In practice, the present process is unweildy. This, coupled with limited manpower resources within the Immigration Commission, has resulted in long delays (sometimes a year or longer) in the decision-making process. The increasing number of claimants has further aggravated the delays.

4) Any person coming into or already in Canada may make a refugee claim. The lengthy processing delays have resulted in frivolous or abusive claims in some cases, by individuals seeking to remain longer in Canada or wishing to obtain work authorizations.

5) Settlement services have only recognized, in a limited way, the needs of refugee claimants during the lengthy time these claimants must await a decision on their claims. With the passage of time and with increasing pressure resulting from the needs of claimants, limited provincial and federal services have been made available. But assistance has been spotty and varies from area to area. The lack of legal status in Canada pending a decision has compounded the difficulties encountered by claimants.

During the six years that the present refugee process has been in existence, long debates and discussions have taken place between church, community and legal groups and with the Immigration Commission officials. The debates have tended to focus on the need for more equitable treatment of claimants counterposed against the fear of encouraging more frivolous claims by improving the treatment accorded to claimants.

This discussion process has resulted in a proposal for legislative change submitted by the Concerned Delegation of Church, Legal & Humanitarian Organizations to the Immigration Commission. The proposed changes are intended to improve the present system while taking into account immigration officials' fears with respect to their responsibility to ensure that the objectives of the *Immigration Act* are met.

The key elements of this proposal are outlined below:

i) The refugee-status determination process should be completely separated from the immigration process through the establishment of a Refugee Review Board.

ii) Any person arriving or already in Canada, regardless of his/her status, should be permitted to make a refugee claim. A screening process should be set up to permit timely acceptance of clearly meritorious claims and rejection of clearly unfounded ones. This could be accomplished by an initial interview of the claimant by a staff officer of the Refugee Review Board, who would be empowered to recommend to the Board acceptance of the claim, to refer the claim to an oral hearing, or to recommend to the Board rejection of the claim. Time limits should be imposed within which the interview must take place. Counsel, an interpreter if required, and recording of the interview should be part of this process. The staff officer's report to the Board should be made available to the claimant.

iii) One Board member would review the officer's report where outright acceptance is recommended and confirm the recommendation or refer to an oral hearing.

- An oral hearing for all claimants so referred would be before a three-member panel of the Refugee Review Board. Right to counsel and an interpreter, along with other rights associated with judicial proceedings, would be guaranteed. The transcript of the initial interview with the staff officer would only be available where there was a dispute about its contents or about the claimant's testimony.

- Where the staff officer has recommended outright rejection of a claim,

the claimant would be given a prescribed time period within which to respond to the officer's recommendation and report. The transcript of the interview could be requested first if there is a dispute about its contents. The officer's report, the claimant's reply and the transcript, if requested, would then be considered by a three-member panel of the Board, who would confirm the recommendation or refer to an oral hearing.

iv) All decisions of the Board would be final, subject only to judicial review.

v) Strict and limited standards should be set out for the rejection of manifestly unfounded claims, for which no oral hearing would be allowed. Recommendations by staff officers to reject a manifestly unfounded claim without a hearing should be limited to cases where:

- the claim discloses no evidence of a fear of persecution for one of the grounds set out in the Convention definition of a refugee.

- the claim clearly indicates that the evidence has no foundation in fact, such as in cases where the claimant is suffering from mental illness and the fear of persecution originates from the affliction rather than any external or real cause, or the person alleges involvement in incidents which never occurred.

- the claim is a second claim and no new evidence is disclosed, in which case the Board could review the first negative decision.

- the claim is made by a spouse and the evidence discloses nothing new or independent from the rejected spouse's claim, in which case the Board could review the original negative decision.

vi) The Commission would have a role in the determination process limited to the oral hearing, in which a Commission representative would have a right to cross-examine and participate in the hearing. The United Nations High Commission on Refugees should receive a copy of the staff officer's report and a transcript where prepared, should be advised of all proceedings and should be entitled to participate both in the oral hearing and in reply to a recommendation that a claim is manifestly unfounded.

vii) Eligibility for authorization to work should be granted only to those claimants whose cases have been recommended favourably or referred to an oral hearing by the staff officer. Essentially, this would mean that no claimant would be permitted to accept employment until after the initial interview with the staff officer has taken place, and, in the case of claimants where the staff officer has recommended rejection of a claim as being manifestly unfounded, not until the Board has decided to refer to an oral hearing. Because the right to work is so restricted, it is essential that the initial determination by the staff officer and the Board review of manifestly unfounded claims be made within a short period of time. It is thought that these restrictions would discourage abusive claims and at the same time would eliminate the need to control the issuance of work authorizations based on financial need for all other claimants.

viii) All cases rejected by the Refugee Review Board process should continue to be referred to the Special Review Committee for consideration on humanitarian and compassionate grounds.

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The above is a resumé of the Concerned Delegation brief which was presented to the Minister of Employment and Immigration in December, 1983. A response to the brief has not yet been forthcoming from the Minister, nor has the requested meeting with the Minister been scheduled to discuss the brief. Changes to the refugee-status determination process were promised by the Minister of Employment and Immigration in June, 1983, but none have yet been forthcoming.

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Palestinian Refugees —

Latest Reports

Food: The general distribution of foodstuffs to some 800,000 refugees was suspended in September 1982 except in Lebanon where special arrangements were made for those affected by the crisis.

Housing: UNRWA has provided assistance to more than 13,000 families in repairing or rebuilding their homes (in Lebanon).

Registration: UNRWA has initiated a new registration system to provide one card for each person rather than one card per family to be completed by mid-1984.

Protection: As of June 1983, the Commissioner-General of UNRWA, Olof Rydbeck, considered the prospects bleak for increased civilian security in Lebanon.

Book Reviews:

Guy S. Goodwin-Gill, *The Refugee in International Law* (Clarendon Press, Oxford, 1983), 318 pp.

by William Angus

With the somewhat belated acceptance by Canada in 1969 of the 1951 U.N. Convention relating to the status of refugees, and legislative confirmation first in an amendment to the *Immigration Appeal Board Act* during the 1973–74 session of Parliament and subsequently in the new *Immigration Act, 1976*, the potential for Canadian courts, tribunals and lawyers to resort to international law for direction and guidance on refugee law seemed promising. But as noted by Wydrzynski in his recent text on Canadian immigration law and procedure, this development has not occurred for a variety of reasons. One of the inhibiting factors undoubtedly has been the lack of an authoritative common law reference work. Grahl-Madsen's classic volumes have been referred to occasionally by Canadian courts, but its civil law style may have contributed to the relative paucity of reliance on it in Canadian legal forums.

In this context, the arrival on the common law scene of Goodwin-Gill's examination of the refugee in international law may be timely and significant. The author is introduced on the jacket as a legal adviser at the Office of the U.N. High Commissioner for Refugees (UNHCR). He explains in his acknowledgements that some of the book's origins lie in his research for the D.Phil. degree at Oxford. Australia provided the setting for its writing, although input from New Zealand sources is also recognized. Thus the work under review has quite strong common law ties from the Commonwealth, which are reflected in its text and footnotes.

Part One of the work commences with a review of events leading up to the definition of the term refugee in the 1951 Convention and the 1967 Protocol, then considers some regional and municipal developments. A chapter analyzing the Convention definition and its application in the determination of refugee status follows. This should be of considerable interest and benefit to lawyers practising before Canadian courts. For example, there is an illuminating discussion on the difficult problem of whether claimants who fear prosecution and punishment for conscientious objection to military service fall within the Convention definition, or whether they are merely in breach of laws of general application and therefore do not quality as Convention refugees. Canadian case law is divided and somewhat confusing on this issue. Recourse to the experience of other legal jurisdictions might prove helpful in resolving our difficulties on the question.

Loss and denial of refugee status and benefits are addressed in the next chapter. Again, examination of this topic is of interest to the Canadian scene. The *Immigration Act, 1976* does not ensure that the Convention refugee, once so found, will have a right to remain in Canada. Curiously, he or she must be "lawfully in Canada" in order to have the right to remain. Of course, the refugee has no status in Canadian law on arrival, or if a visitor, must have lost that status in order to initiate a formal refugee claim toward the end of the inquiry proceeding. Attempts in the *Boun-Leau* and *Dmitrovic* cases in the Federal Court of Appeal to challenge the offending provision of the *Immigration Act, 1976* failed, although the particular facts in these two cases may have dictated a result not inconsistent with international law. Nevertheless, this quirk in our present immigration legislation would seem generally to be contrary to our international obligations. Goodwin-Gill discusses the situations in which voluntary acts of the individual or a change in circumstances will lead to a loss and denial of refugee status and its benefits, setting forth three particular types of undeserving cases. His discussion of these issues should be helpful in arguing against extensions of the *Boun-Leau* and *Dmitrovic* cases.

For the Canadian reader, the next two parts of the book may be of less immediate interest. Nevertheless, they provide a focus on the international legal situation of refugees. Part Two covers asylum. It commences with an examination of the principle of *non-refoulement*, that is, "that no refugee should be returned to any country where he or she is likely to face persecution or danger to life or freedom". In Goodwin-Gill's view, the evidence supports a conclusion that the *non-refoulement* principle forms part of general international law. Of particular concern is the admission and non-rejection of a refugee claimant at the frontier of a state. On its face, the *Immigration Act, 1976* accommodates the principle of *non-refoulement*. One might question, however, whether the Canadian policy of instructing its visa officers in other countries not to issue visas to those who might make a refugee claim on arrival in Canada, meets with the spirit and intendment of the principal of *non-refoulement*. Goodwin-Gill also examines *non-refoulement* in the particular situations of extradition, expulsion and illegal entry, recognizing that certain situations will be exceptional and not amount to *refoulement*.

There follows a chapter on asylum which is essentially an historical review of its origins and development in international instruments and acts, leading up to the failure of the 1977 U.N. Conference to resolve the essential issues. In the penultimate section of this chapter, Goodwin-Gill discusses the intractable problems created by recent large-scale movement of refugees. Essentially the 1951 Convention concerned itself with the individual refugee seeking asylum. Traditional approaches to asylum, although still relevant, have proved to be insufficient in recent years to cope with political and humanitarian problems of refugees on a massive scale. That states in proximity to the source of refugees will now provide temporary asylum, but not a lasting solution, is hardly surprising. Although the principle of *non-refoulement* may be observed, no easy resolution of the extremely difficult problems created by

mass movement of refugees is in sight beyond the hope for eventual voluntary repatriation to their state of origin.

Protection is the title of Part Three of the book. A chapter is first devoted to protection through international institutions, chiefly the Office of the United Nations High Commissioner for Refugees (UNHCR), and the protection of refugees through general international law and treaty. Treaty standards are afforded a descriptive chapter of their own.

In the ensuing chapter on protection in municipal law, Goodwin-Gill examines procedures for the determination of refugee status and the criteria for the grant of residence for 7 states in some detail and 28 others summarily. Canada is one of those states selected for summary treatment. An examination of that summary description, which runs to less than a full page, is reassuring in that it is reasonably accurate and gives rise to only a few quibbles, understandable in the light of such brief treatment. At the present time, Canadian procedures for determination of inland refugee claims are being subjected to enormous pressures created by the volume of claimants, and also criticism on grounds of procedural fairness. As this review is written, the prospect is that a commission or committee will be established within the next few weeks to advise the Federal Government as to how the current procedure should be changed to cope with obvious deficiencies in the present scheme. Goodwin-Gill's moderately detailed and also his summary descriptions of the procedures in other states would undoubtedly form a useful starting point in the search for viable alternatives.

Conclusions are set forth in a separate Part Four. By and large, they repeat much of what has already been said in earlier chapters. One may perhaps be excused for reflecting that the author's concluding remarks might have been more effectively conveyed in two or three pages instead of sixteen. A further seventy pages of various Conventions and other documents, a list of selected resolutions relating to refugee issues adopted by the U.N. General Assembly, and a list of states party to the more important Conventions and Protocol are included as annexes at the end of the book, together with a selected bibliography and comprehensive index. They should prove of value to anyone engaged in research on refugee issues.

Goodwin-Gill's comprehensive and well organized treatment of refugee issues represents a substantial contribution to the relatively limited literature emanating from a common law jurisdiction on the international law aspects of the refugee. It deserves a place in the library of anyone with a serious interest in the developing law relating to refugees.

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Elisabeth Burgos
Me llamo Rigoberta Menchu y asi me nacio la conciencia
Barcelona: Argos Vergara, 1983

by Alex Zisman

Compared to the news coverage of El Salvador and Nicaragua, the prevailing turmoil in Guatemala (and particularly the predicament of its refugees) has commanded relatively little international attention. Even when clashes between the army and the "subversives" are reported and the grim and dramatic situation of the refugees is recalled, few efforts are made to bring into perspective and examine the deep-rooted causes of this social unrest.

The autobiographic testimony of Rigoberta Menchu, as relayed to the ethnologist Elisabeth Burgos, proves rewarding as a source of understanding of the present reality experienced by the Guatemalan people. Over 60% of Guatemala's population is indigenous, belonging to twenty-two ethnic groupings of Maya descent — a people who have fiercely managed to preserve, throughout the centuries since the Spanish conquest, their cultural patrimony and identity.

Rigoberta Menchu, a Quiche Indian in her early twenties who only began to learn Spanish (the language used in these memoirs) when she was twenty, provides an amazingly rich and revealing personal account of the customs, traditions and beliefs of her community. She portrays the convoluted relationship between her people and other segments of the population, ranging from the *ladinos* or *mestizos* to the oligarchy, a ruling elite comprised most prominently by landowners and the higher echelons of the army. As the daughter of a peasant leader in a country where land provides the main means of subsistence to the indigenous population, Rigoberta Menchu gained insight more readily than others into the subtle nuances governing the social and class intercourse in Guatemala before committing herself to work as a catechist.

In Guatemala, semi-feudal traditions are still predominantly observed, particularly in the countryside. Even the military (which, except for the decade culminating with the overthrow of Jacobo Arbenz Guzman in 1954, has managed to exercise a steady rule for over a century) has learned that possession of land is one of the most effective guarantees of status and power.

Disillusionment with rulers such as Kjell Legaraud, who promised land reforms only to turn these promises against the peasants, and dispossession of the richest land by prepotent landowners in connivance with the army, led the peasants (comprising mostly the indigenous population) in the mid-seventies to strengthen their organization.

Human-rights violations began to escalate as the organized peasants began to

(Continued on p. 22)

step up their demands for social justice. The response of the government was anything but mild. The army would gather suspects and publicly torture them in a gruesome display of skills and techniques, before burning them alive. That is how one of Rigoberta Menchu's younger brothers was killed. Her father, after being imprisoned several times, perished in the aftermath of the takeover of the Spanish embassy on 31 January 1980. Her mother was kidnapped, continuously raped by her military abductors, tortured, mutilated and then left under a tree in the countryside to agonize and die. The military, which prevented the removal of her corpse, only left, satisfied, months afterward when vultures and dogs completed their job.

During the eighties, things in Guatemala have been going from bad to worse (*"de Guatemala en guatepeor"*, as the saying goes in Spanish) — this, despite facetious disclaimers by the present government of Mejia Victores, which succeeded, after extending the repression of organized labour, in imposing a subtle reign of terror in the country. Behind a façade of orderliness, substantial numbers of the local population, especially in rural areas, are being coerced through the establishment of Civil Patrols to experience an Orwellian nightmare of close control over fellow citizens and particularly over returning refugees, many of whom are automatically labelled by the army as subversives and placed on constantly updated death lists. The underprivileged, in particular, lead a life of fear and anxiety permeated by secret accusations and arrests, strictly enforced curfews and the inevitable "disappearances". The indigenous population is harassed through the disruption of crops and forms of attrition which force many peasants to flee to avoid facing the more ominous fate of a carefully orchestrated form of genocide.

Rigoberta Menchu's autobiography is a reminder of the tragic fate of a nation and of the conditions which grudgingly force its people to become refugees.

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Luciuk Lubomyr Y. *Heroes of Their Day*: The *Reminiscences of Bohdan Panchuk*.
The Multicultural History Society, Ontario Heritage Foundation, 1983, 168 pages.

by *Tanya Basok*

In his memoirs, Bohdan Panchuk depicts the part of his life, between 1941 and 1952, when he was actively involved in uniting all Canadian Servicemen of Ukrainian origin and later, in aiding Ukrainian victims of World War II found all over Europe. This review will focus on the latter.

Ukrainian displaced persons in Europe did not form a homogeneous group of refugees but consisted of people of various backgrounds including: "voluntary" workers recruited by the Germans, their families, Ukrainians who had joined the German Army, slave workers in the Todd engineering organization, members of the Organization of Ukrainian Nationalists, and those fleeing the Red Army returning to the Ukraine. Many of them were subjects to forced repatriation to the Soviet Union, according to the Yalta Agreement. Panchuk estimates the number of refugees at 2 1/2 million - about 1 million of whom were repatriated or went back voluntarily to the Ukraine, and about 35,000-40,000 of whom immigrated to Canada.

Activities of the Central Ukrainian Relief Bureau and of the Canadian Relief Mission for Ukrainian refugees included: release of Ukrainians from prison; straightening of camp arrangements; transferring of people from one DP camp to another; making available certain supplies to people in hospitals; preventing forced repatriation of Ukrainians to the Soviet Union; and finally, resettlement of Ukrainian refugees in Australia, New Zealand, Great Britain, Canada, the United States, and South Africa.

The book presents a good picture of internal cleavages within the Ukrainian community. The Ukrainians are divided along geographic lines into those who came from East Ukraine and West Ukraine. Politically, Ukrainians comprise leftists and communists on the one hand, and supporters of the Ukrainian Nationalist Liberation movement on the other. In its turn, the Organization of Ukrainian Nationalists is subdivided into Banderivtsi and Melnykivtsi. In the religious sphere one finds members of the Orthodox religion juxtaposed to Greek Catholics. Although not explicitly recognized by the author, Canadian Ukrainian organizations competed somewhat against American ones in their domain of influence overseas. And finally, much to the author's regret, Ukainian refugees who settled in Canada after World War II formed a segment distinct from the rest of the Ukrainian community. Although the pre-existing community had built an institutional base to include various groupings among the refugees, the newcomers chose to found organizations of their own.

The theme of internal divisions within an ethnic group becomes recurrent in Ethnic Studies. Panchuk presents a good ethnographic illustration of a "one vine many branches"* model of an ethnic community.

The book is full of names and bibliographic details of people who were associated with Panchuk in his overseas activities. These people have a sentimental value to the author and his ex-colleagues and an historic value to students of the Ukrainian refugee movement. To a non-Ukrainian reader, such an abundance of names seems, perhaps, redundant. Not enough emphasis was given by the author to the refugees themselves, their background and causes of their movement (with the exception of the Appendix on the Division of "Galicia"). Neither does the author present a *profound* account of the activities of the refugee-rescuing Ukrainian organizations.

The book is an historic monument to the "Heroes of Their Day", those people who sacrificed their interests to serve the cause of the displaced persons of Ukrainian origin. Bohdan Panchuk was one of them.

*The expression is borrowed from Judith A. Nagata's article "One Vine, Many Branches: Internal Differentiation in Canadian Ethnic Groups", in Elliott, J.L. ed. *Two Nations, Many Cultures. Ethnic Groups in Canada;* 173-82.

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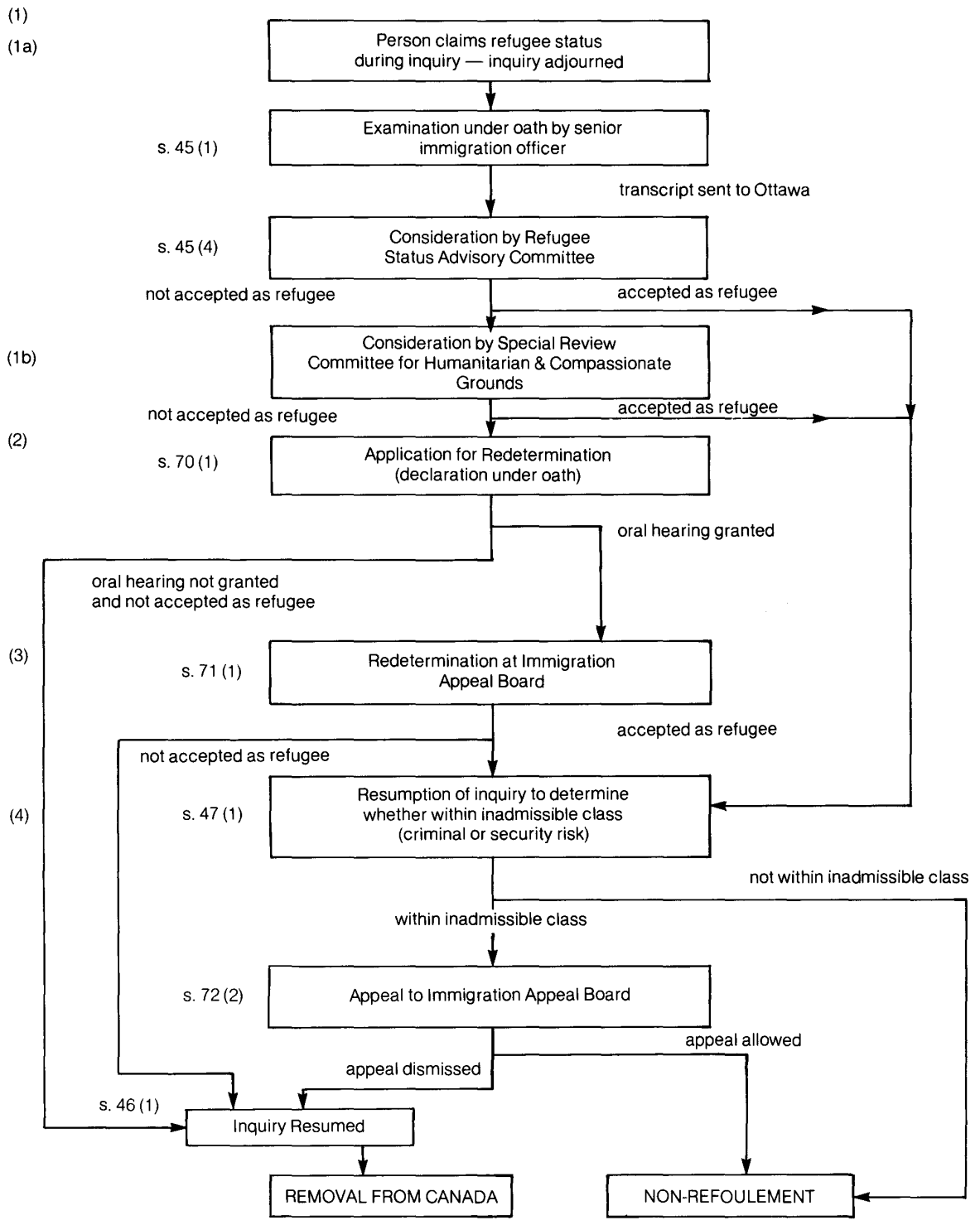
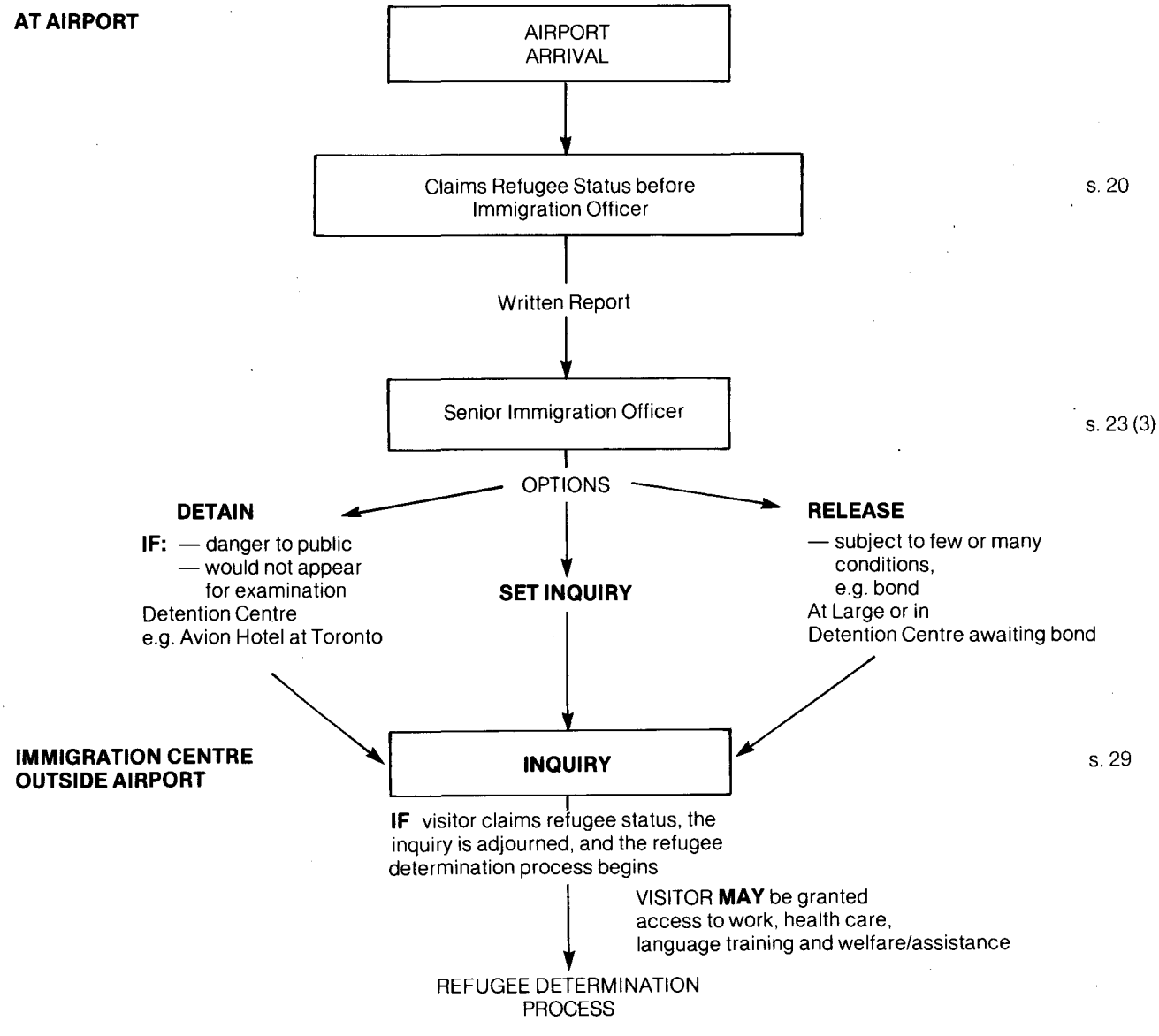
REFUGEE CLAIM PROCEDURE



CANADA'S PERIODICAL ON REFUGEES
REFUGE
c/o Refugee Documentation Project, York University
4700 Keele Street, Downsview Ontario M3J 2R6

Postage paid at Scarborough, Ontario
under Second Class Mail Registration No. 5512

REFUGEE CLAIMANT PROCESSES ON ARRIVAL*



*In addition to claims of refugee status on arrival, a significant fraction of claims are made by persons who arrive in Canada and spend time here on legitimate status such as visitor or student. Such persons enter the process at an immigration centre before an immigration officer.