REFUGEE UPDATE

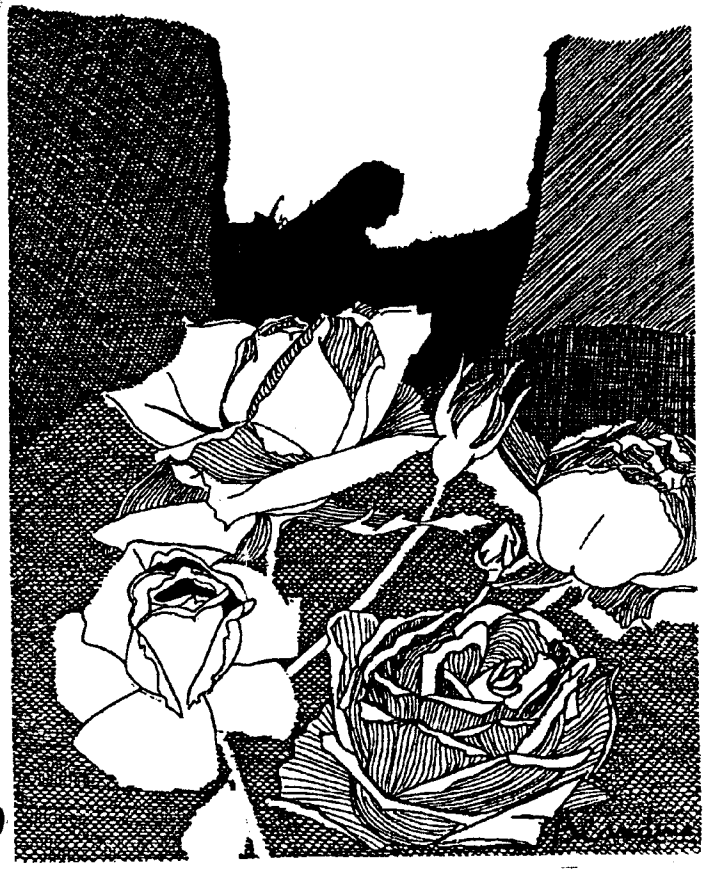
ISSUE NO. 22 A PROJECT OF THE JESUIT CENTRE FOR SOCIAL FAITH AND JUSTICE (JESUIT REFUGEE SERVICE/CANADA) SUMMER, 1994

INSIDE

ACCEPTANCE UP!

ARRIVALS

Arrivals of refugees and asylum-seekers continued with an almost steady trend during the first four months of 1994. The accumulative figure, however, shows a downward trend especially if we compare with the total figure for the first four months of 1992: only 6,402 claims were made during the first four months of 1994, compared with 6,844 and 12,514 for the similar periods of 1993 and 1992 respectively (see the Chart below).



"HOPE OR MIRAGE?" BY BLANDINE WITH THE COURTESY OF HUMAN RIGHTS INTERNET

REFUGEE CLAIMS MADE AT BORDERPOINTS AND INLAND OFFICES

MONTH	1992	1993	1994
JAN	3845	3413	1744
FEB	3200	980	1530
MAR	2915	1339	1617
APR	2554	1112	1458
MAY	2427	1174	-
JUN	2582	1402	-
JUL	2620	1640	-
AUG	2777	1799	-
SEPT	3417	2020	-
OCT	3256	1856	-
NOV	3822	1847	-
DEC	4305	1934	-

SOURCE: CANADA IMMIGRATION

IRB ACCEPTANCE RATE UP TO 57%

On May 20, 1994, the Convention Refugee Determination Division of the Immigration and Refugee Board (IRB) released its statistical summary on refugee determination for the first three months of 1994. It shows a shift, for the first time since 1990, from

CONTINUED ON PAGE 2.

the continuous trend of the decline of the IRB acceptance rate:

1989	76%
1990	70%
1991	64%
1992	57%
1993	46%
1994 (JAN. 1 TO MARCH 31)	57%

This unprecedented shift could, among other things, be attributed to the recent changes within the IRB and attempts to respond to the nation-wide NGO's concern about a just refugee determination system in Canada.

In its News Release, the IRB has declared that 67 percent of the claimants had been granted Convention refugee status in the first quarter of 1994. This figure should not be mistaken as the rate of acceptance. In all its previous News Releases, the IRB itself calculated the rate of acceptance by comparing the number of accepted claims with the total of claims rejected and withdrawn.

During the first three months of the current year, 5,488 claims were referred to IRB's refugee division - compared with 14,068 claims referred to CRDD during the similar period of 1993 (the year of the elimination of the initial hearing stage under the new legislation).

Across Canada, 1,700 - or 25 per cent - of all decisions were rendered through the expedited hearing process. Through this process, the Board identifies claims which are sufficiently straightforward to allow for rapid positive determination by the CRDD.

A conspicuous trend is the increase of the rate of withdrawal or abandonment - 1165 withdrawn claims compared with 685 in the first quarter of 1993 (70% per cent increase).

On March 31, 1994, some 17,000 claims were pending a hearing or final decision. This shows a 14 percent drop compared with 20,000 pending claims at the end of 1993.

The figures below give the distribution of claims heard to completion by the IRB among the regions of Canada. They demonstrate that Ontario and Quebec remain the key points of arrival for asylum seekers.

	NO. OF CLAIMS	PER CENT
ONTARIO	3,365	55.3
QUEBEC	1,814	29.8
OTTAWA/ATLANTIC	499	8.3
B.C.	276	4.5
PRAIRIES	127	2.1
TOTAL	6,081	100.0

The major source countries continued to be Sri Lanka, Somalia, the Republics of the former USSR, Iran, India, Israel, Pakistan and China. Lebanon, Romania, Peru and El Salvador have ceased to be among the top 12 countries. They have been replaced by Bangladesh, Yugoslavia, Haiti and Guatemala. Other major refugee producing countries were Peru with 117 claims, Afghanistan: 115, Romania: 111, El Salvador: 94, Zaire: 92, Iraq: 74, Sudan: 73, Algeria and Kuwait: 67 each.

All top refugee-producing countries except for Guatemala have faced increased rates of acceptance. Following is the percentage of increase for all top-12 refugee-producing countries:

INCREASE IN ACCEPTANCE RATES FOR JAN. TO MAR. 1994 IN COMPARISON TO DEC. 1993

PAKISTAN	23%	ISRAEL	12%	CIS/USSR	2%
CHINA	20%	HAITI	11%	GUATEMALA	-2%
BANGLADESH	19%	SRI LANKA	7%		
IRAN	14%	YUGOSLAVIA	4%		
INDIA	12%	SOMALIA	2%		

TOP TWELVE COUNTRIES - (JANUARY 1, - MARCH 31, 1994)

1994 RANKING	1993	CLAIMS	WITHDRAWN/ ABANDONED*	HEARING REJECT*	HEARING ACCEPT*	ACCEPTANCE % 1993	1994
1. SRI LANKA	1	976	60	123	917	76	83
2. SOMALIA	3	832	44	25	809	90	92
3. CIS/USSR	2	483	87	343	370	44	46
4. IRAN	4	338	32	55	286	63	77
5. INDIA	7	235	123	143	124	20	32
6. ISRAEL	6	216	36	244	92	13	25
7. BANGLADESH	-	182	31	52	132	42	61
8. YUGOSLAVIA	-	155	108	44	136	43	47
9. PAKISTAN	5	148	44	88	122	25	48
10. CHINA	9	146	20	93	69	18	38
11. HAITI	-	137	8	24	120	68	79
12. GUATEMALA	-	134	28	58	67	46	44
OTHERS:	-	2099	544	966	1328	36	46
TOTAL:	-	6081	1165	2288	4572	46	57

* INCLUDING CLAIMS MADE IN 1993 WHICH WERE AWAITING A DECISION AS OF JANUARY 1994.
SOURCE: IMMIGRATION AND REFUGEE BOARD AS COMPILED BY JRS/CANADA.

A TIME TO ...

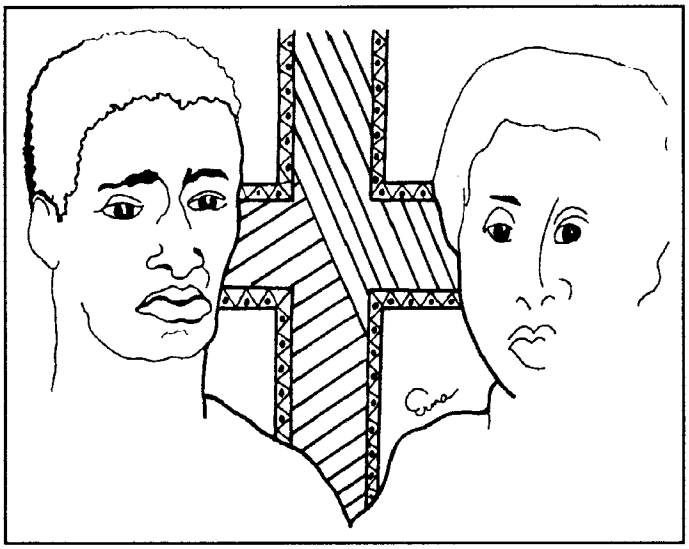
A TIME TO REST, A TIME TO MOURN, A TIME TO GIVE THANKS, ANGER, JOY, FEAR, ANXIETY, THANKSGIVING, SURPRISE.

The emotions run the gamut. They're all there, in this work with refugees, in the effort to understand the issues that affect refugees' lives.

There's not a day that goes by when people across this country working to protect refugees and help them get settled in their new home are not deeply moved and touched at the core of their being. The refugees seem to burst into their lives; they and their children ease into the deeper reaches of their hearts. Relationships and in some cases deep friendships form as the days slip by, sometimes imperceptibly and at other times painfully slowly.

The joy is thick, its taste sweet and rich, when a claimant is accepted. The sadness and bitterness are palpable when someone is rejected.

But when do we take the time to put words, music, dance, and gestures to these emotions? When is there time to sit quietly, in silence, to let the feelings seep in between the marrow and the bone, to acknowledge to ourselves and to one another that we are happy or sad, angry or in mourning at the rejection of another claimant who is our friend?



Yes, the challenge facing people and groups working with refugees is keeping up with the changes in policy, finding more effective ways of convincing Canadians of the need to keep Canada a country open to refugees. The challenge we face also has to do with finding more effective ways to protect refugees in the face of a government bent on keeping refugees out.

But there's another challenge, one which can be described as spiritual. And it has to do with finding ways of telling the story of the faith, hope and love that permeate the work with refugees. It has to do with finding the words to say how this work and the people who come as refugees are in the process of changing our identity, both as individuals and as a country.

This work is about faith, about the trust we have in each other in the face of incredible pressure to keep refugees out of Canada. It's about the trust and respect that builds up between those who are refugees and those seeking to help them. But it's also about the need and the difficulty to seek forgiveness for those moments when the faith, the trust and the respect have been broken.

This work is about hope, hope for a future when our friends who come as refugees will be welcome. It's about hope in a world where people won't have to flee for their lives, where children can grow up as children.

This work is about love, the willingness to open our hearts to be alternatively expanded and broken by the people who come into our lives as refugees. Expanded by their enthusiasm, resourcefulness, and joy; broken by their disappointment, by the rejection they often daily experience here in Canada.

To say that the challenge we face as people accompanying refugees, in whatever way, is spiritual, is to acknowledge that this work is fundamentally about human relationships whose character has a transcendent quality, moving beyond or cutting through the myriad of cultural, organizational and personal differences that also make up who we are.

Do we find — indeed, do we make — time to celebrate, to give thanks, to shed tears over these relationships? For we enter into them and this work, which we call refugee work, first and foremost as persons, as men and women, as children. If we lose sight of this basic starting point, we run the risk of forgetting who we are and what we are about.

A recent example of where refugee workers came together, was in May, when people from southern Ontario, Calgary, and the U.S. gathered for reflection, sharing, and celebration of their work with refugees. Co-sponsored by the Refugee Assistance Association of Fort Erie and the Jesuit Centre, the retreat was a time to rest, to give thanks, and to remember the tremendous gift that refugees are for our lives.

It is precisely such gatherings that allow for renewal of our spirit, and enable all of us to face the very real challenges of providing protection and assistance.

ASC TO DISCONTINUE

The 1991 ASC (Alliance of Sanctuary Communities) conference in Philadelphia was the first in which there was serious discussion about whether the Alliance should continue. In subsequent Steering Committee meetings, the question became whether the ASC could continue. Our never plentiful funds were evaporating. When our appeals to ASC supporters failed to resolve our financial situation we tentatively decided to disband. The response to the survey sent out by the Steering Committee validated that decision.

That the ASC ran out of funds was not a sign of failure. The Alliance was created to lend organization to the Sanctuary Movement. Unfortunately, the Sanctuary Movement defied all attempts by the Alliance - or anyone else - to organize it. What made the ASC worthwhile was its tendency to build bridges between Central Americans and North Americans; and between local sanctuary groups - few of whom would have been in contact otherwise. Contributions declined and attendance at the annual conference dropped off, but countless relationships had been formed through the ASC, and these connections continued to play an important role in the work of those who remained in the struggle.

The Sanctuary Movement succeeded because it was not a U.S. movement on behalf of Central Americans but rather a joint effort of North and Central Americans to cure the sickness here that caused the suffering there.

The movement's dependence on the refugees' presence was evident when scores of North Americans left the movement following a sharp decline in the number of Central Americans seeking to live in sanctuary.

Many of the relationships that foster continued solidarity are well in place. In the Sanctuary Movement's classroom, the Central Americans were superb teachers. They showed us that a nation that deemed itself the light of the world was an accomplice to unimaginable cruelty. They showed us the power of their peoples in the face of this onslaught.

The Sanctuary Movement put the faces and voices of the oppressed peoples of Central America in the minds of millions of North Americans. We brought about the ABC agreement, which forced the INS to acknowledge and ameliorate its discriminatory policy toward Salvadorans.

We are frustrated because history cannot keep up with our dreams, but we are hopeful because today is not like yesterday. Impunity continues, but the masks the torturers hide behind are being slowly pulled away before the world.

AN EXCERPT FROM DAVID GRIFFITHS' ARTICLE IN ASC NEWSLETTER

AN ANALYSIS OF THE DAVIS-WALDMAN STUDY

OF POST-DETERMINATION REVIEW MECHANISMS

BY: RON SHACTER*

The authors of the study make several excellent recommendations: abolishing the very restrictive post claim review process (PDRCC) for unsuccessful refugee claimants, a fair review on humanitarian and compassionate grounds by officers independent from the enforcement branch of Immigration, an internal appeal of decisions by the Convention Refugee Determination Division, the continuation of two person panels for hearings by this Division, the jurisdiction to be given to it to reconsider its negative decisions when there is a change in country conditions since the initial decision on the refugee claim; and finally, that international human rights obligations (the right not to be tortured, for example) be respected in "H and C" decision-making.

The interim measures suggested concerning landing rejected claimants from Somalia, Haiti and China are also long overdue. However, subjecting their landing to normal admissibility requirements, e.g., not being unable or unwilling to support themselves, is problematic. Many of these claimants have never worked or do not speak English or French. It makes little sense to strive to give status to people who are not removable by keeping them indefinitely in limbo. They should be exempted from section 19(1)(b) of the Immigration Act.

Concerning other refused PDRCC claimants, the interim measures proposed relating to the use of NGOs to screen "generalized risk" "H and C" applicants is also problematic. NGOs would hardly be able to deal with the volume involved. In addition, this proposed role would undermine the NGOs' advocacy function. NGOs would become in effect decision-makers, part of the bureaucracy of the Department of Citizenship and Immigration, excluding certain applicants from possible acceptance on "H and C" grounds, fulfilling a role which should be performed by the Department. In the past the private Bar, for example, has provided the Department with a list of urgent cases to be processed in the backlog. In the future the CCR would be, according to the Hathaway model, involved in recommending potential IRB members. However, these roles do not involve **decision-making** on the **merits** of individual **cases.**

The expedited process suggested is problematic (please see the chart below). The creation of a new Board Examining Officer to decide expedited cases is unnecessary and not cost efficient. If an IRB appointment process based on merit were introduced, surely a single Board member could effectively conduct an expedited

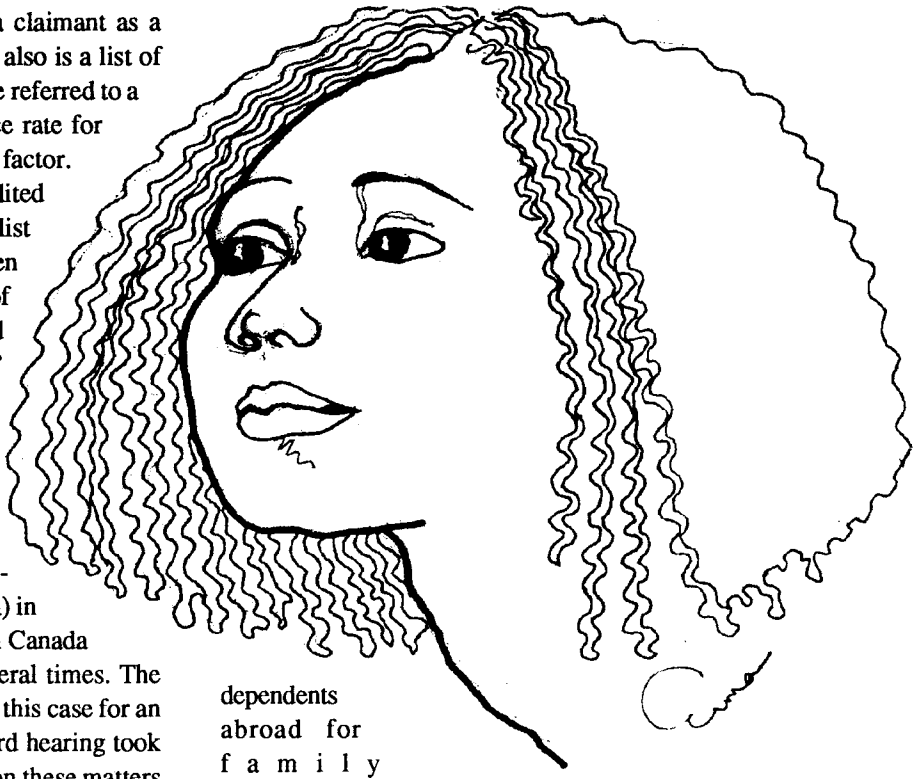
interview and should be empowered to accept a claimant as a Convention refugee at this stage. What is needed also is a list of clear and fair criteria to determine when claims are referred to a member in the expedited process. The acceptance rate for claims from the country involved should not be a factor. Otherwise, Nigerian claims will never be expedited because of their low acceptance rate. In addition, a list of groups at risk in each country should not be seen as exhaustive. A Sri Lankan woman of sixty years of age should not be excluded from the expedited process because she is not from the "target group" of young Tamil males.

Finally, Board members should be involved in determining whether a case is referred to the expedited stream. They will have, assuming proper selection criteria, an adequate understanding of the Convention refugee definition. I recently represented a Tamil claimant who never made a claim a) in the U.S., where she resided for four years, or b) in Canada until 1993, where she had previously visited several times. The RHO supervisor told me he could not recommend this case for an expedited interview because of this. The full board hearing took **one hour:** the members asked for an explanation on these matters from the claimant. **Five minutes** were spent on this subject at the hearing. Why could this case not have been expedited, at a great saving in resources for the system and stress for the claimant?

Another problematic recommendation in the Davis-Waldman study is the authority given to the IRB to accept claimants on "H and C" or generalized risk criteria at the **expedited** stage in addition to the Convention refugee determination jurisdiction. It might make more sense to focus on non-removable groups at this stage. Chinese claimants are non-removable but their acceptance rate is 20%: surely referring them for landing on "H and C" grounds at the expedited stage is an efficient use of resources.

The main difficulty with generalized risk assessment at the expedited stage is that many claimants meet both this test and the Convention refugee definition. There may develop a tendency to accept, for example, Somalis or Sri Lankans on "H and C" grounds, the assumption being that a generalized risk situation more aptly describes claimants from these countries than the Convention refugee definition. One will surely ask what difference this makes to a Somali who will most probably one way or another be accepted for landing within Canada.

The answer lies in the many benefits attached to Convention refugee status such as protection from return to the country of origin and exemption from medical inadmissibility provisions for the claimant and dependents abroad and from the landing requirement that one not be unable or unwilling to support oneself. Another advantage for Convention refugees relates to quicker family reunification. They and their dependants abroad are processed simultaneously for landing and may be issued immigrant visas at the same time (one to two years from Convention refugee acceptance). In the case of "H and C" applicants, no processing of



dependents abroad for family reunification (one to two years) can begin until the applicant in Canada is landed (one to two years from acceptance on "H and C"grounds).

The generalized risk assessment may be more appropriately undertaken as part of the **safety net** by the IRB, at the postclaim stage. For example, a failed claimant from Somalia could be accepted on "H and C" grounds by the Refugee Appeal Division as facing a generalized risk of threat to safety in that country.

Finally, there are three areas in the report which require clarification. Firstly, does the Refugee Appeal Division have jurisdiction to deal with errors of fact? This category is not mentioned by the authors. Secondly, does this Division have the authority in ordering further evidence from the parties to have them appear before it? It would seem more cost efficient to allow parties to make oral submissions or testify before the Division if the latter sees fit rather than sending the matter back for a rehearing before the C.R.D.D. The Refugee Appeal Division would already have studied the case: they may need clarification from the parties as to the contents of **new evidence** presented to it (affidavit material, newspaper articles).

Thirdly, the jurisdiction of the Case Review Officer is unclear. Why house this person at the IRB to facilitate access to the Documentation Centre if the jurisdiction given does not involve generalized risk assessment but other "H and C" criteria, e.g., family dependency?

There thus remain many issues to be addressed and resolved. This study is an important step in this process and hopefully it will be used as a foundation for a system which will have a real "safety net" for refugee claimants while also being cost effective.

* RON SHACTER IS A STAFF LAWYER AT PARKDALE COMMUNITY LEGAL SERVICES.

EXPEDITED PROCESS

CURRENT SYSTEM	HATHAWY MODEL	DAVIS-WALDMAN MODEL
- informal interview is needed	- paper review is possible	- paper review is possible
- universal screening	- universal screening	- universal screening
- right to counsel	- right to counsel	- right to counsel
- RHO recommends (Member rubber-stamps)	- RHO (Conference Officer) recommends: DC (Deputy Chair) decides	- B.E.O. (Board Examining Officer) decides
- geographical specialization	- geographical specialization	
- criteria: (no complex legal/factual issues; credibility problem; inconsistency with country conditions; acceptance rate for country)	- no criteria mentioned	- no criteria mentioned
- profiles of groups at risk	- no profiles mentioned	- no profiles mentioned
- 1-3 weeks for positive decision	- no time limit	- no time limit
- re CR definition alone	- re CR definition	- re generalized risk or CR definition
- if RHO does not recommend, Board Member does not have power to accept through expedited process	- if RHO does not recommend, DC does not have power to accept through expedited process	

THERE'S A BIG DIFFERENCE

BETWEEN A REFUGEE AND AN IMMIGRANT

OTTAWA SLAPS FEES ON REFUGEES

As one who has spent more than 13 years working with refugees, and several years in oppressive countries which produce refugees, I am profoundly disturbed by Immigration Minister Sergio Marchi's decision to charge refugees $500 to apply for permanent residency in Canada.

Mr. Marchi has been quoted as saying that imposing this fee "puts successful refugee claimants on an equal footing with immigrants."

This statement is quite misleading. I would hope that Mr. Marchi knows the difference between people turned into refugees, currently fleeing death in Bosnia, Rwanda or the death squads of Central America, and immigrant business-people fleeing nothing, but who have chosen to come to Canada for any number of reasons.

Genuine refugees flee for their lives and leave their countries because they have no choice and are usually forced to leave everything behind.

In my 13 years of working with refugees, I can affirm that the vast majority arrive in Canada with very few, if any, material assets. Most, even highly skilled professionals in their own countries, have to learn English. As they do not have Canadian credentials or papers in either trades or professions, obtaining work is very difficult.

Moreover, the vast majority of refugees worldwide are women and children who need every cent they have just to survive.

Many refugees have been forced to leave their children behind and so need money for them. Some families have waited four, five or more years to be united with their children because they lack funds.

My own religious congregation has helped many families and recently we, and a local ecumenical group, have established a fund to reunite refugees with their children. These are the people from whom Mr. Marchi wants to extract $500.

There is something profoundly punitive in this decision against refugees who have already suffered losses of family, home, culture and country.

As someone who really hoped for some signs of conscience and compassion, loss of cynicism and more honesty from a new Liberal minister of immigration, I am very disillusioned and disappointed.

To act with justice, dignity and compassion in the present political climate demands conscience, conviction and courage.

SISTER AGNES WARD, OUTREACH CO-ORDINATOR, SISTERS OF ST. JOSEPH, HAMILTON.

DECISIONS FROM THE FEDERAL COURT OF APPEAL

The following are excerpts from decisions of the Federal Court of Canada, reviewing decisions of the IRB (taken from Lexbase national fax network for immigration practitioners).

FEBRUARY 28, 1994

[Reopening: factors to consider]

Wetston, J.:[...] It is evident that there are a number of competing values in determining whether or not to reopen a hearing. For example, the finality of tribunal proceedings versus the opportunity to have new or additional evidence which may affect the tribunal's findings. However, this is an application for judicial review and must be examined in the context of the denial of the motion to reopen. Fundamentally, did the Board member exercise this discretion in a manner which allowed the applicant an opportunity to have the new evidence heard and assessed by an authoritative body (Grewal v. M.E.I., AT 589)? Did the Board member interpret his role correctly? Did he also assess the appropriate jurisprudence? Did he address the question of natural justice and the right to be heard? Did he assess whether the new evidence might render the original decision a nullity? In my view, the answer to all these questions is yes. Accordingly, the application for judicial review is dismissed.

MARCH 7, 1994

Cullen, J.: [...] The principal problem with Board's decision is the total lack of analysis of documentary evidence. [...] The Board rested its decision on her lack of knowledge of others who had been persecuted and the theory that victims of a civil war are not refugees. The board must consider all the material before it and since there is no evidence that it did, this is an error of law which warrants referring the matter back to redetermination. [...]

MARCH 9, 1994

Cullen, J.: [...] At the outset of the hearing, the Board informed the applicant that she need not testify as to the rapes because the Board was accepting them as fact from the applicant's PIF. However, the Board then found that the rapes were not connected to the applicant's involvement in the march and hence her political opinion. Since this was clearly a basis for the negative decision, she should have been given an opportunity to testify as to the rapes and the circumstances behind them. [..] The next area is the Board's conclusive finding that help and protection was indeed available for her had she sought it. [...]

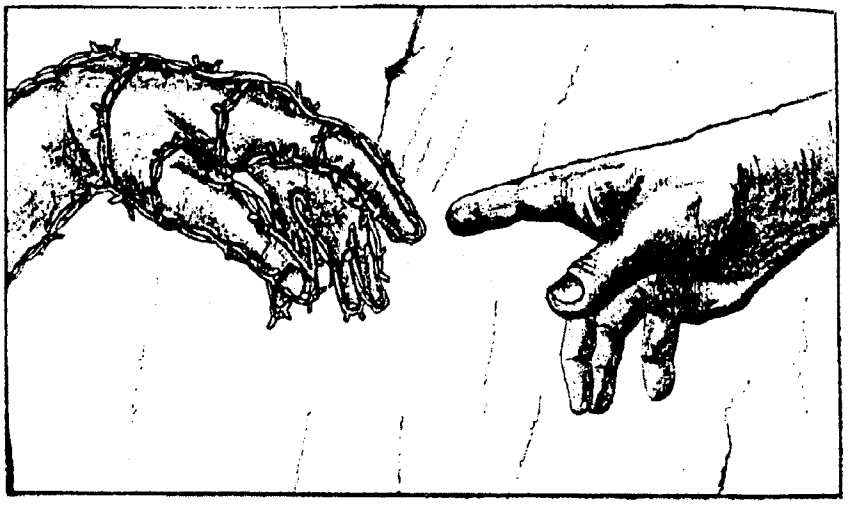
As to the applicant's lack of an attempt to seek protection, the Supreme Court stated in **Ward v. N.E.I. (1993)** 2 S.C.R. 689, that there is no need for the applicant to seek protection of the state where the applicant can show that such an attempt would be useless. I believe such may be the case here, as it was the police security forces who raped her in the first place, thus supporting the idea that seeking protection of the police would be useless [Appeal allowed, matter referred back to a differently constituted Board]

YOU SCRATCH MY BACK...

On April 21, 1994, the Minister of Citizenship and Immigration, Sergio Marchi, announced that citizens of the Republic of Korea would no longer be required to obtain visitor visas in order to visit Canada. The Minister stated that this decision follows approval by South Korea for Canadian Immigration officials to access Kimpo Airport in Seoul to help airline personnel in document screening of travellers to Canada. "The co-operation between our department and South Korean officials has been outstanding and we look forward to further collaboration with them on issues of concern to both our countries," Mr. Marchi said.

EUROPEAN REFUGEE NGO'S ISSUE POLICY STATEMENT

The European Council on Refugees and Exiles (ECRE) released in April a position paper entitled *A European Refugee Policy in the Light of Established Principles.* The paper is important for a number of reasons. One is that it represents a healthy exercise for refugee NGO's working in a rapidly changing context. Canadian NGO's would be wise to model a similar exercise around this document. Secondly, the document is concise yet holistic. Thirdly, it is rooted in the reality of refugees in today's Europe. It is informative with clear policy recommendations.



WITH THE COURTESY OF HUMAN RIGHTS INTERNET.

The April '94 document is, in fact, an updated version of a similar statement released in 1987. In the introduction, ECRE states that what prompted the new version is not a change in the needs of refugees, but the need to reflect major changes in Europe. Those changes are the rise of xenophobia and racism in Europe, the level of secrecy which has come to characterize inter-governmental policy development, and the introduction of new measures to control and deter the movement of refugees and asylum seekers. In this sense the document reads less as a statement of achievable policy objectives than it does as a record of how refugees and asylum seekers have lost ground in defending their rights seeking protection in Europe.

On the question of **racism and xenophobia,** ECRE states that the recession, high unemployment and alienation in a rapidly changing world have caused discontentment and a search for scapegoats which "is exploited more or less explicitly by political parties for electoral purposes in all European States... A dislike of foreigners among some sections of some populations is often referred to by governments when they develop policies toward refugees and, in particular, measures which seek to deter asylum seekers. In this hostile environment refugees are often portrayed as being a burden to the state, a risk to state security, a threat to the demographic structure of the host country, even as criminals." Similar portrayals have been heard and continue to be heard in Canada.

Included in the concern about secrecy in **inter-governmental policy formation** is the lack of parliamentary scrutiny, and the exclusion of the UN High Commission for Refugees from these discussions. Canada subscribed to this secrecy agenda through Bill C-86 in 1992, which included a measure to the effect that intergovernmental agreements on migration could be entered into without consulting Parliament. Under the heading of Democratic and Judicial Control, ECRE recommends that all such agreements should be subject to parliamentary scrutiny, to judicial control, and to the active inclusion of the UNHCR and NGO's in their formulation.

The report goes through the sad litany of new control and deterrence measures in Europe - a list familiar to Canadian refugee activists. The idea of **"safe country of origin"** has emerged in the intergovernmental process and is used by states to rapidly reject the refugee claims of persons from certain countries. ECRE reminds us that this "recent invention...has no basis either in law or in any other discipline," and they argue that the concept contravenes the Geneva Convention definition of a refugee. ECRE's concerns about **"safe third countries"** concepts - where a claimant passed through and could have made a claim - are similar to those which Canadian NGO's have held since the concept was implemented in Canada in 1989.

On the issue of **"protected zones"** - where people remain in a protected zone within their own state, ECRE stipulates that persons should not be forced to such zones, that they should remain free to seek protection elsewhere, and that the existence of such zones should not be used to reject asylum claims. **Visa restriction and carrier liability** are criticized as measures designed to intentionally frustrate the objectives of the Geneva Convention. Specific attention is also given to **"restricted zones"** - usually in airports, not defined in international law, where asylum seekers may be denied lawful rights, detained, refused the right to make a claim, denied legal assistance, and even forcibly returned to the place they fear persecution. Other deterrence issues in the ECRE statement include **rejection at the border, border officials, fingerprinting**, and **detention.**

Proposals concerning **Fair and Efficient Procedures for Determining Refugee Status** will be familiar to Canadian refugee

workers: universal access to an oral hearing before a competent body, access to counsel, a meaningful appeal. On the **Return of Rejected Asylum Seekers,** ECRE draws attention to a 1992 agreement on practices of expulsion among Immigration Ministers of the European Union. Readers should note that Canada has been actively participating in intergovernmental discussions around return agreements. ECRE recommends that procedures for removing nonrefugees should include: access to counselling, respect for the person's preferred method of return, assistance toward reintegration, active monitoring of return programs and the security of returnees once returned.

In its concluding remarks, ECRE argues that safeguarding the institution of asylum is one important element in a strategy to prevent the causes of refugee movements. It acknowledges that other immigration policies must be developed to manage non-refugee movements. But its final point is that refugees themselves and the international system of refugee protection depend and rely on a commitment by states to the universality of human rights and the inviolability of the human person. In naming in such a clear manner the many ways that European asylum and refugee policy currently contravenes this principle, ECRE has demonstrated at least its commitment to address the protection crisis.

BACKLOG CLEARANCE PROGRAM

FINAL REPORT

In March 1994, Citizenship and Immigration Canada Published its final report on the Backlog Program. The following is an excerpt from the report.

On December 28, 1988, the Minister announced that the backlog of an estimated 85,000 refugee claims that had accumulated since 1986 would not be dealt with by amnesty. Rather it was decided that the backlog would be cleared on a case-by-case basis. The Backlog Clearance Program was to begin immediately and be completed within two years.

The acceptance rates broken down by Region/Office are as follows:

ATLANTIC & PRAIRIE:	73%	QUEBEC:	69%
MISSISSAUGA:	68%	B.C./YUKON:	67%
ALBERTA:	65%	TORONTO:	55%

The acceptance rates for the top ten nationalities are as follows:

TRINIDAD & TOBAGO:	29%	SRI LANKA:	95%
IRAN:	87%	EL SALVADOR:	81%
PORTUGAL:	18%	GHANA:	84%
NICARAGUA:	74%	INDIA:	58%
LEBANON:	83%	FIJI:	54%

When the program was announced, the Minister made the commitment to all refused cases before removal to ensure that not one would be removed if there were sufficient humanitarian and compassionate grounds to warrant landing from within Canada. As of May 30, 1993, a total of 8,416 were reviewed. The Minister's delegate approved 706 cases to be processed from within Canada for humanitarian and compassionate grounds and there was no intervention on 7,710 cases for an approval rate of 8.4%.

Nationally, to the end of the program, over 29,200 investigations had been conducted on behalf of claimants who could not be located. Of these, 18,200 were found and processed. Warrants for arrest were issued for the remaining 11,000 and entered into the Canadian Police Information Centre (CPIC). The national investigations success rate was 62%.

Data on backlog detention were recorded from April 1989 to March 1992. During this period a total of 431 persons were detained for total of 4,823 days, an average of 11 detention days per person.

To the end of February 1991, of the 1,296 removal orders issued only 299 or 23 percent were confirmed removed.

Cumulatively, to June 15, 1993, confirmed removals totalled 56 percent of removal orders issued.

No-shows for removal and the issuance of warrants for arrest for removal will continue to generate investigation and removal activities well into 1994.

What will follow is the breakdown by age of the people accepted in the Backlog:

1-18	15%	18 - 25	29%	26-30	24%
31-35	19%	36-40	10%	41-45	5%
46-50	3%	51 AND MORE		4%	

The Breakdown by decision is as follows:

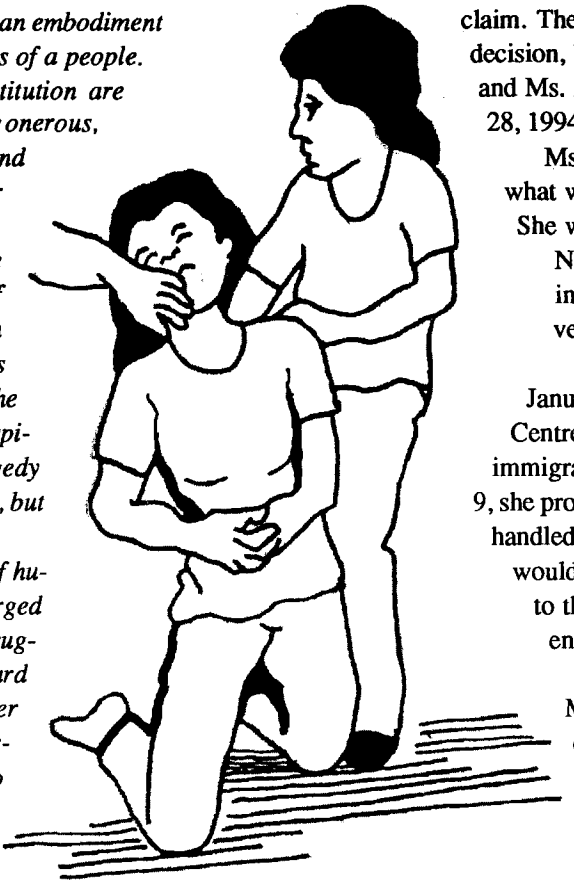
ACCEPTED CREDIBLE:	32540	(34%)
ACCEPTED HUMANITARIAN:	30305	(34%)
WARRANTS/DISPOSITION:	11161	(12%)
VOLUNTARY DEPARTURE:	12042	(13%)
REMOVAL/DETENTION:	10172	(11%)

The Backlog was completed with a total cost of $142.3 million.

DRUGGING OF DEPORTEES

Government is supposed to be an embodiment of the values and aspirations of a people. Those who inhabit that institution are granted a responsibility that is at once onerous, delicate, and important to the lives and destiny of those who come under their control.

That is why when we hear the following story of such an abuse of power it is no wonder one's stomach turns and head spins. This story is about a pregnant woman who had the ill-fortune to fall into the hands of despicable and unruly civil servants, a tragedy not only for the woman and her child, but for the integrity of the state.



On April 22, 1994, a coalition of human rights activists in Montreal charged Immigration officials with forcibly drugging a pregnant African woman aboard a February 23 flight to make it easier for them to deport her back to war-ravaged Zaire. This act, according to the Montreal Coalition, is "only one particularly flagrant example of hundreds of grave human rights abuses regularly committed by the immigration agents who deport people from Canada."

Human rights coalitions have made a complaint about this situation to the Minister of Immigration.

The drugging of the woman came to light only because once back in Africa she wrote about it in letters to a relative in Canada and to local refugee rights groups. Human rights lawyer Stewart Istvanffy has directed a petition to the Inter-American Commission on Human Rights in Washington. Following is a summary of the petition with special thanks to Mr. Istvanffy.

*

The applicant arrived in Canada on August 12, 1989 and claimed refugee status on October 22, 1991 at Moncton, New Brunswick. She came to Canada on a student visa and while here in Canada she learnt that she would have problems if she returned to Zaire.

Her refugee claim was heard on October 1, 1992. She did not have the services of a lawyer because the province of New Brunswick does not provide legal assistance for refugee claimants. She presented her case alone and very poorly.

Ms. M. was refused refugee status on March 15, 1993 because of a lack of credibility and a lack of supporting evidence for her claim. The applicant applied for leave to appeal this decision, but leave was refused on January 25, 1994 and Ms. M. was arrested for deportation on January 28, 1994.

Ms. M. had serious problems after she found out what was happening in Zaire during her absence. She was hospitalized in a psychiatric hospital in New Brunswick in early 1992 and in Montreal in October and December 1993 because of very serious psychological difficulties.

Ms. M. was held in the beginning (after January 28, 1994) in an Immigration Detention Centre on rue Saint-Jacques in Montreal. When immigration officials tried to deport her on February 9, she protested strongly after she was seriously manhandled by the immigration agents and the pilot would not let her on the plane. She was transferred to the Tanguay Prison for Women in the north end of Montreal.

Submissions were prepared to ask that Ms. M. stay here for humanitarian reasons during the month of February at the suggestion of the immigration officials. These were submitted early on February 22, 1994.

Ms. M.'s psychiatrist from the Jewish General Hospital sent a letter by Fax on February 22, 1994 to the immigration officials in charge of deciding her case saying that she should not be deported. He said:

"For humanitarian reasons, this woman must not be deported to Zaire. The political chaos there would make it impossible for her to maintain her mental functioning, and she would quickly become ill enough to place her survival at risk. It would also be impossible for her to be followed medically in the proper manner there, increasing her risk further. It is my professional opinion that to deport this person would seriously endanger her life."

Ms. M. is pregnant with the child of James Kuong. She was 6 to 8 weeks pregnant at the time this request was made. Mr. Kuong signed an affidavit saying that he wished to marry her and to sponsor her to stay here.

A request was made to the immigration authorities to postpone deportation until a full psychiatric report could be prepared and until all the facts of the case could be studied. This was sent to the head of the deportation squad on Papineau Street in Montreal in the afternoon of February 22, 1994.

Ms. M. was taken from Tanguay Prison early in the afternoon of February 23, 1994 without the request for humanitarian consideration having been studied. This request was not given any proper study before she was deported that night.

Ms. M. was drugged on three occasions against her will by immigration officials or on their orders in order to deport her, in spite of the fact that she was pregnant. These sedations were not performed by physicians and were imposed without the authorization of a court, as is required by Quebec law.

Ms. M. ceased taking all prescribed medication for psychological ailments upon learning of her pregnancy in early January 1994.

Zaire is in a state of chaos. It is almost in a civil war type of situation. Public order has broken down and there is no guarantee of protection for someone like Ms. M. She will not receive proper medical care in her country.

The following rights that are laid out by the ***American Declaration of the Rights and Duties of Man*** adopted by the Ninth International Conference of American States, Bogota, 1948, have been violated by the deportation of Ms. M. without there being any effective legal remedy to stop this:

I. Every human being has the right to life, liberty and the security of the his person.

II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction to race, sex, language, creed or any other factor.

VI. Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care, and aid.

XVIII. Any person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

XXVII. Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and international agreements.

There is no possibility of any effective remedy for stopping this type of deportation in Canada. The rights of people facing deportation in Canada are being systematically violated by the absence of any procedure to review these types of abusive decisions.

The Canadian Immigration Act and regulations provide for a Post-Determination Review (article 114(2) of the Act). The aim of this petition is to illustrate how these remedies are devoid of substance. Ms. M. applied for a Humanitarian and Compassionate Review on February 22, 1994, but was deported the next day without this request having been adequately studied. This occurred despite a letter from her lawyer requesting a full psychiatric evaluation and a letter from the psychiatrist advising very strongly against deportation.

In the case Ms. M., the pursuit of any further legal remedies within the Canadian justice system is pointless, as the claimant has already been removed from the country.

NEWS FROM EUROPE

AUSTRIA

A recent report elaborated by the UNHCR concluded that Austria cannot be considered as a safe third country. This implies that there is no guarantee that a person who is sent back by a European country to Austria (his/her country of transit), will be able to apply for asylum there. It is possible that this person could be sent on to his/her country of persecution. The Austrian authorities have sent back asylum-seekers to countries like Iran, Iraq or Syria where the death penalty and torture are practised.

UNITED KINGDOM

1. DECISION BY THE COURT OF APPEAL

On 20 April, the Court of Appeal ruled, by two votes to one, that it was enough for the Home Secretary to assert that a particular country, in this case Spain, was a "safe third country" to which two Moslem Somalis could be sent back. Such a deportation did not constitute a breach of the UK's obligations under the 1951 Geneva Convention on the Status of Refugees. In addition, the appeal procedure, during which no evidence was provided to support the claim by the Home Secretary that Spain was a "safe third country", "is not so contrary to the rule of fairness that the court should intervene to impose a duty on the Home Secretary" to provide such evidence.

The dissenting judge pointed out that the claim that Spain was a safe country "amounted to no more than the *ipse dixit* of the Home Secretary." The Court of Appeal authorised the applicants to appeal to the House of Lords.

2. AMNESTY

Churches are calling for an **amnesty for foreigners faced with deportation who have been living in the UK for 5 years, have a child aged over two and are self-supporting.** One of the persons whom they are supporting is a Nigerian who has lived in the UK for 13 years. He has taken sanctuary in a Baptist Church in east London since a deportation order was issued against him, his wife and 3 children. Two of his 3 children have serious ailments which cannot be treated in Nigeria. The person entered the UK as a student, and the Home Office has pointed out that if he wants to change his status, he and his family would have to leave the country and apply for re-entry from abroad.

SOURCE: MIGRATION NEWS SHEET, BRUSSELS, BELGIUM.

REFUGEE LANDING SELECTED ABROAD 1980 - 1993

COUNTRY OF LAST (CUMULATIVE)	1980-90	1991	1992	1993	TOTAL (GOV.)	TOTAL PRIV.	TOTAL INLAND*	TOTAL
1. VIETNAM	70625	3158	2255	1938	42696	34477	830	78003
2. POLAND	54799	10008	4776	780	20756	49557	58	70371
3. EL SALVADOR	17799	2213	1548	876	20756	49557	512	22436
4. CAMBODIA	18025	334	216	146	10144	8451	126	18721
5. LAOS	12281	978	43	3	3285	9951	69	13305
6. ETHIOPIA	9280	1748	1040	914	6217	6745	20	12982
7. CZECH & SLOVAKIA	9281	243	125	12	7220	2414	27	9661
8. IRAN	7841	905	535	341	6594	3011	17	9622
9. ROMANIA	6142	379	145	15	5237	1429	15	6681
10. USSR	5577	629	262	22	2710	3762	18	6490
11. IRAQ	2763	237	1180	2227	3696	2678	33	6407
12. AFGHANISTAN	4251	1023	623	381	2705	3527	26	6258
13. HUNGARY	5452	315	196	95	3196	2855	7	6058
14. GUATEMALA	3207	506	403	403	3825	474	220	4519
15. NICARAGUA	3975	132	40	21	3942	223	3	4119
16. GERMANY	1501	124	83	21	616	1112	1	1729
17. BOSNIA	0	0	72	1630	992	710	0	1702
18. SOMALIA	572	389	206	271	611	812	15	1438

* PERSONS IN DANGER QUICKLY BROUGHT TO CANADA AND PROCESSED HERE.

SOURCE: INTERNATIONAL HUMANITARIAN AND RESETTLEMENT DIVISION, DEPT. OF CITIZENSHIP AND IMMIGRATION AS COMPILED BY JRS/CANADA.

REFUGEE UPDATE

is published quarterly by Jesuit Refugee Service/Canada a Project of the Jesuit Centre for Social Faith and Justice

EDITORIAL BOARD: Colin MacAdam, Ezat Mossallanejad.

CONTRIBUTORS: Ted Hyland, SJ., Ron Shacter, Stewart Istvanffy, Sr. Agnes Ward.

ART DIRECTION: Patti Spezzaferro.

GRAPHIC: Erma Stultz.

EDITING: Jerald Owczar.

SUBSCRIPTIONS: 1 year/4 issues: individuals $10, institutions $14.
2 years/8 issues: individuals $20, institutions $28, bulk (20 or more) - $1/issue.

JESUIT REFUGEE SERVICE CANADA

947 Queen Street East
Toronto, Ont., M4M 1J9
Canada
Tel: (416) 469-1123; Fax: (416) 469-3579