REFUGEE UPDATE

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INSIDE

A RETURN TO THE ABHORRENT HEAD TAX

BY SHARRY AIKEN

The people of Sodom only became haughty on account of their bounty. They said "since gold and silver flows from our land what need we have of travellers? We do not require any visitors since they only come to diminish our substance". And so they issued a proclamation barring access from their city to all who were poor. This brought about the destruction of Sodom.

FROM THE RABBINIC TRADITION

A fee was imposed on all Chinese labourers who arrived in Canada between 1885 and 1923. It started at $50 and in 1903 reached $500. The "head tax" as it was known, has been widely criticized as a racist policy. Nevertheless a request by the Chinese community for the return of the $23-million raised from the program was rejected by the federal government last year. This year, as announced in February's budget, Canada has decided to levy an up front "right of landing" fee on all newcomers to this country. Unlike the Chinese head tax, but no less regressive, the new tax will apply equally to all immigrants, including Convention refugees, family members, skilled workers and investors.

This charge is on top of an existing $500 processing fee, which itself has caused immense hardship for significant numbers of people who cannot afford the price of permanent residence for themselves and their families. With the additional fee a family of four (two adults, two children) will now have to pay $3,150 to be landed in Canada. That's what an accountant earns in El Salvador in a whole year, and a nurse in Sri Lanka in three. The fee clear-

ly skews the immigration program in favour of wealthy people and wealthy countries. It runs counter to the stated goals of the Immigration Act which include family reunification as well as the protection of refugees, consistent with Canada's international legal obligations and humanitarian traditions.

Canadians currently pay much less to access other public "rights" and benefits: $50 for a criminal pardon, $100 for a first-time driver's licence in Ontario including all tests and a license valid for five years, $35 for a passport (expected to increase by other $20), $315 to register a corporation in Ontario and only $10 to register a firearm under the terms of the proposed gun control legislation.

INSTEAD OF MEETING ITS COMMITMENTS TO REDUCE THE COSTS OF LANDING FOR CONVENTION REFUGEES, THE FEDERAL GOVERNMENT HAS IMPOSED NEW CHARGES

Immigration Minister Sergio Marchi argues that the new landing fee is "a small price to pay to come to the best country in the world" and defends it as necessary to offset at least some of the $271 million cost of settlement programs. Yet the actual costs for other publicly funded programs are not borne so disproportionately by any narrowly defined user group. Those costs are shared by everyone and collected through the tax system, based on the principle that those with the most resources contribute the most. This is the cornerstone of social justice.

The federal government has attempted to assuage criticism of the landing fees by pointing to the proposed "loan option" and providing assurances that no one will be denied entry to Canada on the basis of poverty or employment. A careful review of the proposed scheme reveals, however, that only those who can demonstrate an ability to repay will qualify for a loan. In cases where a person is unemployed, the debt load of his or her immediate family is considered along with the immediate family's ability to repay the loan. If the refugee's family is no better off than herself, she will be excluded from accessing a government loan.

Poor people, particularly those from countries with low per capita incomes, will be unlikely to receive loans. Single women with children, large families and those with disabilities will be at a disadvantage. Private sponsorship of refugees by non-profit groups, a program Marchi pledged to revitalize, will become even more difficult. Eric Salmond is a member of an inter-church group in North York seeking to sponsor a Somali family from a refugee camp in Kenya. He is worried that the family will have difficulty meeting the financial criteria for loan approval. With the exception of refugees selected from abroad, the loans will be interest bearing.

Interestingly, some commentators have concluded that the costs of administering the loan program are likely to balloon far higher than the government's projections. It seems there's a good possibility that administration costs may defeat the program's explicit rationale.

For refugees who are approved for loans and are not deterred by the exorbitant charges, life in their new homeland will begin with a crippling debt. While studies, including the government's own Statistics Canada report published last year, have consistently proven that immigrants positively contribute to Canada's economic growth, an initial period for settlement and adjustment is critical to successful establishment. Up front fees fail to account for this reality. It is foreseeable that many will not even be able to participate in the full time language and orientation programs currently available as they will be forced to accept menial, low-skilled jobs in order to repay their loans as quickly as possible. An ill-conceived, short term gain for government coffers will compromise refugees' longer term potential for financial stability and establishment.

The new tax may also be a violation of international law. Article 34 of the U.N. Convention relating to the Status of Refugees, which Canada has ratified states:

> *"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."*

Instead of meeting its commitments to reduce the costs of landing for Convention refugees, the federal government has imposed new charges (See Ron Shacter, "Immigration Fees Hurt Convention Refugees", Refugee Update, # 23, 1994 at p. 10)

In the weeks following the budget announcement articles and editorials in both alternative and mainstream media across the country have condemned the landing fee. The chief editor of the Montreal Gazette concluded that the probable aim and the sure effect of the fee is the same as the race-based head tax levied earlier this century: "it will deter certain classes of immigrants." (March 1, 1995, B-2) As noted in a recent Toronto Star editorial (March 17, 1995, A-18), perhaps the worst aspect of the policy is that "it feeds into the mindless anti-immigrant sentiment that has surfaced during the recession". These days the government seems to be listening only to the clamour of right wing extremists who perpetuate negative stereotypes and racist myths about refugees and immigrants.

Meanwhile, advocacy groups have been busy voicing their opposition to the imposition of fees. Demonstrations have been planned and letter writing campaigns are underway urging the Prime Minister to rescind the tax. Opposition MPs and even some Liberal backbenchers have expressed concerns.

In remarks at an immigration law conference in Toronto on March 2nd, Marchi's parliamentary secretary Mary Clancy flatly stated that "we are not going to rescind this policy".

The imposition of the landing fees should not be viewed in

CONTINUED ON PAGE 10.

U.S. - CANADA SAFE COUNTRY AGREEMENT:
A LOOMING POSSIBILITY

ANALYSIS

"The intention of asylum-seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account...asylum should not be refused solely on the ground that it could be sought from another state"

FROM ARTICLE (6) OF THE CONCLUSION NO. 15(XXX) OF THE UNHCR'S EXCOM (1979 EXECUTIVE COMMITTEE, 30TH SESSION)

Canada is widely considered to be the initiator of the idea of reaching a Safe Third Country Agreement with the U.S. It has been a part of the restrictive policies of different Ministers. It was a major point of contention in the struggle against Bill C-55 in 1987. The clause remained in the legislation (Bill C-86) that came into effect on January 1, 1989, although no country has been placed on the list to date. The former Conservative government first proposed a Safe Third Country Agreement in the early 1990s. A draft Memorandum of Understanding (MOU) was drawn up, but went nowhere because of the change of administration in United States.

The Memorandum of Understanding was widely criticised by NGO's on both sides of the border for its lack of adequate safeguards. Concerns were raised about the lower standards of refugee protection in the United States and the MOU's lack of any process for the timely unification of refugee families, members of which may, for example, find themselves stranded in the U.S. while the remainder of the family is being settled in Canada.

When Mr. Marchi became the Minister of Citizenship and Immigration in November 1993, he repeatedly assured Canadians that he would not sign a Memorandum of Understanding with the United States unless he could be convinced that U.S. refugee processing meets Canadian standards. In an interview with *The Toronto Star*, he rightfully referred to the problems of entering into a deal with our southern neighbour: "any agreement for me would have to pass the test that the agreement is on a level playing field that respects our standards," Marchi said. "I don't want to sign an agreement that waters down our standards. If our standards are higher on immigration, then I expect the Americans will come up to our standards." (*The Toronto Star*, Nov. 28, 1993, p. E-4). He compared the U.S. negative records on granting asylum to Central Americans with the Canadian positive response and went so far to say that "in the case of the Central American example, I'd be very queazy about signing an agreement because we have a policy in this country of non-refoulement" (Ibid.)

Given this background, the NGO community was taken by surprise when the idea of a Memorandum of Understanding was resurrected prior to the visit of U.S. President Bill Clinton to Ottawa, February 23-24, 1995. During Clinton's visit it became apparent that the Immigration Department has prepared a new draft outlining the legal text of an agreement. The draft remains secret and attempts by refugee rights organizations to get a copy of it has so far failed.

One thing is clear: Canada and the United States are committed to seeking a Safe Country Agreement. Under the Joint Border Management Accord announced by Prime Minister Chretièn and President Clinton on February 24, 1995, "Specific Initiatives for Immediate Action" include "the pursuit of an agreement on sharing responsibility for asylum seekers." In his speech to the House of Commons on March 2, 1995, Minister Marchi said, "we are working diligently to reach an agreement with the United States and other nations which would stop so-called 'asylum shopping' while still ensuring protection to those in need" (CIC, *Statement*, March 2, 1995, p. 5).

The Minister is activating the MOU despite his initial statements and in the face of the fact that U.S. standards for refugee protection have even been lowered since the initial Tory efforts for a deal.

Despite a new Immigration Act signed by George Bush in 1990, American asylum procedures are still not independent from foreign policy and immigration considerations. The United States has hardly used non-discriminatory application of criteria in making refugee determinations. Throughout the 1980's only 1 to 3% of Salvadoran and Guatemalan claims were approved. The rate of refugee acceptance in the U.S. is 22% compared with 61% in Canada. Central American and Caribbean claimants are being denied asylum and deported back to their countries. Mr.

Bush mandated the interception and return of all Haitian boat people by the U.S. coast guards in his Executive Order of May 25, 1992.

The interdiction of Haitian refugees on the high seas and ill treatment of refugees from other countries (i.e. Cuban refugees in Guantanamo Base, California's notorious Bill 187) are continuing more vigorously under President Clinton. On June 21 1993, the U.S. Supreme Court decided to uphold the Clinton administration's policy of intercepting and returning Haitian refugee claimants without a hearing.

The United States does not share an obligation with Canada to uphold the Convention on Civil and Political Rights, the Convention against Torture or the Convention on the Rights of the Child. It is disturbing that human rights issues are not raised in bilateral discussions about signing a MOU.

It is appropriate to ask why Mr. Marchi has activated the MOU at this time despite his previous position on the issue? One possibility is that he is acting under pressure by the Immigration bureaucrats, for years the driving force behind the idea. In adopting their ideas, the Minister is also considering the MOU in the context of the Liberal government's policy of budget constraints (see Sharry Aiken, *A Return to the Abhorrent Head Tax*, in the same issue). It appears that the Minister has been influenced by the current climate of xenophobia, reflected in the Reform Party policy on immigration. There is no doubt that reaching an agreement with the U.S. is in line with Mr. Marchi's vigorous policy of interdiction and removals.

The US, apparently, does not get much out of such a deal. In reality, however, the agreement is part of a package of reforms, that will make the flow of people and goods across the border easier for both countries. In its news release, the CIC has concluded that the levels of tourism and border trade "are expected to increase as further progress is made under the North American Free Trade Agreement and with the globalization of the marketplace." This economic aspect of the Accord is complemented by its immigration component. In the same document, the CIC speaks about strengthening "enforcement including a continued focus on...the illegal and irregular movement of people." (CIC, *News Release*, Ottawa, Feb. 24, 1995).

It seems that Canada would probably offer more concessions to the U.S. government as a trade-off for a Safe Country Agreement: "This Joint Accord is an important beginning" (Ibid).

Besides, the United States is concerned about the refugee flows from Central and South America and might use the deal with Canada as a model for reaching a similar agreement with Mexico. In the words of the Inter-Church Committee for Refugees, an agreement such as this "only makes sense if one includes Mexico as the next signatory." (*Refugee Update*, No. 17, Spring 1993, p. 2).

The U.S. strategy is obvious: use Mexico's desire for a free trade agreement as leverage to get Mexico to undertake immigration enforcement on behalf of the U.S. As far as Central Americans are concerned, the U.S. border is effectively being moved south to the Mexico-Guatemala border.

If implemented, the Safe Country Agreement will negatively affect hundreds of refugee claimants coming to Canada; if they come through the U.S., they will be turned back to have their claims heard there. According to a government document "between February and December 1993, 58% of those making refugee claims on arrival came through the United States." (Immigration Canada, Annual Report to Parliament, *Immigration Plan 1994*, p. 27). This may also encourage Canada to come up with a still more restrictive refugee policy and to sign Safe Country Agreements with other nations. Canada is discussing similar agreements with Australia and European countries.

Judging by the backlog of 425,000 claims in the United States some observers, including Arthur Helton of the Lawyer's Committee for Human Rights in New York City, believe that the U.S. has little incentive to sign the deal. Experts seem to agree that there is disagreement between Immigration and Naturalization Services and the U.S. State Department on this issue. Undoubtedly, the possibility of signing such an agreement depends upon the pace of negotiation and the concessions Canada might be prepared to give to the U.S. An important consideration for United States is the feasibility of reaching a similar agreement (open or secret) with Mexico as a part of a package deal.

While negotiations are going on, refugee advocates should condemn the secrecy of the process and demand a public hearings on the new draft agreement before it is signed. NGO's and others with experience on refugee and human rights issues should be given an opportunity to comment on the proposed agreement.

Some of the key demands (as specified in documents issued by the Canadian Council for Refugees and the European Council on Refugees and Exiles) include:

- The MOU should not result in family separation.
- The Memorandum must include explicit guarantees for the applicant's access to a fair and efficient refugee determination process.
- It should provide the applicant with an effective opportunity to appeal against a deportation order.
- It should guarantee that claimants will not be bounced from on country to another without any state taking responsibility for their claims.
- The Memorandum should guarantee that prior to deportation the refugee claimant be provided with a document stating that the claim for asylum was rejected solely on safe third country ground.
- It should respect individual privacy.
- The principle of equality obligations should be guaranteed in the agreement. Canada and the U.S. must **ensure** equality in the joint granting of a refugee's right to asylum.
- As these rights are international, the agreement must accept some sort of international monitoring system.

If the safe third country episode becomes a reality, coordination between NGO's on both sides of the U.S.- Canada border (and maybe with Mexican NGO's) will be more imperative than ever. They will have to closely monitor developments to the south and combine their forces to enhance refugee protection.

GENDER JUSTICE

MID-TERM REPORT CARD

NAME: CANADA CITIZENSHIP AND IMMIGRATION

BY CHERYL CURTIS AND GLYNIS WILLIAMS

In 1993, the year of the gender consultations in immigration, gender was a hot topic. However, it was all but lost in the broad immigration consultations in 1994. The Minister of Citizenship and Immigration, Sergio Marchi, in his June 1, 1994 address to the Canadian Council for Refugees stated, "We are definitely making progress on one issue of particular concern to all of us here - the plight of refugee women." And now in 1995 as we reflect on gender justice in immigration, we wonder how far we have come? The work of Canada Citizenship and Immigration overseas and inland is evaluated here in report card style.

SUBJECT	EFFORT	ACHIEVEMENT
	B	B-

GENDER PROPORTIONALITY

COMMENTS:

You have been responding conscientiously to criticisms about how many women are selected. You have resettled 23% women heads of households between 1985 and 1991 - a statistic close to the UNHCR refugee camp reality of 27% women. Your grade will improve when you make more of an intentional gender proportioned effort in resettlement, addressing the gender bias in eligibility and admissibility criteria.

WOMEN AT RISK PROGRAMME C D-

COMMENTS:

Canada, you worked well with UNHCR and Canadian NGOs to create this commendable sponsorship programme to protect women most in need and those requiring extensive resettlement assistance. However, the numbers of women resettled under this programme have been too small to make this more than a symbolic gesture towards the urgent protection needs of women overseas. From the programme inception in 1988 to the end of 1994, only 280 cases have arrived in Canada representing approximately 750 people including family members. In addition, the review undertaken by Immigration Canada since 1993 has not been completed. Even Minister Marchi has acknowledged that the programme has not met its goals and needs improvement. You have yet to adequately respond to the Canadian Council for Refugees' recommendations to improve the programme - provide transportation grants, do medical examinations in Canada, do not re-interview, accept reputable NGo referrals, use the Refugee from Abroad Category (RAC) to expand the eligibility criteria, use reception centres to house women on arrival. Shape up Canada. This special programme should remain to address these special needs.

OVERSEAS ADMISSIBILITY CRITERIA FOR REFUGEES C- C-

COMMENTS:

Why persist in applying "successful establishment" criteria to a humanitarian programme? At least you have recognized that the greater the need for resettlement the lower the test for successful establishment should be. The successful establishment test is gender-biased, punishing women for the systemic disadvantages they encounter world-wide with regard to education, work, and participation in society. This gender-biased assessment tool perceives women as long-term burdens rather than resources.

IRB GENDER GUIDELINES A A-

COMMENTS:

Great work, Canada! These ground-breaking guidelines for women refugee claimants fearing gender-based persecution are an important contribution to the protection of women within Canada, and an inspiration to the rest of the world. However, former Board members have alleged that the guidelines make it easier for people to make up stories and be granted refugee status. These comments indicate that guidelines alone cannot change attitudes. Ongoing training and political will are the two key ingredients in ensuring that the guidelines achieve their goals in practice as well as on paper.

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DETENTION C- D

COMMENTS:

Improvement is noted in terms of facilities such as adding a children's playroom to detention centres in Montreal and Toronto. However, they are often locked and detainees are sometimes unaware of their existence. Numbers of women and children have increased and outdoor access is limited. Other concerns include the rough manner in which people are apprehended and transferred to detention prior to removal from the country. You have stated that pregnant women are rarely detained and then only for brief periods. In contrast, refugee advocates report detention periods of many months in the cases of some pregnant women.

POST CLAIM REVIEW D D

COMMENTS:

Much work is needed in this area. Minister Marchi has said that women who were refused refugee status before the introduction of the gender guidelines would benefit from the post-claim review process, where the guidelines would be considered. However, the way the system works, some women never get a chance to present their gender-related fears in this review. Also, commitment to gender issues seems to be lukewarm among programme managers. Statistics are not being kept that could provide a gender analysis.

CLAIMS BASED ON SEXUAL ORIENTATION C C

COMMENTS:

Some claims have been accepted based on sexual orientation, but ignorance and insensitivity are problems among some Board members. There are signs that the Immigration and Refugee Board will address these issues through training and documentation. Many lawyers and refugee workers are either unaware of these claims or openly discourage people from making them. Until this changes, a fair and accessible refugee determination system will be more a hope than reality.

RIGHT OF LANDING FEE F F

COMMENTS:

This fee, also known as the "head tax", will be very detrimental to the protection of refugee women. Since you consider women at high risk for transportation loans already, it seems unlikely they will be given loans to pay this fee.

CONCLUSION

Canada, your rhetoric is great, but you are consistently disappointing in application. Therefore, your marks for effort are generally higher than your marks for achievement. Nevertheless, "Bravo" for your leadership in naming the unique realities facing refugee women. Use your influence to engage allied countries in responding more effectively to the global reality.

Cheryl Curtis is Conference Minister for Christian Development & Social Justice, Toronto Conference, The United Church of Canada.

Glynis Williams is the Coordinator, Action Refugiès Montrèal, a shared ministry of Anglican and Presbyterian churches.

CANADIAN LANDMINES COALITION

INTENSIFYING ITS ACTIVITIES

BY ERIC GAGNON

MINES ACTION CANADA (MAC) members are scheduling activities for the months leading to the UN Conference reviewing the Convention on Inhumane Weapons, in Vienna in September 1995.

The Canadian Friends Service Committee will soon launch a national tour of 10 cities to talk about the impacts of landmines in Cambodia. To have them visit your community, contact Susan Reesor/Peter Chapman, (416)920-5213. The Montreal Raging Grannies added to their repertoire a song called "Killer Weeds", to the tune of John Brown's Body, about landmines. They're looking for new avenues to present it.

Worlds Vision Canada released the second issue "Voices", focusing on landmines in the world, Development and Peace's June issue of "Solidarite" will also be covering the issue. Other coming events: a national tour by Bruce Cockburn, on Mozambique and landmines; an Ottawa conference in September on "Landmines and Development in Cambodia"; the NFB is putting the final touch to a documentary on landmines in Cambodia due to be released in August.

For more information on landmines, on MAC, or to have your local MAC representative visit you, contact the MAC Coordinator, Celina Tuttle, tel: (613)233-9028

"DEEP CALLS UNTO DEEP"

(PSALM 42:7)

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Co-sponsored by the Anglican Diocese of Calgary, and the Jesuit Centre for Social Faith and Justice.

REMOVAL CONTINUES TO BE THE TOP PRIORITY FOR IMMIGRATION

In his 1990 annual report to Parliament, the then chairperson of the IRB, Gordon Fairweather stressed the need for increased removals: "We intend to be quite proactive and to remove and deport those who have no business in this country." (Minutes of the Proceedings of the Standing Committee on Labour..., Nov. 25, 1991, 6:24). The former Minister of Immigration, Mr. Valcourt, frequently emphasized removal and deportation. Since 1990, the Department of Immigration has been shifting its resources into areas of enforcement, intelligence and removals (see the table below).

FINANCIAL ALLOCATIONS FOR ENFORCEMENT (IN $ 1000)

FISCAL YEAR	AMOUNT
1988-89	29,186
1989-90	45,860
1990-91	66,626
1991-92	69,163*
1992-93	72,279
1993-94	55,270
1994-95	57,319**
1995-96	53,549**

* Forecast

** Estimate

SOURCES:

1. Employment and Immigration Canada, 1991-1992 and 1992-93 Estimates.
2. CIC, 1994-1995 and 1995-1996 Estimates (Complied by JRS-Canada).

Despite his initial promises on the implementation of a meaningful appeal and Humanitarian and Compassionate review for rejected refugee claimants, the Liberal Minster of Citizenship and Immigration, Sergio Marchi, has spared no opportunity to emphasize on his policy of interdiction and removal.

ENFORCED REMOVAL OF REFUGEE CLAIMANTS FROM CANADA

1989	385
1990	746
1991	2807
1992	4672
1993	4604*

* Projected from nine months data.

SOURCES:

1. Immigration operations - control and intelligence.
2. Citizenship and Immigration, National Removals Report (as completed by JRS/CANADA under Access to Information Legislation).

The above numbers give a glimpse of what has been happening to unsuccessful refugee claimants in Canada particularly since 1989.

The following table provides a picture of the different categories of removals and the number of removals from the different provinces in the year 1994:

NATIONAL REMOVALS REPORT
FROM JANUARY 1 TO DECEMBER 25, 1994

REGIONS	TOTAL REMOVALS	FAILED REFUGEE CLAIMANTS				
		DO	EO	DPO	DD	BKLG
Atlantic	118	2	2	8	10	1
Quebec	1125	117	151	79	143	61
Ontario	3776	312	420	75	218	704
Manitoba	57	0	0	0	0	1
Saskatchewan	25	2	0	0	0	0
Alberta	258	28	32	7	2	2
B.C.	1010	54	60	36	116	39
TOTAL	6369	515	665	205	489	808
%		8%	10%	3%	8%	13%

DO -DEPORTATION ORDER EO -EXCLUSION ORDER
DPO -DEPARTURE ORDER DD -DEEMED DEPORTATION
BKLG -BACKLOG

Source: Citizenship and Immigration Canada as compiled by JRS – Canada under Access to Information request.

A rising trend in the number of removals is expected in the near future, as a result of increased productivity in the enforcement technology and the Minister's new policy direction (marked by the introduction of Bill C-44 in July 1994) which leaves fewer legal impediments to removals.

BOARD "REFORM": PLUS ÇA CHANGE....

BY RAOUL BOULAKIA

On March 2, 1995 the Minister of Immigration announced planned changes to the Immigration Act affecting the Refugee Board, which he claimed are designed to "expedite decision-making while ensuring fair, well-justified decisions", making the system "faster and more cost effective". The Board has announced internal changes which coincide with this.

The basic thrust of the changes is to move the Board to become a more "investigative" institution, relying more heavily on information from government sources, and treating claimants as outsiders to much of its investigation. The Board seems to be reacting to criticism that its hearing process is too trusting of claimants, and acceptance rates are too high. By more rigorous investigation, the Board may come up with some dirt on particular claimants, but it may also endanger others. It will also be looking to get reports from agencies that are hostile to refugees in order to counter human rights reports. The Board has basically gone full tilt in reaction to claims that the hearing process is too open. The Board will be scaled down, with cases being heard by one member instead of two. The Board's administration will also have a more formal role in deciding on which of its members gets reappointed.

ONE MEMBER PANELS

The Immigration Act currently provides for a two member panel to hear cases. The members normally consult with one another before arriving at a decision, but in the event they cannot agree a split decision goes in favour of the claimant. The Minister and the Chairperson of the Board are replacing this with a system where only one Board member decides the case, but this member will be paired with a new official called a refugee claims officer (RCO). The RCO and Board member will have a series of unrecorded discussions about how to investigate the claim, and will initiate their own investigations prior to hearing the case.

OFF-RECORD CONSULTATIONS AND INVESTIGATIONS

Currently the Board has a refugee hearing officer who questions the claimant and provides alternate documentary evidence and arguments to the panel after the claimant's presentation of his or her case. In theory officers are neutral, but in practice they do act as adversaries testing claimants' credibility and raising any potential arguments against them. The Board is changing this to an RCO who investigates the claim as part of a team with the Board member. Without advising claimants, they will decide in advance what investigations and research they want to do on a case. They will be able to contact governments, including the claimant's own. Much of what they do will be kept secret from claimants, with the Board member deciding when to advise them and whether to accept any objection the refugee might have.

The Board is recycling the concept of the Refugee Analysis Liaison Unit (RALU, the "refugee spy unit") to make it an official part of the hearing process. The RCO and Board member can engage in any amount of discussion of the case off the record. Ironically this type of off-record influence was one concern that led to the commission of the Hathaway report. The Board's plans contradict the aim of giving members clear independence from administrative lobbying.

The general focus of this plan is investigating to find flaws or counter-documentation to refute a claim. Although the Board will continue to claim that the RCO is neutral, the perspective of an RCO is likely to become more adversarial.

The Board's administration and the Ministry of Immigration will be able to channel influence and pressure members off the record through RCOs. It is hard to imagine a system where a state prosecutor and a judge have the opportunity to develop their case together before the defendant appears. If the Board feels the need to increase the investigative role of RHOs there should be greater separation between RHOs and members, not greater collaboration.

The Board's resources will be expanded to include many institutions which either have no abiding interest in human rights issues or can be actually hostile to recognizing such issues. The Board will, for instance, be expanding the role of Canadian consulates in information gathering. This threatens the independence of the Board as consulates have to concern themselves with political relations and are also intended to keep refugees from migrating here independently. The Board will give the refugee's counsel written notice of intention to contact foreign governments. Such notice will not necessarily be given by other departments contacting the claimant's government. The Board will simply receive written objections from the refugee's counsel, and decide what it wants to do, so there is no assurance that persecutory governments will not be contacted. In a recent case the Board decided to reject a Tanzanian refugee because the Tanzanian ministry of foreign affairs said he was not a legitimate dissident.

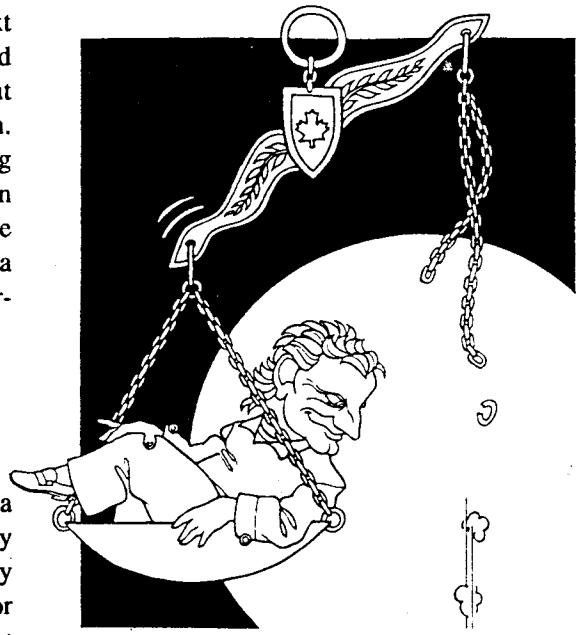
To replace Michael Schelew, the Board has hired a new Deputy Chair who favours the new model. A former CSIS director has been hired to replace the old Executive Director. The Deputy Chair manages Board members and the Executive Director manages the Board's documentation centre, the expedited system and RCOs. With a CSIS director running the Board's information gathering and managing RCOs can we expect the Board to become more concerned with basing decisions on human rights concerns?

The increasing influence of other agencies, such as CSIS and Foreign Affairs, moves the Board to a more political deci-

sion-making style. This is similar to the system in the United States, where state policy developed by other departments is often a central influence on refugee determination. Information on refugee migration collected from claimants may also be increasingly channelled back to offices involved in interdiction.

PORT OF ENTRY NOTES

The Board will also receive port of entry notes automatically and put them immediately into the claimant's file. At a port of entry an immigration officer is entitled to detain any refugee and question them. The refugee has no right to a lawyer at the border. In practice immigration officers often use border detention as a chance to coerce refugees into signing statements that are contrary to their claims. It is routine for claimants to be told that if they do not co-operate they will be put on the next plane home. Claimants are often afraid of the officer, and nervous about explaining what has happened to them. Detention is the worst possible setting for finding out a refugee's case. When officers know the statements will be used at the hearing there could be a greater tendency to abuse these interviews.



COMPLICATED AND POTENTIALLY DANGEROUS PROCEDURES

The new system presumes that a person has a competent lawyer. Many refugees are unrepresented, or poorly represented. There are no safeguards for the rights of a claimant who does not have competent counsel. There is no mechanism for resolving or appealing procedural disputes, even if they allegedly endanger the claimant. Every stage of this proceeding is predicated on having a lawyer to figure out what the Board is up to and to try to influence or mitigate their unilateral actions. For this system to go forward as designed, the Immigration Act should be amended to give claimants a right to legal representation similar to that in criminal law, and a system of designated counsel ought to be established for people who cannot find lawyers.

NO CONSULTATION

There was no consultation over this new model, and the Board seems unlikely to listen to suggestions. The Board did not consult with its own members, and does not seem to have any idea how many tensions are created by its new plan. With the increasing influence of immigration bureaucrats on the Board, complaints that the Board's plan undermines its integrity and stability may well fall on deaf ears.

The central problems are off-record consultations, dilution of the member's independence, endangering claimants through investigations, influence by departments that are either unconcerned with human rights or hostile to refugees, and the arbitrariness of one member panels.

NO INTERNAL APPEAL

One of the most disappointing aspects of this "reform" is that there will be no internal appeal set up. Lorne Waldman had proposed trading off two member panels for internal appeals. The Minister has effectively picked up on cutting the members, without the proposed trade-off.

One of the biggest sources of tension in the current system is that the administration wants "consistency" so it tries to influence members off the record. This is resented by members, who want to be independent, and by lawyers who want a fair hearing for their clients without secret influences. On the other hand, if the Board does nothing to promote consistency it gets criticized for arbitrariness and inconsistent decision-making.

An internal appeal would avoid any need for off-record influence. The administration would get its say in an open and legal manner by being able to appeal unrepresentative decisions. The move to one member panels will greatly aggravate both arbitrariness in decision-making and the felt need for administrative intervention. The political tensions within the Board and between advocates and the Board will also be aggravated as the personality and tendencies of the individual member become so much more important.

The cut to one member is not actually being justified by the deficit. The money saved ($5.6 million) will supposedly go to resettlement. In any event $5.6 million is only 14% of the Board's annual budget, which illustrates that far more money is spent on the Board's bureaucracy than the delivery of the Board's primary service, adjudication. Before this cut is made NGOs should press for complete disclosure of how the Board spends its money, because it is likely that the same amount could be made up through cuts to spending at National Headquarters. In fact the investigative model will likely create new demands for increased hearing time and expenditures.

Furthermore, the cut to one member panels has nothing to do with actual refugee intake levels. There are far fewer refugees coming to Canada, due to interdiction of refugees before they get here. The government plans to cut levels even further through a memorandum of understanding with the U.S. The government could easily maintain two member panels, while cutting the number of Board members, if its primary concern were maintaining the integrity of the hearing process.

THE APPOINTMENTS COMMITTEE

The concept of establishing a committee to screen Board

CONTINUED ON PAGE 10.

appointments and renewals is a departure for the government, which had been opposed to such an idea, but the actual committee being established will not be independent and will likely create its own tensions. Former Conservative MP and Board chairperson Gordon Fairweather will head the committee. He presided over the Board while his party stacked it with patronage appointments, so it is unlikely his committee will provide the type of critical and apolitical perspective needed. Nurjehan Mawani will be on the committee, which puts her in the same position Michael Schelew was attacked for being in. The chairperson will be giving members policy directions and also deciding on their reappointment.

As membership is cut there will inevitably be conflict over how the Board is evaluated and who gets to stay. Because Board membership has become a political issue there are no accepted criteria for evaluating members. The only way to clean up the appointment process is to establish a committee that has an arm's length relation to the Board and the political party in power. The organizer of the committee should be an independent expert in refugee law, perhaps an academic, and it should model its interview process on a committee that has a proven track record such as the Ontario Judicial Council. Instead of depoliticizing conflict over re-appointments, the decision to fire a large number of members is likely to steep us further in the same political bog.

CONCLUSION

Sergio Marchi has abandoned any meaningful consultation with NGOs on the Board's future. The Board's integrity is being compromised by some of the changes being implemented. It also remains to be seen how politically prudent it is to aggravate existing tensions within the Board.

Raoul Boulakia is a Toronto lawyer practising refugee and human rights law.

A RETURN TO THE ABHORRENT HEADTAX

CONTINUED FROM PAGE 2.

isolation. It is part of an overall backlash that has been gaining ascendancy in recent years. Refugees and immigrants had some hope when Sergio Marchi was appointed Minister of Citizenship and Immigration. He spoke frequently of his own immigrant background and made many promises related to his government's support for progressive refugee and immigration policies.

Since the Liberals took office, however, we have witnessed the weakening of the IRB from two to one member panels, the failure to implement an appeal for refused refugee claimants despite bold assurances that such an appeal was an urgent priority, secret negotiations for a "burden sharing" agreement with the United States, a proposal to require sponsors to post financial bonds as a condition of being reunited with their family members, programs that dramatically fail to meet their objectives (ie. "DROC" and "PDRCC"), the passage of Bill C-44 which restrict the rights of refugees and immigrants with criminal backgrounds, restrictions on access to health care as well as an increasing emphasis on interdiction, control and enforcement.

Disturbingly, there is cause for alarm on a wide variety of issues. As for the fees, it is possible that the scheme could become the subject of a constitutional challenge in the courts. If the politicians refuse to listen, perhaps the judges will. For those directly affected by the government policies, and for those of us who refuse to acquiesce to injustice, our challenge is to ensure that our concerns remain in the public arena until significant changes are achieved.

Sharry Aiken is the Staff Lawyer at South Etobicoke Community Legal Services and Co-Chair of the Protection Working Group, Canadian Council for Refugees.

TOP TWELVE COUNTRIES
JAN. 1 - DEC. 31, 1994

1994 RANKING	1993 RANKING	CLAIMS	WITHDRAWN ABANDONED	HEARING REJECT*	HEARING ACCEPT*	% ACCEPTANCE	
1. Sri Lanka	1	2910	144	354	2873	76	85
2. Somalia	3	2412	141	89	2393	90	91
3. CIS/USSR	2	1350	271	676	1073	44	53
4. Iran	4	1113	91	213	974	63	76
5. India	7	902	304	459	520	20	41
6. Israel	6	689	93	504	380	13	39
7. Bangladesh	-	628	63	179	500	42	67
8. Pakistan	5	569	125	237	435	25	55
9. China	9	509	114	326	314	18	42
10. Guatemala	-	439	95	188	270	46	49
11. Haiti	-	429	25	63	379	68	81
12. Romania	10	428	60	233	211	39	42
Others		7266	1877	2921	4902	36	51
Total		19644	3403	6442	15224	46	61

* Including claims made in 1993 awaiting a decision as of January 1994.

Source: Immigration and Refugee Board as compiled by JRS-CANADA.

CELEBRITY INN - NOTHING TO CELEBRATE:

DETENTION IN CANADA

BY CHRIS BOLES

Imagine arriving in a country where you make an appeal for asylum, and you are immediately detained. Imagine arriving in a country where you are put into detention because you cannot speak the language and no interpreter is available, or because your papers do not satisfy the Immigration Officer. Imagine arriving in a country to visit relatives, but instead you are put into detention, and have great difficulty contacting them. When they enquire about you they are given minimal information. Such situations can and do occur in Canada.

Even if a refugee claimant does manage to get entry into Canada, he or she remains under threat of detention. Under the Immigration Act and associated regulations, Immigration Officers have the right to order the detention of non-Canadian citizens for two broad reasons: either because that person is considered a danger to the public, or because that person is considered unlikely to present him or herself at their immigration hearing or for removal and deportation if the case has failed. With broad discretionary powers, Immigration Officers may order a person be detained for apparently subjective or trivial reasons.

Of particular concern are the cases where a detention order is issued because there is no interpreter available. Apart from the many instances of refugee claimants being detained, perfectly innocent tourists visiting Canada have also been detained for a number of days because of, for example, difficulty in finding an interpreter who knows a particular dialect. There is no minimum or maximum period of detention, and the only obligation on the part of Immigration Officers is that a detained person must be interviewed within 48 hours, then if detention is continued, after a further 7 days, and thereafter every 30 days.

Cases of detention appear to be increasing. In 1991/2 there were almost 6800 cases of detention throughout Canada. In 1992/3 that figure had increased to a total of 7796 detainees, almost 5000 of them in Ontario. Observations from refugee advocates and other visitors to the detention centres, suggest strongly that the numbers of detainees continue to increase, and release becomes harder to obtain.

The places and conditions of detention are causes of great concern. There are two types of facilities used for immigration detention in Canada, one being the Immigration Holding Centre, such as those at Niagara Falls, Mississauga, Vancouver, and Montreal. Generally, these facilities are former or still functioning motels, sections of which have been modified for the purpose of detaining men and women with varying standards of security. The other type of facility used for detention purposes is the regular prison system. The criteria for determining which facility is to be used for any particular case is sometimes unclear, but a history of violence, or even isolated incidences of violence or any criminal conviction, is likely to result in prison hold, i.e. being placed within the normal prison population. Currently, there are approximately 110 cases on Immigration Hold at Metro Toronto West Detention Centre, a maximum security jail run by Corrections Canada. Immigration cases, generally held without charge, constitute almost one quarter of the jail's population at this time.

The Immigration Holding Centres are certainly better places to be detained than the jails, but they lack many basic facilities, and often lack even minimum recreation facilities, privacy, family facilities, communication facilities, and so on. The Immigration Holding Centre for the Toronto area is located within the unfortunately named Celebrity Inn Hotel, on Airport Road in Mississauga. The rear portion of the hotel is reserved for immigration detention cases, while the rest of the hotel remains operative for paying guests. Two high barbed-wire fences surround the small recreation area, and the Centre is protected by closed-circuit surveillance cameras. Entry to the Detention Centre is at one location only, controlled by security guards. Conditions inside the centre are tense and depressing, with overcrowding being the greatest concern. Originally intended for around 80 residents, the current population is approximately 130. Rooms for residents were intended to be twin-bedded, but many rooms now have cots and sleep three or

CONTINUED ON PAGE 12.

four. The dining room, for some time the only common recreational space available, has been divided up into small compartments to keep male and female residents separated. A recent addition is a room for children to play, but the only outdoor recreational facility available to adults is a small concrete courtyard which is fenced. Residents and visitors complain of the lack of prompt medical attention.

Human rights are another cause for concern. When any ordinary prisoner goes to court for a hearing or a trial, all restraints are removed, and they at least retain a minimum level of dignity. Refugee claimants from the detention centres, on the other hand, are regularly restrained in handcuffs, and those from the prison have the added humiliation of leg-irons, which are sometimes not removed during interviews or even at IRB hearings. This is a flagrant abuse of the Canadian Charter Of Rights and Freedoms, which states in Article 12 that "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment". The 'Singh Decision' of 1985 made it clear that all refugee claimants in Canada have the right to enjoy the provisions of the Charter, but clearly many are not. The very practice of detention itself is in violation of the same Charter, which states in Section 7 that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". Detention of refugee claimants is a fundamental *injustice*, and a violation of their right to liberty.

Another area of immigration detention which causes great anxiety is that of transfer from one facility to another. Recently, the Montreal based *Comité d'aide aux refugiés* documented a number of cases involving transfers from Toronto to Montreal just after Christmas 1994. Each transferee had been told s/he was going to be transferred because of overcrowding in Mississauga, but most cases were close to deportation. There was little time or opportunity to contact their lawyers, especially since it was Christmas, and in fact many lawyers working in the Toronto area have been unable to keep up with these cases since their move to Montreal.

Recent funding cuts to the Immigration Department have necessitated staff cuts at the immigration detention centres, leading to enormous work pressures on the staff who remain. Services to those in detention inevitably suffer, but things seem to go unnoticed - only because the 'clients', those held in detention, are afraid or unwilling to complain about the lack of service. If no one complains, then the state of affairs is deemed adequate.

It is very difficult for those refugees, tourists, non-English speakers, and others in immigration detention to believe that Canada considers them innocent until proven guilty. They are treated like criminals, but rarely will they be charged with any crime. They are innocent, and they deserve better from Canada.

An independent body is required to monitor cases and conditions of immigration detention. Special attention must be focused on the situation of women and children, on the findings of NGOs who work with detention cases, and on the wide-ranging discretionary powers given to Immigration Officials.

Chris Boles, S.J. works with JRS-Canada and is studying theology at Regis College in Toronto.

YET ANOTHER BATTLE -

HEALTH INSURANCE COVERAGE FOR REFUGEES

AVVY GO

Starting April 1, 1995, refugees in Ontario are no longer entitled to Ontario Health Insurance Plan (OHIP) coverage. As a result of a deal struck between the Ontario and the federal government, refugees in Ontario will now have to apply for health insurance coverage through Citizenship and Immigration Canada. According to an official at the Interim Federal Health Program, refugees who are eligible under the program will receive health care coverage up to the day that they are removed from Canada. This shift in federal-provincial coverage will affect thousands of refugees currently living in Ontario. Many were advised just days before the effective date of the change that their OHIP coverage would expire on March 31, 1995, and that they had to apply to the federal program by dialling 973-4444 to get an appointment. No other address or number was given to refugees if they wished to obtain further information.

Those of us who have ever tried calling the general telephone number of Canada Immigration know how difficult it is to get through. But getting through on the telephone is the least of the problems that refugees will face in applying for federal coverage. They must show that they are financially in need in order to qualify under the program. In addition, they will have to submit bills in order to be reimbursed for their health costs.

One of the most troubling aspects of this new deal is that not all medical services are covered under the federal program. Immigration Canada will only cover essential medical services, and in some cases, emergency services. These services are so restrictively defined that they are all contained in a two page document which lists the type of dental and medical services covered and the maximum amount of reimbursement for each item. For dental care, for instance, only emergency services will be covered and only up to a maximum of $250.00 per person per period. The same problem we have with municipal welfare policies concerning dental care coverage will no doubt emerge with this federal program as well.

Perhaps the only good thing coming out of this new policy is that the federal government is finally taking some responsibility for refugees, and relieving some of the financial burden faced by the province. However, in easing its own financial woes, the provincial government has neglected to take into account the interests of those who are directly affected by the new program, namely, the refugees themselves. By failing to ensure that refugees will receive at least identical coverage under the federal program, the province has effectively abrogated its responsibility to providing every resident in Ontario with equal access to health care.

Avvy Go is the Clinic Director, Metro Toronto Chinese & Southeast Asian Legal Clinic.

THE FATE OF FOUAD: THE NOT-SO-NEW PDRCC

BY MICHAEL BOSSIN

In May of 1994, a Lebanese refugee named Fouad received some good news. The Minister of Citizenship and Immigration announced that all refugee claimants whose claims had been refused between February 1, 1993 and May 20, 1994 would now be eligible for a second "post-determination" review. The original Post-Determination Refugee Claimants in Canada Class (PDRCC) review applied to all refugee claimants who had received a negative decision from the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB). After Fouad's refugee claim had been turned down in June, 1993, his file had been reviewed by an Immigration officer to determine if he would face a life threatening situation, severe sanctions or inhumane treatment in his country of nationality, Lebanon. The officer had found that Fouad was not likely to encounter any such difficulties back home. Now Fouad was being given a second opportunity to convince another officer that his life was indeed at risk should he be returned to Lebanon.

The announcement of a new review was prompted by the report to the Minister made by Susan Davis and Lorne Waldman, *The Quality of Mercy*, in which the original PDRCC program was harshly criticized. The acceptance rate under the "old PDRCC" was so low that less than 1% of cases covered across the country met its criteria. According to Davis and Waldman, this low rate made the entire review meaningless. They recommended the PDRCC review be replaced by an independent risk assessment. Such an assessment would cast a safety net in terms of human rights protection. It would ensure that people who were not Convention refugees but nevertheless had other reasons for fearing a return to their home countries, would be offered protection in Canada.

One reason why so few cases were accepted under the "old PDRCC" was that the standard was so high. In order to succeed, an applicant had to demonstrate that he or she would personally suffer more than anyone else in his or her country. The criteria set out in the regulation were construed so narrowly that, in the words of one advocate, the successful applicant would be the person "who could provide the bullet with her name on it." This standard was far higher than the "well-founded fear of persecution" standard used by the IRB in deciding refugee claims.

Immigration officers made acceptance under the "old PDRCC" almost impossible by requiring applicants to show that they would be singled out for reprehensible treatment. The fact that many other people in similar situations were being targeted for such treatment, rather than strengthening a PDRCC application, actually weakened it.

In the "new PDRCC" review announced last May, the regulation setting out the criteria for the review were left completely intact, but they were to be given a new, "expanded" interpretation. To date, the new interpretation has not proven to be at all expansive. While the rigid requirement that a claimant must be singled out for persecution has been removed, in every other respect the criteria remain the same. Despite this change, the new and improved PDRCC still fails to address the plight of people who face the risk of generalized violence in their homelands.

Fouad is from a town called Dibine, in the south of Lebanon, located in the security zone. This area is controlled by the South Lebanon Army (SLA), a force created by the Israelis to act as a buffer between Israel and armed anti-Zionist organizations such as Hizbollah. The SLA created civil administration councils (CACs) to act as local governments in the security zone. Because of his ability to speak English, Fouad was appointed by his CAC to act as interpreter between the council and the United Nations forces present in the area. Although he was reluctant to accept the position, Fouad believed that he had no choice. The SLA, which has a history of committing serious human rights violations, was likely to interpret a refusal to accept this position as opposition to its authority, which it did not tolerate.

In August, 1992, Fouad was with his family in Beirut, visit-

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ing his father-in-law. At the time, he was trying to sell a car, which he had taken with him on the trip. He had placed an advertisement in a local paper and was pleased when a man contacted him, expressing interest in the car. The two went for a test drive. Along the road, the man stopped to let two other men into the car, whom he identified as friends. He said he wanted their opinion on the car, and Fouad did not complain.

THERE THEY TIED, BEAT AND THREATENED HIM. THEY ALSO ASKED HIM QUESTIONS ABOUT HIS ROLE AS AN INTERPRETER FOR THE SLA-CREATED CAC. THEY CALLED HIM A TRAITOR AND A SPY. THE BEATINGS AND INTERROGATION WENT ON FOR HOURS.

At first, when one of the men in the back seat pointed a gun at Fouad's head, he thought he was being robbed. "Take the car", he said, but the men were not interested in the car. They drove Fouad to a house located in a remote location outside the city.

There they tied, beat and threatened him. They also asked him questions about his role as an interpreter for the SLA-created CAC. They called him a traitor and a spy. The beatings and interrogation went on for hours. At one point, Fouad's forehead was banged hard against a table, and he was bleeding badly. In the end, his abductors let him go. They told Fouad that he must return to the Security Zone. If he was ever found outside the zone again, he would be killed. Although his captors did not identify themselves, it was clear to Fouad that they were associated with the Hizbollah.

As instructed, Fouad did return to the Security Zone. However, there his problems continued. Word of his kidnapping in Beirut by the Hizbollah reached the South Lebanon Army, which in turn arrested, interrogated and detained Fouad. The SLA's concern was that Fouad might now be spying for Hizbollah, even if he was doing so under duress. He was told he could no longer continue to live in the Security Zone.

Afraid of living outside the zone, and unable to live in the Security Zone, Fouad traveled to Syria, where he was able to obtain a visa to visit the United States. In October 1992, he flew to the U.S. and then came directly to Canada, where he made his refugee claim.

The IRB refused Fouad's refugee claim for two reasons: first, it found that country conditions, generally, were improving in Lebanon; secondly, the panel found that even if he were at risk in south Lebanon, Fouad could live safely in other regions of Lebanon; in the other words, he had an "internal flight alternative".

After his claim was turned down, Fouad moved from Windsor to Ottawa. He pursued his leave application to the Federal Court without counsel, but was unsuccessful.

Fouad's "new PDRCC" application was submitted in November 1994, to the local Post-Claim Determination Officer, or PCDO. In it, Fouad tried to address the PDRCC criteria. In particular, he submitted that in Lebanon his life was at risk.

It is clear that the IRB decision constitutes a major consideration for the PCDO. It is therefore recommended that the IRB's reasons be addressed in the PDRCC submission. Along with the applicant's submission, the IRB's reasons for decision as well as the Personal Information Form ("PIF") must be submitted to the PCDO.

Fouad tried to address the Board's concerns about changes in country conditions and internal flight alternatives. Although the situation in general had improved in Lebanon since the end of the civil war in 1990, there clearly remained pockets of concern. Two most significant concerns relevant to Fouad's case are the SLA and Hizbollah, both of whom are accused in numerous reports of committing serious human rights violations.

In addition to a book of documentary evidence, Fouad submitted two expert opinions. One was written by the executive director of an organization in Washington D.C. called Save Lebanon, the other by an academic at McMaster University. Both had written and lectured extensively on Lebanon. At first the university professor was reluctant to write a letter on behalf of Fouad because of his "collaboration" with the SLA. In the end, however, he had to acknowledge that Fouad is at serious risk in Lebanon and this was his overriding consideration. For her part, the executive director of Save Lebanon , upon learning of Fouad's circumstances, said that he "may as well go home in a coffin".

Both experts addressed the issue of an internal flight alternative. Both were of the opinion that there was nowhere in Lebanon where Fouad could live safely. The professor thought that he might be able to avoid the Hizbollah by living in the Christian section of East Beirut, but as a Shiite from South Lebanon, he was not likely to be welcomed "without suspicion and distrust" in that area or "any other area dominated by Lebanese Forces' sympathizers". In his words, "this practically eliminates all areas of Lebanon". The director of Save Lebanon was of the opinion that even in East Beirut, Fouad would be at risk. She wrote: "The influence of Hizbollah in Lebanon is such that were one targeted by this group, I do not believe there is anywhere in the country where one could live safely."

When the Minister made his announcement of a "new PDRCC" last May, there was hope that the guidelines would be interpreted more liberally than in the past and the numbers of persons accepted under the PDRCC would rise as a consequence. To borrow a phrase from the Geneva Convention,

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such early optimism was not "well-founded". The current acceptance rate for PDRCC applicants in Canada is slightly higher than before May 1994, but still very low, at around 5%. Among the 95% of applicants whose reviews have received a negative result is Fouad.

The Post Claim Determination Officer accepted that Fouad's life would be at risk in the south of Lebanon and in areas controlled by the Hizbollah. However, in other parts of Lebanon, where either the Lebanese government forces or the Syrian army are in control, the officer found that Fouad had an internal flight alternative.

Given that two experts said there was nowhere in Lebanon where he could live safely, the decision in Fouad's case is disappointing, if not somewhat puzzling. If two expert opinions are not enough to convince the PCDO, what kind of evidence *is* required? One is reminded of the old New Yorker cartoon where an asylum seeker in the U.S. is told by an American official that what he needs in order to establish his claim is "a letter from his dictator".

As disturbing as the result in Fouad's case is the quality of the analysis. Each decision in the "new PDRCC" review is accompanied by a written analysis and decision record. The officer reviewing Fouad's submission based her conclusion that he had a viable internal flight alternative in Lebanon on her finding that he had nothing to fear from either the Lebanese Army or the Syrians. Two central questions were not addressed: whether either of these forces could or would offer protection to Fouad from the Hizbollah; and whether the internal flight alternative was reasonable.

According to the Supreme Court of Canada in *Ward case* {*Ward v. Canada* (1993), 20 Imm. L.R. (2d) 85} whether the state can provide adequate protection to the claimant is the crucial question in cases involving non-governmental agents of persecution. The absence of analysis of this issue is alarming because the documentary evidence submitted by Fouad clearly indicated that the Lebanese Army is "unable to fully exercise its authority, even in government-controlled areas, since its forces are still weak" (*Lebanon: The Political Situation since the October Election*, IRB, Ottawa, March 1993, pp. 3-6). Moreover, the government is openly supportive of the Hizbollah. With respect to the Syrians, serious human rights violators themselves, they are linked politically and militarily to the Hizbollah, and are not likely to provide protection to the "enemy" of one of their allies.

The government's guidelines for interpreting the PDRCC criteria state that the issue of reasonableness of the internal flight alternative should be dealt with in a "sensitive, culturally aware, flexible and judicious manner". In this case, "reasonableness" was not mentioned at all in the PCDO's analysis.

After the officer's decision was received, a written request was made to the local CIC manager to review this case. It is Canada Immigration's policy not to review such decisions, and the request was ignored.

Fouad's case illustrates some of the shortcomings of the PDRCC program, particularly that of poorly trained post-claim determination officers and the refusal of senior management to re-consider any of their decisions. The impression left with many participants in the process is that the "new PDRCC" is much the same as the "old PDRCC", a rubber stamping of the IRB decision. A meeting between representatives of the Immigration Department and refugee advocates on the "new PDRCC" would be welcome. With a more sensitive approach to submissions and more relaxed criteria, the PDRCC might in some way compensate for the lack of a meaningful "appeal on the merits" in the refugee determination system.

TWO CENTRAL QUESTIONS WERE NOT ADDRESSED: WHETHER EITHER OF THESE FORCES COULD OR WOULD OFFER PROTECTION TO FOUAD FROM THE HIZBOLLAH; AND WHETHER THE INTERNAL FLIGHT ALTERNATIVE WAS REASONABLE.

Fouad has now applied for leave to have the decision judicially reviewed. In the meantime, as in all PDRCC cases, the Immigration authorities have quickly initiated the process of having him removed from Canada. Since the United States will not allow him to return there, Fouad will be removed directly to Lebanon.

The Immigration department monitors the PDRCC program through a national "Post-Refugee Advisory Committee" which includes representatives from non-governmental organizations and the UNHCR. Observers admit to a high level of frustration in regard to the deficiencies inherent in the review process as well as how the program is actually being delivered by the current crop of post-claim determination officers.

It is expected that the PDRCC will be on the agenda for the upcoming Canadian Council for Refugees Conference in Vancouver, May 24-27, 1995. In the meantime, those concerned may express their views by writing letters to their local member of Parliament as well as to the Hon. Sergio Marchi, Minister of Citizenship and Immigration (House of Commons, Ottawa, K1A 0A6). Such letters might make reference to the urgent need for a meaningful appeal on the merits for refused refugee claimants in the absence of significant improvements to the post-claim review program. Advocates might also consider requesting meetings with local managers and program specialists at the regional level to discuss ongoing problems with PDRCC.

Michael Bossin is a lawyer practicing immigration and refugee law at the Community Legal Services of Ottawa-Carleton.

IN COMMEMORATION OF THE SINGH DECISION

Refugee Rights Day was celebrated this year in the context of disturbing awareness about the government's deteriorating policies vis-a-vis refugees.

In the House of Commons, Hon. Osvaldo Nunez, the Bloc Quebecois Immigration Critic made the following statement and expressed his "support for and solidarity with refugees and the organizations dedicated to defending" them: "This year we commemorate the tenth anniversary of the decision by the Supreme Court of Canada to extend the application of the Canadian Charter of Rights and Freedoms to refugees....Considering the current backlash against refugees in Canadian public opinion, the government should start a campaign to make the public aware of our responsibility to welcome these people and aware of the need for openness and tolerance and of Canada's international obligations to refugees."

In Grande Prairie (Alberta), Mayor Gordon Graydon signed a declaration stating that April 2nd to 8th be recognized as Refugee Rights Week. During that week activists did an extensive educational and advocacy work. Stories were covered by the media and lectures delivered in schools and colleges.

More than 400 people celebrated Refugee Rights Day in Montreal in an inter-faith and multicultural programme organized by the Montreal Refugee Coalition and Committee to Aid Refugees (CAR).

In Toronto, the Chairman of the Metro Council, Alan Tonks, recognized April 4th as Refugee Rights Day and urged "all citizens to bid a warm welcome to all refugees and help them integrate into our community." This was followed by a full day and evening programme sponsored by the Toronto Refugee Affairs Council in cooperation with the Canadian Council for Refugees. Speeches and workshops continued throughout the day. The evening was filled with a cultural show comprising of stories, messages, music, songs, dances and drama.

In London, Southwest Ontario Newcomer Support Group organized a poster contest for children in grades 3 and 4 on the subject of celebrating differences, understanding and togetherness. More than 260 children participated in the contest. Workshops and video shows were organized in different languages. Around 70 people joined together in Windsor in a community dinner, inter-faith vigil and information session. Six workshops and an art show were organized by various groups including Windsor-Essex County Newcomers Networks and Detroit-Windsor Refugee Coalition. East Timor Alert Network and the Rwandan Community ran memorial and fundraising services.

REFUGEE UPDATE

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