



Issue No.2
March 1989

Refugee Update

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The Impact of the New Refugee Law

In The Eye Of The Storm

Everything seems pretty calm—even reassuring. Work permits have been promised to refugee claimants in the backlog. The “safe third country” list has not been drawn up yet. Only a small number of claimants are being “screened out” and denied a full hearing of their cases. An even smaller number are actually being deported. Many refugees are being processed and accepted very quickly under the new system.

Who could be blamed for wondering...maybe the new law isn't that bad after all?

No one! Especially ordinary Canadians who are not working with refugees day to day. That's why refugee rights supporters need to stop and take a closer look. A deeper analysis is required for a strong public response to what is actually happening around the “calm”.

The Injustice Of The New Law

On January 3rd, 1989 the Canadian Council of Churches filed its Court Action. It alleges that the new refugee law violates the Canadian Charter of Rights and Freedoms in at least 50 areas, including:

- Limitations on refugees' right to counsel;
- Arbitrary and unjustified detention powers;
- Removal of refugees to life-threatening situations without fair hearings.
- Unfair “burden of proof” requirements on refugees;
- Minister's authority to interfere with an independent body;
- No meaningful appeal or review process;
- Criminalizing of refugee support work.

This law is full of injustice. It may seem to be sitting below the surface right now, but it is only a question of time before it rears its ugly head.

The “Perfect Plan”

The Immigration Department's long range plan is to use the new law for all that it is worth. Its internal guidelines, entitled the “Perfect Plan”, set out two major goals:

Firstly, to **deter 60%** of the refugee claimants who might come to Canada, by getting the “word” out about the tough new refugee law. According to the guidelines:

“The key to getting the word around is, of course, physical removal of illegal migrants from Canada... (This) would result in a 30% decline of intake after the 3rd month... followed by a further 30% decline in the last quarter.”

Secondly, to **screen out 50%** of the refugee claimants who do come on the basis that they are not “credible” and should be denied a hearing before the refugee board:

“This plan might be called the Perfect Plan. It assumes perfect operation of all parts of C-55; it assumes a homogeneous intake with output at consistent percentages.”

The final result under the Perfect Plan: 80% of the refugee claimants who would have sought protection in Canada will never get the chance to tell their story to the refugee board. The clear message is that refugee claimants are not welcome in Canada.

The Credibility Screening

While refugee rights supporters were focusing on the dangers of the “safe third country” list (and rightly so), the Immigration Department was shaping the “credibility screening” as a major tool to keep refugees out.

The credibility screening happens at the immigration inquiry soon after the refugee claimant arrives. It takes place before an immigration adjudicator and a member of the IRB. Although a positive decision from either one means going on to the full IRB hearing, the role played by the adjudicator is a problem.

The all-party Parliamentary Standing Committee

on Immigration, in its Fourth Report (June, 1985), stated the following: "In theory, adjudicators should be non-affiliated with the Commission (ed. the Immigration Department) and, in this context, render independent judgments. However, according to many witnesses (including adjudicators themselves), adjudicators are often located in the same premises, and even share the same support staff, with the Commission. Witnesses also indicated that adjudicators are usually selected from within the Commission. As a result, some felt that adjudicators possess an inherent enforcement bias which affects their decisions in significant ways."

It is the immigration adjudicator who is legally in charge of the process: decides who testifies, what evidence is relevant and just about everything else that counts about the screening. The atmosphere in the credibility screening is definitely adversarial with the immigration prosecutor (case presenting officer -CPO) attempting to show why the claimant is not to be believed.

Lawyers for claimants are often designated by the Immigration Department. Translation problems are commonplace.

The most serious danger is that the Immigration Department seems to be succeeding in shifting the real decision making away from the full IRB hearing to the credibility screening which they control. The test which is apparently being used in the screening is not "is there any credible basis for a refugee claim" but "is the claimant credible". This latter question is supposed to be for the Immigration and Refugee Board (IRB) to decide at the full hearing.

Ironically, one of the positive aspects of the new law is this full hearing before the (IRB). The IRB is independent from the Immigration Department (if not from the government). The atmosphere is supposed to be non-adversarial. And the hearing only takes place after refugee claimants have some time to develop their cases and establish relationships of trust with the people around them.

Safe Third Country

While the list of "safe" third countries has not yet been drawn up, it could come at any time. Recently, the Coalition For A Just Immigration And Refugee Policy wrote Barbara McDougall expressing concerns about this. Here is part of her reply, dated February 27, 1989:

"Thank you for your letter of December 14, 1988...

"While I appreciate receiving your observations, I cannot agree with your view that returning claimants to 'safe' countries

where they can and will receive the protection they are entitled to under the Convention is unnecessary. This said, you are aware that no list of countries has yet been prescribed pursuant to paragraph 115(1)r of the Act; there are no immediate plans to prescribe such a list.

"I will be monitoring the situation of the refugee determination process in Canada during the coming weeks and months. I will be particularly interested in whether the process can cope with the numbers of claimants arriving at our airports and borders without access to this provision of Bill C-55. If there is a risk that the system will be overwhelmed by claimants arriving from other countries where they could have sought protection, the Government will have to revisit the issue..."

—Barbara McDougall

New inside information has it that the issue is already being revisited. Apparently a group has been set up to look at using the "Notwithstanding Clause" of the Canadian Charter of Rights and Freedoms to override the unconstitutionality of implementing the "safe third country" rule.

"H and C" Grounds

In its public promotion of the new law, the Immigration Department stresses that the system is virtually foolproof because of the so-called "humanitarian and compassionate" grounds. Department spokespersons respond to the public's concerns about the harshness of the law by asserting that "H and C" grounds will be used to protect cases that might otherwise fall through the cracks.

The Department's real agenda has once again been leaked. Guidelines for immigration officials on what constitutes humanitarian and compassionate grounds are very restrictive. For example, consideration will be given to those with family connections in Canada. But family is limited to a narrow definition of immediate family—mothers, fathers, spouses, and children who are minors.

On the other hand, "favourable consideration" is to be given to:

"Individuals who are members of official delegations, athletic teams or cultural groups, and other persons who, by seeking to remain in Canada, so embarrass their government as to leave themselves open to severe sanctions should they return home."

Heaven help the average refugee claimant!

Monitoring

One way of monitoring the impact of the new law is by following the statistics. But they can be misleading.

There is also a need to follow the type of case being rejected. That gives us an indication of the direction the system is moving in.

Making Sense Of The Statistics

On March 13th, 1989 the Immigration and Refugee Board (IRB) issued a news release with statistics on its first ten weeks of operation:

- 1575 refugee claims initiated
- 1272 initial inquiries completed and 303 adjourned
- 72 claims (6%) withdrawn
- 1112 claims (87%) granted a full hearing
- 88 claims (7%) "screened out" because no credible basis

Of the 1112 claims sent to full hearings, so far 311 have been accepted and 18 rejected.

Already, the statistics are being used to suggest that the new law is fair and that only a small number of people are being "screened out". But a closer look reveals a different picture.

(1) The news release fails to mention that the number of claims (1,575) is half that of a year ago. It seems clear that the "word" has gotten around and there are a lot less refugees willing to take a chance on coming to Canada's borders. The Department's goal of deterring 60% is apparently being realized.

True, some of these cases may not have been refugees within the strict definition, but we will never know how many people truly needing protection have been prevented from coming.

(The most recent reports are that Canadian visa offices overseas have been instructed to divert resources into preventing refugee claimants from coming to Canada. One focus is the training of airport personnel in the detection of false documents, notwithstanding that the Geneva Convention on refugees recognizes that many refugees require false documents to seek protection.)

(2) The fact that only 7% of the claims have been "screened out" could indicate that the "Perfect Plan" grossly overestimated the numbers of claimants who would not have credible claims. But there may be other reasons.

Immigration prosecutors have been waiving most refugee claimants right on to the full hearing. Of the 1112 claims sent to full hearings, only 271 were contested by the immigration prosecutor. Since 88 of the 271 were "screened out", there is a 32% (one-third) "screen out" rate on contested cases. If the Immigration Department decides to contest more cases this would mean many more refusals.

Another question is why the immigration prosecutors are contesting so few cases at this time. Specula-

tion ranges from making the system look good initially, to lacking resources needed to contest more cases.

(3) There is the question of why 72 refugee claimants (6%) would quickly withdraw their cases. Could it have something to do with how they were treated upon arrival in Canada? Could the arrest and detention (see below—"Detention Of Refugee Claimants") have something to do with this?

(4) What do the statistics say about what lies ahead? If the plan is really to only "screen out" 7% of refugee claimants, why is the screening needed at all? Would it not make sense to also grant these few people a full hearing to ensure that no mistakes are made? It is small comfort to the refugees turned back to countries where they face persecution that "most" refugees are getting through.

Cases

A major problem is how to keep track of all the cases being "screened out". Of the 88 cases denied a full hearing as of March 13th, 1989, the refugee rights network was only aware of about 15. Presumably the rest have been "quietly" deported. Although lawyers must be aware of some of these cases, there is no systematic way of obtaining this information.

Many of the cases followed by the network are caught up in the courts. Quite a few deportations have been suspended through habeas corpus proceedings (legal language for an application to the court asking that the reasons for a person's "detention" be reviewed...which allows the court to look at the legality of the law under which the person is detained) first used in the case of H.M., an Ethiopian refugee "screened out" in January.

The outcome of many of these cases now rests on the results of another case, that of N.P. from Iran. She is a 20 year old woman who arrived in Canada on January 7th, 1989. She was screened out at the immigration inquiry as having no credible basis for a refugee claim.

Amnesty International's January, 1989 statement on Iran to the United Nations Commission On Human Rights states that since July 1988 Amnesty has recorded over 1000 names of political prisoners who have reportedly been executed.

The situation for women in Iran opposed to the government is extremely precarious. Surely, the fact alone of claiming refugee status here in Canada would put this woman in jeopardy.

The habeas corpus application by her lawyers is now before the Ontario Court of Appeal and a decision is expected shortly. It will affect the outcome of many other cases.

In the meantime, the Toronto Vigil Network has requested public opinion messages (POMs - \$3.50 for 15 words through CNCP) to Barbara McDougall, Minister of Employment and Immigration, House of Commons, Ottawa.; K1A 0A6.

Late breaking news!

• E.J. is a 19 year old Salvadoran man who first presented himself as a refugee claimant at Douglas Crossing, British Columbia, Dec. 21st, 1988. He was turned back to the U.S. to await an inquiry and decided to sneak back across the Canadian border.

He later turned himself in to immigration authorities but was arrested and jailed. He was then "screened out" as not credible and deported on Thursday, March 9th, 1989 to El Salvador.

His claim was based on fear of recruitment into the Salvadoran military but the government's position is that avoiding military service is not grounds for claiming refugee status. Apparently, Barbara McDougall, reviewed the case personally and ordered the deportation to proceed.

• A Guatemalan man who fled Guatemala after having receiving death threats has also been deported. He arrived in British Columbia. He was "screened out" as not credible and deported to the United States where he was arrested and detained.

This case has raised concern that the "safe third country rule is being ushered in through the back door.

National Vigil Network

URGENT ACTION...URGENT ACTION...URGENT ACTION...URGENT ACTION...

This makes 3 cases of Central Americans deported. One Honduran deported and detained in the U.S., one Guatemalan deported and detained in the U. S. and this Salvadoran deported directly to El Salvador.

These deportations break the long standing agreement with refugee rights groups that refugee claimants from Central America denied status in Canada would not be deported.

And now there is a fourth case of a Salvadoran who is facing deportation. There has to be a strong protest to protect this person and ensure the policy is changed.

• S.M. is a Salvadoran who arrived in New Brunswick on February, 1st, 1989. He was granted a full hearing but rejected by the IRB. His case is based on his union activities and threats from the death squads. His lawyer is filing an application for leave to appeal.

Call, write or send a POM (public opinion message for about \$3 from CN/CP) to: Barbara McDougall; Minister of Im-

migration; House of Commons; Ottawa; K1A 0A6; tel. (613) 994-2482; or Gordon Fairweather; Chairman; Immigration and Refugee Board; National Headquarters; Ottawa; K1A 0K1; tel. (613) 996-4752.

Ask that: (1) S.M. be protected and not returned to El Salvador or the United States; and (2) Canada reinstate the freeze on deportations of Salvadorans and Guatemalans and extend it to Hondurans.

If calling or writing, ask why the Immigration Department's "humanitarian and compassionate grounds" review, which is supposed to protect against deportation of "persons likely to be put at risk if returned to their homeland...in situations where their homeland is undergoing civil strife or political disturbances", is not being used for El Salvador, Guatemala and Honduras.

(Note: Is the answer that this review replaces the Special Review Committee process which was notorious for protecting cases from so-called left-wing dictatorships while ignoring those fleeing right-wing terror?)

• Another case involves a family from the Middle East (country not identified here for security reasons) "screened out" as not credible even though Canadians who have met them feel they are refugees.

The Backlog

Who's Really In Control?

There are some 87,000 refugee claimants waiting for decisions on claims they made prior to the new law coming into effect. These people are collectively known as the "backlog"...another touch of depersonalization.

Many Canadians hoped an amnesty would be declared for these people when the new refugee law came in. After all, it was the government's unfair system and its refusal to move against unscrupulous immigration "consultants" that created the backlog in the first place.

But in late December, 1988 Barbara McDougall announced that there would be no amnesty. She insisted that all claimants would have to prove their refugee cases or be deported. It was a tough line meant to ap-





pease a weary public and the extreme anti-immigrant groups.

But behind the scenes Immigration Department officials were saying backlog claimants would only have to pass a relatively easy "credible basis" test. And for those who failed there would be humanitarian and compassionate grounds to apply.

But it is now clear that the humanitarian and compassionate grounds guidelines for the new law (above) are the same ones which will be used for the backlog. This probably means trouble but again the messages are mixed.

The March 9th, 1989 *Globe and Mail* reported the following portions in an article entitled "New Immigration Guidelines Spawn Fear Of Mass Deportations":

"A senior immigration official estimated that upwards of 20,000 claimants under the old system, which became defunct on Jan. 1, will be asked to leave the country...

"Mr. Sadinsky (ed. Ian Sadinsky, spokesperson for Barbara McDougall) said he does not believe they will lead to mass deportations, but would not speculate on how many will be asked to leave, saying this 'is up to the determination process.'

"Raphael Girard, director of the Refugee Determination Task Force for Immigration Canada, said he expects that more than half the people in the backlog 'will meet the credible basis test' simply because they come from countries wracked by years of war and intense political and social upheaval and would face a life-threatening situation if returned home.

"Mr Girard also discounted allegations of mass deportations because he believes that 'several thousand' claimants will simply

withdraw their claims and leave Canada on their own.

"He noted that a deportation order can virtually destroy an individual's chance of ever coming back to Canada, whereas 'if they withdraw their claim and go home voluntarily and apply from there to immigrate to Canada, their experience will work in their favour.'"

Very few, if any, of those who leave "voluntarily" will ever be allowed to immigrate back to Canada. There is no way. Yet apparently this "line" will be used to encourage claimants in the backlog to withdraw their cases.

What system that uses these kinds of tactics can claim to be fair?

Focus Detention

Detention Of Refugee Claimants

Most Canadians don't realize that Canada's refugee law gives immigration officials the right to arrest and detain refugee claimants arriving in Canada:

"Where a person seeking to come into Canada is unable to satisfy an immigration officer with respect to that person's identity, that immigration officer shall forthwith detain the person.

"Every senior immigration officer may on reasonable grounds issue a warrant for the arrest and detention of any person with respect to whom an inquiry is to be held where, in his opinion, the person would not otherwise appear for the inquiry." [S.104(1), 104.1(1)]



These sections are troubling because they allow detention of people who have not done anything wrong but "might". Moreover, the Fourth Report of the Parliamentary Committee on Immigration (June, 1985), states that many people seem to be detained even when there are no grounds to believe they "might":

"Many witnesses...informed your Sub-committee that people, especially those claiming refugee status, are being detained for reasons which do not appear to constitute 'reasonable grounds'. In fact, some witnesses claimed that refugees are being detained in order to deter others from coming. In the case of refugee claimants, witnesses, including adjudicators, indicated that because refugee claimants express a fear of being sent back to their own countries, immigration officers, case presenting officers and adjudicators seem to think that this is 'reasonable grounds' to conclude that they will not appear for their inquiry, and the refugees are consequently detained."

In the criminal law, the power to deprive persons of their liberty is carefully supervised. But under the refugee law there is no appeal outside of the Immigration Department for detained refugee claimants.

Part Of The "Perfect Plan"

The Immigration Department's "Perfect Plan" guidelines name detention as part of the tough new system that will deter 60% of refugee claimants from ever coming to Canada once the "word" gets around: "We want cases which are removable on the basis of arrival from a safe third country or on grounds of lack

of credible substance to be detained because removal will be imminent. The argument is on the basis of not likely to appear for processing."

As the "Perfect Plan" begins to unfold, detention may play a key role in the revolving door strategy.

What Refugee Rights Groups Can Do

It is crucial that refugee rights groups stay on top of the detention issue. This is an important way of monitoring what is happening under the new law. Unless there is direct contact with the detention centres many refugee claimants may be "screened out" and deported without anyone ever knowing.

It is also important to monitor the conditions in which detainees are kept. Canada has a history of detaining refugee claimants in very poor conditions, including little or no outdoor air or exercise, overcrowding and restrictions on visitors. Conditions seem to be improved but there is a need to watch this closely.

Finally, groups should be able to play an important role in having refugee claimants released from detention. In the Parliamentary Committee's Fourth Report the following recommendation was made:

"Providing there are no strong grounds to continue detention, case presenting officers should be instructed to recommend release if a non-governmental organization or a responsible person undertakes to assist a detainee and provide for his/her accommodation. In this context, we welcome the initiative of the Director General of Immigration for the Ontario region, who indicated that the case presenting officers will be instructed not to ask for bonds to be posted or co-signed by organizations who facilitate the release of detainees."

In Ontario contact "Refugees In Detention", Fred Franklin (416) 921-7414.

In Quebec contact the "Ecumenical Working Group", Glynis Williams (514) 931-6265.

Network News

Refugee Rights Day / April 4th, 1989

Contact the Vigil Network or your local refugee rights group to find out what's happening on and around April 4th, 1989 in your area.

- Hamilton: Vigil For Refugees / April 4th, 1989—Contact Pascale Vigani (416) 528-1161...Dance For Refugee Rights—Contact Inez Rios (416) 528-8883
- Montreal: Press Conference and Vigil / April 4th, 1989 Contact Marie Lacroix (514) 935-1065
- Niagara: Celebration / April 15th, 1989 Contact Linda Bowron (416) 374-4184
- Toronto: Dance / April 1st, 1989 St. Paul's Church (Parliament and Queen) Contact Colin MacAdam (416) 469-1123
- Winnipeg: Vigil For Refugees / April 4th, 1989 Contact: Winn Leslie (204) 477-4483

Court Action Sweatshirts

"Refuge For Refugees" sweatshirts (and soon T-shirts) available with profits to support the Court Action. \$20 plus \$3 handling. Order from Refugee Update.

Educational Resources

"The Moment—Refugees On The Line", a 20 page booklet produced by the Jesuit Centre on the new law and what's behind it. \$3 for single copies, \$2 for 10 copies or more. Order from Refugee Update.

Copies of documents mentioned in Refugee Update No.2 (The "Perfect Plan", IRB News Release, "H and C" Guidelines and the Fourth Report of the Parliamentary Standing Committee on Immigration) available from the Vigil Network at cost of photocopying and handling.

Refugee Update is published for the Vigil Network by the Canadian Jesuit Refugee Programme of the Jesuit Centre For Social Faith and Justice. Some funding is provided by the Canadian Council For Refugees.

Refugee Update; c/o The Jesuit Centre; 947 Queen Street East; Toronto, Ontario; M4M 1J9 telephone: (416) 469-1123

Graphics courtesy of Rio Grande Border Witness, Chicago Religious Task Force, and Guatemala Solidarity Committee.

Art direction: Mirage Studios

single issue: \$2

Vigil

The Vigil Network is a coalition of groups and individuals working to protect refugees at risk under Canada's new refugee law.

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REFUGEE RIGHTS

GETTING INFORMED / GETTING ORGANIZED

**A national gathering of people concerned for refugees
threatened by Canada's new refugee law.**

When

Friday, May 5th, 1989 at 7:00 P.M.—Sunday, May 7th, 1989 at noon

Where

University of Windsor; Sunset Avenue; Windsor, Ontario

What

INFORMATION: how is Canada's new law affecting refugees

ANALYSIS: who and what's behind the new refugee law

PLANNING: what can we do to protect refugees at risk

ORGANIZING: what kind of a network do we need

Who

Nancy Pocock Quaker, refugee activist: "Committing to refugees"

Len Desroches Peace activist: "Refugees and nonviolence"

Rob Shropshire Refugee activist: "Protecting refugees at risk"

Rose Voyvodic Legal worker: "Legal tools"

There will be space for sharing and support at a faith level

Sponsors

The Vigil Network and the Windsor Refugee Office/IONACollege

For registration

Pauline Maheux; Windsor Refugee Office; 165 Oak; Windsor, Ontario; N9A 5E5

telephone: (519) 254-1341

(please register prior to April 15th, 1989 if you require accommodation)

Also for information contact

Steve, Colin or Peter; The Vigil Network; telephone: (416) 469-9790