

GJ: It seems a considerable amount of discretion has been introduced in this Bill—regulatory powers and discretionary powers that weren't there before. That concerns me because I don't understand why, and it strikes me as being potentially open to abuse.

JB: Most of it pertains to the management of immigration. Some of it highlights the realities, things that happened administratively anyway and that are now in the regulations—for example, private sponsorship. The theory is that we can handle as many as there are sponsors, but the reality is that we can only handle as many as there are people

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***"I think it shows a real lack of faith in the Board members."***

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available in the posts abroad to process them. Clearly, the level of resources for the posts abroad are linked to the proposed level of immigration for the year. There is a de facto limit, and the regulations simply acknowledge it.

GJ: What concerns me is when a safeguard has been removed and been replaced by discretion. The answer to the concern is that the Minister can issue a permit, or we will allow the person in anyway? There's an awful lot of that kind of discretion where the safeguard has been removed and the safety net is administrative or ministerial discretion.

AA: If the safe third country provisions are implemented, what is the projected number of refugees that will be affected?

JB: I guess press materials say 40 percent, don't they? It's hard to predict. As the world changes, the number of refugees to Europe will rise, yet last year, the number to Canada went down. One of the goals in streamlining the process is to maintain the current level, rather than deal with growth. It depends on what countries are prescribed. The obvious one is the U.S. because more than a third of the total flow is through the U.S. Obviously, there would be ways of getting around the port of entry coming from the U.S. It's hard to predict, but for administrative purposes, we figure we can cut the number from the U.S. in half. Europe is hard to predict. □

## No Integrity Without An Appeal

Esther Ishimura, Vigil Toronto

I waited with great anticipation for the new amendments to the Immigration Act. I had hoped that it would make provision for a new appeal mechanism to review failed refugee claims. With great dismay and frustration, I note that there is no such provision.

I work with Vigil Toronto, a volunteer nongovernmental organization. For the last three years we have been assisting people we believe to be Convention refugees who have exhausted all legal avenues open to them, and who are scheduled for deportation from Canada. One of these people is Mr. E.

Mr. E. is a Sri Lankan Tamil who fled Sri Lanka in 1989 after two of his friends were killed for providing equipment to the Tamil Tigers. He also unwillingly gave equipment to the Tigers and feared for his life. From 1974 until 1989 Mr. E. was detained and tortured repeatedly and brutally by the Sri Lankan army and the Indian Peacekeeping Forces. On one occasion he was also detained by the Tigers. As a result of this treatment, Mr. E. continues to have flashbacks of his experiences of torture. He suffers from insomnia, nightmares, digestive problems and anxiety.

The Immigration and Refugee Board refused Mr. E. because they misunderstood his testimony and believed he only feared the Indian army, which had left the country. They did not recognize the cumulative effect of the numerous detentions and extreme persecution that Mr. E. endured at the hands of various armies, especially the Sri Lankan army, which is still engaged in a bitter civil war against the Tigers.

Vigil Toronto has seen over a hundred cases similar to this one in the last three years. While we acknowledge that Canada's refugee determination system is generally fair, mistakes do occur. Genuine refugees have been denied Convention refugee status because of poor legal representation, poor translation or errors made by

Immigration and Refugee Board members. As well, people come to Vigil Toronto because new evidence has arisen in their situations after the completion of their hearing. For example, a man might discover that security forces in his country have attempted to find him and, failing to do so, have killed a close relative in his place.

The refugee determination system has no adequate means to review failed claims for the purpose of correcting errors or considering new evidence. The present avenue for reviewing a failed

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***"Canada must have a safety net to ensure that genuine refugees are not returned to the persecution from which they fled."***

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decision includes an appeal to the Federal Court, a postclaim humanitarian review or an appeal to the Minister of Immigration. The appeal to Federal Court is by permission only and is granted only on errors in law, not on the facts of the case. It does not allow for new evidence to be presented.

The humanitarian and compassionate review is a perfunctory paper review that is presently done by the managers at immigration offices. To be accepted, people must show that they would be in more danger than anyone else in their country. It is no surprise that because of this stringent test, only eight out of 237 Tamils have been accepted since January 1, 1989, notwithstanding the utter horror of the civil war, arbitrary detention and human rights abuses in Sri Lanka.

The statistics for the total number of people accepted under the postclaim humanitarian and compassionate review illustrate that this process is of negligible effectiveness and dangerously unreliable. From April 1991 until April



# The Canadian Council for Refugees (CCR) Spring 1992 Session Resolutions

1992, twenty-three people out of 3,463 were accepted across Canada for humanitarian considerations. Appeals to the Minister of Immigration have been all but useless since Mr. Valcourt took office. In the last year the Minister has accepted less than a handful of people. Mr. E. was among the many who were refused.

The recently-announced changes to the Immigration Act not only fail to address the need for a more effective safety net, they introduce the possibility that even more errors will occur. The new Act makes it necessary for some refugee claimants to convince both of the Refugee Board members hearing their case to accept them. At present only one assenting member is required, giving the refugee the benefit of the doubt. The new Act also gives expanded exclusion powers to immigration officers at initial interviews. The proposed change to the Immigration Act that allows for a complaints procedure acknowledges that there are problems with the Refugee Board members, but offers no relief to the failed refugee claimant.

To ensure that our refugee determination system meets the high standards that Mr. Valcourt talks about, there must be an appeal on the merits of a case with the possibility of entering new evidence. Canada must have a safety net to ensure that genuine refugees are not returned to the persecution from which they fled. Without this appeal we can have no confidence in the present government's commitment to provide protection for all those Convention refugees who need it. Without this appeal we have no answers for the people we know who need Canada's protection, but who are scheduled for deportation back to Iran, Sri Lanka and Kenya.

Vigil Toronto already told Mr. E. that the Minister of Immigration refused to allow him permission to stay. Yesterday we told him that the new changes to the Immigration Act do not allow for a review of his case. He just sat and cried.

*Esther Ishimura is the chairperson of Vigil Toronto, a nonprofit volunteer group that advocates on behalf of refugees in need who are denied protection in Canada.*

## I. Language Training

**RESOLUTION 1:** The CCR to send a telegram to the Minister of Employment and Immigration requesting that implementation of the Language Instruction for Newcomers (LINC) and Labour Market Language Training (LMLT) programs be postponed until the Federal Immigration Language Training Policy is reviewed.

**RESOLUTION 2:** The CCR resolved to recommend to Canada Employment and Immigration that Canadian citizens be given equal access to LINC and LMLT programs.

**RESOLUTION 3:** The CCR to encourage Canada Employment and Immigration to make refugee claimants eligible for the LINC and LMLT programs.

**RESOLUTION 4:** The CCR to urge the Canada Employment and Immigration Commission (CEIC) to: 1) adopt flexible guidelines and provide funding to increase the number of hours of language instruction to meet the needs of clients; 2) adopt flexible guidelines and increase funding to provide class sizes appropriate to clients' needs.

**RESOLUTION 5:** The Executive Committee of the CCR to promote adopting the Manitoba model of cooperation among stakeholders in the delivery of language training; the Executive of the CCR to encourage provincial departments overseeing the welfare of refugees and immigrants to take a leadership role in this matter; the Executive of the CCR to advise the Canadian Ministers of Education Council of the importance of this process.

## II. Overseas Protection

**RESOLUTION 6:** The CCR to urge the Canadian government to release remaining Iraqi assets; encourage other governments to release similarly frozen assets in their countries; use its position in the UN to ensure that sanctions against Iraq do not cut off food, medical and rebuilding supplies; monitor purchases by Canadian or UN reps to ensure that they are distributed without discrimination.

**RESOLUTION 7:** Levels for government-assisted refugees. The CCR to urge: 1) the Minister of Employment and Immigration to fulfill the government's commitment to select and land 13,000 government-assisted refugees in 1992, and to allocate resources to overseas visa posts required to meet this commitment; 2) the Minister of Cultural Communities and Immigration of Québec to increase the levels of government-assisted refugees for 1992 to at least the same percentage of the Canadian total as has been set for all other immigration levels to Québec.

**RESOLUTION 8:** Overseas protection of urgent protection cases. The CCR to urge the Minister of Employment and Immigration to speed up private sponsorship proceedings at overseas visa posts for refugees in urgent need of resettlement; to urge visa posts to accept referrals of protection/vulnerable cases from the United Nations High Commissioner for Refugees (UNHCR); to urge visa posts to attend to referrals of protection/vulnerable cases by granting Minister's Permits and conducting medical and security checks in Canada.