



CANADA'S PERIODICAL ON REFUGEES REFUGEE

Vol. 14 • No. 4

August–September 1994

Rebuilding Procedures: The Immigration and Refugee Board and *Rebuilding Trust*

H. Patrick Glenn

There is widespread agreement in this country and abroad that refugee determination procedures should not be adversarial. The conclusion follows from the nature of a request for refuge. There is no adversary to such a request, no opposing testimony to be raised, and no burden of proof to be overcome. There are, moreover, many difficulties of language, communication, and cultural difference. In these circumstances, adversarial procedure is not only unnecessary, but likely to be detrimental. This has been the stated policy of the Government of Canada and the Immigration and Refugee Board (IRB), who have received the benefit of a number of reports, most recently that of Professor James Hathaway, *Rebuilding Trust*.¹

However, there now appear to be major conceptual and practical difficulties in implementing this policy, at least in this country. This is evident from a reading of the preliminary response of the IRB to Professor Hathaway's report, in which the Board states that it "has difficulty" considering the changes in procedural responsibili-

ties—directed towards a less adversarial model—suggested by the report, and that it "does not foresee a shift" in the procedural role of Board Members.² How have we managed to reach this point? How has consensus at the level of principle been transformed into apparent discord and reaction at the level of implementation?³

In trying to answer these questions it may be useful to turn to some basic principles of procedure. The procedure known and used by North American lawyers, north of the Rio Grande,

is usually referred to as the adversarial procedure. It is important to note that it is the procedure which is adversarial, as opposed to the participants in the procedure, or the manner in which it is conducted, or any important element of it, such as cross-examination. Adversarial procedure is usually compared in the Western world with another form of procedure that developed in continental Europe and Latin America, which North American and common law lawyers describe, pejoratively, as "inquisitorial." Here

CONTENTS:

Rebuilding Procedures: The IRB and <i>Rebuilding Trust</i>	
<i>H. Patrick Glenn</i>	1
The End of the Cold War, International Disorder, and Refugees:	
Laying the Foundations for a "New Wall?" <i>Albrecht Schnabel</i>	4
Accepted on Compassionate Grounds: An Admission Profile	
of Tamil Immigrants in Canada <i>Arul S. Aruliah</i>	10
Early Warning and Conflict Resolution	
—An essay review <i>Absalom M. Adam</i>	15
African Refugees: Development Aid and Repatriation	
—A book review <i>Charles Smith</i>	18

