HOUSE OF COMMONS
CANADA

SAFEGUARDING ASYLUM - SUSTAINING CANADA'S COMMITMENTS TO REFUGEES

Report of the Standing Committee on Citizenship and Immigration

Norman Doyle, M.P.
Chair

MAY 2007

39th PARLIAMENT, 1st SESSION

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THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

FIFTEENTH REPORT

Pursuant to its mandate under Standing Order 108(2), your Committee has conducted a study on *Refugee Issues.*

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INTRODUCTION

Since the Second World War, Canada has resettled more than 700,000 individuals fleeing persecution in their homelands, or who were displaced by conflicts. In 1986, Canada became the first and only country to receive the Nansen Medal, awarded by the United Nations High Commissioner for Refugees for outstanding service in supporting the causes of refugees. The U.N. High Commissioner for Refugees at that time, Mr. Jean-Pierre Hocke, praised Canada for "the humanitarian impulse which lies behind the welcome traditionally extended to refugees," and stated that this impulse had kept Canada's door open at a time when other countries were closing off their borders. The Nansen Medal was a milestone in Canada's history of refugee protection. Canada's early record on providing protection was often found wanting: before the Second World War, more than 900 Jewish refugees aboard the SS St. Louis were refused refuge in Canada and several other countries. After the SS St. Louis was forced to return to Europe, most of its passengers perished in countries that were later occupied by the Nazis.

In September 2006, the House of Commons Standing Committee on Citizenship and Immigration embarked on a study of what it considered to be some of the more pressing issues facing Canada's refugee determination system. Four separate topics for study were highlighted: the Private Sponsorship of Refugees Program, the proposed Refugee Appeal Division (RAD), the situation faced by refused claimants who seek sanctuary in churches, and the status of people from countries where there are moratoria on removals. Since that time, some additional topics relating to refugees have come to light, such as the backlog of refugee claims waiting to be heard at the Immigration and Refugee Board (IRB) due to the current shortage of IRB members, the Safe Third Country Agreement with the United States, the Pre-Removal Risk Assessment process, and settlement issues relating to refugees.

Over the course of its study, the Committee heard from a number of witnesses, including the Canadian Council for Refugees, the Canadian Immigrant Settlement Sector Alliance (CISSA); Canadian Ecumenical Justice Initiatives (KAIROS), the Canadian Conference of Catholic Bishops, and a number of other organizations representing church groups and the refugee settlement sector. Officials from Citizenship and Immigration Canada (CIC) and the IRB, as well as the Minister of Citizenship and Immigration, added to the evidence before the Committee. Members of the Committee travelled to Montreal to attend the Canadian Council for Refugees' annual consultation, where they met with representatives from the myriad of organizations that provide advocacy and settlement services for refugees across Canada.

Refugee policy frequently necessitates balancing safeguards to individuals with efficiency. Because the determination of refugee status can be a life or death decision, legal protections and due process are necessary to shield claimants from arbitrary or poor decision making. Because refugees could potentially affect Canada's security and economic wellbeing, the Government of Canada imposes restrictions on admissibility, and must scrutinize all applications thoroughly. On the other hand, too many government restrictions on admissibility, or inefficiency in processing refugee claims, can similarly threaten what CIC calls "the integrity of the system." While claimants with a legitimate claim to refugee status should be swiftly accepted into Canadian society, claimants who are not bona fide refugees should be removed from Canada expeditiously. Most of the topics studied by the Committee were, at a base level, arguments about Canada's obligations to provide comprehensive protection without unduly encumbering the system. The Committee has attempted, in this report, to reconcile some of the administrative necessities under Canada's refugee determination system with the integrity of the system itself. The report makes recommendations that will, it is hoped, enhance both justice and efficiency.

PRIVATE SPONSORSHIP OF REFUGEES (PSR) PROGRAM

The Private Sponsorship of Refugees (PSR) program allows Canadians to sponsor refugees and their families living abroad, and to help them build a new life after they have arrived.

Under the *Immigration and Refugee Protection Act*[1] (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR),[2] the applicant must be a member of one of the following three classes: the Convention Refugees Abroad Class, the Country of Asylum Class and the Source Country Class. Convention Refugees are people who are outside of their country of nationality or habitual residence and who are unable to return to that country because of a well-founded fear of persecution on specified grounds. The Country of Asylum Class consists of applicants who are outside of their country of nationality or habitual residence and have been seriously and personally affected by civil war, armed conflict or violations of human rights. The Source Country Class consists of applicants from a source country (listed under Schedule 2 of the IRPR and currently comprised of Columbia, El Salvador, Guatemala, the Democratic Republic of Congo, Sierra Leone and the Sudan) who have been affected by armed conflict or detention without charge, or have a well-founded fear of persecution.

A determination of whether a sponsored individual is a member of one of these three classes is made by an officer at a Canadian visa office overseas. The visa officer makes his or her decision based on an interview with the applicant, supporting documentation submitted by the applicant and sponsoring group, and additional

1 S.C. 2001, c. 27

2 SOR/2002-227

information available to the officer, such as updates on country conditions. Applicants must pass medical and security checks to be accepted for resettlement in Canada. In addition, applicants are assessed on their ability to successfully establish themselves in Canada, unless they are determined by the visa officer to be in urgent need of protection. In deciding whether applicants will be able to establish themselves in Canada, visa officers look at whether or not the refugee has relatives in Canada, the refugee's ability to speak or learn either French or English, his or her potential for employment, and other factors. When a family is applying, their settlement potential is assessed as a unit. Refugees deemed to be in urgent need of protection are not assessed for settlement potential.

The type of groups that may sponsor refugees under the PSR program is broad, ranging from Sponsorship Agreement Holders (SAH), which are incorporated organizations that have signed pre-approved, formal sponsorship agreements with CIC, to any group of five or more Canadian citizens or permanent residents who decide to collectively sponsor a refugee. Sponsoring groups must supply proof to their local CIC Centre that they meet the necessary qualifications, and CIC decides whether or not to approve the sponsorship.

The length of the sponsorship is generally one year; however, if the visa officer overseas determines that the refugee or his/her dependants have special needs, and, as a result, will require more time to establish themselves in Canada, the officer may ask the sponsoring group to increase the duration of the sponsorship to up to 36 months.

Sponsors are expected to provide support for the refugee and dependants, which may include help with the cost of rent, food, utilities and other day-to-day living expenses, as well as clothing, furniture and other household goods. Sponsors may also be called upon to provide assistance in locating interpreters; selecting a doctor and dentist and securing health care coverage; enrolling children in school and adults in language training; providing orientation to community services, such as banking and transportation; and assisting in the search for employment.

Religious organizations and community groups have embraced the PSR program and as a result, many refugees have been successfully resettled in Canada. As one witness stated:

> Communities right across Canada, large and small, can participate in welcoming refugees through private sponsorship. This allows communities to get to know refugees face-to-face and build a commitment to upholding Canada's humanitarian traditions as well as facilitating successful integration and reducing xenophobia.[3]

3 Debra Simpson, Member, Canadian Council for Refugees, Meeting No. 17, October 3, 2006, (9:05 a.m.)

The program has received widespread praise: in 1986, for example, the United Nations High Commissioner for Refugees awarded the people of Canada the Nansen Medal in recognition for our outstanding voluntary efforts in the resettlement of refugees under the PSR program.

In recent years, however, there have been indications that the PSR program has not been functioning as effectively as it could be, and that as a result, some groups are beginning to rethink their continued participation. Witnesses who appeared before our Committee, in particular, representatives from the Canadian Council for Refugees (CCR) and the Canadian Conference of Catholic Bishops (CCCB), expressed concerns about:

- low targets for private sponsorship;
- lengthy delays in bringing privately sponsored refugees to Canada; and
- lack of understanding, on the part of sponsors, as to why so many private sponsorship applications are refused by Canadian visa posts abroad, particularly in regard to sponsorship of family members.

According to these witnesses, the above concerns are dampening the enthusiasm of organizations and individuals and threatening the ongoing success of the PSR program.

CIC's Immigration Levels Plan for 2006, contained in its 2005 Annual Report to Parliament,[4] called for the landing of 3,000 to 4,000 privately sponsored refugees in 2006. The Committee notes that CIC fell short of the low end of this target, landing only 2,976 refugees during this period.[5] While CIC's Immigration Levels Plan for 2007, contained in its 2006 Annual Report to Parliament, shows a slightly increased upper target for privately sponsored refugees (4,500), the lower target remains 3,000.[6] It does not appear, therefore, that the government plans to land significantly more privately sponsored refugees in 2007 than it did in 2006. Organizations like the CCR and the CCCB have interpreted such low targets as a lack of clear government support for private sponsorship or a lack of political will to make private sponsorships work.

When CIC officials appeared before the Committee in May 2006, they indicated that there were 14,855 private sponsorship applications awaiting processing in Canadian posts abroad. The backlog of applications may be related to the low targets, meaning that CIC is dedicating fewer resources for the processing of PSR applications. Other factors may also

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4 This report is available on CIC's Web site at: http://www.cic.gc.ca/english/pub/annual-report2005/index.html.

5 This figure is available in CIC 2006 *Annual Report to Parliament*, available on CIC's Web site at: http://www.cic.gc.ca/english/pub/annual-report2006/index.html.

6 See the Immigration Levels Plan 2007, in CIC's 2006 *Annual Report to Parliament*.

be contributing to both the low targets and the large inventory. For example, when the former Minister of Citizenship and Immigration appeared before the Committee, he indicated that there was a 52% refusal rate for private sponsorships, and that visa posts end up devoting excessive time and resources to screening applicants who turn out not to be refugees.

Witnesses told the Committee that the lengthy delays have resulted in declining interest in the program:

> People get very excited about this program. They respond because they know that someone's in need, and then they wait. Very often, as a sponsorship agreement holder, I am not able to explain to the sponsoring group why this is taking so long. So people move on. It's true. We have seen a decline in interest in the program primarily related to the fact that it has taken so long for people to arrive, and there's no good explanation.[7]

Witnesses also told the Committee that during the long delays in processing, conditions on the ground can change. Claimants who would have originally had a good claim to refugee status could become ineligible. One witness cited the example of Sudan, where long processing times meant that any application was futile: the refugee would be repatriated long before the visa officer could possibly process the claim.[8]

Another witness pointed out that when they sponsor a refugee, they must show that they have funds available for the financial responsibility they will assume. These funds have to be kept on hand during the long delays in processing, meaning that resources cannot be allocated elsewhere in the meantime.[9] The amount of money sponsors have tied up in the system was estimated at $44 million.

When the representatives from the CCR appeared before the Committee in October 2006, they expressed concern over CIC's statements that the PSR program is being used to bring family members, who are not necessarily refugees, into Canada through the back door. The CCR indicated that sponsoring groups are frustrated by this perception, because they dedicate time and effort to screening the cases they decide to sponsor in order to ensure that the individuals fall into one of the three classes eligible for sponsorship under the program. The Mennonite Central Committee stated that sponsors sometimes find it difficult to assess refugee status from abroad:

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7 Debra Simpson, Member, Canadian Council for Refugees, Meeting No. 17, October 3 2006, (9:05 a.m.)

8 Carolyn Vanderlip, Coordinator, Refugee Sponsorship, Anglican Diocese of Niagara, Elected Sponsorship Agreement Holders, Meeting No. 31, February 1, 2007 (11:40 a.m.)

9 Martin Mark III, Coordinator, Refugee Sponsorship, Catholic Crosscultural Services, Roman Catholic Archdiocese of Toronto, Elected Sponsorship Agreement Holders, Ibid., (11:50 a.m.)

> Last spring, I and six of my colleagues from Canada and two based in Africa spent several weeks exploring refugee protection issues in Kenya and South Africa, including many NGO visits, visits with UNHCR hubs and branch offices, and also visits with the respective Canadian High Commissions in each of those countries. Something that stands out was a comment we heard several times from NGOs involved in resettlement. They noted how difficult it must be for Canadian SAHs to assess refugee cases exclusively from within Canada when they find it incredibly difficult to do that right at the source.[10]

The government, for its part, has indicated that sponsoring groups could be more selective in terms of who they choose to sponsor and that if this were done, the refusal rate might drop, and visa posts would be able to process private sponsorship applications faster. Some of the sponsoring groups stated that they were cognisant of the need to better screen potential refugees and were working with CIC to address the issue:

> We don't claim that sponsors have always done a perfect job of screening, which is something that even the most highly trained visa officer can't claim. But many sponsors have participated in eligibility training provided by CIC. There's a better flow of information from CIC, giving them better screening tools and information about eligibility, country information, and changing country conditions, etc. Frankly, there is also a much greater awareness of the need to screen.
>
> But cases in the pipeline were submitted before sponsors had these tools. The program is haunted by the past, causing negative perceptions within CIC and overseas visa posts. We want to move the program forward. Focusing on the past will not produce positive outcomes for anyone, whether sponsor, refugee, or government.[11]

The Committee heard from a witness who described a United Church of Canada pilot project called the visa-office-referred project. Under this project, visa officers pre-approve a potential refugee, and then refer them to the sponsoring group, making the process less time-consuming and inefficient. They stated that they had committed to taking 20 visa-office-referred refugees annually, but thus far there has been no response from CIC.[12]

Some witnesses, most notably the Canadian Ecumenical Justice Initiatives (KAIROS), have indicated that because the family class is so narrowly defined in immigration law, the private sponsorship program may be their only option to bring extended family members to Canada. As a result, refugees within Canada ask churches and other sponsoring organizations to consider relatives like brothers and sisters, or aunts

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10 Ed Wiebe, Coordinator, National Refugee Program, Mennonite Central Committee Canada, Ibid., (11:15 a.m.)

11 Carolyn Vanderlip, Coordinator, Refugee Sponsorship, Anglican Diocese of Niagara, Elected Sponsorship Agreement Holders, Meeting No. 31, February 1, 2007, (11:25 a.m.)

12 Sarah Angus, Member, Justice, Peace and Creation Advisory Committee, United Church of Canada, Meeting No. 31, February 1, 2007, (11:15 a.m.)

and uncles for private sponsorship. In its appearance before the Committee in April 2005, during the previous session of Parliament, KAIROS recommended that the government reinstitute the assisted relative class, in order to give individuals in Canada another route, besides private sponsorship, to bring their family members to Canada.[13]

An NGO that appeared before the Committee stated that, ultimately, the backlog could be addressed only by more CIC resources dedicated to the PSR program, and better screening by sponsoring agencies:

> I really do believe that our visa officers, the staff, are under resourced. There should be more of them. They should have more resources available. We have some responsibility, and we maybe have put in cases because we see the humanitarian need. We are now cutting back and screening. But no matter what we do, as long as that backlog is there and not systemically addressed, nothing is going to work.[14]

The Committee notes that both sponsoring groups and CIC are of the view that the PSR program is an excellent way to bring refugees to Canada. The Committee agrees with former Minister Solberg, who stated in his testimony before the Committee, that "the outcomes for people who come as privately sponsored refugees are typically much better because they're coming into a community where they already have people who care about them and want to help."[15]

The Committee is encouraged by the fact that CIC indicated, in its 2006 Annual Report to Parliament, that it has made or is making efforts to improve the program, including:

- The provisions of funding for temporary duty officers in early 2005, to reduce inventories at several of the most affected missions;
- Establishing an NGO-Government Sub-Committee, in August 2005, which meets monthly with elected representatives of SAHs to discuss and share information on operational and policy issues affecting the PSR program; and
- Developing a quarterly information newsletter for the PSR Community.[16]

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13 See the text of KAIROS's April 2005 *Presentation to the House of Commons Standing Committee on Citizenship and Immigration* on the topic of Family Reunification, available on KAIROS' Web site at: http://www.kairoscanada.org/e/media/letters/ltrBrief_FamilyReunification050413.asp.

14 Heather Macdonald, Program Coordinator, Refugee and Migration, Justice and Global Ecumenical Relations, United Church of Canada, Meeting No. 31, February 1st, 2007, (12:30 p.m.)

15 The Honourable Monte Solberg, Minister of Citizenship and Immigration, Meeting No. 3, May 10 2006, (5:15 p.m.)

16 See page 28 of the 2006 *Annual Report to Parliament*

The Committee recommends:

- **That the Government of Canada continue to support and expand the PSR program as a key element of Canada's refugee program, allowing individuals and communities from across Canada the opportunity to participate in upholding Canada's longstanding humanitarian traditions.**

- **That CIC increase the lower end of the annual target for privately sponsored refugees to 4000 and that the government make appropriate investments in infrastructure and funding to support that target.**

- **That CIC significantly increase the resources for processing private sponsorships (and other immigration classes) at visa posts abroad, in order to both clear up the existing backlog, and allow for an increase in the number of people admitted under the PSR program.**

- **That CIC provide clear guidelines to sponsoring groups as to the criteria they use to evaluate applicants under the PSR program, and provide clear reasons for decisions to refuse applicants, in order to reduce the high refusal rates for private sponsorships.**

- **That the spouse and children of a person admitted under the PSR program be allowed to immediately enter Canada, and that the processing of the child or spouse take place within Canada.**

- **That a child who is accepted as a refugee be permitted to sponsor his or her parents, and that the parents be immediately brought to Canada for processing within Canada.**

- **That CIC develop new types of overseas partnerships and consider different sponsorship agreement models that will expedite the processing of refugees at visa posts.**

- **That CIC further develop the visa-office-referred refugee concept, by which visa offices abroad pre-approve refugees for resettlement in Canada under the PSR program, and extend the system to all sponsoring groups.**

THE REFUGEE APPEAL DIVISION

Refugee determinations inside Canada are made by the Refugee Protection Division (RPD) of the IRB. A single IRB member decides whether or not a person claiming refugee status is in fact a refugee. The IRPA provides for the creation of an additional IRB division, the Refugee Appeal Division (RAD), where negative refugee determinations made by the RPD could be appealed. Appeals would proceed without an oral hearing. The appeal would be determined by the record of the proceedings of the RPD, and on written submissions from the refugee claimant, CIC, and a representative of the United Nations High Commissioner for Refugees. The RAD would be permitted to confirm the RPD decision, substitute its own decision for that of the RPD, or return the matter to the RPD for a re-hearing. The IRPA provisions governing the RAD, however, have not been brought into force.

Under the former *Immigration Act*,[17] refugee claims were heard by two-member panels. In the event of a split decision, the decision favourable to the refugee claimant was in most cases deemed the decision of the Board. Under IRPA, in the interests of administrative efficiency, the number of Board members needed to make a refugee determination was reduced from two to one. The RAD was meant to provide a safeguard when the number of Board members needed to hear a claimant's initial case was reduced. However, in April 2002, the government announced that implementation of the RAD would be delayed because of the high volume of claims in the system and pressures related to the implementation of IRPA. In March of 2005, former Minister of Citizenship and Immigration, the Honourable Joe Volpe, committed to a review of the issue; however, neither previous governments nor the current government have taken steps to implement the RAD or any other type of appeal on the merits for refused claimants.

The Committee heard evidence that the move from two-member panels to one-member panels had not had an adverse affect on acceptance rates for refugee claimants. An official from CIC, for example, told the Committee:

> [W]hen the IRB had two-member panels, there were a very limited number of split decisions. Most decisions were unanimous. In fact, it was less than 1% of the decisions that were split decisions. So there were very few split decisions.
>
> Also, when we went from two-member panels to one-member panels, we certainly did not see, let's say, a sudden increase in refusal rates at the IRB.[18]

17 R.S.C. 1985, c. I-2, which was repealed by section 274 of the *Immigration and Refugee Protection Act*

18 Ms. Micheline Aucoin , Director General, Refugees Branch, Department of Citizenship and Immigration, Meeting No. 27, December 5, 2006, (9:20 a.m.)

The current process does allow a refused claimant to make an application to the Federal Court of Canada for leave to seek judicial review, in the event of a negative refugee determination. The Minister may also seek judicial review of a refugee determination. Moreover, refused refugee claimants are entitled to apply for permanent residence through a humanitarian and compassionate (H&C) application, and can avail themselves of a pre-removal risk assessment, both of which are similarly subject to judicial review, if leave is granted. Leave is granted for judicial reviews only in a small number of cases: of the 6,939 refugee cases submitted to the Federal Court in 2005, judicial reviews were granted in only 1,034 files.[19]

The six grounds of review by the Federal Court, found in section 18.1(4) of the *Federal Courts Act*, allow the court to quash RPD decisions for a number of reasons, including on jurisdictional grounds, procedural fairness and errors in fact or law.[20] The RAD would allow appeals on errors of fact, law, or mixed fact and law, and would not allow new evidence to be introduced. A witness from the Courts Administration Service of the Federal Court of Canada stated in his testimony that the RAD would have offered identical grounds for appeal as a judicial review by the Federal Court.[21]

The Committee heard from a number of witnesses who advocated for implementation of the RAD, arguing that the potential for errors, coupled with the profound repercussions of those errors, made the RAD necessary. One witness summed up this position as follows:

> Inevitably, mistakes are made. Any human decision-making process is subject to error. This is even more the case with refugee determination, a very difficult process involving things happening in different countries, when information is often limited and testimony is usually heard through an interpreter. Yet the consequences of a wrong decision are huge. It may be a matter of life and death… yet there is no meaningful review of a negative decision. The only possible review is a judicial review, which is a narrow legal review, and most importantly, only by leave.[22]

The Committee notes that in the Committee's meetings studying the IRPA in 2001, officials from the IRB were forthright in their position that the RAD would serve to balance the rights of refugees with the integrity of the system. As the IRB Chairperson in 2001, Mr. Peter Showler testified at the time:

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19 Mr. Raymond Guénette (Acting Chief Administrator, Office of the Chief Administrator, Courts Administration Service, Federal Court of Canada), Meeting No. 29, December 12, 2006, (9:05 a.m.)

20 The Federal Court may quash a tribunals decision if satisfied that the tribunal acted without jurisdiction; failed to observe a principle of natural justice or procedural fairness; erred in law in making a decision; based its decision on an erroneous finding of fact; acted, or failed to act, by reason of fraud or perjured evidence; or acted in any other way that was contrary to law. *Federal Courts Act*, R.S.C. 1985, c. F-7, Section 18.1(4)

21 Mr. Raymond Guénette, Acting Chief Administrator, Office of the Chief Administrator, Courts Administration Service, Federal Court of Canada, Supra, note 19, (9:30 a.m.)

22 Francisco Rico-Martinez, Co-Chair, Working Group on Inland Protection, Canadian Council for Refugees, Meeting No. 17, October 3, 2006, (9:05 a.m.)

> Single-member panels are a far more efficient means of determining claims. It is true that claimants will no longer enjoy the benefit of the doubt currently accorded them with two-member panels, and I think that should be noted. However, any perceived disadvantage is more than offset by the creation of the refugee appeal division, the RAD, where all refused claimants and the minister have a right of appeal on RPD decisions.[23]

A useful summary of the arguments in favour of implementation of the RAD was provided by François Crépeau, Professor of International Law at the Université de Montréal:

> The Refugee Appeal Division is indispensable for the smooth functioning of the Canadian refugee determination system for four reasons:
>
> *In the interests of efficiency*: a specialized appeal division is a much better use of scarce resources than recourse to the Federal Court, which is not at all specialized in refugee matters. It would be much better placed to correct errors of law and fact and to discipline hearing room participants for unacceptable behaviour.
>
> *In the interests of consistency of law*: an Appeal Division deciding on the merits of the case is the only body able to ensure consistency of jurisprudence in both the analysis of specific facts and in the interpretation of legal concepts in the largest administrative tribunal in Canada.
>
> *In the interests of justice*: a decision to deny refugee status is generally based on an analysis of the facts, often relies on evidence that is uncertain and leads to a risk of serious consequences (death, torture, detention, etc.). As in matters of criminal law, a right to appeal to a higher tribunal is essential for the proper administration of justice.
>
> *In the interests of reputation*: as a procedural safeguard, the Refugee Appeal Division will enhance the credibility of the IRB in the eyes of the general public, just as the provincial Courts of Appeal reinforce the entire justice system. The IRB's detractors — both those who call it too lax, and those who call it too strict — will have far fewer opportunities to back up their criticisms and the Canadian refugee determination system will be better able to defend its reputation for high quality.[24]

During the course of the Committee's present study, witnesses stated that that non-implementation of the RAD was an affront to the Parliamentary process that led to the passage of IRPA. In the opinion of one witness, "the implementation of the Act without the right of appeal subverts the will of Parliament and undermines the democratic process …Members of Parliament agreed to the reduction of decision-makers in each case from

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23 Peter Showler, Chairperson, IRB, Meeting No. 5, March 20, 2001, (9:15 a.m.)

24 Professor Crépeau's comments were included in a brief submitted by the Canadian Council for Refugees entitled *The Refugee Appeal: Is No One Listening*, March 31, 2005, available on-line at: http://www.web.net/ccr/refugeeappeal.pdf

two to one, because refugee claimants were still going to get an appeal process."[25] In other words, because the government reneged on its commitment to implement the RAD, the IRPA is not a valid expression of Parliament's intentions.

Officials from CIC pointed to the other avenues through which claimants could petition to remain in Canada, such as H&C applications and pre-removal risk assessments. Moreover, CIC officials argued that all of these applications, including a negative determination of refugee status, are subject to a judicial review in the Federal Court of Canada. CIC officials, therefore, believe that the RAD is unnecessary, given Canada's already generous refugee determination system. The former Minister of Citizenship and Immigration, the Honourable Monte Solberg put it as follows:

> The system as it is today does provide a number of avenues of appeal. I know there are concerns that there is not an avenue of appeal with respect to the merits of an individual case. I understand that. Our concern is that we're reluctant to move forward with this without a discussion about other changes so that we don't end up with the situation where we have people tied up in the system even longer than they're tied up today. As you know, sometimes people are in there for many, many years using the generous avenues of appeal that we currently have, and also, frankly, they are able to do so at little cost to themselves because they use legal aid services in individual provinces. The result is that some people are here for 10, 15 years — I remember one case of 17 years — tying up the system.[26]

Departmental officials argued that the lack of a RAD had served to streamline the refugee determination system and reduce the backlog of claimants. Any discussion on implementing the RAD, in their view, should be tied to a reform of the refugee determination system as a whole. Former Minister Solberg stated that he was "not opposed to having a discussion about the RAD, but it has to be done in concert with a larger discussion about making the whole system more efficient."[27]

A number of witnesses commented on the opportunities for judicial review. Witnesses maintained that leave is granted in a small percentage of cases and, if granted, the judicial review of an IRB decision is more limited in scope than the appeal contemplated in the RAD. As the representative from the UNHCR testified, "[t]he Federal Court judicial review is not an appeal on the merits. The court cannot replace a decision by the IRB with its own judgment."[28] Finally, advocates for the RAD pointed out that the body would have an expertise in refugee determinations that the Federal Court of Canada does not possess, and that the RAD would develop a body of precedents over time that would

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25 Francisco Rico-Martinez, Co-Chair, Working Group on Inland Protection, Canadian Council for Refugees, Meeting No. 17, October 3, 2006, (9:05 a.m.)

26 The Honourable Monte Solberg, Minister of Citizenship and Immigration, Meeting No. 11, June 7, 2006, (4:05 p.m.)

27 The Honourable Monte Solberg, Minister of Citizenship and Immigration, Meeting No. 23, November 7, 2006, (9:55 a.m.)

28 Jahanshah Assadi, Representative in Canada, UNHCR, Meeting No. 7, May 29, 2006, (4:30 p.m.)

make refugee determination less arbitrary. It was also asserted that by implementing the RAD, the government would save time and money, because people would be less likely to apply to Federal Court for leave for judicial review in the event that they received a negative determination on their refugee claims.

The Committee notes, however, that an appeal to the RAD, as it is presently worded in the IRPA, would allow only a paper review of a RPD decision, and that no new evidence would be allowed to be presented at a proceeding before the RAD.

The Committee heard testimony from Jean-Guy Fleury, the former Chairperson of the IRB, who was able to give a rough estimate of the resources that would be needed to implement the RAD. According to the estimates made in preparation for the enactment of IRPA, the RAD would require 20 additional decision makers, plus support staff, and could therefore be implemented by fewer than 70 additional public servants.[29] A witness from the IRB put the start-up costs at an estimated $8 million, and annual operating costs between $6 and $8 million.[30] The increase in legal aid expenditures, provided to refugee claimants by the provinces, was calculated by a witness to range between $6 to $9 million.[31]

This is not the first time that this Committee has studied the implementation of the RAD. In December 2004, the Committee unanimously passed a motion requesting that the Minister of Citizenship and Immigration implement the RAD or advise the Committee as to an alternative proposal without delay. A history of the government's decision not to implement the RAD, including the testimony in Parliament of successive Immigration Ministers, is included as an appendix to this report.

Prior to the release of this report, the Committee studied and adopted a private Member's bill that would require the government to implement the RAD. Bill C-280 *An Act to Amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171)* will, if passed by Parliament, proclaim into force the RAD-relevant sections of IRPA, with the exception of the provision that would allow the government to appeal to the RAD.

The Committee recommends:

1. That the Minister of Citizenship and Immigration Canada immediately implement the RAD as provided for in the *Immigration and Refugee Protection Act.*

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29 Jean-Guy Fleury, Chairperson, Immigration and Refugee Board, Meeting No. 7, May 29, 2006, (3:45 p.m.)

30 Mr. Paul Aterman (Director General, Operations Branch, Immigration and Refugee Board of Canada), Meeting No. 46, March 29, 2007, (12:50 p.m.)

31 Mr. John Frecker, (President, Legistec Inc.), Meeting No. 29, December 12, 2006, (10:30 a.m.)

PEOPLE WHO SEEK SANCTUARY IN CHURCHES

Sanctuary is a religious "right-of-asylum" that was historically offered to fugitives from the law who found their way to a sacred place. In biblical times, those fleeing persecution could make their way into a sanctuary, but could only claim refuge if they managed to reach the altar, where they were required to grab hold of one of the four "horns" found at the corners of the altar. The principle of sanctuary existed in both Greek and Roman civilizations, and since the fourth century, as a tenet of the Christian faith. Islam has maintained its own tradition of sanctuary, where those fleeing persecution could find protection in sacred enclaves within Mecca, and "any violation of the immunity of those who placed themselves under its protections was deemed a serious act of impiety, a sacrilege."[32] Under medieval English law, fugitives could claim refuge from prosecution in a church, provided they agreed to leave English shores within 40 days. Those who did not leave faced prosecution. In England, fugitives lost their legal right to sanctuary in 1623.

Although a legal right to sanctuary no longer exists, sanctuary has been offered by religious organizations to many refused refugee claimants since the early 1980s. Those who are granted sanctuary find themselves in limbo, unable to leave the church in which they have been granted sanctuary for fear of being arrested and removed from Canada.

The Committee notes that sanctuary is often provided to refused refugee claimants who have exhausted all legal avenues to remain in Canada, including an initial refugee determination, an H&C application, and a pre-removal risk assessment, as well as the option of applying for judicial reviews of those decisions.

The decision to offer sanctuary has been generally respected by Canadian law enforcement officials. However, one recent exception demonstrated that officials are willing enter churches. In March 2004, police officers entered the Saint-Pierre United Church in Quebec City and arrested a refused Algerian refugee claimant, Mohamed Cherfi. Mr. Cherfi was an activist for the rights of non-status Algerians, and the police arrested and detained him for allegedly violating bail conditions imposed following his participation in a demonstration. Mr. Cherfi was subsequently deported to the United States, where he sought, and was eventually granted, refugee status.

Mr. Cherfi's arrest led to public debate over whether or not churches should be offering sanctuary. In 2004, the former Minister of Citizenship and Immigration, the Honourable Judy Sgro, expressed the view that churches should not be offering sanctuary to refused refugee claimants.[33]

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32 Ghassan Maarouf Arnaout, Asylum in the Arab-Islamic Tradition, Office of the United nations High Commissioner for Refugees, Geneva, 1987

33 See CBC news, *The Church as Sanctuary*, February 14, 2005, available online at: http://www.cbc.ca/news/background/immigration/sanctuary.html

At the end of 2004, however, Minister Sgro met with church leaders and later gave ministerial permission for a claimant who had sought sanctuary in churches in Ottawa and Montreal to leave their church sanctuary to apply for landed immigrant status, without the fear of deportation. One of the witnesses who appeared before the Committee described the results of the meeting with former Minister Sgro as follows:

> No church leader tells congregations to offer sanctuary. No church leader can make us stop. I mention this because I was part of a delegation of church leaders who met with former immigration minister Judy Sgro. They were the leaders of churches where congregations had offered sanctuary, and the minister was disturbed by the growing number of churches that were offering sanctuary. At that meeting, she asked the church leaders to tell the congregations to stop, and offered them a back channel for resolving their difficulties. The minister said the church leaders could come to her in private once a year with twenty cases that would be dealt with in that quiet, private way. The church leaders refused this option, and quite wisely so, certainly for the simple reason that they did not want a private process that was available to them and not to other religious groups, that was available to them and not to other advocacy groups.
>
> Secondly and more importantly, they acknowledged that we did not ask these congregations to do this and that we cannot make them stop, because this is a question of conscience.[34]

Witnesses from churches and religious organizations that provide sanctuary to refused refugee claimants believed that their actions were a tenet of their faith:

> the offer of sanctuary begins as a moment of conscience. Someone — a mother, a father, a person who is alone — knocks at the door of the church and asks for help. The minister, the priest, or a member of the congregation, sometimes a secretary, is then faced by another desperate human being, and these Christians are then forced to face themselves and to respond to the summons that this refugee presents.[35]

Religious organizations emphasized that sanctuary was not offered without a great deal of thought and deliberation, since the practice potentially requires a long term commitment to the refused refugee claimant. Many organizations have developed a policy for the provision of sanctuary to ensure that it is not used frivolously. A witness described his church's policy as "a cautious one" where "sanctuary is seen as the last resort."[36] Another witness told the Committee that they tried to protect the credibility of sanctuary and reserved the practice for those most in need, stating:

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34 Ms. Mary Leddy, Director of Romero House of Refugees, Sanctuary Coalition of Southern Ontario, Meeting No. 22, November 2, 2006, (9:00 a.m.)

35 The United Church of Canada: Heather Macdonald, Program Coordinator, Refugee and Migration, Justice and Global Ecumenical Relations, Meeting No. 22, November 2, 2006, (9:15 a.m.)

36 Mr. Stephen Allen Associate Secretary, Justice Ministries, The Presbyterian Church in Canada, Meeting No. 22, November 2, 2006, (9:40 a.m.)

> We have refused more requests than we have ever accepted. It may come as a surprise to you that it is not something we want to do. Rather, it is something we must do….We always try to avoid sanctuary if possible, because it's exhausting, physically and emotionally; it's expensive; it's tedious; and in the long run, it's just plain boring. But when a commitment is made to a refugee, we honour the commitment. We are firm and persistent in what we understand to be the truth. [37]

Some witnesses saw the provision of sanctuary as a form of civil disobedience, that had become necessary because of flaws in Canada's refugee determination system, and in particular, because of the government's decision not to implement the RAD, which would offer them access to appeals of their negative decisions. It was also argued that more churches and religious organizations are willing to offer sanctuary to these claimants because they perceive the current refugee determination system, with its single member panels, to be unfair. Churches pointed to evidence that the government's failure to implement the RAD has increased the incidence of sanctuary. For example, witnesses from one church stated that they have provided sanctuary 14 times since 1983, with six of those 14 cases since the implementation of IRPA.

It is not clear, however, the extent to which the implementation of the RAD alone would satisfy those who provide sanctuary to refused refugee claimants. One witness stated that, were the government to institute the RAD "sanctuary pressures on our church would be far less," but none of the witnesses said that the implementation of the RAD would end offers of sanctuary.

After careful consideration, the Committee recognizes the provision of sanctuary as an understandable community-based response to faults in Canada's immigration and refugee determination system, particularly the failure of the government to implement the RAD.

The Committee recommends:

- **That CIC, the CBSA, and law enforcement officials respect the right of churches and other religious organizations to provide sanctuary to those they believe are in need of protection, but that official recognition of sanctuary be made on a case-by-case basis and be subject to reasonable limits.**

- **That CIC, the CBSA, and law enforcement officials open clear lines of communication with a religious organization providing sanctuary, and seek to negotiate a resolution with the religious organization or refused refugee claimant.**

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37 Ms. Heather Macdonald Program Coordinator, Refugee and Migration, Justice and Global Ecumenical Relations, The United Church of Canada, Ibid., (9:10 a.m.)

- **That in cases of sanctuary, officials strictly adhere to a policy of non-interference with the children of refugee claimants who may be affected by their parents' decision to seek sanctuary, including but not limited to the right of children to attend school (and be brought to and from school) without the threat that they, or their families, will be arrested or detained.**

- **That in cases of medical emergencies, those who have sought sanctuary, and members of their family, be allowed to receive medical treatment without the threat that they will be arrested or detained.**

PEOPLE FROM COUNTRIES WHERE THERE ARE MORATORIA ON REMOVALS

Under section 230 of the *Immigration and Refugee Protection Regulations* (IRPR),[38] the Minister of Public Safety can declare a temporary stay of removal to a country where there is a generalized risk to the civilian population as a result of armed conflict, environmental disaster or any other temporary and generalized situation. Currently, Canada has issued a temporary stay of removals for nationals of eight countries: Afghanistan, Burundi, the Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda and Zimbabwe. Temporary stays are commonly referred to as moratoria on removals.

If a person from a country on which there is a moratorium on removals makes a refugee claim in Canada, and is determined to be a refugee by the IRB, then all is well. Refused refugee claimants from moratoria countries, however, face a precarious situation. While a moratorium on removals affords them protection from removal for the duration of the moratoria,[39] it does not provide a route through which they can obtain permanent residence in Canada. Although stays of removal are intended to be temporary, they can last for years if the situation in the moratoria countries fails to improve.

There are other mechanisms through which refused refugee claimants can become permanent residents. If refused refugee claimants are married to or are in common law relationships with Canadian citizens or permanent residents, it is possible for them to apply for permanent residence under CIC's in-Canada spousal policy.[40] Refused refugee claimants from moratoria countries are also able to apply for permanent residence on Humanitarian and Compassionate (H&C) grounds. CIC policy on H&C applications states

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38 SOR/2002-227

39 The moratoria on removals does not apply to applicants who are inadmissible on criminality or security grounds, or have been refused refugee status for violations of human or international rights. In addition, refused refugee claimants can choose to return to their countries of origin despite a moratoria on removals.

40 Spouses and common-law partners in Canada, regardless of immigration status, are able to apply for permanent residence from within Canada under the Spouse or Common-Law Partner in Canada Class.

that persons who have established themselves in Canada due to a prolonged inability to leave Canada as a result of circumstances beyond their control may be entitled to favourable H&C consideration.[41]

In their appearance before the Committee in December 2006, CIC officials indicated that the vast majority of persons from moratoria countries who make refugee claims in Canada are granted refugee status. According to figures provided by the IRB, refugee status has been granted to over 15,000 individuals from moratoria countries, with an acceptance rate of almost 80%. CIC officials indicated that, with respect to the individuals who are found not to be refugees, H&C acceptance rates are also high.[42] Finally, CIC officials stated that even if refused refugee claimants from moratoria countries are unsuccessful in their H&C applications, they are, for the duration of their stay in Canada, entitled to the same employment and social benefits as any other temporary foreign worker, able to attend school, and entitled to medical coverage under the Interim Federal Health Program.

With respect to acceptance rates, CIC has indicated that approximately 90% of claimants from moratoria countries are eventually granted permanent residence.[43] The Committee notes that the 90% acceptance rate is, according to CIC, a global figure that encompasses refugee determinations, the in-Canada spousal public policy, and H&C applications.

Other witnesses appearing before the Committee, most notably the CCR, have expressed concern about H&C applications being the primary route for refused refugee claimants from moratoria countries to become permanent residents of Canada. In its September 6, 2006 report, *The Limits of H&*C, the CCR stated:

> H&C has indeed proven a solution for a significant number of moratorium country nationals. However, as discussed in the 2006 CCR report, "Lives on Hold", "[t]he H&C route is both ineffective and inefficient, since it leaves many people from moratorium countries without permanent residence and is cumbersome and resource-intensive for the government since each case needs to be individually studied in all its complexity".[44]

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41 See section 5.21 of Chapter *IP-5 — Immigration Applications in Canada made on Humanitarian and Compassionate Grounds*, available on CIC's Web site at: http://www.cic.gc.ca/manuals-guides/english/ip/ip05e.pdf.

42 In 2005, for example, CIC officials advised that there was an 85% acceptance rate for H&C applications made by individuals from moratoria countries. Officials also indicated, however, that preliminary figures for 2006 showed a drop in acceptance rates.

43 Citizenship and Immigration Canada, *Fact Sheet on Refugee Issues*, available on-line at: http://www.cic.gc.ca/english/policy/responses.html

44 See page 1 of the September 6, 2006 CCR report entitled *Lives on Hold – The Limits of H&C*, available on the CCR's Web site at: http://www.web.ca/ccr/Lives%20on%20hold%20-%20H&C.pdf. Its July 2005 report entitled *Lives on Hold: Nationals of Moratoria Countries Living in Limbo*, is also available on the CCR's Web site at: http://www.web.ca/ccr/livesonhold.pdf.

The CCR also referred to the inconsistency of H&C decision making in this report, stating that while it may be true that 85% of H&C applications from individuals from moratoria countries are accepted, the individuals in the 15% category are victims of an inherently discretionary process.[45] As CCR representatives stated in their testimony before the Committee in October 2006:

> Similar cases get different answers. This inconsistency is inherent to H&C because it is a discretionary process in which individual officers reach their own conclusions about whether humanitarian intervention is required or not.[46]

The CCR indicated that, despite the fact that individuals from moratoria countries are able to obtain authorization to study and work in Canada, and are entitled to benefits under the Interim Federal Health program, they continue to face a host of complications when they find themselves unable to obtain permanent resident status. According to the CCR, they often encounter the following difficulties:

> [I]n terms of work, you have access to a work permit renewable maybe every year or every six months. You have a social insurance number that begins with a nine. Employers, therefore, will know you don't have permanent status in Canada, and that means they are unlikely to be hired for any highly qualified job or sent off for training or invested in by an employer. Most people in this circumstance are forced to rely on minimum-wage jobs. In terms of improving themselves or getting an education, primary and secondary education is fine, but after you get past that, you are treated as a foreign student, and therefore you have to pay fees as a foreign student, and of course most families are unable to do that. With respect to health, people from moratorium countries have access to the interim federal health program, which covers only emergency health care services. This will do for most things, but if you have something more important or more chronic, then it is a problem. Obviously, the name interim federal is meant for a short period of time, but when you have people relying on that program for years, then they are in difficult situations.[47]

Another point emphasized by representatives from both the CCR and the CCCB was the difficult and lengthy separations from family members, often faced by refused refugee claimants from moratoria countries. Because these individuals are not permanent residents, they are unable to sponsor their spouses, children other family members, who may be residing in the moratoria country itself. As a result, refused refugee claimants experience the emotional hardship of being separated from their loved ones, as well as anxiety over their fate in a country where a civil war may be raging.

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45 See page 2 of Lives on Hold — The Limits of H&C, supra.

46 Janet Dench, Executive Director, Canadian Council for Refugees, Meeting No. 17, October 3, 2006, (9:20 a.m.)

47 Janet Dench, Executive Director, Canadian Council for Refugees, Meeting No. 17, October 3, 2006, (10:20 a.m.)

Witnesses suggested that the situation of refused refugee claimants from moratoria countries could be alleviated through the introduction of a regulatory class or regularization program, which would accept applications for permanent residence after a certain period of time. The program would not involve discretionary decisions on the part of immigration officials, as H&C decisions do, and, provided applicants met the specific requirements of the program, which would likely include medical and security checks, they would be granted permanent residence.

CIC has implemented regularization programs in the past, most notably through the Deferred Removal Order Class (DROC). A person could apply for permanent residence under the DROC if his or her refugee claim had been refused at least three years before, and he or she had yet to be removed from Canada.

More than 5,000 individuals obtained permanent residence under the DROC provisions before they were repealed.[48] Under the DROC program, whether the applicant had worked for at least six months was considered. In addition, applicants were ineligible for the program if they had committed a crime, were seen as "security risks," had avoided deportation and immigration proceedings, had been on welfare, or if they had a serious medical condition that would put excessive demand on health care services.

The Committee recommends:

- **That the government pass regulations creating a new class of immigrants, similar to the former Deferred Removal Order Class (DROC), that would allow refused refugee claimants from moratoria countries to apply for permanent residence if they have been in Canada for more than 3 years.**

- **That the regularization program impose minimal conditions and criteria for acceptance, consisting of criminal and security checks.**

- **That CIC draft and publish clear guidelines respecting the criteria for acceptance for this new class of immigrants so that prospective applicants are able to assess, before submitting their application, whether or not they are likely to meet the requirements of this class.**

48 See the Report of the Auditor General, Citizenship and Immigration Canada and Immigration and Refugee Board — The Processing of Refugee Claims, April/October 1997, Chapter 25, available on the Office of the Auditor General's Web site at: http://www.oag-bvg.gc.ca/domino/reports.nsf/html/ch9725e.html.

- **That CIC ease restrictions on employment, health care and education provided to people from moratoria countries.**

IRB APPOINTMENTS PROCESS AND BACKLOG

During the course of the study, the Committee heard troubling testimony on the current lack of IRB members available to hear refugee claims, which has resulted in an increasing refugee claims backlog.

The IRB is an independent tribunal that reports to Parliament through the Minister of Citizenship and Immigration. It is composed of three divisions: the Immigration Division, the Immigration Appeal Division, and the Refugee Protection Division (RPD). The RPD decides claims for refugee protection made by persons within Canada. Refugee claimants appear before a single IRB member, who determines their refugee status.

Since its inception, the IRB has been beset by a perception that the appointment process is inherently political. In 1995, a Ministerial Advisory Committee (MAC) was created to assist in the selection of IRB members. In 1997, the Auditor General reported that the screening process did not ensure the appointment of qualified candidates. Many commentators in the refugee field complained that, despite the MAC, appointments remained overtly political, and sometimes resulted in the appointment of members with no expertise or training in refugee determination. In March of 2004, the government announced changes to the appointment process for the IRB, designed to eliminate "political patronage", introduce more stringent criteria for appointments, and increase parliamentary oversight of the appointment process.[49] The new selection process was aimed at providing "transparent and independent merit-based selection" and promised to measure candidates "against a new standard of competence to ensure that they have the necessary skills, abilities and personal suitability."

The current selection process includes an initial screening, a written test, an advisory panel prescreening, a section board interview, and reference checks. The advisory panel, consisting of the legal community, academia, non-governmental organizations and human resources experts, prescreens candidates. The selection board, chaired by the IRB Chairperson, then interviews candidates identified by the advisory panel. Based on the assessment of the advisory panel and the selection board, the IRB Chairperson provides the Minister of Citizenship and Immigration with a list of qualified candidates. The Minister can then recommend IRB Members, who receive their appointment by Order in Council.

49 CIC Press Release, Minister Sgro Announces Reform of the Appointment Process for Immigration and Refugee Board Members, March 16, 2004

Some witnesses believed that the failure to fully staff the IRB was the result of an appointments process that, in spite of the 2004 reforms, has again become politicized. The result, according to some witnesses, was an increase in the backlog of refugee applicants and longer wait times. The backlog of refugee claimants waiting for an IRB hearing has been falling in recent years. Jean-Guy Fleury, the then Chairperson of the IRB, explained as follows in his testimony before the Committee in October of 2006:

> [W]e were faced with a backlog of 52,000 claims in March 2003. The result of our action plan has been a greater consistency in decision-making and in the management of claims. In the year following the implementation of the action plan, our output reached unprecedented levels. We dramatically reduced the backlog from a peak of 52,000 three years ago to approximately 20,000 today. Of course, other factors have contributed to this decline as well, not the least of which was the concurrent drop in refugee claims.[50]

At the same meeting, Mr. Fleury told the Committee that the IRB had 40 vacancies, out of a full complement of 156 members. This, he acknowledged, was one of the reasons that the IRB was not able to further reduce the backlog, stating that "… [I]f I had all the members I need, we could eat away at the backlog at a faster rate than I'm doing it at right now. Right now, I'm plateauing."[51] Indeed, Mr. Fleury stated, the backlog is projected to increase in the 2006 fiscal year, to an estimated 24,000 to 25,000, if new appointments are not made in a timely manner.[52]

Some witnesses believed that the failure to fully staff the IRB was the result of an appointments process that, in spite of the 2004 reforms, remained politicized. As a witness from the Canadian Council for Refugees told the Committee:

> [A] system is political if people are barred from consideration because they were appointed by the previous government, and that is certainly the perception out there. The impact of that is that you are losing a lot of highly qualified board members, people who would be able to mentor and take the system forward. If you lose a large number of qualified people and you replace them with new people, the new ones may be excellent but they will take at least six months to properly get up to speed, so there is a lot of wastage, and if they don't have the experienced members to mentor them, it may take them longer. So we're concerned at the… government's apparent position that they are reluctant to reappoint existing qualified and competent members.[53]

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50 Jean-Guy Fleury, Chairperson, Immigration and Refugee Board, Meeting No. 7, May 29, 2006, (3:35 p.m.)

51 Ibid., (4:05 p.m.)

52 Jean-Guy Fleury, Chairperson, Immigration and Refugee Board, Meeting No. 19, October 17, 2006, (10:15 a.m.)

53 Janet Dench, Executive Director, Canadian Council for Refugees, Meeting No. 17, October 3, 2006, (9:55 a.m.)

It was also pointed out that the difficulties in the appointment process did not begin with the transition following the change of government in 2006. As Nick Summers, a former member of the Immigration and Refugee Board of Canada Advisory Panel, told the Committee:

> Our disquiet with the system started back in the summer of 2006. Actually, I guess, it went back even further than that, because we were concerned about the fact that there was a very low level of appointment of people to the IRB by, at that point, the Liberal minister, Mr. Volpe. It was clear that we were not giving him names that he wanted to see and appoint. That was our first disquiet…
>
> When the Conservatives were elected, we were encouraged by comments that there was going to be an open and transparent system of appointments in all panels, and we thought that perhaps we would start to see some appointments, which we new the IRB desperately needed. However, this did not materialize under Minister Solberg, and in fact what we began to see during the summer of 2006 was that not only were there not appointments being made, but people who were being recommended for reappointment were not being appointed. And it would appear that it was simply because they had been appointed during the time the Liberals were in government.[54]

Mr. Fleury himself, when he appeared before the Committee in October 2006, was of the opinion that the power to recommend reappointment of IRB members to the Governor in Council should be taken out of the purview of the Minister, and given to the IRB chairperson:

> Because I don't have the power to reappoint, which other tribunals have in provincial jurisdictions, people then go back to the political...to get their backing or their support for reappointment.
>
> I think that's not the way to go. People are exercising independent decisions every day on refugee or immigration matters and then feel that for the next appointment they have to go back to the political...for support. I hope that practice will stop….
>
> I think reappointment should be the purview of the chair. I have no problem that it's the government that appoints when they come in, but once a person has done their mark, they're evaluated. This reappointment process is insecure. I can't plan, and then you have the political overtones.[55]

In November of 2006, the former Minister of Citizenship and Immigration, the Honourable Monte Solberg, stated before the Committee that the problem of appointments would soon be alleviated through an aggressive recruitment campaign, which included advertisements in daily newspapers across Canada. This campaign

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54 Mr. Nick Summers, Former member of the Immigration and Refugee Board of Canada Advisory Panel, Meeting No. 48, April 17, 2007, (11:20 a.m.)

55 Jean-Guy Fleury, Chairperson, Immigration and Refugee Board, Meeting No. 19, October 17, 2006, (10:25 a.m.)

resulted in 350 applications, which will take about four months to process. Based on this stream of applicants, the Minister believed that the IRB would soon be closer to its full complement.[56]

By 2007, the concerns surrounding the IRB appointment process had not been fully resolved. In April 2007, Mr. Stephen Green, a witness from the Canadian Bar Association, stated that the lack of appointments was causing increased stress on the system, and had implications for Canada's national security:

> What exists today, quite candidly, in the present process is a crisis. When the government came to power there were approximately five vacancies; we now have over 50.
>
> Canadians should be concerned, and are concerned, with this appointment system. The objectives of the *Immigration and Refugee Protection Act* are spelled out quite clearly in this act, and one of them is family reunification. The problem is that people who appear before this board who are trying to bring their family members to Canada who have been refused are waiting up to three years because there aren't board members who they can appear before. Canadians and permanent residents are being separated from their spouses, partners, and parents because there's no one to hear their case. There are presently eight Federal Court applications dealing with this exact issue: "I am a Canadian. I am a permanent resident. My spouse has been refused a visa. There's no one to hear my case. Help me." That's what exists.
>
> On security, people who should or should not be removed from Canada don't have anyone to hear their cases. There are not enough board members, so we have people who have perhaps been convicted, who have an absolute right in certain circumstances to go before this board and argue their cases to stay — or the minister argues that they shouldn't stay — but no one is hearing these cases because there's no one to hear them.[57]

The Canadian Council for Refugees related to the impact that the shortage of IRB members was having on those awaiting a decision:

> We want to highlight the devastating impact of the government's failure to appoint members on refugees and people waiting for an appeal on family sponsorship. Claimants are waiting longer and longer for a hearing because there simply aren't enough board members to sit on hearings. This is very difficult for refugees who live in a constant state of anxiety while waiting to know whether Canada will protect them. For refugees separated from their immediate family members the wait is particularly excruciating.

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56 The Honourable Monte Solberg, Minister of Citizenship and Immigration, Meeting No. 23, November 7, 2006, (10:10 a.m.)

57 Mr. Stephen Green, Secretary, National Citizenship and Immigration Law Section, Canadian Bar Association, Meeting No. 49, April 19, 2007, (11:10 a.m.)

> Let me give you an example. An Iraqi fled persecution in his home country and arrived in Canada 10 months ago. He is still waiting for a date for his refugee hearing. His wife and baby daughter remain in central Baghdad, where every day your life is at risk. If the IRB had its full member complement, this man would probably have had his hearing by now. As it is, who knows when he will have a hearing and, if accepted, begin the procedures to bring his wife and daughter to Canada.[58]

The issue of appointments to the IRB has also been shaped by the release of a report in January 2007 by the Public Appointments Commission (PAC) entitled *Governor in Council Appointments Process — Immigration and Refugee Board of Canada*.[59] The PAC report was produced for the Minister of Citizenship and Immigration pursuant to the *Federal Accountability Act*.

The PAC report identifies some of the perceived deficiencies in the current appointment process, such as the fact that the exam used to screen candidates for competence does not have a pass mark, and some candidates are recommended to the selection board despite receiving low marks on the exam. The PAC report spoke to a number of other issues surrounding the appointment process, including: the timeliness of recruitment campaigns; the need for targeted advertising; maintenance of the practice of providing the Governor in Council with several names for each vacancy; keeping candidates for appointment and reappointment apprised of their situation; making initial appointments for three years; and making reappointments for five years followed by another reappointment of two years.

The section of the PAC report that provoked the most controversy, however, was recommendation 5, which called for a return to having political appointees on the panel that chooses candidates. The PAC report recommended merging the advisory panel with the selection board, and then made the following recommendation:

> The ministerial prerogative should be applied as intended when the current IRB selection process was implemented in 2004: whether the current Advisory Panel is retained or a new Committee established (merging the Advisory Panel and the Chairperson's Selection Board), the Minister and the IRB Chair should each appoint half of the external members. The IRB Chair should preside the Advisory Panel or the newly-constituted Committee.[60]

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58 Janet Dench, Executive Director, Canadian Council for Refugees, Meeting No. 49, April 19, 2007, (11:30 a.m.)

59 Governor in Council Appointments Process — Immigration and Refugee Board of Canada. Report to the Minister of Citizenship and Immigration Canada, January 2007, available on-line at: http://www.cic.gc.ca/english/pub/irb-process.html.

60 Governor in Council Appointments Process – Immigration and Refugee Board of Canada. Report to the Minister of Citizenship and Immigration Canada, January 2007, available on-line at: http://www.cic.gc.ca/english/pub/irb-process.html. In Committee testimony, the report was referred to as the Harrison Report, after Mr. Peter Harrison, the public servant charged with producing it.

Following the release of the PAC report, five members of the advisory panel resigned in protest.[61] One of the members of the advisory panel, Mr. Nick Summers, appeared as a witness before the Committee. Mr. Summers explained the reasons for the resignation of the selection board as follows:

> The selection process we had in place was working extremely well. We were getting extremely good candidates, and were passing people on for appointment who were very good. The problem wasn't our selection process; the problem was the minister's office not appointing people.
>
> We also could not see any purpose in putting minister's representatives on the selection committee, other than to bring partisanship into the process. Since we came on the committee with the express intent that there would not be partisanship in the selection process, we felt that any attempt to go that way was a contradiction of the terms under which we came on it, and we would not accept that.[62]

In his testimony before the Committee, Mr. Summers responded to some of the criticisms in the PAC report, stating that the exam was not used to definitively screen candidates:

> I can tell you that in our considerations there were some extremely qualified people on their résumés who did not do well on the test. We felt that in fairness to the applicants, we had an obligation to look at whether or not the test adequately represented their qualifications. So in a small number of cases, after considerable consideration and debate, we decided that some people should get an interview.[63]

A number of other witnesses who appeared before the Committee also had concerns about the recommendations contained in the PAC report. Mr. Joseph Allen, from the Quebec Immigration Lawyers Association (AQAADI), stated that policy considerations did not have a place in the appointment process:

> My understanding behind part of the rationale for the report's recommendations to allow the minister to name persons to the external advisory committee is partly couched in the belief that it is legitimate and appropriate for selected candidates to be in tune with, and sympathetic to, government policy.

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61 PM defends refugee board changes, *Toronto Star*, March 1, 2007, available on-line at: http://www.thestar.com/News/article/186996

62 Mr. Nick Summers, former member of the Immigration and Refugee Board of Canada Advisory Panel, Meeting No. 49, April 17, 2007, (11:20 a.m.)

63 Ibid., (1:40 p.m.)

> Respectfully, I disagree. The sole mandate and duty of an IRB decision-maker is to hear the parties and the facts adduced in evidence, and to rule in accordance with the law, the principles of natural justice, the *Canadian Charter of Rights and Freedoms*, and the *Immigration and Refugee Protection Act*. Government policy cannot be, and should never be, the concern of a decision-maker.[64]

Finally, in April 2007 the Committee heard again from Mr. Jean-Guy Fleury, who had resigned as Chairman of the IRB on March 16, 2007.[65] Mr. Fleury explained that his departure from the IRB was not due to political pressure, but rather that the transition to a new government had made his departure necessary:

> There was never any pressure put on me by the government, the PMO, the Clerk, PCO, anybody… I made the decision that it was best for the board, because we weren't getting appointments, regardless of the system, that the board was being penalized and they needed a new chair, and the government needed to appoint a new chair.[66]

Mr. Fleury declined to comment on whether the IRB was in crisis, but said that "it had been a very difficult year in terms of appointments and reappointments" and that in the last year, the IRB had lost approximately "300 years of experience in one year."[67] Mr. Fleury explained that it is normal for vacancies on the IRB to be unfilled after an election, however, when asked whether the transition period was normal or extraordinary, Mr. Fleury remarked that it was "a tough transition." [68] He also told the Committee that the reappointment process should be subject to minimal interference:

> I respect the fact that the government can decide what they want on appointments and they can decide what they want in terms of selection. I came in and saw that the way to professionalize the institution was to divorce the selection from the appointment. My view is when you mix them up, whether you like it or not, you are politicizing the selection process.
>
> My sense is for tribunals, not for governor in council appointees everywhere but for tribunals, especially our tribunal and the work we do, it has to be divorced.[69]

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64 Mr. Joseph Allen, Attorney and President, Quebec Immigration Lawyers Association (AQAADI), Ibid., (11:25 a.m.)

65 Mr. Jean Guy Fleury, *Letter to the Minister of Citizenship and Immigration Canada*, February 23, 2007, available on-line at: http://www.irb-cisr.gc.ca/en/media/news/2007/fleury_letter_e.htm

66 Mr. Jean-Guy Fleury, Former Chairperson, Immigration and Refugee Board, Meeting No. 50, April 24, 2007, (11:40 a.m.)

67 Ibid., (11:20 a.m.)

68 Ibid., (11:55 a.m.)

69 Ibid., (12:00 p.m.)

When asked for a response to the PAC report recommendation of allowing the Minister to appoint half of the selection board, he responded "it is certainly not the way I would go."[70]

The Committee heard testimony from the former IRB chair that the backlog of refugee applications may be increasing by 1,000 per month, due to the vacancies on the Board.[71]

The Committee believes that there is a crisis at the IRB that is very serious, and requires immediate action.

The Committee therefore recommends:

- **That the Government of Canada expedite the reappointment of existing members of the IRB to help alleviate the backlog of refugee applications, spousal applications and appeals against removals, and that such reappointments be made on the basis of an evaluation of core competencies.**

- **That the Government of Canada appoint new IRB members immediately, using the selection process and criteria developed in 2004.**

- **That the government reject recommendation 5 of the PAC report.**

- **That the Minister's power to recommend reappointment of members be transferred to the Chairperson of the IRB, who will recommend reappointments on the basis of an impartial evaluation of core competencies.**

70 Ibid., (11:10 a.m.)

71 Ibid., (12:05 p.m.)

THE SAFE THIRD COUNTRY AGREEMENT

Under the IRPA, the Minister of Citizenship and Immigration may designate a country to which refugee claimants may be returned to make their claim for asylum.[72] This provision allows Canada to negotiate safe third country agreements with other countries. Potential claimants coming into Canada from these countries can be denied access to our refugee determination system.

The safe third country policy stems from the principle that refugee claimants in certain counties have access to a refugee determination system that is roughly the same, qualitatively, as Canada's. If they receive a negative determination in the third country, they will likely receive the same result if they make a claim in Canada. The safe third country policy option is meant to alleviate strains on refugee processing by preventing multiple claims that will unnecessarily duplicate refugee determination proceedings. It also tries to prevent "asylum shopping," by which refugees continue to make claims in multiple jurisdictions until they find one that provides them with protection. The UNHCR has stated that agreements can, with appropriate safeguards, enhance the international protection of refugees through the orderly handling of refugee claims.

Canada and the United States signed the Safe Third Country Agreement (the Agreement) in 2002, following the September 11 attacks, although negotiations predated the attacks. It has been in effect since December 2004. The Agreement had an immediate effect: for the period from December 29, 2004, to March 30, 2005, there was a 40% drop in refugee claims at border ports of entry.[73] In 2005, Canada received 4,033 refugee claims at the Canada-U.S. land border, which was 55% lower than the number of refugee claims made at the land border during 2004.[74] To date, the United States is the only country that has received a designation as a "safe third country" under Canadian law.

Under the Agreement, a refugee claimant at a port of entry along the Canada-U.S. border is not eligible to access the refugee determination process in Canada unless they can satisfy the border services officer, on a balance of probabilities, that they qualify under one of the exceptions. The exceptions to the Agreement, which are outlined in the Regulations, are broad. Claimants arriving at a land border will be allowed to make a claim for refugee protection in Canada if they:

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72 Section 101(1)(e) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27, provides that a person is ineligible to have a refugee claim determined by the Immigration and Refugee Board if they "came directly or indirectly to Canada from a country designated by the regulations [...]" This power also existed in the IRPA's predecessor, the Immigration Act, R.S.C. 1985, c. I-2, but no country was ever designated under that Act.

73 CIC, First Statistics Under Canada – U.S. Safe Third Country Agreement Show Decline in Refugee Claimants, June 2005

74 CIC, A Partnership for Protection-Year One Review, November 2006

- Have a family member in Canada who is a Canadian citizen or permanent resident; a protected person; a person in favor of whom a removal order has been stayed for humanitarian and compassionate considerations; a person over age 18 who has made a claim for refugee protection and awaits a hearing at the IRB; or a person who holds a valid work or study permit;

- Are an unaccompanied minor;

- Have a valid Canadian visa or other valid admission document (other than a transit visa) issued by Canada, or were not required to obtain a visa to enter Canada, but were required to obtain a visa to enter the U.S.;

- Have been charged with or convicted of an offence that could subject them to the death penalty in the U.S. or in a third country; or

- Are nationals of a moratorium country, or stateless persons who are former habitual residents of a moratorium country.

Large numbers of claimants come within the exceptions outlined above. Of the 4,041 individuals who requested refugee status at Canadian land-border ports of entry between December 29, 2004 and December 28, 2005, more than 3,000 were found eligible to make a refugee claim in Canada.[75]

Officials from CIC contended that the drop in refugee claimants was not necessarily caused by the Safe Third Country Agreement, pointing to a wider trend in refugee flows:

> Some witnesses have attributed the declining number of asylum claims in Canada to the Safe Third Country Agreement. It is important to note that there has been a decline in refugee claims in industrialized countries of some 50% since 2001. The decline in Canada is consistent with this global trend.[76]

The UNHCR has monitored the Agreement to assess whether the obligations of Canada and the United States under international law are being met. In its report, the UNHCR stated that the Agreement has generally respected international law:

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75 Ibid.

76 Janet Siddall, Assistant Deputy Minister, Operations, Department of Citizenship and Immigration, Meeting No. 27, December 5, 2006, (9:05 a.m.)

> [I]t is the UNHCR's overall assessment that the Agreement has generally been implemented by the Parties according to its terms and, with regard to those terms, international refugee law. Individuals who request protection are generally given an adequate opportunity to lodge refugee claims at the ports of entry (POEs) and eligibility determination decisions under the Agreement have generally been made correctly.[77]

While the UNHCR has approved of the overall workings of the Agreement, it has outlined particular areas where the Agreement could be improved. Of primary concern was the continued use of the "direct back policy," under which a person makes a refugee claim at a time when officials at the port of entry are unable to process his or her claim. The claimant is scheduled for an interview and returned to the United States to wait for an appointment with Canadian authorities. The UNHCR recommended that direct backs be discontinued to prevent claimants who would otherwise be eligible to apply for refugee status in Canada from being returned to their country of origin before being able to access Canada's refugee determination system. The Committee notes that the Government of Canada has committed to phasing out the use of the direct back policy, and since August 31, 2006, the use of direct backs has been limited to exceptional circumstances only.

The UNHCR also outlined other problematic aspects of the Agreement:

> Other primary areas of concern for UNHCR include: (1) lack of communication between the two governments on cases of concern; (2) adequacy of existing reconsideration procedures; (3) delayed adjudication of eligibility under the Agreement in the United States; (4) in some respects, lack of training in interviewing techniques; (5) inadequacy of detention conditions in the United States as they affect asylum-seekers subject to the Agreement; (6) insufficient and/or inaccessible public information on the Agreement; and (7) inadequate number of staff dealing with refugee claimants in Canada.[78]

The overall acceptance rate for refugees is comparable in Canada and the United States. The Committee heard evidence that in the period from 2001 to 2005, for example, the overall acceptance rate was about 45% in the United States. Canada's rate of acceptance for the same period of time was about 43%. Some of the witnesses who appeared before the Committee expressed concerns over the operation of the Agreement. They cited differing treatment of refugee claimants and acceptance rates that differed depending on geography and nationality. Witnesses told the Committee that in the case of Colombian refugee claimants, Canada accepts over 80% of those seeking asylum, while in the United States the acceptance rate is less than 40%. Professor Deborah Anker, Professor of Law at Harvard Law School, who appeared before the Committee as a witness, gave an example of an instance in which Columbian claimants would be denied refugee status in the United States:

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77 UNHCR Safe Third Country Agreement Monitoring Report, December 29, 2004–December 28, 2005

78 Deborah Anker, Clinical Professor of Law, Immigration, and Refugee Program, Harvard Law School, Meeting No. 33, February 8, 2007, (11:50 a.m.)

> One of the most pointed examples of the application of that has been the case of Colombian refugees. Guerrilla organizations, including the FARC in Colombia, often kidnap people and then extort from their relatives; that's how they raise their funds, by kidnapping people and then demanding that their family pay. The family, of course, has to pay the ransom or their relatives will be killed. But if they pay, they are now found under U.S. law to have materially supported a terrorist organization. The level of duress required by basic humanity, which everyone in this room would participate in, is a basis for an absolute exclusion under the material support- for-terrorism bar. If you are a child and you live in a conflict area and you give a glass of water to an individual in that conflict, you will have supported that terrorist organization. That is where U.S. law stands.[79]

Professor Anker also told the Committee that on such important issues as gender persecution, "Canada clearly recognizes violence against women as a form of persecution and gender-based persecution as a ground for protection, U.S. law is up in the air at this point."[80] The one-year filing deadline under the U.S. refugee determination system was also cited as less generous than those found in Canada:

> Although both governments claim to offer generous systems of refugee protection, several aspects of the U.S. asylum system violate international legal standards. For example, in the United States, we have a one-year filing deadline, so that an individual has to apply for asylum within one year of entering the United States or he or she is barred. If he or she is barred, he or she is only eligible for a form of protection called "withholding of removal", requiring the applicant to meet a higher standard of proof.[81]

Because of these deficiencies, one of the witnesses suggested that Canada should re-examine its commitment to the Safe Third Country Agreement in light of a deterioration of refugee protections in the United States since it was entered into. As she put it:

> Under the agreement there has to be a determination by Canada that the U.S. is a safe third country, that it is a safe place for asylum seekers. For many asylum seekers, that is not the case. Critically, I think, the information upon which Canada based its determination that the U.S. was safe was information from 2002. Major new developments have happened in the U.S. in the last five years, and I would say that most of the current problems in our asylum system have been precipitated by those developments.[82]

Finally, witnesses told the Committee that the Agreement puts lives at risk because of an increased dependence on human trafficking:

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79 Ibid.

80 Ibid., (12:30 p.m.)

81 Ibid., (11:00 a.m.)

82 Ibid., (11:40 a.m.)

> More urgently, human lives are demonstrably put at risk by this policy. Individuals are endangered in a climate of increased irregular border crossings and increased vulnerability to trafficking and dangerous smuggling practices. We know CBSA and the RCMP say they don't have data about these things. Well, of course not. They are illegal things, so there is no data to confirm them. But if you go to my office every day, you will see people arriving. They just crossed the border undetected, and they have sometimes paid up to $10,000 to find a way to come to Canada.[83]

The Canadian Conference of Catholic Bishops went so far as to question whether the Agreement violates the *Canadian Charter of Rights and Freedoms*:

> In entering into the Safe Third Country Agreement with the United States, Canada has left in the hands of a foreign government the determination of the final disposition of people to whom we deny refugee status. This places us, then, at risk of violating our international obligations under the United Nations Convention relating to the Status of Refugees, to respect the principle of *non-refoulement.*
>
> The Safe Third Country Agreement allows Canada illicitly to wash its hands of these obligations, leaving it for U.S. officials to render, *refouler*, or hold in detention people who could otherwise have had a viable refugee claim, and there is no appeal and every likelihood that the Safe Third Country Agreement violates the Charter of Rights and Freedoms.[84]

The Committee recommends:

- **That the Government of Canada undertake a full and comprehensive review of the Safe Third Country Agreement every two years, in light of changes to U.S. refugee law, to determine whether the U.S. system continues to meet internationally acceptable standards.**

- **That CIC take steps to publicize the exceptions to the Agreement through its website, and by disseminating information to U.S. based refugee organizations.**

- **That CIC take immediate steps to respond to the UNHCR's concerns with the Agreement, as set out earlier in the UNHCR Safe Third Country Agreement Monitoring Report.**

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83 Francisco Rico-Martinez, Co-Director, FCJ Refugee, Centre, Ibid., (11:20 a.m.)

84 Most Rev. Brendan M. O'Brien (Archbishop pf St-John's), Espiscopal Commission for Social Affairs, Canadian Conference of Catholic Bishops, Meeting No 26, November 28, 2006, (10:15 a.m.)

REMOVALS AND THE PRE-REMOVAL RISK ASSESSMENT PROCESS

The IRPA allows refused claimants who have been issued a removal order to apply to the Minister of Citizenship and Immigration for a pre-removal risk assessment (PRRA). Upon receiving a PRRA application, a PRRA officer evaluates the risks faced by refused refugee claimants if they are sent back to their country of origin. Almost any person can apply for a PRRA, with certain exceptions. For example, persons going through an extradition process, and those that fall under the purview of the Canada-US Safe Third Country Agreement. The acceptance rate for PRRA applications is low: between 1% and 3%, according to one witness.[85] While CIC is responsible for conducting a PRRA, the Canada Border Services Agency is ultimately responsible for carrying out removals.

The PRRA usually takes place just prior to removal: the PRRA application must be submitted within 15 days from notification, after which the PRRA officer must wait at least 30 days before deciding whether to approve the application. Most PRRAs are conducted through a written submission, however oral hearings can be required in cases where a PRRA officer has concerns about an applicant's credibility.

PRRA officers are empowered to determine whether the applicant is at risk of persecution and torture, or at risk of cruel and unusual treatment in the event they are returned to their country of origin. The standard used for a PRRA is the same standard that the IRB applies when it decides on a person's claim for refugee protection. When a person has already had a refugee protection claim assessed by the IRB, however, only new evidence, such as evidence that demonstrates a change in conditions in the country of origin, will be considered.

Applicants who are found to be at risk may apply for permanent residence. For applicants who are inadmissible for reasons of security, serious criminality, involvement in organized crime, or violation of human or international rights, a positive PRRA determination will result in a temporary stay of removal. Applicants who receive a negative decision are required to leave Canada.

During the course of the study, the Committee heard from a number of witnesses about the PRRA process. Of particular concern was the level of training received by PRRA officers, and the limits of the PRRA process as a safety net meant to address possible shortcomings in the system. Other witnesses questioned the need for a PRRA, if the system itself were more efficient at processing refugee claims.

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85 Mme Claudette Cardinal, coordinatrice, Réfugiés, Section canadienne francophone, Amnistie internationale Canada, Meeting No. 34, February 13, 2007

On the issue of training, the Committee heard concerns that PRRA officers were not given enough training to make the crucial decision of whether an applicant was in need of protection. CIC officials described the limits of training that a PRRA officer was required to undergo:

> In terms of the skills and training that the PRRA officers receive, they have a two-week training period during which they're trained on refugee evaluation and refugee, international, and Canadian law. They also have decision-making and weighing and balancing — evidence-assessing — skills. They are experienced officers to begin with, in terms of the immigration program and their ability to assess information, but they have two weeks of specific training with respect to refugee protection.[86]

Former Minister of Citizenship and Immigration Monte Solberg, however, pointed out that this two week training period built on a pre-existing skill set:

> Remember, these are experienced officials who have a tremendous amount of training within the department. They make decisions all the time. They're experienced decision-makers. It's not like they're right out of school and after two weeks they are making those decisions.[87]

The Committee requested additional information on the competencies and qualifications of PRRA officers, but was told by CIC that the *Privacy Act* prevented a detailed response. The Committee was told that "officers receive in-depth nine-day mandatory and specialised training on PRRA," and that "continuous learning activities are conducted by CIC's regional offices."[88] The CIC response also indicated that the department "will be reviewing all training courses related to PRRA and, as a part of ongoing learning activities, will be assessing the need for revisions to the Humanitarian and Compassionate training package and the development of a course on writing PRRA reports."[89]

One of the witnesses who appeared before the Committee suggested that the PRRA process would be better left to IRB officials, stating that he "would have liked to have seen the pre-removal risk assessment taken over by the board, because it has the expertise."[90]

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86 Anna-Mae Grigg, Director, Litigation Management, Department of Citizenship and Immigration, Meeting No. 21, October 26, 2006, (9:45 a.m.)

87 Hon. Monte Solberg, former Minister of Citizenship and Immigration, Meeting No 23, November 7, 2006, (10:00 a.m.)

88 CIC's response to a request for information made by the Standing Committee on Citizenship and Immigration on December 12, 2006

89 Ibid.

90 John Frecker, President, Legistec, Inc, Meeting No. 29, December 12, 2006, (10:20 a.m.)

The Committee also heard evidence on the limits of the PRRA process as a safety valve to correct any possible oversights in the refugee protection applications. The UNHCR calls the PRRA "an important safety net, especially when there's a long passage of time between a negative decision and removal," but also acknowledged that the PRRA does not serve to correct faulty decision making in the first instance, stating that the PRRA "is a circumscribed process that does not correct a first instance negative decision."[91]

The limited nature of the PRRA application is the result of the inability of applicants to bring forward new evidence, once the initial refugee determination has been made:

> The other remedy is the pre-removal risk assessment, which only kicks in if there is a significant delay in removing a failed refugee claimant; and that only deals with allegations of changed circumstances in the country of origin.
>
> So the claimant never has the chance to re-litigate the matters that were heard by the single member before the refugee division. That case is closed, unless it's overturned by the Federal Court on judicial review.
>
> In the pre-removal risk assessment, they can bring forward, if such evidence exists, evidence of changed circumstances in the country, if there's a coup or if there's a civil war started, or something like that, that would make removal to that country dangerous. But that's a very limited process.[92]

The Francophone section of Amnesty International found the PRRA process deficient for the following reasons:

> In analyzing files of refused refugees who have called upon our organizations for support, we have come across examples of practices that lead us to believe that there are systemic problems with the PRRA process. These problems include: dismissing apparently trustworthy evidence without providing the reasoning for doing so; arbitrary choices among documentary evidence; failure to independently consider credibility once the IRB has made a negative finding; raising of the evidentiary threshold far beyond that required by statute and jurisprudence.[93]

Departmental officials stated that the PRRA process was subject to judicial review, and that the process itself was not meant to represent a final appeal, but rather a safety mechanism to ensure that circumstances have not changed since the initial decision was rendered.

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91 Jahanshan Assadi, Representative in Canada, United Nations High Commissioner for Refugees Meeting No. 7, May 29, 2006, (4:30 p.m.)

92 John Frecker, President, Legistec, Inc, Meeting No. 29, December 12, 2006, (10:15 a.m.)

93 Mme Claudette Cardinal, coordinatrice, Réfugiés, Section canadienne francophone, Amnistie internationale Canada, Meeting No. 34, February 13, 2007, (11:00 a.m.)

The Committee heard from a witness who described the PRRA as a safety measure that, if the system as a whole were more efficient, would not be needed:

> The pre-removal risk assessment is a legal necessity when there is a delay. The initial decision by the refugee protection division is the risk assessment, and it's valid for a reasonable period of time. If you wait for two years before you remove the person, and there's been a civil war in that country and a change in government and all of these other things, it could be that these objective conditions that the Refugee Protection Division made its decision on have totally changed, so you need the pre-removal risk assessment very close to the time of removal. You don't need it at all if you effect the removal very quickly after the initial decision.[94]

The Francophone section of Amnesty International, in a brief provided to the Committee, made a number of recommendations for reform of the PRRA. Some of the recommendations would not require legislative changes, including implementation of the Refugee Appeal Division, enhancing the training of PRRA officers, disclosure by CIC of the qualifications and conditions of tenure of PRRA officers, and ensuring the availability of an oral hearing. Long term solutions, which would require legislative changes, include removing PRRA applications from CIC and mandating the IRB to instead carry out the PRRA, allowing refugee claims even if the person has submitted a prior claim, and enhancing the powers of the IRB to re-open inquiries where there has been a significant change of circumstance or new evidence has become available.[95]

The Committee recognizes that the implementation of the RAD would go a long way to addressing issues surrounding the PRRA. An appeal or review on the merits would ensure that the PRRA is not used as a method by which applicants try to correct errors made by the IRB in the initial refugee determination.

The Committee recommends:

- **That the government remove the Pre-Removal Risk Assessment (PRRA) from the jurisdiction of CIC and instead mandate the IRB to carry out PRRAs.**

- **That the government repeal the IRPA provisions that preclude refugee claims if a prior claim was found ineligible, or was withdrawn or abandoned.**

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94 John Frecker, President, Legistec, Inc, Meeting No. 29, December 12, 2006, (10:45 a.m.)

95 The Pre-Removal Risk Assessment Process in Canada, Brief presented to the Standing Committee on Citizenship and Immigration, House of Commons, Ottawa by Amnistie Internationale, Section canadienne francophone and La Table de concertation des organismes au service des personnes réfugiées et immigrantes, Le Centre Justice et Foi, February 13, 2007

- **That the government amend IRPA to allow the IRB to re-open applications where there has been a significant change of circumstance or significant new evidence has become available.**

- **Pending legislation that would transfer the PRRA to the IRB, and allow it greater leeway to re-examine claims, the Committee recommends:**

- **That CIC provide better training for PRRA officers, particularly in regard to rules of evidence, the interpretation and application of IRPA, and international human rights standards. The training should include consultations with stakeholders and interested parties on the standards to be used in the PRRA.**

- **That CIC disclose the qualifications of PRRA officers, along with expectations relating to the duties and conditions of tenure of PRRA officers, to stakeholders.**

- **That CIC ensure that section 167 of the *Immigration and Refugee Protection Regulations* be applied so as to afford an oral hearing whenever credibility is at issue and in all cases where the applicant was denied a hearing before the IRB.**

- **That CIC change its policy on removals to prohibit the removal of persons to war zones or imminent war zones notwithstanding an unsuccessful PRRA application.**

- **That CIC change its policy on removals to ensure that any person who is having their case adjudicated by an international body, for example to the United Nations Committee against Torture, should be granted leave to remain in Canada pending resolution of their claim.**

SETTLEMENT ISSUES AFFECTING REFUGEES

The Canadian government has established several programs to assist refugees in establishing themselves in Canada. CIC's core settlement services consist of the Immigrant Settlement and Adaptation Program (ISAP), the Language Instruction for Newcomers to Canada (LINC) and the Host Program. Services are delivered by community-based organizations through formal contribution agreements with CIC. A number of other programs also provide settlement funding for immigrants and refugees. The Resettlement Assistance Program provides funds to organizations to help defray the

costs of meeting the refugee at the port of entry, providing temporary accommodation and help in finding permanent accommodation, providing basic household items, and providing a general orientation to Canadian life. In addition, the Immigration Loans Program (ILP), funded from the Consolidated Revenue Fund, can help to pay for medical examinations abroad, travel documents, and transportation to Canada.

During the course of its study, the Committee heard evidence from a number of witnesses on the settlement of immigrants and refugees in Canada. Although much of the discussion pertained to overall settlement issues affecting both immigrants and refugees, the Committee recognizes that refugees face particular challenges in settling in Canada.

Overall spending on immigrant and refugee settlement was discussed by witnesses from the settlement sector and CIC. The Committee heard concerns from witnesses on comparable settlement services and funding across the provinces, most notably in language training provided to immigrants and refugees. Witnesses advocated for national standards to address discrepancies between provinces. Witnesses also weighed in on specific problems associated with the settlement of young immigrants and refugees. Finally, some witnesses stated that settlement issues could only be resolved in high-immigration areas through cooperation at the community level, for example through the provision of multi-service settlement hubs.

Settlement and integration funding in Canada was frozen in 1996. In November 2006, the Government of Canada announced an additional $307 million, over two years, in new settlement funding to provinces and territories outside Quebec, which is covered by a separate agreement. The new funding is meant to address the declining ability of newcomers to compete for jobs and share in Canada's prosperity. As former Minister Solberg stated before the Committee, it is "unacceptable to have newcomers with incomes 32% less than the Canadian average in 2003 compared to 25% higher in 1980."[96]

While the Committee is pleased that the government has provided additional funding, organizations that constitute the settlement sector discussed, on a practical level, some of the problems in the way the government provides the funds. Of primary concern was the fact that under federal-provincial agreements, funding is not tied to any national standards or performance requirements for provincial recipients. As one witness stated:

> Our concern with this issue of comparable services, of national standards, in the context of the new money that's being presented by the Conservative government, the $307 million, is that this money has to come along with some guiding principles and protocols about how the money is going to be invested. Our concern is that if we do not have

96 Hon. Monte Solberg, Minister of Citizenship and Immigration, Meeting No. 23, November 7, 2006, (10:30 a.m.)

> comparable services in this country, then what we face is increasing interprovincial competition for immigrants where, as I say, immigrants can shop around to obtain higher levels of support in some areas of the country than in others.[97]

Some witnesses complained of the disparities in how settlement funding is distributed to different provinces under federal-provincial agreements, and that the funds for settlement are not necessarily earmarked for their intended recipients:

> [T]he caveat is immigration agreements that do or don't exist with certain provinces. For example, the Minister was in B.C. announcing these new funds to British Columbia, but because they're going to go to the province and because of the B.C. and federal immigration agreement, those funds go into general revenue.
>
> Only 47% of immigration settlement funds in B.C. go to programs and services for immigrants. The rest is distributed through general revenue.[98]

The Committee equally recognizes that children and youth occupy important positions in refugee families. They will often acquire English or French language skills sooner than other members of their family, which can put strains and cause power imbalances within the family unit. Canadian cities that have experienced large scale immigration face stresses on their ability to educate immigrant and refugee children. Apart from the obvious challenges of teaching children to speak English and French, there has been, as the Burnaby School District pointed out, a "significant increase in the number of immigrant and refugee students with special education needs and frequently with a multiplicity of learning challenges."[99]

Witnesses from the settlement sector believed that settlement funding should have a particular focus on children and youth, stating that "CIC money has always been focused on the adult. There are very few programs designed or funded for youth. Actually the only source of funding we had for youth was through Service Canada… the former HRDC."[100]

Witnesses told the Committee that refugees and immigrants are increasingly settling not in Canada's largest cities, but in suburban communities surrounding those cities. These suburbs face strains on the services and physical infrastructure needed to settle an extraordinary influx of newcomers. A witness from the City of Burnaby, for example, stated

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97 Chris Friesen, Secretary, Canadian Immigrant Settlement Sector Alliance Meeting No. 15, September 26, 2006, (9:30 a.m.)

98 Wai Young, Executive Director, Canadian Immigrant Settlement Sector Alliance Meeting No. 25, November 21, 2006, (9:50 a.m.)

99 Diana Mumford, Trustee, Burnaby School District, Meeting No. 26, November 28, 2006, (9:10 am).

100 Farborz Birjandian, Member at large, Canadian Immigrant Settlement Sector Alliance, Meeting No. 15, September 26, 2006, (10:00 a.m.)

that, because many settlement services were located in the Vancouver core, newcomers to Burnaby can spend considerable amounts of time travelling around the Greater Vancouver Regional District in order to get basic settlement services.[101]

The Committee was particularly encouraged by the testimony of representatives from the City of Burnaby, British Columbia, which has opted to try to set up multi-service hubs that will provide a host of immigrant services, and benefit from economies of scale in such necessities as translation services.

The Committee recommends:

- **That the government begin to develop and make public a comprehensive comparison of settlement services and funding in light of provincial agreements, including in language training provided to immigrants and refugees.**

- **That the CIC introduce national standards to address discrepancies in settlement services between provinces, and make all federal transfers for settlement services contingent upon the provinces meeting those standards, subject to the Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens.**

- **That CIC dedicate significant resources to the settlement of immigrants and refugees.**

- **That CIC provide funding for multi-service settlement hubs in areas that receive significant numbers of immigrants.**

THE ISSUE OF STATELESS REFUGEES IN THE PHILIPINES

The Committee notes that the situation faced by stateless Vietnamese in the Philippines remains unresolved. Over 2,000 stateless refugees were residing in that country in 2001, where they had been stranded for more than 10 years. Many countries in the international community have contributed towards resettling the refugees, including Canada, which accepted 23 individuals in 2006. However 156 stateless refugees in the Philippines remain in a state of limbo.

101 Ms. Karen Roth, Public Health Nurse, Burnaby Health Promotion and Prevention, Fraser Health, Meeting No. 26, November 28, 2006, (9:20 a.m.)

A motion passed by the Standing Committee on Citizenship and Immigration on September 28th, 2006, and concurred in by the House of Commons on December 12, 2006, called on the government to allow the urgent resettlement in Canada of the remaining Vietnamese refugees stranded in the Philippines.[102]

In February 2006, the Committee heard compelling evidence from advocates for the refugees:

> Like the refugees, my family fled Vietnam in the late 1970s in search of freedom. Like these refugees, my family went onto little dingy boats that were leaking. They risked their lives at sea, they battled storms, in search for a new hope for life. Like these refugees, my family landed in a new country in a refugee camp, not knowing what the next day would bring.
>
> Unlike these refugees, my family was lucky. We were lucky in that Canada extended a compassionate hand and resettled my family in the city of Vancouver. Unlike these refugees who have children in the camps, I was born a Vietnamese-Canadian in 1980. I had the chance to have my rights respected. I had the chance to have an education. I had the chance to go to university, become a professional, and contribute back to the society that has given so much to me and my family. But for a stroke of luck I could have easily been one of these Filipino refugees, or one of their kids, still stranded for the past 16 years, not knowing what to do with their lives. Now their rights are still denied. It's still going on.[103]

At the time of the writing of this report, the Committee understands that advocates for the stateless refugees have been meeting with the Minister of Citizenship and Immigration, and officials at CIC and the Prime Minister's Office. They have been led to believe the government will soon be moving forward on the matter.

The Committee again recommends:

That the Government of Canada take immediate steps to resettle the remaining 156 stateless Vietnamese refugees in Canada.

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102 Sixth Report of the House of Commons Standing Committee on Citizenship and Immigration, 39th Parl. 1st Sess, adopted by the Committee on September 28, 2006, concurred in by the House of Commons on December 12, 2006

103 Mr. Maxwell Vo, Project Coordinator, SOS Viet Phi, Meeting No. 19, February 10, 2005, at (11:20 a.m.)

NOTE ON FEES CHARGED TO REFUGEES

Finally, the Committee wishes to comment on the ongoing issue of fees charged for refugees who apply for permanent resident status. In April 2005, the Committee heard testimony about the fees charged to refugees for permanent resident status, and the barriers and financial hardship this presents to many refugees and their families. As a witness from the Parkdale Community Legal Services told the Committee in April 2005:

> Because we are asking refugees who are accepted in Canada to pay $550 per adult, $150 per child, in order to apply to be residents, they are delaying, and in many cases not even submitting, their applications for landing, because they don't get that money. In the audience today, we have a whole lot of people who have been reaching into their own pockets, and the pockets of the churches and the other community organizations in Toronto, to pay that money. It's very frustrating to them. The amount of $550 seems like a little bit if you're here, and you have a job, and so on, but if you're trying to survive on welfare of $500 a month, and you don't have a job, and your family is overseas, it's a lot of money. It's an absolute barrier.[104]

The Committee agrees, and recommends:

That the government immediately eliminate the $550 fee currently required of protected persons to process their application for permanent residence in Canada, and the $550 fee for the processing of a humanitarian and compassionate application for women and children escaping domestic violence.

104 Ms. Geraldine Sadoway, Staff Lawyer, Immigration and Refugee Group, Parkdale Community Legal Services, Meeting No. 44, 1st Sess. 38th Parl, April 14, 2005

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Canadian Immigrant Settlement Sector Alliance (CISSA)	2006/09/26	15
Fariborz Birjandian, Member		
Bridget Foster, Member-at-large		
Chris Friesen, Secretary		
Stephan Reichhold, Member-at-large		
Reza Shahbazi, Chair		
Canadian Council for Refugees	2006/10/03	17
Janet Dench, Executive Director		
Francisco Rico-Martinez, Co-Chair Working Group on Inland Protection		
Debra Simpson, Member		
Canadian Ecumenical Justice Initiatives (KAIROS)	2006/10/19	20
Jennifer Devries, Program Coordinator Refugees and Migration		
Cecilia Diocson, Executive Director National Alliance of Philippine Women in Canada		
Avvy Go, Executive Director Metro Toronto Chinese and South East Asian Legal Clinic		
Stan Raper, National Coordinator for the Agricultural Workers Programme United Food and Commercial Workers Union		
All Saints Lutheran Church	2006/11/02	22
Gordon Walt, Vice-Chair Congregational Council		
First Unitarian Congregation of Ottawa		
Phil Nagy, Chair Hitschmanova Committee, Unitarian-Universalist Congregation		
Romero House		
Mary Leddy, Director Professor, Ontario Sanctuary Coalition		
St. Joseph's Roman Catholic Church		
Pierre Gauthier Refugee Outreach Committee		

The Presbyterian Church in Canada		
Stephen Allen, Associate Secretary Justice Ministries		
The United Church of Canada		
Heather MacDonald, Program Coordinator Refugee and Migration, Justice and Global Ecumenical Relations		
Canadian Immigrant Settlement Sector Alliance (CISSA)	2006/11/21	25
Fariborz Birjandian, Member		
Morteza Jafarpour, Member		
Wai Young, Executive Director		
Burnaby School District	2006/11/28	26
Diana Mumford, Trustee		
Canadian Conference of Catholic Bishops		
Roger Ébacher, Chairman (Archbisbop of Gatineau) Episcopal Commission for Social Affairs		
Brendan O'Brien, (Archbishop of St. John's) Episcopal Commission for Social Affairs		
City of Burnaby		
Sav Dhaliwal, Councillor		
Basil Luksun, Director Planning and Building		
Fraser Health		
Karen Roth, Public Health Nurse Burnaby Health Promotion and Prevention		
Department of Citizenship and Immigration	2006/12/05	27
Micheline Aucoin, Director General Refugees Branch		
Luke Morton, Senior Counsel Legal Services		
Janet Siddall, Associate Assistant Deputy Minister Operations		
Federal Court of Canada	2006/12/12	29
Wayne Garnons-Williams, Acting Registrar Registry Branch, Courts Administration Service		
Raymond Guénette, Acting Chief Administrator Office of the Chief Adminsitrator, Courts Administration Service		
Legistec Inc.		
John Frecker, President		

Elected Sponsorship Agreement Holders	2007/02/01	31
Martin Mark Ill, Coordinator Refugee Sponsorship, Catholic Crosscultural Services Roman Catholic Archdiocese of Toronto		
Elected Sponsorship Agreement Holders		
Carolyn Vanderlip, Coordinator, Refugee Sponsorship, Anglican Diocese of Niagara		
Mennonite Central Committee Canada		
Ed Wiebe, Coordinator, National Refugee Program		
The United Church of Canada		
Sarah Angus, Member Justice, Peace and Advisory Committee		
Heather MacDonald, Program Coordinator Refugee and Migration, Justice and Global Ecumenical Relations		
As an individual	2007/02/08	33
Francisco Rico-Martinez, Co-Director FCJ Refugee Centre		
Harvard Law School		
Deborah Anker, Clinical Professor of Law Immigration and Refugee Program		
Efrat Arbel, Research Assistant to Deborah Anker Immigration and Refugee Clinical Program		
Amnesty International Canada	2007/02/13	34
Claudette Cardinal, Coordinator Refugees, Canadian Francophone Section		
Table de concertation des organismes au service des personnes réfugiées et immigrantes		
Richard Goldman, Coordinator Refugee Protection		
As individuals	2007/04/17	48
Peter Harrison, Senior Associate Deputy Minister, Indian and Northern Affairs Canada Deputy Head, Indian Residential Schools Resolution Canada		
Nick Summers, Former member of the Immigration and Refugee Board of Canada Advisory Panel		
Canadian Bar Association	2007/04/19	49
Stephen Green, Secretary National Citizenship and Immigration Law Section		
Tamra Thomson, Director Legislation and Law Reform		

Canadian Council for Refugees		
Janet Dench, Executive Director		
Quebec Immigration Lawyers Association (AQAADI)		
Joseph Allen, Attorney and President		
As an individual	2007/04/24	50
Jean-Guy Fleury, Former Chairperson Immigration and Refugee Board of Canada		

APPENDIX B
LIST OF BRIEFS

Organizations and individuals

All Saints Lutheran Church

Amnesty International Canada

Burnaby School District

Canadian Bar Association

Canadian Conference of Catholic Bishops

Canadian Council for Refugees

Canadian Ecumenical Justice Initiatives (KAIROS)

Canadian Immigrant Settlement Sector Alliance (CISSA)

City of Burnaby

Collacott, **Martin**

Department of Citizenship and Immigration

Elected Sponsorship Agreement Holders

Federal Court of Canada

First Unitarian Congregation of Ottawa

Fraser Health

Harrison, **Peter**

Harvard Law School

Mennonite New Life Centre of Toronto

Metro Toronto Chinese and Southeast Asian Legal Clinic

National Alliance of Philippine Women in Canada

Rico-Martinez, **Francisco**

Romero House

Speranza, **Cynthia**

St. Joseph's Roman Catholic Church

Table de concertation des organismes au service des personnes réfugiées et immigrantes

The Presbyterian Church in Canada

The United Church of Canada

United Food Products and Commercial Workers Union

APPENDIX C
LETTER OF RESIGNATION FROM JEAN-GUY FLEURY FORMER CHAIR OF IRB BOARD

February 23, 2007

Honourable Diane Finley
Minister of Citizenship and Immigration Canada
365 Laurier Avenue West
Jean Edmonds Building
South Tower, 21st Floor
Ottawa, Ontario K1A 1L1

Dear Minister Finley:

Please accept this letter as official notification of my intention to step down as Chairperson of the Immigration and Refugee Board of Canada (IRB) effective March 16th, 2007. While my more than four years as IRB Chairperson have been deeply satisfying personally and professionally, I feel the time has come for a change in leadership at the IRB. As well, after nearly 42 years of public service, I am ready to spend more time with my family and pursue new endeavours, including self-employment opportunities.

I am proud of the many creative and innovative accomplishments achieved during my tenure as Chairperson of the IRB – including the elimination of the backlog at the Refugee Protection Division, the Transformation Agenda and the implementation of a merit-based appointment system for Governor in Council decision-makers. Based on the discussions I have had with your office, I am also encouraged by the prospect of appointments to come in the near future for the IRB.

One important item I am leaving for you and a future Chairperson is the IRB Business Case for Organizational Change. While we have accomplished much to date, the Board could be an even more effective, efficient and ultimately fair tribunal with the Governance changes recommended in the Business Case. The Board's current structure is dated and lacks sufficient clarity vis-à-vis accountabilities. I urge you to pursue this issue with the next IRB Chairperson.

Please rest assured that I will do everything in my power to ensure a successful transition to the next IRB Chairperson.

Yours truly,

Jean-Guy Fleury

c.c. Kevin Lynch
Clerk of the Privy Council and Secretary to the Cabinet

APPENDIX D
LETTER OF RESIGNATION FROM ADVISORY PANEL MEMBERS

M. Jean-Guy Fleury
Chairperson
Immigration and Refugee Board
Minto Place, Canada Building
344 Slater Street, 11th Floor
Ottawa, Ontario
K1A 0K1

February 27, 2007

Dear M. Fleury,

Re: Resignation of Advisory Panel Members

We write to advise you of our resignation from the Advisory Panel to the Chairperson of the Immigration and Refugee Board with respect to Board Appointments, effective immediately. We do this following the release of the Report to the Minister *Governor in Council Appointments Process: Immigration and Refugee Board* (the "Harrison Report"), together with statements made to the press by the office of Minister of Citizenship and Immigration Diane Finley indicating that she is accepting all the recommendations in the Report. We take this action also in the knowledge of the announcement of your resignation as Chairperson of the Board effective March 16, 2007.

Although we find the Harrison Report's recommendations generally acceptable, and are pleased to see that they adopt many aspects of the process established in 2004 which included the Panel, we wish to express our concern with the proposed change to a Selection Board several members of which are to be appointed by the Minister of Citizenship and Immigration.

Each of the undersigned joined the Advisory Panel in 2004 at your invitation. We are a disparate group, with a range of backgrounds and connections to the immigration field. Our discussions were lively, reflecting the variety of perspectives we brought to the task. Nevertheless, we came together on the basic goal of making a merit-based appointment process work for the IRB. We believe that we largely succeeded.

The Panel's advice on candidates for appointment to the Board responded solely to the need to find qualified individuals with the range of competencies identified by you and

your staff. Candidates' political views, backgrounds or associations played no part in our discussions or recommendations.

We understand that the ultimate role in the selection process is played by executive government. However, Panel members strongly believe that in a true merit-based system, the screening process should be insulated from actual or apparent political interference. We urge the Minister to reconsider the idea of replacing an independent advisory body with one that has significant government involvement. It is this change which is the focus of our collective decision to submit our resignations.

As you may know, several of the members of the Advisory Panel expressed doubts about the Government's commitment to merit-based appointments at the IRB in mid-2006, when for unspecified reasons the selection of candidates we had screened was suspended, and renewals of the terms of experienced and well-regarded Board members were rejected. We correctly foresaw that these actions would damage the productivity of the Board and harm its hard-won reputation for placing merit ahead of all other considerations. In fact, one of our members, a respected Ontario administrative lawyer, resigned over that issue.

The undersigned continued on in order to complete the selection process following from the first ever public advertising for IRB Members in September 2006. That has now been done. We are confident that as a result of this process and the ones which preceded it, you are in a position to provide to the Minister with the names of many highly qualified individuals from across Canada. We encourage the Minister to move forward with appointments from these names in order to assist the Board to return to a full complement of Members so that it can properly perform its important role in Canadian society.

The Harrison Report questions why the Advisory Panel initially forwarded for interview the names of a few candidates who received below average scores on the written examination. As you will recall, when the Panel commenced its activity the examination was a new instrument. We were concerned that it might overvalue the aptitude for legal analysis in relation to other essential competencies such as the ability to take into account the social and cultural conditions, norms and beliefs prevailing in claimants' countries of origin, mindful of Canada's international humanitarian obligations. Panel members agreed that it would be appropriate to consider individuals with otherwise impressive backgrounds and qualifications who had received lower test scores until we developed confidence in the instrument's ability to accurately measure the full range of desired competencies. We believe the fact that several of these candidates succeeded at the interview stage vindicated this approach.

In closing, we wish to thank you for allowing us to participate in this challenging period in the IRB's history. We appreciate the dedication that you and your senior staff have demonstrated with respect to instituting a merit-based selection process at the IRB.

We wish you well in all your future endeavours.

Yours sincerely,

Monique Laplante, Chairperson, Advisory Panel
Ottawa, ON

Peter Carver
Edmonton, AB

Beverley Nann
Burnaby, BC

John Scratch
Ottawa, ON

Nick Summers
St. John's, NL

Cc The Honourable Diane Finley
Minister of Citizenship and Immigration

APPENDIX E

PAST STATEMENTS AND COMMITTEE RECOMMENDATIONS REGARDING IMPLEMENTATION OF THE RAD

PREPARED FOR THE HOUSE OF COMMONS STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

Andrew Kitching
Law and Government Division

23 March 2007

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PAST STATEMENTS AND COMMITTEE RECOMMENDATIONS REGARDING IMPLEMENTATION OF THE RAD

INTRODUCTION

The *Immigration and Refugee Protection Act* (IRPA)[1] which received royal assent on 1 November 2001 and came into force on 28 June 2002, created a new division within the Immigration and Refugee Board (IRB): the Refugee Appeal Division (RAD). The sections of the IRPA that would have instituted the RAD have not been brought into force and the new appeal mechanism has never been established. From 2001 to the present, officials from Citizenship and Immigration Canada (CIC) and the IRB, as well as former Ministers of Citizenship and Immigration, have gradually backed away from the plan to implement the RAD. The Standing Committee on Citizenship and Immigration (the Committee) has recommended implementation of the RAD on one previous occasion.

STATEMENTS ON THE IMPLEMENTATION OF THE RAD DURING THE ENACTMENT OF IRPA

During the passage of Bill C-11,[2] the legislation that enacted IRPA, officials from CIC and the IRB gave testimony before the Committee on the provisions of the Bill that would have instituted the RAD. Under the old *Immigration Act*, refugee claims were heard by two-member panels. In the event of a split decision, the decision favourable to the refugee

(1) 2001, c. 27.

(2) Bill C-11, An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger, 37th Parliament, 1st Session.

claimant was deemed the decision of the Board.[3] When officials discussed the move from two-member to single-member refugee hearings under the IRPA, the RAD was promoted as an important guarantee of the integrity of refugee determination decisions. In the initial news release accompanying the introduction of IRPA, CIC stated that the legislation committed the government to "faster but fair decisions" by consolidating the process and "by combining the increased use of single-member panels with an internal paper appeal before the Board."[4]

The then Chair of the IRB, Peter Showler, gave the following testimony before the Committee in the course of its study of Bill C-11:

> In contrast to the present model, where claims are normally heard by two-member panels, the vast majority of protection decisions will be made by a single member. Single-member panels are a far more efficient means of determining claims. It is true that claimants will no longer enjoy the benefit of the doubt currently accorded them with two-member panels, and I think that should be noted. However, any perceived disadvantage is more than offset by the creation of the refugee appeal division, the RAD, where all refused claimants and the minister have a right of appeal on RPD decisions.[5]

CIC Assistant Deputy Minister Joan Atkinson testified that RAD decisions would serve as useful precedents that would add consistency to IRB decisions, and were essential to streamlining the system.[6] Ms. Atkinson also stated that the RAD was meant to serve as a balance against the reduction of the number of IRB members needed to make the initial decision. In the clause-by-clause analysis on Bill C-11, Ms. Atkinson affirmed that:

> The use of single-member panels is one of the key components of making the refugee determination system more efficient and more streamlined….

---

(3) There were limited exceptions to the split-decision rule. In cases where the two members did not agree on whether the person was a Convention refugee but both members did agree that the claimant destroyed identity documents without valid reason or visited the country where persecution was allegedly feared after making his claim, the decision *not* favourable to the claimant would be deemed the decision of the Board.

(4) CIC Press Release, "Immigration and Refugee Protection Act Introduced," 21 February, 2001.

(5) Peter Showler, Chairperson, IRB, Meeting No. 5, 20 March 2001 at (09:15).

(6) Joan Atkinson, Assistant Deputy Minister, Policy and Program Development, Citizenship and Immigration Canada, Meeting No. 3, 13 March 2001, at (11:25).

> The decisions of one-member panels are reviewable by the refugee appeal division. In addition to reviewing those individual cases, one of the primary objectives of the refugee appeal division is to provide for some consistency in the decision-making by the single-member panels, because the refugee appeal division will be able to issue precedent-setting decisions that will guide the subsequent decision-making of cases at the refugee protection division.
> So the single-member panel is a key element of our streamlining of the system, so that people who are in need of protection get through more quickly – as will those who are not in need of protection – and it's balanced by the refugee appeal division.(7)

The Minister of Citizenship and Immigration at the time, the Honourable Elinor Caplan, also made a connection between the RAD and the reduction in the number of IRB member's needed to hear a case. In her testimony before the Committee the Minister stated that:

> Bill C-11 reintroduces key improvements to our refugee protection system. It consolidates several current steps and criteria into a single protection decision. It combines greater use of single-member panels with an internal paper appeal and a new division of the IRB. Together these measures will see that the important decision of whether to allow a refugee claim will be made more quickly, but fairly, with an opportunity for an effective review.(8)

Former Minister Caplan made similar statements during the debate on C-11 at second reading in the House of Commons:

> By consolidating several current steps and protection criteria into a single decision at the IRB and, moreover, by combining increased use of single member panels at the board with an internal paper appeal on merit, we will see faster but fairer decisions on refugee claims.(9)

(7) Joan Atkinson, Assistant Deputy Minister, Policy and Program Development, Citizenship and Immigration Canada, Meeting No. 27, 17 May 2001, at (11:40).

(8) Honourable Elinor Caplan, Meeting No. 2, 1 March 2001, at (09:15).

(9) Edited Hansard, No. 21, 37th Parliament, 1st Session, Monday, 26 February 2001.

STATEMENTS FROM MINISTERS OF CITIZENSHIP AND IMMIGRATION ABOUT IMPLEMENTING THE RAD AFTER THE PASSAGE OF IRPA

In April 2002 it was announced that implementation of the RAD was being delayed due to "pressures on the system."(10) Former Minister Coderre is reported to have promised at the annual general meeting of the Canadian Council for Refugees (CCR) in May 2002 that he would implement the RAD within one year.(11) In response to a question in the House of Commons in May 2002, Minister Coderre said he would "not suspend, but delay the implementation of [the] appeal division to ensure that we do it properly", and that the plans would be finalized within a year.(12) However in March of 2003, in an appearance before the Committee, Minister Coderre stated that he said that at the CCR meeting, he had only committed to "providing options" within one year.(13)

When former Minister Sgro appeared before the Committee in March 2004, she suggested that CIC would be studying implementation of the RAD as part of an overall process of streamlining the system and would be "looking at that particular section of it and seeing just how we might incorporate it into the review process, if that's appropriate."(14) However, when Minister Sgro appeared before the Committee in November of 2004, she indicated that the RAD would not be implemented because of concerns over the backlog, stating that it was "important that people who seek protection in our country receive it as quickly as possible" and that "to introduce at this particular time the appeal system…would have completely…brought the system to a halt."(15)

By 2005, the government had not implemented the RAD, but had still not rejected the idea. When former Minister Volpe appeared before the Committee in March of 2005, he stated:

(10) CIC Press Release, "Refugee Appeal Division Implementation Delayed," 29 April 2002.

(11) Canadian Council for Refugees Media Release, "CCR Calls on Minister to Name Date for Refugee Appeal," 22 May 2002.

(12) 37th Parliament, 1st Session, Edited Hansard, No. 180, 1 May 2002.

(13) Honourable Dennis Coderre, Meeting No. 50, 20 March 2003, at (11:35).

(14) Honourable Judy Sgro, Meeting No. 4, 24 March 2004, at (16:30).

(15) Honourable Judy Sgro, Meeting No. 6, 2 November 2004, at (09:25).

> We have had some 6,000 more refugees accepted into our country in this last year than we did in the previous year, so if one of the functions of the RAD would have been to give people a greater opportunity to get a positive response, I think increasing your refugee intake through the system currently in place by in excess of 20% tells me the system is efficient – it is working quite efficiently already.
>
> While I haven't closed the door on the RAD…I didn't see the same urgency I have for some of the other priorities in play, given the fact we've had an increase in refugees that have gone through that system.(16)

However on 1 November 2005, in response to questions posed during a Committee hearing on the supplementary estimates, Minister Volpe announced that the department would not implement the RAD. The Minister testified that his decision was based on lack of necessity, since the IRB was a professional body, and other safeguards, such as the pre-removal risk assessment, made the system as it was workable. The Minister stated that "protection is really what counts and that's what the current system delivers."(17)

In November 2006, former Minister of Citizenship and Immigration, the Honourable Monte Solberg stated before the Committee that he was "not closing the door on anything. But if we're going to have a discussion about the refugee appeal division, we have to have a larger discussion about the refugee determination system in general."(18)

COMMITTEE MOTION ADVOCATING THE IMPLEMENTATION OF THE RAD

On 14 December 2004, the Standing Committee on Citizenship and Immigration unanimously adopted the following motion:

> Whereas: The Refugee Appeal Division is included in the Immigration and Refugee Protection Act; Parliament has passed the Immigration and Refugee Protection Act and can therefore expect that

(16) Honourable Joe Volpe, Meeting No. 24, 8 March 2005, at (12:50).

(17) Honourable Joe Volpe, Meeting No. 75, 1 November 2005, at (15:50).

(18) Honourable Monte Solberg, Meeting No. 23, 7 November 2006 at (09:55).

it be implemented; and The House of Commons and parliamentarians have a right to expect that the Government of Canada will honour its commitments; The Standing Committee on Citizenship and Immigration requests that the Minister of Citizenship and Immigration, implement the Refugee Appeal Division or advise the Committee as to an alternative proposal without delay.[19]

(19) Standing Committee on Citizenship and Immigration, Minutes of Proceedings, Meeting No. 16, 14 December 2004.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* of the Standing Committee on Refugee Issues (Meetings *Nos. 15, 17, 20, 22, 25, 26, 27, 29, 31, 33, 34, 43, 52, 53, 55, 56, 57, 58 and 59*) is tabled.

Respectfully submitted,

Norman Doyle, MP
Chair

Dissenting Report from Conservative Party Members on the Committee

The committee's report attempts to deal with a number of refugee and refugee-related issues. This dissenting report summarizes some of the key concerns of Conservative members on the committee.

Private Sponsorship of Refugees (PSR) Program

Conservative members of the committee believe that the assisted relative class should not be reinstated without a proper evaluation of the effect this may have on the existing family class program and existing inventories. Put simply, reinstatement of the assisted relative class should only be considered after a thorough evaluation of its potential impacts on the immigration process and the costs and benefits to the overall program.

The Refugee Appeal Division

On the issue of implementation of the Refugee Appeal Division, a majority vote by all members of the opposition parties defeated a Conservative motion to hear from former Immigration Ministers, Hon. Joe Volpe Hon. Judy Sgro and Hon.Denis Coderre.

Opposition refusals to hear from these former Ministers was most regrettable as these former Ministers would have been able to provide important testimony as to why each refused to implement the Refugee Appeal Division while having had every opportunity to do so as former Ministers of Citizenship and Immigration.

It is worth noting what former Ministers Volpe and Sgro had to say when asked about whether they would implement the Refugee Appeal Division.

On Thursday, March 10, 2005 Mr. Volpe stated:

> "I might remind the House, Mr. Speaker, that all failed claimants can make an appeal to the Federal Court, and they are also subject to a pre-removal risk assessment and have applications for H & C in the process."

On Tuesday, November 1, 2005 he stated:

> "It takes too long for decisions to be made and too long for decisions, once they are made, to have an effect. Simply by adding another layer of review or appeal to what we already have will do little to address the shortcoming, in fact, it may make it worse. My decision therefore is not to implement the RAD."

On Tuesday, November 2, 2004, former Liberal Immigration Minister Judy Sgro said:

> "It's important that people who seek protection in our country receive it as quickly as possible. To introduce at this particular time the appeal system that you were referring to would have completely, I think, brought the system to a halt."

Based on the evidence at hand, implementing the Refugee Appeal Division (RAD) at this time would provide very limited benefit at a very high cost. To put things in context, it is important to note that the RAD would only provide a review on the record similar to a federal court review, without the calling of additional evidence or the provision of new or additional facts. Outside of the fact that it can substitute its own decision, the difference as to the scope of the appeal is limited.

What is needed is better process, not more process. To add another layer of appeals and process would simply make an already extremely lengthy refugee determination process even longer.

Failed refugee claimants can apply for a Federal Court review of their decision. They can also apply for a pre-removal risk assessment and for permanent residence on humanitarian and compassionate grounds, including consideration of possible risk if returned to their home country.

As things stand, it can take years to conclude the adjudication of a case. To add additional months and even possibly years to the delays is unfair to refugees and their families who expect a timely resolution and decision with respect to their application for refugee status. In the current context, increasing the length of the refugee determination process would potentially do more harm than good.

Therefore, Conservative members of the committee recommend that implementation of the RAD should not be considered at this time. Resources would be better directed at seeking ways to improve and streamline the existing refugee determination process as a whole.

People who Seek Sanctuary in Churches

People seeking refuge in churches often do so as a means of last resort. Often they may choose to seek sanctuary after having received negative decisions from the Immigration and Refugee Board (IRB), the Federal Court or from their Pre-Removal Risk Assessment hearing.

For the integrity of the system, when all avenues for appeal and review have been exhausted including appeals for permanent resident status based on humanitarian and compassionate grounds, individuals should respect our laws and leave voluntarily, without having to force the appropriate authorities to take specific actions to remove these individuals.

IRB Appointments Process and Backlog

On November 3, 2006, the then Minister of Citizenship and Immigration, the Honourable Monte Solberg, asked for an independent review of the selection process for making appointments to the IRB. In January 2007, the executive director of the Public Appointments Commission Secretariat, Peter Harrison, completed a report recommending changes to the way the IRB members are selected.

It is important to note several important findings of the Public Appointments Commission Secretariat Report. The test used in the selection process represented in their view a reasonable yardstick for screening candidates against a declared member's competency. However, the standard actually applied for passing the written test was not high enough for the test to perform its intended function of reducing the initial group of applicants to a pool that merits review by a group of experts.

The data received by the Secretariat on December 1, 2006, indicated over 20% of the candidates referred to the Minister did not meet the minimum standard of 36 points which in and of itself was not a pass mark. To put it another way, the Advisory Panel and the Selection Board were using discretion to advance to the next stage some candidates who did not reach the minimum standard. The recommendation was that a pass mark be set where those who fail be excluded from further consideration.

It is interesting to note that most of the recommendations were acceptable to retiring IRB Chair, Jean Guy Fleury. The recommendation that he found difficulty with is with the Minister appointing equal members to the advisory panel.

As stated in the Secretariat report, the original intent of the 2004 process was that the Advisory Panel members would be chosen jointly by the Minister and the Chair. The 2004 press release stated: "The advisory panel will be independent and representative of Canadians nominated by the IRB Chairperson and the Minister, the panel will…" It seems over time, the IRB Chair made all the nominations and it seemed he would like to have kept it that way. The Secretariat recommended that ministerial input take place on the selection of the members to the panel to preserve ministerial prerogative as otherwise the full discretion as to the three names to be presented to the Minister to fill a vacancy would be at the full discretion of the IRB Chair and the panel members he solely appointed. This would seem to place the whole process in the hands of an unelected member who is not accountable to the electorate.

It seems that both the IRB Chair and the Minister are equally able to appoint persons of specific backgrounds namely someone from the legal community, academia, non-governmental organizations and human resource experts. In the end, with a six member board, each equally appointed by the IRB Chair and Minister with the IRB Chair presiding, the Chair continues to have significant

input while at the same time preserving the Minister's prerogative at this stage of the selection process.

This is a balanced approach to streamlining the Board that will see both the Chair and the Minister appointing members.

The Safe Third Country Agreement

The Safe Third Country Agreement is part of a package of measures to enhance the management of joint Canada-US borders. Under the agreement, refugee claimants must seek protection in whichever country they first have an opportunity to do so unless they qualify for an exception. Although the process differs between countries, refugee claimants continue to have access to a full and fair refugee protection determination process in one country or another.

Conservative members of the committee believe that the agreement should be maintained but implementation should continue to be reviewed with CIC taking reasonable steps to publicize the exceptions to the agreement.

Dissenting Report from Bill Siksay MP (Burnaby-Douglas)
New Democratic Party

New Democrats support the recommendations of the Standing Committee on Citizenship and Immigration report on Refugee policy with the following qualifications.

PRIVATE SPONSORSHIP OF REFUGEES (PSR) PROGRAMME

New Democrats support all the recommendations in this section, but make one additional recommendation. This recommendation is general in nature, and should apply across the refugee programme, not just in regard to the Private Sponsorship Programme.

Canada's experience with immigration and refugee resettlement has often shown that significant family reunification measures lead to more successful and happier immigrant and refugee settlement and adaptation outcomes.

New Democrats recognize the incredible pressure for family reunification felt by many refugees given the often horrific situations from which they have escaped. We also recognize the need to respond to their hope to ensure the safety of family members who may have suffered under similar circumstances. Canada must respond compassionately to ensure families separated by war, civil strife and persecution and often having endured lengthy stays under difficult conditions in refugee camps or in exile do not continue to be victimized by Canadian immigration and refugee policies. Canada must also recognize that the definition of family in the Immigration and Refugee Protection Act is limited and often does not reflect other cultural understandings of which family relationships are the most important and sustaining, nor does it recognize the family groupings that form when key family members have died or disappeared due to war, civil strife, or persecution.

Recommendation:
That the definition of family as applied to refugee family reunification be expanded immediately to enable the reunification of families that do not conform to the current and limited definition of family in IRPA.

THE SAFE THIRD COUNTRY AGREEMENT

New Democrats do not oppose the recommendations made in this section of the report but find them weak and of very limited value.

Canada has a proud history of refugee resettlement, and is known world wide for the generosity and fairness of its refugee determination system. Canada must not surrender its sovereignty or independence to any other country in matters related to the determination of refugee claims, or integrate its refugee determination system in any way with the refugee determination process of the

United States or any other country. Canadian refugee policies and processes must recognize that the interests of Canada and the United States are not identical when it comes to refugee determination and resettlement policy. Canada has also established policies which recognize that violence against women and gender-based persecution are grounds for protection-policies that have not been matched by the United States.

Recommendation:
That Canada immediately serve notice and then proceed to abrogate the Safe Third Country Agreement with the United States of America

SETTLEMENT ISSUES AFFECTING REFUGEES
New Democrats support the recommendations made in this section of the report but make one additional recommendation.

It is clear that children and youth who are refugees face particular hardships in adapting to life in Canada. Schools note specific challenges that face students, notably those who arrive in Canada in their teens and who have often not attended school for many years. More must be done to support settlement services for refugee and immigrant children and youth. As well, women often have particular settlement needs that require specific programmes.

Recommendation:
That significant new resources be directed to settlement programmes for children and youth who are immigrants and refugees, and for women who are immigrants and refugees.