



CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

CANADA'S REFUGEE STRATEGY: HOW IT CAN BE IMPROVED

Robert Vineberg

SUMMARY

When citizens lose faith in their government's refugee policies, there arises the potential for an anti-immigration backlash, as several European countries have recently discovered. Canada has yet to see that happen, but it has for too long been muddling along with a refugee-processing system that is seriously flawed. Refugees go unprocessed for years, and in the meantime end up living, working and laying down roots. Often that only increases the chances they will end up staying even if they might have otherwise been rejected. It may even lead to increases in questionable refugee claims, as people realize they can work and make money in Canada for years before their case is even heard.

The Canadian government has committed to increasing refugee numbers. The United Nations High Commissioner for Refugees has designated Canada as the primary destination for hard-to-settle refugees. The diversity of source countries is increasing, resulting in more refugees who are illiterate in both English and French. More refugees will struggle to adapt to life in Canada. Taken together, it is possible that without fixing the problems in the system, public dissatisfaction could rise as Canadians lose faith that their refugee system is under control, and that could undermine their faith in the entire immigration system.

The biggest flaw in the refugee system traces back to the government's overreaction to the Singh decision. The Supreme Court ordered that all rejected refugees had a right to an in-person appeal, but the federal government went much further and gave every refugee an in-person hearing. That system has left Canada with a backlog, as of last year, of 34,000 cases. In most every other country, initial refugee screenings are conducted by public servants working

for the immigration agency, which here would be Immigration, Refugees and Citizenship Canada, as opposed to the staff of the Immigration and Refugee Board.

Canada could do a much better job at clearing its backlog and better processing refugee claims, particularly in weeding out the bogus claims, by reassigning responsibility for interviewing refugees to the officials at IRCC. The agency also has the advantage of having offices in almost every major city in Canada, while the IRB only hears cases in Vancouver, Montreal and Toronto, with the 2,500 refugee claimants residing in places outside B.C., Quebec and Ontario having to travel long distances for a hearing or having to settle for an inferior two-way video hearing. Also, this would avoid the conflict of interest at the IRB, which is in charge of reviewing appeals of its own decisions. The IRB is better suited to handle appeals of decisions made by IRCC agents who are at arm's-length from the IRB.

In addition, Canada should also ensure it maintains a balance in accepting not strictly refugees who are most at risk, but also an equal number of refugees who will more easily establish themselves in Canada and adapt within one year of landing in Canada. Having a system that not only ensures more efficient, effective processing of refugees, with proper control over who settles here, will not only help Canadians maintain confidence in their refugee and immigration system. It will also ensure that Canada has a system that can respond, when necessary, to global crises when they erupt, and better help those refugees who need protection.



CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

LA STRATÉGIE CANADIENNE POUR LES RÉFUGIÉS : PISTES D'AMÉLIORATION

Robert Vineberg

RÉSUMÉ

Quand les citoyens ne font plus confiance aux politiques gouvernementales relatives aux réfugiés, il y a risque de contrecoup anti-immigration, comme plusieurs pays européens l'on vécu récemment. Cela ne s'est pas encore produit ici, mais depuis trop longtemps le Canada se contente d'un système de traitement des demandes d'asile qui présente de sérieuses carences. Les demandeurs d'asile doivent attendre des années avant que leur dossier ne soit traité et, pendant tout ce temps, c'est ici qu'ils vivent, travaillent et tissent des liens. Souvent, dans le cas de demandes qui autrement auraient été refusées, cela ne fait qu'augmenter leurs chances de rester au pays. On pourrait même assister à une augmentation des demandes d'asile douteuses, puisque des gens réalisent qu'il est possible de travailler et de gagner de l'argent au Canada pendant plusieurs années avant qu'un dossier ne soit même étudié.

Le gouvernement canadien s'est engagé à augmenter le nombre de réfugiés. Le Haut Commissariat des Nations Unies pour les réfugiés a désigné le Canada comme destination principale pour les réfugiés difficiles à réinstaller. L'augmentation de la diversité des pays d'origine signifie un nombre plus élevé de réfugiés qui ne communiquent ni en anglais ni en français. Plus de réfugiés auront ainsi des difficultés à s'adapter à la vie au Canada. Si les divers problèmes du système ne sont pas réglés, la situation pourrait faire en sorte qu'une insatisfaction publique s'installe, que les Canadiens se mettent à douter des contrôles du système de protection des réfugiés et que leur confiance envers le système d'immigration en général soit minée.

Le pire problème du système de protection des réfugiés émane de la réaction excessive du gouvernement suite à l'arrêt Singh. La Cour suprême avait ordonné que les demandeurs du statut de réfugié dont la demande avait été rejetée aient droit à une audience orale, mais le gouvernement fédéral a été bien plus loin en accordant ce droit à l'ensemble des réfugiés. Cette décision a généré un retard cumulé de 34 000 cas au Canada, tel que l'indiquent les données de l'année dernière. Dans la plupart des autres pays, l'entrevue initiale des réfugiés est menée par des fonctionnaires qui travaillent pour les services de l'immigration – en l'occurrence ici Immigration, Réfugiés et Citoyenneté Canada (IRCC) – plutôt que par le personnel de la Commission de l'immigration et du statut de réfugié (CISR).

Le Canada pourrait faire mieux pour éliminer son retard et mieux traiter les demandes de réfugiés, particulièrement au niveau de l'élimination des demandes non fondées, en réassignant la responsabilité des entrevues aux préposés d'IRCC. Le Ministère a l'avantage d'avoir des bureaux dans presque toutes les grandes villes canadiennes, alors que la CISR n'entend les causes qu'à Vancouver, Montréal et Toronto. Les quelque 2 500 demandeurs d'asile résidant ailleurs que la Colombie-Britannique, le Québec ou l'Ontario doivent se déplacer sur de longues distances pour une audience ou se contenter d'auditions par vidéoconférences, moins efficaces. Cela éviterait aussi un conflit d'intérêt au sein de la CISR, chargée des appels de ses propres décisions. La CISR serait mieux équipée pour en appeler des décisions des agents d'IRCC qui sont indépendants de la CISR.

Par ailleurs, le Canada devrait voir à maintenir un équilibre en n'acceptant pas seulement les réfugiés qui sont les plus à risque, mais aussi un nombre égal de réfugiés à même de s'établir plus aisément au Canada, de s'adapter en moins d'un an après leur arrivée. Un système qui assure un traitement plus rentable et plus efficace des dossiers des réfugiés, avec un contrôle effectif de ceux qui s'établissent ici, contribuerait à entretenir la confiance des Canadiens envers leur système d'immigration et de demande d'asile. Cela permettrait aussi de doter le Canada d'un système à même de mieux répondre aux crises internationales, lorsqu'elles surviennent, tout en offrant une meilleure protection aux réfugiés qui en ont besoin.

1. INTRODUCTION

Refugee Policy is a contentious issue in every refugee receiving country in the world. In Canada, there is a general consensus that Canada ought to offer protection to those who deserve it. However, the consensus breaks down if numbers appear to be too high or if it appears that the government has lost control of who comes to Canada. Therefore, an effective refugee strategy is an essential component to a successful refugee program. Furthermore, a successful refugee program is essential to a successful immigration program in general as lack of public support for one component of the program will undermine support for the overall immigration program.

Canada has, from its very origins, has been a refugee receiving country. With the arrival of the first Europeans, came refugees: Huguenots from France, Loyalists from the United States, African-Americans via the Underground Railroad, Mennonites and Jews from Russia and many others long before Canada had a refugee policy of any kind.

This paper will provide an overview of how Canadian refugee policy has evolved since the end of the Second World War and will describe the current state of affairs in refugee policy, including the good and the bad. The paper will then conclude with a number of recommendations for the improvement of Canada's refugee policy.

2. BACKGROUND

The absence of a refugee policy led to serious abuses such as the refusal to assist refugees, mostly Jewish, fleeing from Nazi Europe (Abella and Troper 1968). The first articulation of a Canadian refugee policy came in Prime Minister William Lyon Mackenzie King's statement to the House of Commons on immigration policy on May 1, 1947. In it he stated:

Among other considerations, it [Canadian policy] should take account of persons who are displaced and homeless, as an aftermath of the world conflict (Canada 1947, 2644).

Later, in his speech, he was more specific:

The resettlement of refugees and displaced persons constitutes a special problem...Canada is not obliged, as a result of membership in the united nations [sic] or under the constitution of the international refugee organization [sic], to accept any specific number of refugees or displaced persons. We have, nevertheless, a moral obligation to assist in meeting the problem, and this obligation we are prepared to recognize (Canada 1947, 2645)

In the aftermath of the Second World War, Canada welcomed 165,697 displaced persons from Europe as well as 4,527 Polish Veterans (C&I 1964, L-2), most of whom fought with the Polish 1st Armoured Division, which formed part of the First Canadian Army in Northwest Europe in 1945.

In 1951, the *United Nations Convention relating to the Status of Refugees* was approved. It defined a refugee as a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the

protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UN 1951, A(1)(2)).

However, the original Convention only applied to Europe and to persons affected by events prior to January 1, 1951. Canada, while a participant in drafting the Convention, did not accede to the Convention until 1969. In the meantime, for immigration purposes, the Department of Citizenship and Immigration (C&I) developed its own working definition of refugee which referred to a person who:

(a) as a result of events arising out of World War II, was displaced from one European country to another, e.g., from an Eastern to a Western European country, and has not been permanently re-settled; or

(b) because of fear or dissatisfaction, left one of the under-mentioned countries since the closure of the International Refugee Organization on December 31, 1951:

Albania	Bulgaria	Czechoslovakia
Estonia	Hungary	Latvia
Lithuania	Poland	Roumania
East Zone of Germany	U.S.S.R.	Yugoslavia

and has not been permanently re-settled (C&I 1964, L-1).

Despite not signing the *Convention*, Canada did co-operate with the United Nations High Commission for Refugees (UNHCR) and accepted many refugees referred by the UNHCR. Normal selection criteria were still applied with respect to the likelihood of successfully establishing in Canada but the terms were relaxed for refugees. Also, any resident of Canada or reputable voluntary agency could sponsor a refugee from Europe. In 1962, following the introduction of the new *Immigration Regulations* that eliminated discrimination on the basis of race, nationality and country of origin (Canada 1962) refugees from outside Europe could apply but had to meet the normal selection criteria though in practice, again, the selection criteria were often relaxed (C&I 1964, L-5).

In 1967, the United Nations adopted a *Protocol relating to the Status of Refugees*, which served to remove the time and geographical limits of the original *Convention* (UN 1967, Article I, Sections 2 and 3). Canada signed the *Convention and Protocol* in 1969 and from that date, immigration officers were instructed to use the *Convention* definition of refugee. However, it was not until 1976, when a new *Immigration Act* (Canada 1976) was approved by Parliament, that Prime Minister Mackenzie King's commitment to assist refugees first appeared in Canadian legislation. Among the objectives of Canadian immigration policy, stated in section 3 of the new act was:

(g) to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and persecuted;

Also “Convention Refugee” was defined as:

any person who

(a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(i) is outside the country of the person’s nationality and is unable, or by reason of that fear, unwilling to avail himself of the protection of that country, or

(ii) not having a country of nationality, is outside the country of the person’s former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country,

The general authority to admit Convention refugees and persons belonging to refugee-like groups but not meeting all the requirements of the refugee definition (Designated Classes) was in section 6(2) of the act and categories of admission were described in the *Immigration Regulations* (Canada 1978) that were implemented in 1978 when the Act came into force. Section 7 of the Regulations provided for both Government Assisted Refugees (GARs) and for Privately Sponsored Refugees (PSRs) as well as for “Designated Classes” to cover refugee-like situations where it would be difficult to determine cases solely with the refugee definition. The timing of these innovations was remarkable as the Indochinese refugee crisis was about to break and the new provisions allowed Canada to respond quickly and flexibly to the crisis.¹

The Act prescribed the process for determination of refugee status (Canada 1978, S. 45-48). The Act provided that the Minister would determine claims but it also established a Refugee Status Advisory Committee (RSAC) for the purpose of advising the Minister in respect of refugee claims. The committee reviewed the claimant’s written claim and the transcript of his/her examination by an immigration officer. The committee did not offer in person hearings. Negative decisions could be appealed to the Immigration Appeal Board (IAB) (Canada 1978, S.40 (1)).

However, the lack of an opportunity for a refugee claimant to make his case in person was a fundamental flaw in the 1976 legislation. Also, the process was predicated on a belief that there would be very few refugee claims made on Canadian soil. Events proved these assumptions wrong and the RSAC and the IAB were overwhelmed by the volume of claims and appeals of rejected claims.

In its famous 1985 “Singh Decision,” the Supreme Court of Canada ruled both that *Charter* protections applied to any person physically in Canada and that the paper process for refugee determination, then in place, did not provide the opportunity for an oral presentation by the claimant and this constituted a denial of *Charter* rights (Singh vs. Minister of Employment and Immigration, 1985). This was a wise decision as the old process gave claimants no opportunity to state their case and to know the Minister’s case against them. In response, the Federal Government introduced legislation to create the Immigration and Refugee Board (IRB) and provided that all refugee claimants in Canada would have an in-person hearing before a panel of members of the Immigration and Refugee Board. These members are Governor-in-Council, that is to say, political appointees.

¹ For more on Canada’s response, see: Molloy, et al. 2017.

The Government reaction was an over-reaction because the process soon became bogged down both by insufficient appointments to the IRB and by the sheer volume of claimants. By 2008, there was a backlog of 62,000 claims (Kelley and Trebicock 2010, 445, 446). The problem was that the legitimate refugees had to wait in line with all the bogus claims, resulting in waits of several years for a decision. The Supreme Court decision only required that claimants being refused were entitled to an oral hearing. There could have been a faster process to deal with legitimate claims.

The result has been that the IRB almost continually has faced backlogs serving both to delay the recognition of legitimate refugees and to give unfounded claimants several years of *de facto* residence in Canada before being found not to be a refugee and being subject to a removal order. However, not all those ordered removed would eventually leave Canada. The longer they remained in Canada, the greater the likelihood of developing a rationale for remaining in Canada, including marriage and children. Some have been, ultimately, allowed to stay in Canada under humanitarian and compassionate provisions or by becoming a sponsored member of the Family Class. In addition, through the process known as Pre-Removal Risk Assessment (PRRA), which is discussed below, about 3% of the 1,875 PRRA applications reviewed were allowed to stay in 2014 (IRCC 2016a, 13, Figure 4.3 and 16, Figure 4.6).

3. RECENT CHANGES

With the introduction of the new *Immigration and Refugee Protection Act and Regulations* (Canada 2001 and 2002) in 2002, a major change in how Government Assisted Refugees are selected was made. Under the 1976 Act, convention refugees still had to demonstrate that they would “be able to become successfully established in Canada” (Canada 1978, S.7 (1)) and this was to be assessed against the same criteria as in the points system for economic immigrants but without assigning points. It was generally accepted that refugees should be able to establish themselves within one year of arrival. This approach was criticized by other refugee receiving countries as “skimming the cream off the milk” rather than providing asylum to the most needy. However, since 2002, convention refugees are referred to IRCC, generally by the UNHCR on the basis of the importance of resettlement (Canada 2002, S. 138 and 140.3). While IRCC officers are still supposed to assess the ability to settle successfully, the criteria are much less stringent and the timeline for establishment is now three to five years (Canada 2002, S. 139(1)(g)) and CIC 2009, S 13.9 to 13.14).

On March 30, 2010, then Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, introduced long overdue reforms to the refugee determination process in Canada (Canada 2010). The new proposals, labelled the *Balanced Refugee Reform Act* aimed to conclude refugee determination within sixty days. However, it was unclear how new cases could be dealt with in this time period. The Government’s “backgrounder” on the reforms stated that “individuals who are determined to be eligible to make an asylum claim would meet with a public servant at the IRB within eight days of being referred to the IRB. During this information-gathering interview, information on the claim would be collected, forms properly completed and a hearing scheduled before another public servant at the IRB within 60 days” (CIC 2010).

This was all very good as rhetoric but, as currently organized, the IRB is not in a position to meet these time standards. In the IRB’s Department Results Report 2016-17, meeting

regulatory time limits is identified as the Board's "Key Risk" due to increased intake and limited capacity (IRB 2017, 8). It only has field offices in Montreal, Toronto and Vancouver and, while the bulk of refugee claimants are in those three cities, for the period from January 2017 to October 2017, over 2,500 claimants were living outside of Quebec, Ontario and British Columbia (IRCC 2017a). These claimants are not treated in the same way as claimants where the IRB has offices as they will either have to travel to an IRB office, at their own expense, or make their all-important claim by video conference.

The process in place today is summarized by IRCC on its web site so I will not go into it in further detail (IRCC 2017b).

4. WHERE WE ARE TODAY

a) In-Canada Refugee Claimants

The new system for in-Canada refugee claims was introduced in 2010 and implemented in 2012. Its legal safeguards include the right of appeal to the Refugee Appeal Division (Canada 2001, S.110). However an appeal is not available in cases that were considered manifestly unfounded or if the claimant came from a country designated as having an independent judicial system and other freedoms. Furthermore, the right of appeal does not include the right to an oral hearing. Further appeal is available, by leave, to the Federal Court. The government hoped that by having the initial decision made by an official and by imposing tight timelines that the process would be speedier and backlogs would be reduced. Unfortunately this is not the case. Also, timelines for applicants are so short that many advocates for refugees feel that it is impossible to prepare a compelling case within those time limits (Canadian Bar Association 2010).

The backlog was significant even before the influx of refugee claimants entering Canada illegally from the United States. In 2017, though the 18,149 (IRB 2018a) claimants, entering Canadian irregularly from the United States was relatively high, the overall number of claimants at 47,425 (IRB 2018b) is not much different from numbers Canada has experienced in the past². As of the end of February 2018, the IRB had 47,451 claims pending and were finalizing about 2,000 claims per month, so at the current rate of processing cases the backlog represents about two years of processing, on top of the new claims that have averaged about 4,000 per month over the past year (IRB 2018c).

While these numbers are significant, we need to maintain perspective. In 2016, 390,000 undocumented migrants entered Europe and another 5,100 lost their lives in the attempt. In 2017, the numbers have dropped by half (almost 187,000 people plus another 3,100 who died) but are still enormous in comparison to what Canada has to deal with (IOM 2018).

Nevertheless, the increase in illegal border crossings has the potential to undermine the public's belief that the government has migration under control and, therefore, the consensus in support of immigration in general (Globe and Mail, 2018). The best way to prevent an increase in illegal border crossings is to use diplomatic pressure on the United States to enforce its own laws by dedicating more resources to prevent illegal departures over the Canada/US

² In Canada refugee claims in 2000 numbered 37,748, in 2001 there were 44,640, and in 2008 there were 36,856. Source: Citizenship and Immigration Canada (CIC 2015, 47).

land border. However, as Nicholas Keung noted in a *Toronto Star* article on October 19, 2017 (Keung 2017b), there are many people in Canada who believe that the border crossers should be welcomed in Canada and a recent poll suggested that more Canadians believe that refugee claimants are legitimate than those who believe they are not legitimate (Environics 2018). Therefore, any such initiative to reduce the flow of claimants across the border would have to take into consideration the strong support for refugee claimants and, therefore, be relatively low-key in nature in order not to elicit criticism. Apart from this step, the best approach is to make decisions on claims quickly and correctly so that those whose claims are unfounded will be removed from Canada rapidly. I suggest, below, a number of options to achieve this.

As noted above, the IRB is not resourced to deal with the numbers that come to Canada. As of August 31, 2017, there was a backlog of some 34,000 cases and people were waiting about 16 months for their hearing rather than the 60 days it is supposed to take, reported Nicholas Keung in another *Toronto Star* article on September 20, 2017 (Keung 2017a). And, as noted earlier, the backlog as of February 2018 has grown to over 47,000.

Refugee Claimants are not eligible for most social programs but are given work permits while they wait for their case to be determined. The longer people have to wait for a refugee hearing, the longer they get to work in Canada. This, in itself, can be an incentive to come to Canada and make a refugee claim. Therefore the waiting time for hearings must be shortened. How could we shorten the wait times? There are actually many ways. But before we look for solutions, we should look at some of the reasons that wait times are so long.

First of all, if we go back to the *Singh Decision*, the Supreme Court only ruled that refused refugee claimants had to have an oral hearing. The government over-reacted by creating a cumbersome system that required every claimant to have an oral hearing. Over the years, there have been attempts to accelerate the system by reducing the number of members hearing each case and then, in 2012, turning over the initial determination to officials of the IRB.

However, Immigration, Refugees and Citizenship Canada (IRCC) has some twenty offices from St. John's to Vancouver to Yellowknife. If public servants with the IRB are going to make the initial refugee determination, why not give this responsibility to public servants with IRCC? After all, IRCC officers overseas already do refugee selection abroad. IRCC has the network of offices and trained officers in almost every major community in Canada. In almost every other country, the initial determination is made by an official of the administrative agency for immigration, not a quasi-judicial body. Why are we different? Furthermore, with a far larger trained cadre of officers, IRCC can redeploy officers to take on rising workloads. The IRB does not have this capacity.

There is also the possibility of conflict of interest in IRB appeal decisions. Will the IRB members, at appeal, be more likely to overturn a decision made by an IRCC officer, who they do not know, or that of an IRB officer with whom they work closely? Even the perception of a conflict of interest due to the absence of an arms-length relationship is a serious breach of the principles of fairness in administrative law.

A second reason that our system is cumbersome is that we have also put the cart before the horse. A process that forces claimants to have only their refugee claim considered at the beginning of the process fails to recognize that there are other ways to qualify for Canadian residence and that is what refugee claimants want – Canadian residence - and most do not care in what form it comes provided that get it. Today, following a negative decision, unsuccessful

claimants who are otherwise ready for removal from Canada may apply for a Pre-Removal Risk Assessment (PRRA) (Canada 2001, S.112-114). The PRRA, originally known as the Post-Determination Refugee Claimants in Canada Class (PDRCC), was introduced in the early 1990s in recognition that there are other risks beyond those in the refugee definition that could result in danger to a failed refugee claimant on removal from Canada. With the implementation of new the legislation (*IRPA*) in 2002, (Canada 2001, S.97 (1)), the PDRCC was replaced by the PRRA.

The PRRA is carried out by officers of IRCC and examines the circumstances of a claimant against other types of risk that may not have been within the purview of the *Convention* (IRCC 2017c). This serves also to meet Canada's international obligations under the *Convention Against Torture* (UN 1987) and the *Convention on the Rights of the Child* (UN 1990) and if an officer concludes that removal would subject a person to undue risk, that person will be allowed to stay.

Furthermore, an unsuccessful refugee claimant may have humanitarian and compassionate (H&C) grounds to stay in Canada, such as close family in Canada and nowhere else. All these reasons to remain in Canada should not be left until the end of the process to be considered.

b) Government Assisted Refugees (GARs)

Since the selection changes in 2002, the UNHCR continues to refer the most at risk refugees to Canada. This, of course, increases the settlement challenge as the most at risk are often not the most readily adaptable to Canada. Furthermore, as source areas for refugees diversify, fewer refugees are literate in a western language or any language for that matter. This makes acquisition of English or French an even greater challenge. One approach would be to select some of the GARs on the basis of ability to establish themselves within a year, as was the case prior to 2002. The government announced, in its 2018-2020 Immigration Plan, that the target for GARs will be increased from the current 7,500 to 10,000 by 2020 (IRCC 2017d). It may be worth considering a 50-50 split between selection of those in most need and those most able to establish themselves for a number of reasons. Rapid establishment builds public support for the program and budget allocations for the Resettlement Assistance Program (RAP) are insufficient for the current numbers of GARs and the increasing settlement challenge they face (IRCC 2016b, 40). Furthermore, a major hurdle to rapid establishment is the fact that the government only loans money to GARs for transportation to Canada and requires it to be repaid. The cost of this program is small for the government but it is a huge burden for the GAR. The loan program could be replaced by transportation grants.

c) Privately Sponsored Refugees (PSRs)

The PSR program has been a huge success and the UNHCR has been encouraging other countries to emulate it (UNHCR 2016). However, the program is a victim of its own success. For several years the number of PSR applications has outstripped the resources devoted to processing PSR applications. A 2007 evaluation of the program noted that long wait-times of three years or more are negatively affecting the program (CIC 2007). IRCC has also capped the number of applications being accepted so an invisible backlog of applications waiting to be submitted by Settlement Agreement Holders (SAHs) exists as well. Measures need to be taken to make the program more responsive to demand.

It is a valid assumption, in most refugee-generating countries, that close relatives of refugees are also at risk. We also know that the presence of close relatives helps settlement. A large number of PSR applications are for those close relatives, usually siblings. The long process to approve the sponsorship application and then to confirm that they are indeed refugees is expensive to both Canada and the sponsors. Why bother with this process if the chances are almost 100% that the application is for a person at risk?

Government Assisted Refugees (GARs) and Privately Sponsored Refugees (PSRs) could be allowed to sponsor one close relative (brother, sister, cousin) with the support of a group of 5 sponsors BUT without requiring the relative to be determined to be a refugee. This would improve settlement and speed the processing of these people who, otherwise, would clog the Private Sponsorship of Refugees Program (PSRP) processing as is the case now.

The PSR program is very cost effective and by involving Canadians personally, helps maintain high levels of support for Canada's refugee programs. It needs to be adequately resourced and supported.

5. RECOMMENDATIONS

In general, there needs to be the will and the resources within the Government of Canada to welcome in the range of 35,000-40,000 refugees annually and to have the plans and capacity (not only at IRCC but also at the IRB, Global Affairs, National Defence, CSIS and the Provinces) in place to respond quickly to refugee crisis situations. My specific recommendations to improve Canada's refugee policies follow:

a) In-Canada Refugee Claimants

1. The initial decision on a refugee claim should be made by an IRCC officer rather than an IRB officer. With the initial decision-making and the appeal process in the same agency there is the potential for a serious conflict of interest. The government should amend the *Immigration and Refugee Protection Act* to provide that IRCC officers make the initial refugee determination in Canada with the IRB having responsibility to hear appeals, as is the case for all other immigrant decisions.
2. A refugee processing unit should be established in at least one major office in each region of Canada. This would allow IRCC officers to consider both refugee status *and* other avenues to permanent residence such as H&C, *Convention against Torture*, *Convention of the Rights of the Child* and other risks not contemplated by the *UN Refugee Convention*.
3. Appeals should be made to the IRB and include the possibility of oral hearings, thus paralleling the process for immigrants. As the initial decision would be entirely administrative, all refused claimants, who have not made an earlier claim within the previous year, ought to be able to lodge an appeal.

b) Government Assisted Refugees

4. The commitment to Government Assisted Refugees (GARs) needs to be reaffirmed and sufficient resources dedicated to meeting targets. However, we should not commit to only

hard to settle GARs. The government should keep the commitment for 5,000 per year for UNHCR referred hardship cases but for the remaining GARs return to the requirement that in order to be accepted they must be assessed as likely to establish themselves within one year of landing.

5. Government Assisted Refugees (GARs) should be allowed to sponsor one close relative (brother, sister, cousin) and immediate family with the support of a group of 5 sponsors BUT without requiring the relative to be determined to be a refugee. This will improve settlement and speed the processing of these people who, otherwise, would clog the Private Sponsorship of Refugees Program processing as is the case now.
6. The RAP program needs to be adequately funded to provide the resources to settlement agencies to provide for the increasingly difficult settlement challenges faced by recently arrived refugees.
7. The transportation loan program should be replaced by transportation grants.

(A recent evaluation of the GAR program and RAP makes a number of excellent recommendations as well (CIC 2011, 51-58).)

c) Privately Sponsored Refugees

8. The government needs to put in place adequate resources to process PSR sponsorships in Canada and PSR applications abroad in a timely fashion and remove the caps currently in place.
9. Privately Sponsored Refugees (PSRs) should be allowed to sponsor one close relative (brother, sister, cousin) and immediate family with the support of a group of 5 sponsors BUT without requiring the relative to be determined to be a refugee. This will improve settlement and speed the processing of these people who, otherwise, would clog the Private Sponsorship of Refugees Program processing as is the case now.

(More recommendations regarding Privately Sponsored Refugees can be found in a recent submission to the government by the Refugee Research Network (Hyndman et al.2016, 2,3).)

d) All Refugees

10. Funding for language training for refugees needs to be increased so that all refugees not fluent in either English or French can obtain rapid access to language training.

6. CONCLUSIONS

This paper set out to provide an overview of refugee policy since the end of the Second World War; to describe the current state of affairs in refugee policy; and, offer a number of recommendations for the improvement of Canada's refugee policy.

Overall, Canadians can be proud of our refugee policy but that does not mean we can be complacent. We still make errors in refugee determination. People at risk still sometimes face

the risk of removal and forced return to the situation from which they fled. And we often take far too long to approve applicants with a well-founded need to obtain Canada's protection.

I believe that the recommendations in this paper would serve to improve, significantly, the effectiveness and the level of compassion of Canada's refugee strategy while still ensuring that Canadians are protected from those would abuse our refugee system. They would also serve to increase the level of public confidence in refugee programs and, therefore, the immigration program in general.

There is a healthy amount of discussion among academicians, refugee advocates, and settlement workers. I trust that this paper will contribute to the discussion and help to promote improvements in Canada's refugee policy.

7. REFERENCES

- Abella, Irving. and Howard Troper. 1968. *None is Too Many, Canada and the Jews of Europe, 1933-1948*. Toronto: Lester & Orpen Dennys.
- Canada. 1947. *House of Commons Debates, 1947*. Ottawa: King's Printer.
- Canada. 1962. *Order-in-Council P.C. 1962-0082*, January 18, 1962.
- Canada. 1976. S.C. 1976-77, c.52, *An Act respecting immigration to Canada*.
- Canada. 1978. *Immigration Regulations, 1978* (OIC, P.C. 1978-0486).
- Canada. 2001. S.C. 2001, c.27, *Immigration and Refugee Protection Act (IRPA)*
- Canada. 2002. SOR 2002-227, *Immigration and Refugee Protection Regulations (IRPA Regs)*.
- Canada. 2010. 'Bill C-11.' Accessed January 6, 2018. <http://www.parl.ca/DocumentViewer/en/40-3/bill/C-11/first-reading>
- Canadian Bar Association. 2010. National Citizenship and Immigration Law Section, *Bill C-11, Balanced Reform Act*. Ottawa: Canadian Bar Association.
- Citizenship and Immigration Canada (CIC). 2007. Evaluation Branch, *Summative Evaluation of the Private Sponsorship of Refugees Program*. Section 3.2.3. Accessed December 22, 2017. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/private-sponsorship-refugees-program.html>
- Citizenship and Immigration Canada (CIC). 2009. Manual OP5: *Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Class*. Ottawa: CIC
- Citizenship and Immigration Canada (CIC). 2010. CIC Backgrounder: *Proposed Reforms to Canada's Asylum System*. Accessed December 8, 2017. <http://www.cic.gc.ca/english/department/media/backgrounders/2010/2010-03-30.asp>.
- Citizenship and Immigration Canada (CIC). 2011. Evaluation Branch, *Evaluation of Government Assisted Refugees (GAR) and Resettlement Assistance Program (RAP)*. Ottawa: CIC.
- Citizenship and Immigration Canada (CIC). 2015. *Facts and Figures, Temporary Residents, 2014*. Ottawa: Public Works and Government Services Canada.
- Citizenship and Immigration Department (C&I). 1964. *Immigration Policy* (Internal document in author's possession).
- EnviroNics Institute. 2018. "Focus Canada – Winter 2018: Canadian public opinion about immigration and minority groups." Accessed April 5, 2018. <https://www.enviroNicsinstitute.org/projects/project-details/focus-canada-winter-2018---canadian-public-opinion-on-immigration-and-minority-groups>
- Hyndman, Jennifer and William Payne, Shauna Jiminez. 2016. *The State of Private Refugee Sponsorship in Canada: Trends, Issues, and Impacts*. Toronto: York University Refugee Research Network and Centre for Refugee Studies.

- Globe and Mail. 2018. "Globe Editorial: To remain a welcoming country, Canada needs a secure border." *Globe and Mail*, April 1, 2018. Accessed April 1, 2018. <https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-to-remain-a-welcoming-country-canada-needs-a-secure>
- Immigration and Refugee Board (IRB). 2017. *Departmental Results Report 2016-17*. Ottawa: Minister of Immigration, Refugees and Citizenship.
- Immigration and Refugee Board (IRB). 2018a. "Irregular Boarder Crosser Statistics." Accessed April 5, 2018. <http://www.irb-cisr.gc.ca/Eng/res/stat/Pages/Irregular-border-crosser-statistics.aspx>
- Immigration and Refugee Board (IRB). 2018b. "Refugee Protection Claims (New System) by Country of Alleged Presecution – 2017." Accessed April 5, 2018. <http://www.irb-cisr.gc.ca/Eng/RefClaDem/stats/Pages/RPDStat2017.aspx>
- Immigration and Refugee Board (IRB). 2018c. "Recent Trends." Accessed April 5, 2018. <http://www.irb-cisr.gc.ca/Eng/res/stat/Pages/volume-reports.aspx>
- Immigration, Refugees and Citizenship Canada (IRCC). 2016a. Evaluation Division, *Evaluation of the Pre-Removal Risk Assessment Program*. Ottawa: IRCC.
- Immigration, Refugees and Citizenship Canada (IRCC). 2016b. Evaluation Division, *Evaluation of the Resettlement Programs (GAR, PSR, BVOR and RAP)*. Ottawa: IRCC.
- Immigration, Refugees and Citizenship Canada (IRCC). 2017a - Asylum Claimants by Province/Territory of Claim Received, Province/Territory of Last Known Address and Claim Year. Accessed December 8, 2017. http://open.canada.ca/data/en/dataset/b6cbcf4d-f763-4924-a2fb-8cc4a06e3de4?_ga=2.36009446.791346230.1512784127-1636814078.1507574448.
- Immigration, Refugees and Citizenship Canada (IRCC). 2017b. Claiming Asylum in Canada – What Happens. Accessed December 8, 2017. https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_incanadawhathappens.html.
- Immigration, Refugees and Citizenship Canada (IRCC). 2017c. Processing pre-removal risk assessment applications: Intake. Accessed December 10, 2017. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/removal-risk-assessment/applications-intake.html>.
- Immigration, Refugees and Citizenship Canada (IRCC). 2017d. Supplementary Information 2018-2020 Immigration Levels Plan. Accessed December 22, 2017. https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2018.html?_ga=2.179428196.1773314245.1509566734-495994404.1505857313.
- International Organization for Migration (IOM). 2018. 'Migration Flows – Europe'. Accessed April 5, 2018. <http://migration.iom.int/europe>.
- Kelley, Ninette and Michael Trebilcock. 2010 *The Making of the Mosaic, A History of Canadian Immigration Policy*. Toronto: University of Toronto Press.
- Keung, Nicolas. 2017a. 'The law says refugee claims must be heard in 60 days. So why are people waiting 16 months?' September 20. Accessed December 17, 2017. <https://www.thestar.com/news/immigration/2017/09/20/the-law-says-refugee-claims-must-be-heard-in-60-days-so-why-are-asylum-seekers-waiting-16-months.html>

- Keung, Nicolas. 2017b. 'New Data show 69% of illegal border crossers are being granted asylum.' *Toronto Star*, October 19. Accessed January 6, 2017. <https://www.thestar.com/news/canada/2017/10/19/new-data-show-69-of-illegal-border-crossers-are-being-granted-asylum.html>
- Molloy, Michael J., and Peter Duschinsky, Kurt F. Jensen, Robert Shalka. 2017. *Running on Empty: Canada and the Indochinese Refugees, 1975-1980*. Montreal and Kingston: McGill-Queen's University Press.
- Singh v Minister of Employment and Immigration. 1985. Supreme Court of Canada [1985] 1 S.C.R. 177. Accessed December 8, 2017. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/39/index.do>.
- United Nations (UN). 1951. *Convention relating to the Status of Refugees*. Available from <http://www.unhcr.org/1951-refugee-convention.html>
- United Nations (UN). 1967. *Protocol relating to the Status of Refugees*, 1967. Available from <http://www.unhcr.org/1951-refugee-convention.html>
- United Nations (UN). 1987. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Accessed December 13, 2017. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.
- United Nations (UN). 1990. *Convention on the Rights of the Child*. Accessed December 13, 2017. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
- United Nations High Commissioner for Refugees (UNHCR). 2016. 'Global Refugee Sponsorship Initiative promotes Canada's private refugee sponsorship model', December 16, 2016. Accessed December 22, 2017. <http://www.unhcr.org/news/press/2016/12/58539e524/global-refugee-sponsorship-initiative-promotes-canadas-private-refugee.html>

About the Author

Robert Vineberg's career in the Federal Public Service spanned 35 years, of which 28 were with the immigration program, serving abroad, in policy positions in Ottawa and, as Director General of Citizenship and Immigration Canada's Prairies and Northern Territories Region, based in Winnipeg. He retired in 2008. Mr. Vineberg has published several peer reviewed articles on immigration history and on military history. His book, *Responding to Immigrants' Settlement Needs: The Canadian Experience* (Springer), was published in 2012. He co-edited and contributed two chapters to *Integration and Inclusion of Newcomers and Minorities Across Canada* (McGill Queen's University Press, 2011), and has contributed chapters to *Immigration Regulation in Federal States: Challenges and Responses in Comparative Perspective* (Springer, 2014) and *Immigrant Experiences in North America* (Canadian Scholars' Press, 2015). Mr. Vineberg has a BA in History from the University of Toronto as well as an MA in Canadian History and a Graduate Diploma in Public Administration, both from Carleton University, in Ottawa.

ABOUT THE SCHOOL OF PUBLIC POLICY

The School of Public Policy has become the flagship school of its kind in Canada by providing a practical, global and focused perspective on public policy analysis and practice in areas of energy and environmental policy, international policy and economic and social policy that is unique in Canada.

The mission of The School of Public Policy is to strengthen Canada's public service, institutions and economic performance for the betterment of our families, communities and country. We do this by:

- *Building capacity in Government* through the formal training of public servants in degree and non-degree programs, giving the people charged with making public policy work for Canada the hands-on expertise to represent our vital interests both here and abroad;
- *Improving Public Policy Discourse outside Government* through executive and strategic assessment programs, building a stronger understanding of what makes public policy work for those outside of the public sector and helps everyday Canadians make informed decisions on the politics that will shape their futures;
- *Providing a Global Perspective on Public Policy Research* through international collaborations, education, and community outreach programs, bringing global best practices to bear on Canadian public policy, resulting in decisions that benefit all people for the long term, not a few people for the short term.

The School of Public Policy relies on industry experts and practitioners, as well as academics, to conduct research in their areas of expertise. Using experts and practitioners is what makes our research especially relevant and applicable. Authors may produce research in an area which they have a personal or professional stake. That is why The School subjects all Research Papers to a double anonymous peer review. Then, once reviewers comments have been reflected, the work is reviewed again by one of our Scientific Directors to ensure the accuracy and validity of analysis and data.

The School of Public Policy

University of Calgary, Downtown Campus
906 8th Avenue S.W., 5th Floor
Calgary, Alberta T2P 1H9
Phone: 403 210 3802

DISTRIBUTION

Our publications are available online at www.policyschool.ca.

DISCLAIMER

The opinions expressed in these publications are the authors' alone and therefore do not necessarily reflect the opinions of the supporters, staff, or boards of The School of Public Policy.

COPYRIGHT

Copyright © Vineberg 2018. This is an open-access paper distributed under the terms of the Creative Commons license [CC BY-NC 4.0](https://creativecommons.org/licenses/by-nc/4.0/), which allows non-commercial sharing and redistribution so long as the original author and publisher are credited.

ISSN

ISSN 2560-8312 The School of Public Policy Publications (Print)
ISSN 2560-8320 The School of Public Policy Publications (Online)

DATE OF ISSUE

April 2018

MEDIA INQUIRIES AND INFORMATION

For media inquiries, please contact Morten Paulsen at 403-220-2540. Our web site, www.policyschool.ca, contains more information about The School's events, publications, and staff.

DEVELOPMENT

For information about contributing to The School of Public Policy, please contact Jessika Anderson by telephone at 403-210-7968 or by e-mail at jessika.anderson@ucalgary.ca.

RECENT PUBLICATIONS BY THE SCHOOL OF PUBLIC POLICY

AN INTERNATIONAL COMPARISON OF TAX ASSISTANCE FOR R&D: 2017 UPDATE AND EXTENSION TO PATENT BOXES

<http://www.policyschool.ca/wp-content/uploads/2018/04/Tax-Assistance-Lester-Warda.pdf>

John Lester and Jacek Warda | April 2018

FISCAL POLICY TRENDS: THE PATH TO BALANCE OR THE ROAD TO RUIN?

<http://www.policyschool.ca/wp-content/uploads/2018/03/Fiscal-Trends-Path-to-Balance-Dahlby.pdf>

Bev Dahlby | March 2018

CAPACITY MARKET DESIGN: MOTIVATION AND CHALLENGES IN ALBERTA'S ELECTRICITY MARKET

<http://www.policyschool.ca/wp-content/uploads/2018/03/Electricity-Market-Brown.pdf>

David P. Brown | March 2018

GAINS FROM TRADE FOR CANADA'S NORTH: THE CASE FOR A NORTHERN INFRASTRUCTURE CORRIDOR

<http://www.policyschool.ca/wp-content/uploads/2018/03/Trade-Gains-Canadas-North-Fellows-Tombe-final4.pdf>

G. Kent Fellows and Trevor Tombe | March 2018

SOCIAL POLICY TRENDS: ALBERTA GOVERNMENT PROGRAM SPENDING

<http://www.policyschool.ca/wp-content/uploads/2018/03/Social-Trends-AB-Budget-March-2018.pdf>

Margarita Gres Wilkins and Ronald Kneebone | March 2018

FISCAL POLICY TRENDS: COMMENTARY FOR THE PROVINCIAL BUDGET MARCH 22, 2018

<http://www.policyschool.ca/wp-content/uploads/2018/03/Fiscal-Trends-Provincial-Budget-March-2018.pdf>

Bev Dahlby | March 2018

SURVIVING AND THRIVING IN THE DIGITAL ECONOMY

<http://www.policyschool.ca/wp-content/uploads/2018/03/Digital-Economy-Pesic.pdf>

Goran Samuel Pesic | March 2018

NAFTA RENEGOTIATIONS: AN OPPORTUNITY FOR CANADIAN DAIRY?

<http://www.policyschool.ca/wp-content/uploads/2018/03/NAFTA-Renegotiations-Beaulieu-final.pdf>

Eugene Beaulieu and V. Balaji Venkatachalam | March 2018

ENERGY AND ENVIRONMENTAL POLICY TRENDS: THE INVISIBLE COST OF PIPELINE CONSTRAINTS

<https://www.policyschool.ca/wp-content/uploads/2018/03/ENERGY-trends-advisory-March.pdf>

G. Kent Fellows | March 2018

FALLING THROUGH THE CRACKS: HOW THE COMMUNITY-BASED APPROACH HAS FAILED CALGARY'S CHRONICALLY HOMELESS

<https://www.policyschool.ca/wp-content/uploads/2018/02/Falling-Through-The-Cracks-Milaney-FINAL-2Williams-Dutton-final.pdf>

Katrina Milaney, Nicole Williams and Daniel Dutton | February 2018

SOCIAL POLICY TRENDS: INTERNATIONAL TRENDS IN FEMALE EMPLOYMENT RATES

<https://www.policyschool.ca/wp-content/uploads/2018/02/Social-Trends-International-EM-Rates-February-2018.pdf>

Margarita Gres Wilkins and Ronald Kneebone | February 2018

THE TIME HAS COME TO REVISIT SOLVENCY FUNDING RULES

<https://www.policyschool.ca/wp-content/uploads/2018/02/Solvency-Funding-Nielson.pdf>

Norma Nielson | February 2018

2017 TAX COMPETITIVENESS REPORT: THE CALM BEFORE THE STORM

<https://www.policyschool.ca/wp-content/uploads/2018/02/2017-Tax-Competitiveness-Bazel-Mintz-Thompson-final.pdf>

Philip Bazel, Jack Mintz and Austin Thompson | February 2018