

Models of Change in Canada's Refugee Status Determination Process

by Barbara Jackman

It is not possible here to outline all criticisms of the refugee-status determination process. Many of these criticisms are directed at secondary issues arising from the actual practices followed by the Immigration Commission — problems with work authorizations, welfare, settlement assistance and other such matters. Rather, I will attempt only to outline the primary concerns with the present process and to put into context the proposals for change.

The concerns fall primarily into two categories — the need for a fair process, which has been characterized fundamentally as a need for an oral hearing, and the need to control frivolous or abusive claims made to gain time in Canada or to work in Canada legally. In these cases, the primary criticisms have centred on the following problems:

1) Unless the claimant is allowed an oral hearing on the second stage of the process, he/she has no opportunity to present his/her claim in person to the tribunal who ultimately considers it.

2) Claims to refugee status can only *lawfully* be made when the claimant is in the immigration-enforcement stream, i.e., in an inquiry. Therefore, violations of the Immigration Act (1976) are implicitly encouraged in order to bring the claimant within the inquiry stream. Further, enforcement officials are responsible for the handling of refugee claims, although a determination of refugee status is a decision that is separate from immigration-enforcement decisions.

3) In practice, the present process is unwieldy. This, coupled with limited manpower resources within the Immigration Commission, has resulted in long delays (sometimes a year or longer) in the decision-making process. The in-

creasing number of claimants has further aggravated the delays.

4) Any person coming into or already in Canada may make a refugee claim. The lengthy processing delays have resulted in frivolous or abusive claims in some cases, by individuals seeking to remain longer in Canada or wishing to obtain work authorizations.

5) Settlement services have only recognized, in a limited way, the needs of refugee claimants during the lengthy time these claimants must await a decision on their claims. With the passage of time and with increasing pressure resulting from the needs of claimants, limited provincial and federal services have been made available. But assistance has been spotty and varies from area to area. The lack of legal status in Canada pending a decision has compounded the difficulties encountered by claimants.

During the six years that the present refugee process has been in existence, long debates and discussions have taken place between church, community and legal groups and with the Immigration Commission officials. The debates have tended to focus on the need for more equitable treatment of claimants counterposed against the fear of encouraging more frivolous claims by improving the treatment accorded to claimants.

This discussion process has resulted in a proposal for legislative change submitted by the Concerned Delegation of Church, Legal & Humanitarian Organizations to the Immigration Commission. The proposed changes are intended to improve the present system while taking into account immigration officials' fears with respect to their responsibility to ensure that the objectives of the *Immigration Act* are met.

The key elements of this proposal are outlined below:

i) The refugee-status determination process should be completely separated from the immigration process through the establishment of a Refugee Review Board.

ii) Any person arriving or already in Canada, regardless of his/her status, should be permitted to make a refugee claim. A screening process should be set up to permit timely acceptance of clearly meritorious claims and rejection of clearly unfounded ones. This could be accomplished by an initial interview of the claimant by a staff officer of the Refugee Review Board, who would be empowered to recommend to the Board acceptance of the claim, to refer the claim to an oral hearing, or to recommend to the Board rejection of the claim. Time limits should be imposed within which the interview must take place. Counsel, an interpreter if required, and recording of the interview should be part of this process. The staff officer's report to the Board should be made available to the claimant.

iii) One Board member would review the officer's report where outright acceptance is recommended and confirm the recommendation or refer to an oral hearing.

- An oral hearing for all claimants so referred would be before a three-member panel of the Refugee Review Board. Right to counsel and an interpreter, along with other rights associated with judicial proceedings, would be guaranteed. The transcript of the initial interview with the staff officer would only be available where there was a dispute about its contents or about the claimant's testimony.

- Where the staff officer has recommended outright rejection of a claim,

the claimant would be given a prescribed time period within which to respond to the officer's recommendation and report. The transcript of the interview could be requested first if there is a dispute about its contents. The officer's report, the claimant's reply and the transcript, if requested, would then be considered by a three-member panel of the Board, who would confirm the recommendation or refer to an oral hearing.

iv) All decisions of the Board would be final, subject only to judicial review.

v) Strict and limited standards should be set out for the rejection of manifestly unfounded claims, for which no oral hearing would be allowed. Recommendations by staff officers to reject a manifestly unfounded claim without a hearing should be limited to cases where:

- the claim discloses no evidence of a fear of persecution for one of the grounds set out in the Convention definition of a refugee.

- the claim clearly indicates that the evidence has no foundation in fact, such as in cases where the claimant is suffering from mental illness and the fear of persecution originates from the affliction rather than any external or real cause, or the person alleges involvement in incidents which never occurred.

- the claim is a second claim and no new evidence is disclosed, in which case the Board could review the first negative decision.

- the claim is made by a spouse and the evidence discloses nothing new or independent from the rejected spouse's claim, in which case the Board could review the original negative decision.

vi) The Commission would have a role

in the determination process limited to the oral hearing, in which a Commission representative would have a right to cross-examine and participate in the hearing. The United Nations High Commission on Refugees should receive a copy of the staff officer's report and a transcript where prepared, should be advised of all proceedings and should be entitled to participate both in the oral hearing and in reply to a recommendation that a claim is manifestly unfounded.

vii) Eligibility for authorization to work should be granted only to those claimants whose cases have been recommended favourably or referred to an oral hearing by the staff officer. Essentially, this would mean that no claimant would be permitted to accept employment until after the initial interview with the staff officer has taken place, and, in the case of claimants where the staff officer has recommended rejection of a claim as being manifestly unfounded, not until the Board has decided to refer to an oral hearing. Because the right to work is so restricted, it is essential that the initial determination by the staff officer and the Board review of manifestly unfounded claims be made within a short period of time. It is thought that these restrictions would discourage abusive claims and at the same time would eliminate the need to control the issuance of work authorizations based on financial need for all other claimants.

viii) All cases rejected by the Refugee Review Board process should continue to be referred to the Special Review Committee for consideration on humanitarian and compassionate grounds.

• • •

The above is a resumé of the Concerned

Delegation brief which was presented to the Minister of Employment and Immigration in December, 1983. A response to the brief has not yet been forthcoming from the Minister, nor has the requested meeting with the Minister been scheduled to discuss the brief. Changes to the refugee-status determination process were promised by the Minister of Employment and Immigration in June, 1983, but none have yet been forthcoming.

• • •

Barbara Jackman is a Toronto lawyer.

Palestinian Refugees —

Latest Reports

Food: The general distribution of foodstuffs to some 800,000 refugees was suspended in September 1982 except in Lebanon where special arrangements were made for those affected by the crisis.

Housing: UNRWA has provided assistance to more than 13,000 families in repairing or rebuilding their homes (in Lebanon).

Registration: UNRWA has initiated a new registration system to provide one card for each person rather than one card per family to be completed by mid-1984.

Protection: As of June 1983, the Commissioner-General of UNRWA, Olof Rydbeck, considered the prospects bleak for increased civilian security in Lebanon.