Can Efficiency and Justice Cohabit in Canada's Refugee System?

Brief to the Standing Committee on Citizenship and Immigration House of Commons, Ottawa, Canada

Bill C-11 (Balanced Refugee Reform Act)

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Canadian Association of Professional Immigration Consultants

L'Association Canadienne des Conseillers Professionnels en Immigration

CAPIC-ACCPI is the largest, independent association of certified Canadian immigration consultants with over NUMBER members in Canada and abroad. We are sensitive to the need for refugee protection mechanisms that will serve refugee claimants fairly and equitably while protecting the integrity of the refugee determination system.

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Introduction

Canada's refugee system needs fixing. The backlogs are unfair to refugee claimants and the number of abusive claims undermines the public's confidence in the IRB and the government's ability to control its borders. Bill C-11, inspired by some innovative thinking, contains important administrative and program fixes that should address these problems.

In this brief, we seek to extend that new thinking with a few modest recommendations that may further strengthen both the efficiency and speed of the new refugee determination process and the protections offered refugee claimants.

We believe that timely efficiency is not incompatible with justice. A flexible refugee system is one that hears out claimants, recognizes that there can be mistakes and grants appeals, allows people to reconsider their decisions, but also acts quickly to remove failed claimants and does so to discourage manifestly false claims.

Factors that lead refugee claimants to choose Canada

Wars, repression, social and political injustices, natural and economic disasters, and hardships of all kinds have displaced millions of people around the world. Many flee or have fled to neighbouring states, to states much farther afield, or to safer zones within their country's own borders. Some are refugees by the strict definition of the UN. Some are in refugee-like situations. Some are facing economic hardships. The lot of these millions of people is not easy.

Every year, thousands arrive at Canada's borders seeking sanctuary. And every year, Canada must decide who is a refugee in need of protection, and who is not a refugee. Of all the possible sanctuary options in the world, how is it that so many thousands of people choose Canada? And in a post-9/11 world, how is it possible for so many undocumented travelers to reach Canada and claim refugee status? These questions are significant, because the answers may well contain elements of a solution to Canada's refugee backlog.

Our members, Certified Canadian Immigration Consultants (CCICs), do not represent as many refugee claimants as do immigration lawyers or refugee lawyers, for the simple reason that provincial legal aid for refugee claims only extends to lawyers representing refugee claimants, not CCICs. But CCICs do see many failed refugee claimants. And the experience of failed claimants has

much to teach us about the inherent weaknesses of the existing refugee system and the factors that lead claimants to choose Canada.

First, many claimants learn about Canada's refugee determination system from friends and relatives who are already here, or from their own expatriate communities in third countries such as the United States. In Florida, for example, a French/Creole radio station popular with the Haitian community, broadcast a toll-free telephone number until recently for individuals who had exhausted their options in the United States and wanted to try their luck in Canada. On calling that number, they were told what to do when they reached the Canadian border. The destination was a support group on the US side of the border which, if they were qualified under the Safe Third Country Act, would assist them in getting an appointment with a Canadian Border Services Agent at the Port of Entry. In general, they pay nothing for this information or assistance.

Second, many claimants come to the border after hearing stories from unscrupulous immigration facilitators. For example, we have included in our brief, copies of ads run in Mexico by a ghost agent working out of Montréal, who offers to tell applicants exactly how to claim refugee status in Canada, for $150. This agent has been making frequent trips to Latin America giving seminars on Canadian immigration. We understand his web site has now been shut down, but believe that he is still operating.

Third, human traffickers and other criminal elements play a role in organizing the movement of individuals illegally across international borders to Canada, using false documents and passports. Many of these documents are destroyed just before arriving in Canada, where they make their refugee claim. Such movements of people are the work of local and international criminal organizations that prey on all sorts of people, some of whom are genuine refugees and many who are not.

Regardless of how they get to Canada, the system must be seen to protect those who are really in need of protection.

Front End Improvements to the Refugee Determination System

No matter how refugee claimants come to choose Canada as their destination, rarely are any intending claimants given a full and complete picture of the refugee process, or about other options to enter Canada legally. They are making choices based on incomplete and sometimes false information.

The government's initiative to offer individuals who abandon their claims resettlement assistance abroad is a good one. This is an example of new

thinking. But we think it could be improved. It is our members' experience that many who claim refugee status would not do so if they had a full explanation of what the process entails, or if they found that they could qualify to work and live in Canada under another immigration program.

Yet refugee claimants rarely get to make this choice. We are recommending that all refugee claimants be given the opportunity to have all of their options explained to them very early in the process.

The first stage interview mechanism should be modified to initiate this review exercise. It is our view that the interview stage would gain wider support from refugee advocacy groups and others concerned by this provision if it was conducted as an off-the-record, confidential review of a claimant’s case with a view to fast tracking the claim, or examining other immigration options, or encouraging claimants to consider withdrawing claims with no credible basis.

The 8-day interview mechanism should also be extended to 30 days. Under this recommendation, refugee claimants would have time to gather appropriate documents and consult with qualified and authorized professionals concerning the full range of options under Canada’s refugee and immigration system.

We also recommend that following the first-stage interview claimants be allowed to withdraw their claim without penalty any time prior to the second-stage refugee hearing, to file a humanitarian application or to leave Canada altogether to apply in some other category. Granting claimants a penalty-free period to reconsider their claim would help many people to extricate themselves from the system. As it stands now, claimants have every incentive to see the claim processed to conclusion and thus tie up lots of resources because withdrawing or abandoning a claim invites automatic removal from Canada. An applicant switching to the humanitarian stream should be given sixty days to file the H & C claim.

This buffer period leading up to the refugee hearing would give the intending claimant time to consult an authorized third party who would help him or her understand all immigration options (including ones that require an applicant to apply outside Canada).

To encourage this review exercise, the government should pay for the consultation with the authorized representative. Payment of a fee or stipend of $100 per case, for example, could get claimants a document showing their immigration and protection options which could then be presented to the first-stage interviewing officer as part of the initial discussions with claimants on the merits of the claim.

Program Integrity

The exploitation of vulnerable migrants by unscrupulous agents and unqualified intermediaries is a major global problem worth billions of dollars. The Standing Committee on Citizenship and Immigration tackled this issue two years ago. In its report, the committee recommended changes to the regulations to close loopholes which allow ‘’ghost agents’’ to operate with impunity and to allow for proper enforcement, control and prosecution of these agents to help put an end to this exploitation.

The Standing Committee also recommended that the body charged with regulating immigration consultants be wound down and reconstituted and given more powers to prosecute those who would pervert the system which would include the so called "bottom feeders" " that induce people to take enormous risks in travelling to Canada, often illegally, and in making refugee claims. This committee repeated those recommendations last year.

We have heard that the government is moving at last to implement the recommendations of this committee, and we support that initiative wholeheartedly. This will help reduce the number of false claims. But we would like the committee to note that this is not a problem restricted to immigration consultants, regulated or unregulated.

Most refugee claimants are represented by lawyers, not consultants. Regulated consultants are prohibited by their Rules of Professional Conduct from filing claims that they know have no merit, to protect the integrity of the system. Lawyers, on the other hand, operate on the premise that everyone has the right to representation, and quite rightly so. But we have heard many examples of lawyers who facilitate the filing of dubious refugee claims that have little or no merit, sometimes working with NGOs, charging very low initial fees, just to get the refugee claimant on the ever increasing legal treadmill that goes from PIF, to Filing an Application for Refugee Status, to Appeal to the Federal Court after refusal, to filing an H& C application, then PRRA filing and finally back to Federal Court. Years later, once the appeals have been exhausted and tens of thousands of dollars have been spent, they watch as the client is removed from Canada. We ask that this Committee consider asking the Law Societies to review their guidelines for ethical practice with their membership, to put a stop to this type of abuse.

Backlogs lead to de facto settlement

In some cases individuals cooperate willingly with unethical agents, paying for false documents and for preparation of claims that are without merit, because they know that once in Canada, even in the worst case scenario, they can work for several years and earn more than they could dream of earning in their home country. The combination of backlog and de facto settlement simply fuels the problem, leading to ever greater backlogs and making it increasingly difficult for Canada to protect the integrity of its refugee system or to remove failed claimants.

The biggest deterrent to this practice is a fast and efficient refugee determination process that will lead to quick decisions and removals of failed claimants. The speed of the process is important, since removal to one's home country before one can recoup the expenses of coming to Canada in the first place will slowly discourage the practice. This sends the message that money spent on travelling to Canada and bogus refugee claims is a waste.

Safe Country of Origin

Refugee advocates and other stakeholders have expressed concerns with the Safe Country of Origin designation. In our view, an SCO mechanism is essential and will manifestly reduce the number of false claims. But to avoid politicizing the process, the designation should only be arrived at after careful consultation with stakeholders. The Minister alone should not be allowed to make the decision, otherwise the independence of the refugee determination system will be called into question.

We recommend that concept of 'populations at risk' be incorporated into the SCO concept, since certain populations within any country, no matter how free or democratic that country is, may be at risk of persecution.

Pre-Removal Risk Assessment

The PRRA process should be retained for all individuals who are subject to removal. The process as it stands now does not add significantly to the timelines. PRRA represents an important safety valve. Mistakes at any stage of the process can be disastrous.

The PRRA process remains an important tool in addressing other important considerations outside the immediate scope of the refugee determination

process. An illustration of this might be the situation of a Chinese woman whose refugee claim was rejected by the RPD but who during or after the processing of that claim became pregnant with a second child. Removal to China could have serious repercussions for both the woman and her unborn child.

Humanitarian and Compassionate Stream

Currently H&C applications are often judged on the applicant's integration into Canadian society after a lengthy stay in the country. C-11 proposes to exclude refugee claimants from the H&C process. Instead, intending claimants would have to choose between an application before the Refugee Protection Division, and an application on humanitarian grounds. They could not have it both ways.

We recommend that up until the second-stage RPD hearing claimants be allowed to switch to the Humanitarian stream without penalty. This will help get claimants out of the refugee determination system who have no business being there but who do have legitimate H&C considerations. The PRRA process would apply to H&C applicants being removed from Canada before a decision is made on their application.

Rules on the Introduction of New Evidence

We support the concept that new evidence can be introduced at anytime in the process - hearing, RAD, PRRA - for consideration. The Member could decide to accept the new evidence or not, at their discretion, and such decisions could be challenged at Federal Court. This new evidence concept could also allay concerns about the inadequate time given to claimants to gather their documents and information.