

# REFUGEE UPDATE

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## THE NEW WAVE OF CONSERVATIVE VALUES

BY HEATHER LASH

Here we are. We were both nervous and resignedly prepared to be here: a Conservative government in Canada. Since they took power on February 6<sup>th</sup>, refugee advocates have been alert for indications of the new cabinet's – and the Prime Minister's – attitudes toward and plans for refugee protection.

There have been a few. We have heard that the regularization of non-status people is “not a priority” of the new government. We have heard of no commitment to implement the long-awaited and legally enshrined in Refugee Appeal Division (RAD). Diane Ablonczy, while she was the Conservative immigration critic in opposition, had stated sympathy in principle to the implementation of the RAD. She didn't get a post.

We are, of course, aware of who did. Stockwell Day, the new Minister for Public Safety and Emergency Preparedness, finds Canadian Border Services Agency in his portfolio, and so matters of enforcement will be under his jurisdiction. A few small but interesting things have happened since he assumed his post: some ministerial relief requests (when the Minister is asked to intervene in a refugee matter), that had been pending for 3 or 4 years, have suddenly been denied. Detentions have been increasing; several detainees were recently transferred from Toronto to Montreal, owing to the fact that our immigration holding centre had *run out of room*. Whether these developments have anything directly to do with Day's appointment remains to be seen.

The new Minister of Citizenship and Immigration, Monte Solberg, who has repeatedly referred to our former Prime Minister as Paul Martin Luther King (oh dear), is from rural Alberta. There has been talk of the possibility of his being out of touch with the needs and realities of migrant communities in the big cities, but perhaps more interesting is his general orientation toward his new portfolio.

Solberg told the *Canadian Press* on February 14<sup>th</sup> that he had no plans to change the annual target number for newcomers, but that “the mix of immigrants – and the means they use to enter the country – may need to change to reflect a greater emphasis on labour shortages.” We would do well to listen very carefully to what he is saying. Solberg is welcoming skilled labourers who will come here on temporary work visas. He is not welcoming their families: he has “no plans to change the number of people coming in under family reunification.”

When Solberg says he faces “big challenges respecting family reunification **versus** matching immigration to labour shortages” (emphasis mine), he is really joining a chorus of dominant voices around the world that see immigration through one of two lenses: the economic discourse or the security discourse. While newcomers are condemned as queue-jumpers and freeloaders if their migration will bring them even the slightest economic benefit, nations explicitly structure their immi-

regimes around what will bring them economic benefit. Labour shortages in host countries result in more “relaxed” immigration agendas to target workers from abroad. Architects of such agendas may then try to present their choices as open, liberal, even humanitarian.

The other discourse operating alongside that charade is the overwhelming global hysteria around national security. Although it has been exhaustively proven that recognizing the rights of refugees poses no threat, at our borders or elsewhere, the public imagination still links – is encouraged to link – refugees and security. It is in this context that a national identity card (for everyone) is still on the books. And it is this discourse that creates an overall climate of hostility toward refugees. The chill is steadily intensifying, and we rightly fear the looming review of the entire refugee determination system in Canada, still only a potential but which this government may well bring into earshot any time. Economics and security: the only notion utterly and lamentably absent from current thinking about refugees is that of *protection*.

Vigilance demands that we look everywhere for clues about how these issues will play out under the new rule. That we stay aware of which way the wind is blowing, as it were. Although not put out *by* the government, an extremely disturbing artifact was recently made public – and publicly legitimated by some media – by the positively petrifying Fraser Institute. A conservative think-tank.

Please study the cornerstone sentence of this “report on terror policy”: **Canada needs to do more to ensure new immigrants embrace Canadian values.** It goes on to say that “special attention must be given to working with the Muslim community”, as if the first sentence didn’t have enough racist implications. Here are a few questions for that main sentence.

**Canada:** who? Refugee advocates? Non-status women in factory work?

**Do more to ensure:** like what? Bobsled races in every town? Or more like televisions that can, um, see you?

**New immigrants:** gee, from where? Is this about ensuring that people from England use more spice in their food? That’s how we do it around here...

**Embrace:** what would this look like?

**Canadian values:** and what are those? Who decides? Some from the United States may be uncomfortable with decriminalized marijuana and legalized same-sex marriage. We need to ensure they embrace those Canadian values...

marriage. We need to ensure they embrace those Canadian values...

Okay, that’s enough sarcasm. Because I’m really concerned. Talk of “cultural fit”, “cultural integration” and “values” are usually code words used by racists who know it is no longer acceptable to speak publicly about race in certain tones. This Fraser recommendation made to the Canadian Conservatives – made to Stockwell Day in particular, as he is the one in charge of saving us from “terrorism” – would have felt creepy and incongruous with Canadian politics a very few years ago. Not so now. This divisive, racialized discourse is gaining legitimacy and momentum, and we must find ways of countering it.

Conservative governments and think-tanks alike get a great deal of mileage out of the word *values*, in particular, *family values* are invoked to justify certain types of bigotry and fear. I assume that the Fraser Institute is including the observance of family values in “what is expected of (immigrants)”. And I assume they will furnish civil society with their own definition of these values. So I have a suggestion:

I think the highly-charged notion of family values should come to bear on the issue of family reunification. If families are inherently of value – as a unit – then surely this government will immediately eliminate the financial and bureaucratic barriers to quick and effective family reunification. Surely they will also recognize that the notion of *family* has different nuances in different cultures, and so will work to make the definition of the word as broad and inclusive as possible, to honour the reality of bonds among families from around the world.

It would be great to create an association in the public mind between family values and family reunification, and I think it’s doable. Above all, to this government we must express that refugee protection is a Canadian value. We must watch and listen – and stay optimistic. We don’t know what they will do. In the final analysis, however, we must bear in mind how quickly policy changes can devastate what took generations to build.

*P.S. The Canadian Council for Refugees has asked – as is the custom – for a meeting with both Mr. Day and Mr. Solberg. Their responses, I’m sure, are forthcoming.*

**Heather Lash is a staff member of the FCJ Refugee Centre**



# GENDER-BASED APPROACH TO SETTLEMENT

## A PROJECT OF THE CANADIAN COUNCIL FOR REFUGEES

### When and how this project started

The Gender Core Group of the Canadian Council for Refugees has been envisioning a Gender-Based Approach to Settlement Project since May 2004. After extensive consultation and with preliminary research, the project was granted funding from Status of Women Canada and Citizenship and Immigration Canada (ISAP).

### Moving forward

The CCR is pleased to announce the launch of this project this month (January 2006). We are currently recruiting non-governmental organizations across Canada to host local meetings exploring gender issues particular to immigrants and refugees, and applying a gender-based approach to improving settlement experiences in Canada. The ten local meetings (hosted in at least five provinces) will provide input into the development of a resource tool and policy recommendations.

### The objectives of the project are to:

1. Increase understanding of how gender impacts the settlement and integration process;
2. Assist settlement organizations in at least 5 provinces to develop resources for implementing and evaluating a gender-based analysis in their programs and services;
3. Identify the impact of government settlement and integration policies and programs on gender equality;
4. Begin to advocate for changes to such policies and programs to make them more consistent with the principles of gender equality enshrined in the Canadian Constitution.

### What does "gender" really mean?

Gender is created and re-created with different meanings depending on communities, cultures and locations. It is often expressed in our roles, responsibilities and behaviours.

Social and economic systems are gendered, meaning these systems affect people differently (giving advantage to some and imposing disadvantage on some) depending on gender. Gender oppression is often experienced in combination or

intersection with various forms of oppression and discrimination (such as racism, xenophobia, classism, homophobia, transphobia, ableism, ageism, etc.) It is important to consider these points of intersection throughout the gender analysis process.

### How can we apply a gender-based approach to settlement?

We can start by asking questions that explore the wide range of settlement experiences and how gender plays a part in these experiences. While there is no formula for answering these questions, they can initiate discussion and engage us in the work of improving settlement services and policies. Some examples of such questions are:

*\*When, to whom and how is anti-violence against women education offered to refugees and immigrants in Canada? Does anti-violence education adequately consider race?*

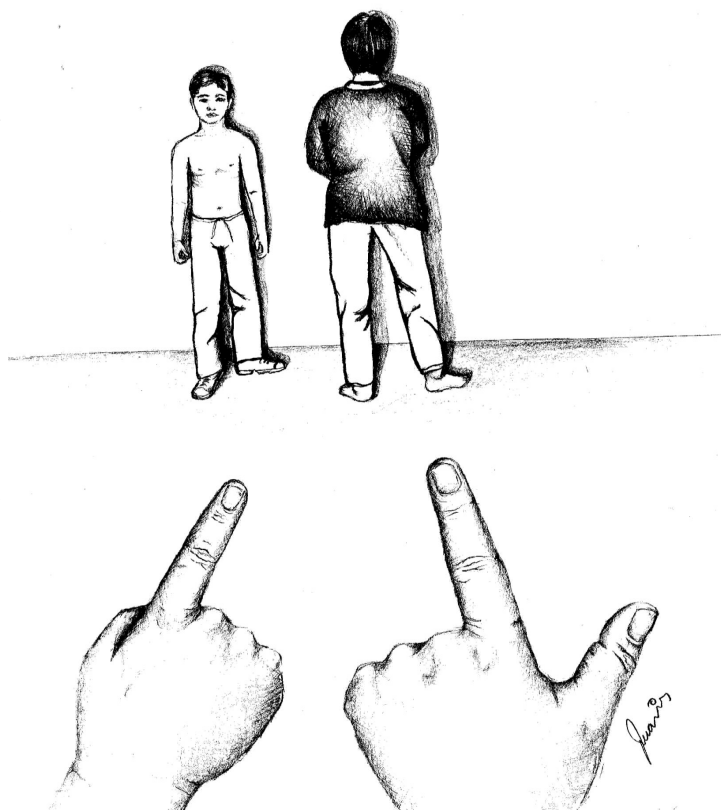
*\*Have you considered that the mother seeking your advice in the context of divorcing her husband might need to be connected with a lesbian mothers peer group? How can your*

*services and space make disclosure easier for such women?"*

*\*Why is child care not provided for the immigrant men's group that meets every Tuesday afternoon?*

*\*What would you say to a young refugee woman who is questioning her gender identity?*

***If you are interested in getting involved in any aspect of the Gender-Based Approach to Settlement Project and/or would like to receive more information about it, please direct your questions to Julie Mooney, Project Coordinator at [ccr6@web.ca](mailto:ccr6@web.ca)***



# FRAGILE STATUS, FRAGILE RIGHTS

BY TANYA CHUTE MOLINA AND PATRICIA PÉREZ

From 1988 to 2003, Jose Olbera traveled each year from his home town in Mexico to work in the vegetable fields of Quebec as a seasonal agricultural worker. It was back-breaking work – sowing and weeding through the long hot summer, then hand-picking and packing the lettuce, cucumber and other produce at harvest time. This hard work and sacrifice covered the basics – food and shelter for his wife, eight children and aging parents. It paid for his children's education and even got one of his sons to university. But it wasn't enough to get proper diagnosis and treatment for his youngest son's respiratory illness. And it certainly didn't measure up to the income of his Quebecois co-workers.

At the end of the season, Jose would return home to spend a few brief months tending to his own land. There was never much profit to make there, especially after NAFTA came into effect and made it almost impossible for small farmers to compete with the cheap imports from the US. However, he had little choice. There was no way to access the Employment Insurance program he paid into each year in Canada. Benefits could only be collected by unemployed workers in Canada. So Jose worked the land - and waited for the next growing season to return to Canada. For fifteen years, he migrated between Mexican and Canadian fields, until a work accident put an end to his travels.

Jose is not alone. Under the Seasonal Agricultural Workers Program, approximately 18 000 migrant workers come from Mexico and the Caribbean each year to fill labour shortages on Canadian farms. Recruited to work for up to eight months at a time, these "offshore" labourers are granted only temporary status in Canada. Some return every growing season for twenty years, without ever having the opportunity to become permanent residents or bring their families over to join them.

Temporary status, tied as it is to employment, makes workers vulnerable to exploitation and abuse. Employment agreements are inadequately monitored and workers fear making complaints that could cost them both their job and their right to stay in Canada. Common problems include sub-standard wages, long hours without overtime pay, unsafe working conditions, and crowded and unhealthy accommodations.

Health is a major concern for seasonal agricultural

workers. Agriculture is among the most hazardous occupations in Canada. It involves working with dangerous pesticides and machinery, sometimes without adequate training or protective equipment. For seasonal agricultural workers, the consequences can be tragic. In 2003, Jose suffered a severe spinal injury due to a workplace accident. His employer offered him \$7000 in compensation if he quietly returned home. When Jose refused, and took his case to the Worker's Compensation Board, Citizenship and Immigration took away his temporary work visa, depriving him of all access to medical, legal and financial aid. As Jose's case dragged on, his son was forced to drop out of university to look for work. His younger children, unable to pay for transportation and books, also abandoned their education.

While Jose eventually won his case at the Worker's Compensation Board, his victory proved hollow. Jose cannot benefit from the kind of employment reintegration program offered to Canadian workers because he no longer has a work visa.

Fragile status means fragile rights, fragile protections. Seasonal agricultural workers work long hours under dangerous working conditions, but do not receive overtime pay, employment insurance benefits or adequate compensation for injuries. As the Canadian government seeks to expand temporary work programs to fill new labour shortages in construction, hospitality and other sectors, this is a critical moment to resist immigration policies and practices which create second-class workers. Temporary workers work overtime for Canada. Let's give them their due.

***Tanya Chute Molina is Refugee and Migration Program Coordinator at KAIROS: Canadian Ecumenical Justice Initiatives.***

***Patricia Pérez staffs the Québec Centre d'appui pour les travailleurs et travailleuses migrantes , one of five seasonal agricultural worker support centers funded by the United Food and Commercial Workers.***

***KAIROS and the UFCW are working together with the National Alliance of Philippine Women in Canada and the STATUS Coalition to plan a National Migrant Justice Gathering for June 2006. For more information about how you can get involved in this national movement for migrant rights, contact [тчute@kairoscanada.org](mailto:тчute@kairoscanada.org)***

# THE WORLD & THE REFUGEE PHENOMENA

BY M. SAEED MOKHTARZADA

Wars and conflicts bring about a situation on all sides taut  
Human life becomes squeezed by a siege with less ways out

Many turmoil ridden lands face a situation gone with the wind  
To overcome it all needs another generation with a new tint

What unfolds in their countries is not of their own making  
They remain confused at their excruciating continuous taking

Years/decades of a fate with no ups and downs  
Because it is a luck that unfolds only downs  
That life is rough, tough with misery and despair as its lot  
Millions wondering who is behind this harsh worldwide plot  
Refugees are these humans forced to leave their homelands  
Because of unbearable horrors unfolding in their inlands

In this expanse of hopelessness, destitution and despair  
Every little bit goes far to heal, to cure and to repair

Persecutions and threats to life force search of asylums in other lands  
Commencing the intricate factors that thrust the refugees into  
"strangers' hands"

These hands help, overcome the hurdles of resettlement and adaptation  
Longed for remains employment of the skilled and community  
integration

Achieving a world without war and its calamities is always a pending  
That's why the refugee phenomena, now 19 million, has never  
an ending

What remains for humanity to continue to delve on and to attend  
Is to still, seek ways, to find means to enable peace to defend

Advocating refugee causes needs fortitude and courage  
Because the humane nature of the work entails a moral voyage

*M. Saeed Mokhtarzada is the Manager, Resettlement Assistance Program at the London Cross Cultural Learner Centre, London, Ontario*

## THOUSANDS PROTEST ANTI-IMMIGRANT LEGISLATION LOCAL 32BJ CALLS FOR OVERHAUL OF IMMIGRATION SYSTEM

WASHINGTON, March 7 /PRNewswire/ -- At a massive rally outside the Capitol attended by nearly 20,000 people, Local 32BJ harshly criticized the House passage of H.R. 4437 sponsored by Rep. James Sensenbrenner (R-WI) and called on elected officials to pass comprehensive immigration reform legislation that will fix the nation's immigration system and set undocumented immigrants on a path to citizenship.

"The Sensenbrenner bill is a shocking piece of anti-

immigrant, anti-American legislation," said Jaime Contreras, Local 32BJ District 82 Chair and Chair of the National Capital Immigration Coalition. "It criminalizes and targets millions of immigrants for severe punishment while doing nothing to fix our broken immigration system."

H.R. 4437 would subject millions of immigrants to deportation as well as imprisonment, and severely reduce due process rights, undercutting the basic tenets of the

justice system. Further, it would create a mandatory and dramatic Employment Eligibility Verification System (EEVS) that would expose U.S. workers to possible employment disruptions without creating legal channels for needed workers and disrupting the economy. By failing to create a path to citizenship for undocumented immigrants or put forward plans to regulate the future flow of needed immigrants, reduce family reunification backlogs and protect workers' rights, the bill does not contribute to national security or to comprehensive and realistic immigration reform.

"Our immigration system is outdated, inadequate and ineffective -- but H.R. 4437 is not the answer," said Mike Fishman, Local 32BJ President. "We need sweeping reform to ensure that immigration is safe, legal, orderly and fair to workers and employers throughout the United States. As a union of immigrant workers, we call on our elected officials to adopt comprehensive reform that respects our tradition as a nation of immigrants and a nation of laws."

Local 32BJ, along with other labor and immigrant organizations, supports the Secure America and Orderly

Immigration Act, a bipartisan bill introduced by Senators John McCain (R-AZ) and Edward Kennedy (D-MA). This bill would bring the 11 million undocumented immigrants out of the shadows and set them on a path to citizenship; set up legal channels and realistic caps for workers and family members to enter in the future; provide for tough enforcement; and encourage immigrants to participate in the civic life of the U.S.

The National Capital Immigration Coalition, consisting of forty-five faith, labor, business and community-based organizations from Virginia, Maryland and Washington, DC, including Local 32BJ, sponsored the rally and an interfaith service in protest of H.R. 4437.

With more than 85,000 members, the majority of whom are immigrant workers, in New York, New Jersey, Connecticut, Pennsylvania, Maryland, Virginia and Washington, DC, Local 32BJ is the largest property services union in the country.

**Source: SEIU Local 32BJ**

Web site: <http://www.seiu32bj.org/>

## V V V V V V

# **GLOBAL COMMISSION ON INTERNATIONAL MIGRATION RELEASES ITS REPORT (OCTOBER 2005)**

*The Global Commission on International Migration, created in December 2003, has released its report entitled Migration in an Interconnected World: New Directions for Action. Comprised of 19 Commissioners, the Commission is independent and was given the mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration.*

The Global Commission on International Migration's report finds that the number of international migrants has increased from 75 million to some 200 million in the past 30 years and migrants are now to be found in every part of the world. It suggests that the expansion in the scale and scope of migration seems certain to continue for the foreseeable future and may well accelerate, due to the growing developmental, demographic and democ-

atic disparities that exist between different regions of the world.

In its report, the Commission says the international community has failed to realize the full potential of migration and has not risen to the many opportunities and challenges it presents. The Commission stresses the need for greater coherence, cooperation and capacity to achieve a more effective governance of international migration. The 90-page report provides an analysis of key global policy issues in the field of international migration, and outlines six broad principles for action and a number of related recommendations-covering the role of migrants in a globalizing labour market, migration and development, irregular migration, migrants in society, the human rights of migrants, and the governance of migration-that can serve as a guide to the formulation of migration policies at

the national, regional and global levels.

The six principles state that:

- people should be able to migrate out of choice rather than necessity, in a safe and authorized manner and because their skills are valued and needed;
- the role of migrants in promoting economic growth, development and poverty reduction should be recognized and reinforced; migration must become an integral part of global development strategies;
- States, exercising their sovereign right to decide who enters their territory, should cooperate with each other in an effort to stem irregular migration, while fully respecting the rights of migrants and refugees and re-admitting those citizens who return to their home country;
- long-term and authorized migrants should be effectively integrated in the societies where they settle, so as to accommodate social diversity and foster social cohesion; migrants must be aware of their rights and respect their legal obligations;
- the human rights framework affecting international migrants should be implemented more effectively, so as to improve the protection and labour standards available to migrants; and
- migration policies should be enhanced by improved coherence and strengthened capacity at the national level, by greater cooperation at the regional level, and more effective dialogue and consultation among governments and between international organizations.

The report finds that migration makes a large but largely unrecognized contribution to the global economy, and the continued expansion of that economy is dependent on human mobility. In developing countries, the remittances provided by migrants living abroad amounts to some US\$150 billion a year, three times the value of official development assistance (ODA). Certain sectors of the economy in many industrialized States have become highly dependent on migrant labour and would rapidly collapse if that labour were to be withdrawn.

Irregular migration, especially human trafficking and migrant smuggling, has many negative consequences, not least for migrants themselves. Stemming irregular migration requires that States recognize their shared interest and responsibilities in

this matter. In seeking appropriate responses to this situation, States must exercise their sovereign right to defend their borders, prevent unauthorized entry and protect the security and welfare of their citizens. But a purely restrictive approach to irregular migration is neither desirable nor feasible, and may jeopardize the rights of migrants and refugees.

The report recognizes that some societies have become fearful of migrants, and that such fears have in certain instances been exacerbated by politicians and the media, which can lead to the further marginalization and alienation of migrants. Concerted efforts are required to ensure that migrants and other members of society are able to benefit from a mutual process of adaptation and integration, and this effort must combine the efforts of national and local authorities, civil society and the private sector.

The report notes that as States, societies and global policy issues are increasingly connected to each other, more effective migration policies are required; however, such policies are unlikely to prove effective unless they are supported by complementary action in relation to other issues. The report underlines the need to ensure the full implementation of the commitments that States have made in the Millennium Declaration and Monterrey Consensus, and calls on the international community to use the Doha Round of negotiations to maximize the welfare gains of the multilateral trading system, and to support regional initiatives such as the New Partnership for Africa's Development.

The Co-Chairs of the Commission are Jan O.Karlsson, Sweden's former Minister for Migration and Development and Mamphela Ramphele, former Managing Director of the World Bank from South Africa. The Secretariat is located in Geneva, headed by Rolf K. Jenny from Switzerland.

The Commission is also making available the supporting evidence for its conclusions and recommendations, which includes a series of thematic papers, a series of papers on migration issues in different regions of the world, and reports of all the regional hearings, stakeholder consultations

and expert meetings that the Commission has held over the past 21 months ([www.gcim.org/en/ir\\_experts.html](http://www.gcim.org/en/ir_experts.html)).

Contact: Tony Murdoch, GCIM Secretariat, Rue Richard-Wagner 1, 1202 Geneva, Switzerland, telephone +41-22/748 4850, fax +41-22/7484851, e-mail: [amurdoch@gcim.org](mailto:amurdoch@gcim.org), website ([www.gcim.org](http://www.gcim.org)).

*Taken from NGLS Go-Between, November 2005 FOCUS [www.un-ngls.org].*



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## TEMPORARY RESIDENT PERMITS

BY MARJORIE HILEY

This permit used to be called the Minister's permit under the old Immigration Act. The jurisdiction to issue it is found in s. 24 of the *Immigration and Refugee Protection Act*. It is rarely given to those who live in Canada. Sometimes visa offices will provide a family member with a TRP to allow that person to come to Canada with the other members of the family. It is mainly used to deal with those foreign nationals who are inadmissible to become permanent residents because of health problems or because they have criminal convictions. A temporary resident permit can be cancelled at any time. There is no meaningful avenue of appeal if your TRP is cancelled.

It is difficult to get information on how to make your initial application for a temporary resident permit. The kit provided in the Citizenship and Immigration Canada website speaks to renewal of a TRP. Canadian Visa offices are not helpful in providing information on this process and actually discourage applications for TRPs.

Under section 65 of the *Immigration and Refugee Protection Act Regulations* TRP holders can be-

come permanent residents within 3 years (medical inadmissibility) and in some cases within 5 years (criminal inadmissibility but not for terrorism, security risks, serious criminality or organized criminality). The province of Quebec also has extra factors that must be considered before a TRP can be landed within that province.

There are a number of limitations to being issued a temporary resident permit. Children of parents on a TPR must pay foreign student fees to attend school. Those with TPR have restrictions on their provincial health care and in Ontario will not get OHIP if you are on a TRP due to medical inadmissibility. Though TRPs can be issued for a maximum of three years normally you must renew each year at a cost of \$200.00. Being in receipt of a valid TRP does not mean you have automatic re entry into Canada. If you are a national of a country that needs a temporary resident visa (visitor visa) to enter Canada then you must obtain that visa plus have your valid TRP in order to re enter Canada.

Those who have temporary resident permits and



want to work or study in Canada must apply for those temporary resident visas. Work permits and study permits are only given to those who have TRPs with a validity of more than six months.

You must apply for renewal of your TRP at least 30 days prior to its expiry date. Otherwise there is no process to permit a late renewal of the TRP and you can be asked to leave Canada. As well one of the requirements to obtain a TRP is that you must have a valid passport and maintain that passport while on the TRP.

The temporary resident permit is a very discretionary process and it is exceptionally difficult to obtain one and then to ultimately become a permanent resident of Canada. The process is both obscure and complex. Those interested in this permit need to seek experienced legal advice before embarking on the application process.

*Marjorie Hiley is an immigration lawyer living in Toronto.*

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# ISLAM AND REFUGEE PROTECTION

BY JEHAD ALIWEIWI

Islam and more specifically Muslims have become almost synonymous with refugees and forced population movements. Today the Muslim world accounts for a significant percentage of countries that are both producing and hosting refugees. There are likely more refugees who are Muslims than not. Countries like Iran and Iraq, Afghanistan and Pakistan, Palestine and Jordan, Sudan and Kenya, Somalia and Ethiopia, are amongst the world largest sources of refugees and internally displaced persons. At the same time, these are the countries where the majority of refugees and internally displaced persons are to be found. Palestinians are the modern world's oldest refugee problem. Kurds are the world largest stateless population. Both are predominantly Muslim groups.

Although Refugee Protection has a well established and incredibly celebrated tradition in Islam, refugee protection today is neither a priority nor a fully understood issue in large parts of the Muslim World.

The foundation of Islam as a new social and political movement was built by refugees. The principal event that gave birth to the first Islamic state was the mass exodus of Mohammed's followers from Mecca following persecution against early converts to Islam. The fleeing masses sought

refuge in Madina, some 600 km away, a city of feuding tribes and abundant wealth. This was known as the second migration in Islam or Hijra (The Muslim calendar begins on the date of that event). The first migration had been a few years earlier when the prophet asked his followers to escape to Habasha or Abyssinia, modern day Ethiopia. Mohammed told the small number of early converts to the incipient faith to escape to Habasha where a Christian king would welcome and protect them. He did and Muslim refugees were provided with protection and allowed to live in Abyssinia for as long as they wanted.

Against that background, the significance of Refugee protection to Islam is not adequately reflected today. The movement of refugee protection that was born in the basements of Churches in Canada and elsewhere has no counterpart in mosques in the Muslim World of today. Compared to other faith based partnerships involved in refugee protection and sponsorships, Mosques are significantly uninvolved. Historically mosques have offered sanctuary to people fleeing hunger, racism, oppressions and discrimination for centuries. Grand mosques like Alazhar of Cairo, Jerusalem's Alaqsa and Karbala's grand mosque were once a safe haven to many people from around the world.

Nonetheless, there are now some promising developments and hopeful signs that refugee protection is becoming a subject of, at least, debate and deliberation at the top level. Recently the Organization of Islamic Conference organized a two day meeting to “highlight ways and means to enhance refugee protection in Member States of the OIC”. The conference held on November 2005 titled ENHANCING REFUGEE PROTECTION IN THE MUSLIM WORLD is one of the first conferences to be held to discuss refugee protection and Islam.

(For further reading on Islam and Refugee protection please refer to the OIC Ministerial Conference on the Problems of Refugees in the Muslim World by visiting <http://www.oic-oci.org/english/conventions/refugees-conf.htm>)

*Jehad Aliweiwi is the executive director of Thorncliffe Neighbourhood Office in Toronto and can be reached at [jehad@comnet.ca](mailto:jehad@comnet.ca).*

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## THOUGHTS ON THE FRECKER REPORT

BY RAOUL BOULAKIA

In October, 2002 John Frecker, former Deputy Chair of the Immigration and Refugee Board of Canada, completed a report for the federal Department of Justice on Legal Aid for immigrants and refugees. Overall the report supports refugee claimants having legal representation, and makes compelling practical arguments why this is essential. The survey was based on interviews with CIC staff, IRB members, lawyers, community workers, and refugees. Several former IRB members assisted, but the final report seems to be Mr. Frecker’s conclusions.

The report gives a good overview of the refugee determination process and the availability or lack of Legal Aid across Canada, pointing out deficiencies even in provinces which ostensibly have Legal Aid, such as Quebec which seriously under-fund.

The basic conclusion of the report is that representation by a competent lawyer is not only fundamental to a refugee claimant in PIF preparation and hearing representation, but that it also promotes the efficiency of the refugee determination system.

The report is wrongly equivocal about whether refugee claimants need legal representation at a port of entry interview, primarily because CIC officers view this as something that would be a major practical impediment. The report relies on the fact that although “service providers” have a negative perception of how Immigration Officers conduct port of entry interviews, refugees they interviewed said the officers were courteous. However, this suggests a selection of refugees who had relatively good experiences. Any lawyer could have referred the

authors to clients who were treated abusively at a port of entry. In reality, the refugee experience at a port of entry is much more variable than the report suggests. Right now even children and refugees who are detained often get no access whatsoever to a lawyer for summary advice at a port of entry. In contrast with the report’s equivocating, there should be some form of duty counsel on call for summary advice at a port of entry.

The report states that: “There was near unanimity among respondents that refugee claimants need substantial assistance to prepare their personal information form (PIF) and to get ready for the hearing on their claim.” Mr. Frecker had, before he conducted this study, been discussing a model where a government official would interview an unrepresented claimant to prepare a statement similar to a PIF. Coming from his government perspective, the fact that, after doing a study, he has come to this conclusion is very supportive of the need for lawyer representation.

The report asks whether lawyers are needed for Federal Court litigation, and concludes that they are. It’s an odd question as non-lawyers are barred from representing anyone in the Federal Court.

The report focuses on refugee claimants, because refugees are always required to litigate and more likely to be in financial need. They exaggerate this assumption by relying on the fact that Legal Aid spends 90% of its funding in immigration law on refugee cases. Legal Aid funding is capped, and priorities have to be triaged, so the range of people who could need legal assistance and the range of issues going un-addressed cannot be

presumed from actual expenditures. The authors have left a difficult area to investigate and quantify unstudied. There is actually a wide range of immigration law needs that are unmet.

Frecker tries to attack the difficult problem of accountability and quality in legal representation. He notes that:

“Respondents were generally in agreement that participation by a competent representative enhances the efficiency of all proceedings after the initial intake stage (i.e., admissibility and eligibility interviews). They also agreed that participation by incompetent representatives has a very negative impact on efficiency at all stages.”

He concludes by proposing a model where NGOs and lawyers would form associations and bid for contracts to do Legal Aid work:

“This could be accomplished through arrangements under which consortiums of lawyers, working in association with these settlement organizations, could contract with legal aid authorities to deliver representation services in accordance with clearly established standards, on terms agreed to by the legal aid authorities and the service providers.”

It is not surprising that this has not been acted on. To organize NGOs into associations with lawyers to provide a continuum of service from refugee representation to integration would take way more funding than the government is willing to spend. It would also present organizational challenges without necessarily improving quality of legal service. NGOs are run by voluntary boards not necessarily equipped to supervise lawyers.

Community politics can also affect how an NGO is managed, which can be compatible with community service, but incompatible with the focused short-term goal-oriented needs of a litigation lawyer.

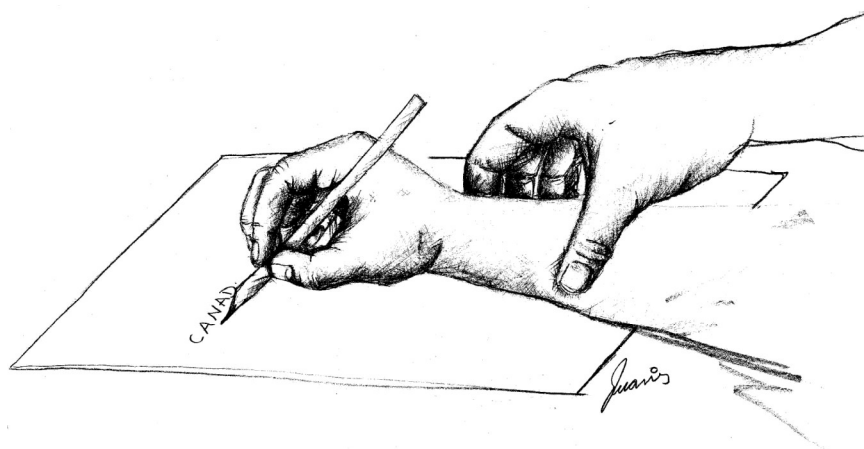
Frecker considers the difficult and compelling issue of

lawyer referrals. At present there is no system. Refugees can get ethical referrals to competent lawyers by NGOs, friends or helpful interpreters, or they can get unethical referrals from commercial interpreters. Another problem, which he doesn't seem to have picked up on, is negligent or even unethical referrals from NGO staff to lawyers or consultants who do manifestly poor work. I have been lobbying a major shelter in Toronto to upgrade their “lawyer” referral list (which included non-lawyers, lawyers no longer in practice etc.) for over a year. Often lawyer referral is a low priority for overworked management. Staff can be left to develop their own personal favourites, which ranges from lawyers who do good work to lawyers or consultants they are merely friendly with.

Critically analysing the results of lawyer referrals would require follow-up with clients, which NGOs generally have no time or funding to manage. Unlike Legal Aid, NGOs also do not have the legal power to compel production of lawyer files.

The overall ideal of having the ability to get people to competent lawyers quickly, and also have them referred to a community service that helps with their community integration needs is terrific. I would see two sets of institutions functioning cooperatively as more practical than forcing very distinct services together. For example, NGO representatives could sit on a board that co-

manages a lawyer referral service with Legal Aid, with Legal Aid managing investigation of lawyer service standards.



The biggest weakness in this report is that it was authored by people with no experience in Legal Aid management, and no experience in consultations with Legal Aid. It asks questions, and offers ideas, without dealing with practical cost consequences or pragmatic operational issues. For example

he notes that Legal Aid is under-funded, yet suggests getting lawyers to bid for contracts of Legal Aid work. This raises an obvious question. If we already have to struggle to interest enough lawyers in doing work at Legal Aid rates, how realistic is it to expect that you could make enough competent lawyers bid for it and

commit to doing nothing but Legal Aid work? It would only become realistic if payments were much higher, so that lawyers could afford to plan and staff an office based on a Legal Aid contract. But that would mean significantly raising funding to Legal Aid. How much would that cost?

If you cost out how high the Kaufman report estimated Legal Aid rates would have to be raised to make exclusive Legal Aid practice competitive in the legal marketplace, you would be looking at almost doubling Legal Aid's budget. It is especially challenging to get recent law school graduates to commit to Legal Aid with student debt loads so massive.

Yet the report imagines lawyers would go even further than just committing to doing Legal Aid work. It expects lawyers to come up with elaborate bureaucratic proposals, which they would first negotiate with NGOs, to provide a range of legal and settlement services. Imagine an experienced lawyer, with an established practice, opting for that. Imagine a recent graduate who owes the bank \$80,000 putting her life on hold to launch into negotiating all that, so that she can wait to see if bureaucrats will approve it, with the promise of a rate of pay that is insufficient to run an office and pay her debts.

Legal Aid Ontario has already looked at the idea of contract bids for stand-alone legal services, and would

up dismissing it. The idea of even more complex contract bids is totally unrealistic. Like most government studies, the authors take such pride in going it alone that they re-invent a wheel without asking anyone whether it has been thought of before. They did not address the Kaufman report, and their conclusions were not even bounced off Legal Aid administrators for a reality check.

Legal Aid Ontario has adopted a lower-cost delivery model. It maintains the individual certificate model (which is the least costly method of delivering case-specific litigation services to a large number of people), but requires lawyers to sign service-standard contracts with LAO. To function optimally, this should be complemented with an NGO-Legal Aid service that can give ethical lawyer referrals, and sufficient funding for Legal Aid to do greater monitoring of compliance with lawyer service standards. Legal Aid needs more funding to even maintain service delivery, let alone expand on what it offers. The broader question of integration services after a refugee's acceptance is a serious societal issue, but it would take a complete rethink of government values and far more money than the government now spends.

*Raoul Boulakia is an immigration lawyer working in Toronto.*

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## **GAY RIGHTS AND REFUGEE PROTECTION**

BY ROBERTO JOVEL

**We, lesbian, gay, bisexual, transgender, intersex, queer refugees are present in all of Canada. We come from the very countries from which other refugees came and continue to come. We face the same barriers other refugees face. And we face additional, strong and stubborn barriers. Some of us see our national or ethnic communities deny our belonging within their very womb, in their very living tissue. For their part, mainstream Canadian gay and lesbian communities oftentimes prove equally refractory towards us.**

History and anthropology teach us that sexual and gender diversity have always existed in all continents throughout time, whatever forms such diversity has taken in each point of the planet. Human groups and cultures have been at times more welcoming, at times

more hostile towards those whose sexuality or gender features differ from the dominant norms. In the last 30 years though, and in all continents, we, lesbians, gays, bisexuals, transgender, intersex and queer (LGBTIQ) people, have started rising and speaking up for our fundamental rights. Our process of assertion has been met by a strong backlash in all cultures, including in countries of the North and the West. Still, little by little we're starting to gain spaces and rights. But...

People ignore or seem to forget the persistent persecution of us who are different in our sexuality or gender features. There are laws criminalizing us in no less than 70 countries in the world, condemning us to several years of prison, to life sentences, to capital punishment. And in numerous other countries we're the targets of extrajudicial persecution: arbitrary arrests, de-

tention under irregular conditions, torture, sexual violence, killings at the hands of State agents. This permanent risk of undergoing attacks against our physical and mental integrity unfolds in society at large too: we are expelled from school, thrown out of home at a very young age, sexually exploited in the streets, dismissed from our jobs, battered by members of our families, murdered by our neighbours.

Thus, we lesbians, gays, bisexuals, transgender, intersex and queer people sometimes are forced or decide to flee our countries and seek asylum. We arrive here in Canada affected by a life history that has evolved in such an environment, either having lived or remained at the constant, real risk of persecution – or both.

The 1990s saw a struggle to have people in the Canadian system for the protection of refugees understand not only that LGBTIQ folks should be protected in accordance with our country's commitment to the Geneva Convention, but the conditions of threats of or actual violence under which we (try to) live in many places. The lack of understanding of these realities has had (and, unfortunately, continues to have) an impact on how refugee determination hearings turn out for asylum claimants needing protection. Even in many countries abroad where anti-discrimination legislation has been enacted and where there are numerous organizations working for the rights of sexual and gender dissenters, and where there is a number of bars, night clubs, etc., catering to that part of the population... even in many of those countries we still witness patterns of both State and non-State persecution that goes unchallenged and unpunished. And not even LGBTIQ human rights defenders are safe. The UNHCR's policy is that « persons facing attack, inhumane treatment, or serious discrimination because of their homosexuality, and whose governments are unwilling or unable to protect them, should be recognized as refugees. » Canada still has work to do in view of offering such protection adequately, and there is concern regarding the extent to which LGBTIQ refugees can find protection in refugee determination systems abroad.

Those of us working for the protection of refugees and for their settlement and integration in Canada need to ask ourselves the question about the extent to which we are aware of these issues so relevant for a part of the population that we serve. It is a matter not only of openness and subscribing to the principle of non-discrimination. It is a matter of competency in the realization of our vocation and mission. Of being really

useful to all those we claim to serve according to their rights and needs. For instance, if we are a counsellor to a lesbian, gay, bisexual, transgender, intersex or queer refugee trying to gather documentation in support of their claim, how can we support them? Will such a refugee feel secure and confident to come to our organization and request the assistance they need in their plea for protection? And when protection is granted, how are our services adapted to make sure we're instrumental in such refugees' efforts to settle in Canada and integrate its society?

Racialization is one among various forms of oppression that combines with homophobia, heterosexism and transphobia to deeply affect LGBTIQ refugees' experience of settlement and integration. As settlement practitioners, as resettlement workers, we need to understand, for instance, how a refugee lesbian woman of colour can overcome such challenges and fully participate on an equal standing in our diverse Canadian society. It is not uncommon to hear white people, either heterosexual or homosexual, throw around racist remarks about how people of colour from abroad are « so homophobic », « backwards », « unable to evolve » in matters of sexuality... and the like. Such white people not only forget how rampant homophobia still is among people of European origin, but they neglect for instance the fact that former European imperial powers have an

historic responsibility for the legacy of homophobia in their former colonies, implanted through longlasting acculturation and exploitation endeavours. And these racist attitudes, as they manifest in different social and institutional settings, undermine the efforts by LGBTIQ refugees and immigrants to build a new life here. How can we combat at once racism and homophobia, heterosexism and transphobia as they affect refugee communities in their diversity? Are we adequately sensitized to such combined forms of oppression as they affect LGBTIQ refugees and immigrants in areas like housing, employment, access to health, etc.? Do we reproduce

oppressive mechanisms in the context of service delivery? How can we become effective agents for social change?

At its most recent Annual General Meeting (November 2005), the Canadian Council for Refugees adopted a draft Policy on Anti-Homophobia, Anti-Heterosexism



and Anti-Transphobia. It is an anti-racist policy that is currently being finalized and will be accompanied by tools for sensitization, awareness raising and acquisition of useful skills and knowledge. Another important endeavour of the CCR currently underway is its Gender-Based Approach to Settlement project, which looks at how gender-based oppression affects newcomers in combination with racialization, poverty, ableism, ageism... It also looks at issues of sexual diversity and gender identity, and it'll produce a resource tool for those working for the settlement and integration of refugees and immigrants.

**Roberto Jovel is the Settlement Policy Director and Consultation Organizer for the Canadian Council for Refugees.**

1. Suggested reading (non-systematic sample) at: <http://www.mask.org.za/> (African LGBTIQ gate); <http://www.al-fatiha.org/> (LGBTIQ Muslims); <http://www.opusgay.cl/1315/channel.html> (Chilean LGBTIQ media); <http://www.jflag.org/> (Jamaican LGBTIQ); <http://www.sehakia.org/> (North-African lesbians); <http://www.trikone.org/> (South-Asian LGBTIQ); <http://www.helem.net/> (Lebanese LGBTIQ association).

2. Amnesty International, *Crimes of Hate, Conspiracy of Silence. Torture and Ill-Treatment Based on Sexual Identity*. London, 2001. <http://web.amnesty.org/library/Index/ENGA400162001?open&of=ENG-347>

3. You can consult the *Ward* decision by the Supreme Court of Canada (1993). See section about how to understand the notion of “particular social group”: <http://www.canlii.org/ca/cas/scc/1993/1993scc72.html>

4. See Amnesty International’s archive with materials on persecution based on sexual and gender differences: <http://web.amnesty.org/library/eng-347/index>

5. See: [http://www.unhcr.org/cgi-bin/texis/vtx/basics/open\\_d\\_o\\_c\\_h\\_t\\_m?tbl=BASICS&page=home&id=3b0280294#orientation](http://www.unhcr.org/cgi-bin/texis/vtx/basics/open_d_o_c_h_t_m?tbl=BASICS&page=home&id=3b0280294#orientation)

6. A unique resource is the International Gay and Lesbian Human Rights Commission’s asylum documentation program: <http://www.iglhrc.org/site/iglhrc/section.php?id=20> You can also consult the International Lesbian and Gay Association’s website: <http://www.ilga.org/>; Amnesty’s archive in the footnote above, and Amnesty’s LGBT Network’s web pages at: <http://www.ai-lgbt.org/>

## “DEPORTATION IS FREEDOM” (... AND YOU BEST NOT DISAGREE!)

BY KEN LUCKHARDT

If the title of Steve Cohen’s new book, Deportation is Freedom, sounds cruel or offends your sensibilities then you have responded properly. Subtitled “The Orwellian World of Immigration Controls,” the author has penned an uncompromising expose and condemnation of Immigration Controls as practiced by neo-liberal capitalist states.

Cohen is a British immigration lawyer and political activist of 30 years and one of the five authors of the September 2003 **No One Is Illegal** manifesto. His argument essentially rests on four points: (1) Immigrations Controls (hereafter, ICs) are “intrinsicly unfair, racist, unjust and inequitable;” (2) are a “product of imperialism...(insofar as they are) an effort to control the global movement of labour.... in search of work or safety or both;” (3) are historically reminiscent of previous periods of domestic repression of the working class; and, (4) are incapable of being reformed and

must be eliminated through collective resistance.

The metaphor employed by Cohen to make his case is George Orwell’s much debated classic, Nineteen Eighty-Four.

### Doublethink and Newspeak

The ability to “tell deliberate lies while genuinely believing in them” is what Orwell terms **DOUBLE-THINK**. To Cohen, the very idea that ICs could be “just,” “fair” or “tolerant” is **Doublethink** because these qualities will never be experienced by the people who are subject to them. “Immigration control can never be about rationality or sanity. It can only ever be about oppression and exploitation, which are both irrational and insane.”

In the post 9/11 world in which Immigration Controls now operate, **Doublethink** is best illustrated by the example of Weapons of Mass Destruction. They are “unweapons.” They do not exist materially, only politically. Similarly, the US spokespersons claim that Iraqis continue to wage war on the US because “they hate freedom.” To Cohen this must be the first war in history where one side is fighting against its own “freedom.” **FREEDOM IS SLAVERY.....and not only in Orwell’s imagination.**

**NEWSPEAK, Orwell’s second concept, refers to the conscious corruption of language and the narrowing and ultimate destruction of rational thought.** Its relevance to a critique of ICs is profound and replete with examples. The process begins by reducing all those unwanted persons to the status of “illegals.” Orwell’s “outlaws, untouchables, enemies of the state, foreigners, traitors, saboteurs and thought-criminals” become in the current language of **IC Newspeak** the “bogus refugee, bogus immigrant, economic refugee, economic migrant, economic immigrant.”

The category of “refugee” (or “asylum seeker”) has lost its original reference to those fleeing persecution. It now means those who are “unwanted here.” The “unwanted” refugee claimants are the “unpersons” of Orwell’s fiction. We have “dead illegals” who are found inside the bowels of transoceanic freighters, and we have the “illegals who jump the queues” **Illegality is a political construct**, a point made repeatedly by Cohen over the span of 200 pages.

Orwell’s repressive society removes persons through “**vaporization;**” modern day immigration laws achieve the same through “**deportation.**” And then there is the word “**removals**” which at one point referred to inanimate objects, like furniture. Now it more commonly refers to human beings who are victimized by the refugee determination system....or who embrace the **Doublethink** of “**voluntary departure**”.

The insidious vocabulary never ends: “bogus brides”.... “courier wives”.... “asylum cheats”....occasionally juxtaposed with “genuine visitors” and “legitimate refugees”. Orwellian categories at their best would be the “bogus family” with its “bogus children, parents, grandparents,” all living as one “bogus unit.”

**Immigration Control Newspeak** language is crucial because it simultaneously numbs the minds of citizens while dehumanizing the lives of the undocumented. This overarching ideology effectively sets refugee issues apart from all other legal matters. Cohen puts it clearly, “**Within all other areas of the law it is the deed that is illegal, but within immigration law it is the person. Immigration law transforms the adjective into the noun....**”

Cohen’s examples come primarily from his British experience, but it is certainly not difficult to find Canadian equivalents. Take the “**Safe Third Country**” legislation for example. **Newspeak** for sure. “**Unsafe Third Country**” legislation, to be more correct. Once in place, the system essentially reverses the flows of established migration paths (south to north) and turns them into their opposite, corridors

of expulsion (north to south).

### The Present as History

The exclusion and denial of rights to asylum seekers is increasingly institutionalized across all sectors of everyday life. Removing or reducing access to social services, including welfare, creates a **permanent underclass** without status and without hope, rendering them all the more vulnerable to economic exploitation.

Control through poverty is not new. Cohen traces the current methods back in British history to the Poor Laws and the Workhouses of the 19th century. The operative goal then was (and now is) to keep the underclass desperate, to limit their physical “maintenance” at a level below that of human needs, below the level of the worst paid who were (are) employed. It was known in that earlier era as “the principle of less eligibility.” In sum, make the conditions so intolerable

that the undocumented will work for nothing to avoid even greater suffering and tragedy.

The historical workhouse is the **detention centre** of today’s immigration system. Multi-national corporations now manage the facilities, regularly reporting how those inside are having a “very positive experience.” (Occasionally the truth gets out as in the well-documented cases of inhumane treatment in the Australian



centres.)

Cohen shows how the whole state machinery has a role to play. Welfare and Local Authority institutions are the spies on the spot to report any abuse of the Immigration Controls. Whistleblowing against the powerless is encouraged. Embassies and consulates deny visas or travel permits to the “unchosen.” Airlines and other transportation corporations face substantial fines against the bottom line if they transport the “unwanted” here. Cohen provides UK examples of immigration officers competing to see who can accumulate the greatest number of refusals in one year. “**Spotting Refusal Shoes** is a game that anyone can play at the airport to while away the time.” (a quote from Tony Saint’s novel, Refusal Shoes.)

Beyond this, nation states search further afield for remote locations (islands, special zones) to collectively house the unwanted refugees. Australia again distinguishes itself in this regard with its “Nauru solution” in the South Pacific, but Australia is not alone in the desire to find dumping grounds for asylum-seekers. Par-

allels with the 1938-40 effort by the Nazi regime to ship the Untermensch (“non-humans”) to Madagascar come to mind.

And that is Cohen’s fundamental political point: current Immigration Controls “are arguably a step towards fascism.” When Jews fled Germany to Poland, they were labelled “illegal refugees” by the Nazis; and in Switzerland at the time it was illegal to “shelter illegal (read Jewish) immigrants”. **“No one who comes in contact professionally with Immigration Controls can come away with totally clean hands. This is because controls are politically filthy.”**

### Collective Resistance

Cohen’s conclusions flow logically from his analysis: (1) Immigration controls cannot be improved—they are inherently rights restricting and must be eliminated; and (2) the only possible hope to eliminate repressive Immigration Controls is through collective resistance. Individual struggles over individual cases inevitably prove inadequate unless they are part of a larger, protracted campaign led by the undocumented themselves.

Cohen insists that resistance must include ideological debate as well as mobilization around specific campaigns. He warns refugee advocates of the pitfalls of arguing individual cases on “compassionate and humanitarian grounds” as a last resort. To do so, Cohen argues, is to legitimize all the other deportations—past, present and future—that do not merit the special argument. (The additional example of historically unproductive distinctions between the “deserving” and “undeserving” poor is quite instructive in this context.)

As well, Cohen pleads with his readers to forego the reformist position which says that it is too early to demand the abolition of all Immigration Controls. If not now, when would

it be the time to do so, he asks rhetorically. Would progressives ever say that we should only protest racist murders as a subset of all racist attacks? No, and we should similarly not engage in a form of “miracle worship” that suggests Immigration Controls can someday be turned into their opposite, that they could someday be just, fair or tolerant.

The text ends with a quote from a former UK Minister of Immigration who once said of deportation that “the most important thing is that it be done with dignity.” Cohen responds: “Deportation? Dignity? The forced removal of human beings? All this is the reduction of our language to **Newspeak**. It is the destruction of language. **It is DEPORTATION posing AS FREEDOM**.” (emphasis added).

\*\*\*Deportation is Freedom: The Orwellian World of Immigration Controls is published by Jessica King Publishers, 2006 and sells for US\$ 19.95 in paperback.

*Ken Luckhardt is National representative, International Department, CAW-Canada and a member of the Editorial Board of Refugee Update.*



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Toronto ON M6E 2V4 Canada  
Tel: (416) 469-9754  
Fax: (416) 469-2670  
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