

A person can always seek in Federal Court a stay of enforcement of a removal order. However, in order to succeed on a request for a stay, the applicant must show that the removal raises a serious issue and would cause irreparable harm, and that the balance of convenience favours the applicant, something that is not always easy to do.

It does not follow that because a humanitarian application is compelling, removal pending processing causes irreparable harm. Several Federal Court cases have denied judicial stays pending a decision on humanitarian applications holding both that the pending application raises a serious issue and that removal pending a decision would not cause irreparable harm.¹²

The Federal Court stay criteria are what they are. But it should not be necessary to establish irreparable harm in order to stay in Canada on humanitarian grounds. It is one thing if a person delays a humanitarian application to the last minute. In that situation, the person has him or herself to blame for having to meet the irreparable harm test. It is quite another when the law itself requires the person to wait until the last minute to make a humanitarian or temporary resident permit application. In that situation, the scheme of the legislation is being violated if a meritorious humanitarian or temporary resident permit application has to meet the irreparable harm test.

It may well be that an officer deciding whether or not to report or a Minister's delegate deciding whether or not to refer would be prepared to allow a permanent resident to stay with a temporary resident permit even though not prepared to allow the person to stay as a permanent resident. The individual and his or her counsel should explore that possibility by indicating to the officer and Minister's delegate an intention to apply for a temporary resident permit if the individual is reported, referred and ordered removed. It might well even be helpful to prepare an application for a temporary resident permit in draft for consideration by the officer and delegate. Doing so expands the range of options for the officer and delegate and gives borderline cases a greater chance of remaining.

For persons who seek protection, the timing is different after the two year cut off is applied, rather than before. If a person wants refugee protection, he or she should apply for pre-removal risk

assessment. However, because that application is pre-removal, the person must be removable before it is triggered. The individual has to wait until the removal order is made and ineligibility to access the Refugee Protection Division of the Immigration and Refugee Board determined before the pre-removal risk assessment application can be made.¹³

4. Conclusion

The ending of appeals to the Immigration Appeal Division of the Immigration and Refugee Board and refugee protection claims to the Refugee Protection Division of the Immigration and Refugee Board for those convicted of offences with maximum sentences of ten years or more and punished with actual sentences of two years or more is not the loss of remedies, just a shift of remedies. Every remedy a person caught up in the new law which the person would have been able to seek under the old law from the Immigration Appeal Division of the Immigration and Refugee Board or the Refugee Protection Division of the Immigration and Refugee Board is not now beyond reach; it just has to be sought elsewhere, from either the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness. Counsel for persons who may be caught by the two year cut off need not sit idly by; they just have to act differently.

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Refugees in Canada

Ed Corrigan

Canada is a signatory to the 1951 Geneva Convention on Refugees. This international agreement set up a system for protection of refugees that did not exist before 1951 and was, in a large part, a response to the failure to protect Jewish refugees and other individuals fleeing persecution during the Second World War.

In 2005, Canada granted refugee protection to 12,061 persons in Canada through the Immigration and Refugee Board. A further 10,400 refugees were resettled to Canada from abroad. Each year, approximately 25,000 refugees are granted permanent residence in Canada. Of these, one-third arrive in Canada as government-

¹² See for instance *Strachan v. Canada (Minister of Citizenship & Immigration)* (1998), 157 F.T.R. 267, 1998 CarswellNat 2327 (Fed. T.D.), November 18, 1998, *Wetston I. or Simoes v. Canada (Minister of Citizenship & Immigration)* (2000), 2000 CarswellNat 1328 (Fed. T.D.), Nadon J., June 16, 2000.

¹³ *Immigration and Refugee Protection Regulations*, SOR/2002-277, s. 160.

assisted refugees and approximately 13 percent are privately sponsored.

Refugee protection claimants are eligible for public assistance and, in certain circumstances, can apply for work permits. They have to undergo medicals to work in food production or with children or the elderly. All refugees undergo medical, criminal and security checks.

Why Does Canada Accept Refugees?

As part of its humanitarian and immigration policies, Canada accepts refugees. Churches and private groups can sponsor individuals who are deemed to be Convention refugees. Under our international commitments, Canada allows individuals who claim a fear of persecution the opportunity to present their case for protection.

Canada accepts a limited number of refugees from abroad who are accepted as Convention refugees by the United Nations High Commissioner for Refugees (UNHCR). The UNHCR is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Many Western countries participate in refugee resettlement programs.

Generally, resettlement is promoted in situations where no other solution is available or when effective protection is not available. Refugee groups sponsored by the Government of Canada in the past include Vietnamese boat people, Kurds from Iraq, Somalis, Bosnians and Albanians from Kosovo, Shia from Iraq, and Afghans. In most cases these refugees were fleeing civil wars in their home countries and were living in refugee camps.

When the UNHCR identifies a refugee for resettlement to Canada, a Canadian visa officer decides whether or not a person meets the requirements of Canada's refugee resettlement program and if the person will be admitted to Canada.

To be eligible, refugees must not have another long-term solution within a reasonable time. Persons selected for resettlement undergo medical, security and criminality screening. They must also show that they will eventually be able to reestablish themselves in Canada.

Government Sponsored Refugees

Refugees selected for resettlement to Canada have often been forced to flee their country because of unimaginable hardship

and have in many cases been forced to live in refugee camps for many years. Many of them are victims of trauma or torture, such as women and children at risk, and may have special needs. When they arrive in Canada, they have nothing with them but a few personal effects.

The Resettlement Assistance Program (RAP) provides government-assisted refugees with immediate resettlement assistance in the form of support services and income support. Income support is provided under the RAP to those eligible government-assisted refugees who lack the resources to provide for their own basic needs. This support is provided in the form of a one-time initial household start-up allowance and a monthly income support payment. The level of income support is guided by the prevailing provincial social assistance rates in their province of residence.

The RAP support services provided to government-assisted refugees are the same across Canada. A single government-assisted refugee who settles in Ontario, for example, will receive \$580 per month as RAP income support. This amount covers food, shelter, and transportation allowances.

In most cases, the first month's income support payment is larger because it includes additional funds provided on a one-time basis for basic household start-up needs on top of the standard monthly income support amount for food, shelter, and an allowance for clothing.

The rates provided for household start-up will vary by family size. There are also other special allowances that may be provided depending on circumstances. Special allowances are given for children under six years of age: a school start-up allowance for children attending school from kindergarten to Grade 13, a maternity allowance for pregnant women, and a newborn allowance to allow a family to purchase clothing and furniture for their child.

Income support can last up to one year from the date of arrival in Canada, or until the refugee is able to support him or herself, whichever happens first. Special-needs clients selected under the Joint Assistance Sponsorship program may receive RAP income support for up to 24 months or more. The vast majority of refugees, however, receive assistance only for 12 months or less.

Support services for government-assisted refugees are provided by service provider organizations located throughout Canada which are funded by the government through the Resettlement

Assistance Program. Agencies like the Cross-Cultural Learner Center in London provide support for resettling refugees.

Income support for government-assisted refugees is provided directly by the Government of Canada. Resettlement assistance is not provided to refugee claimants or privately sponsored refugees.

Privately Sponsored Refugees

Churches and private groups of five individuals can sponsor refugees. It is the responsibility of the sponsoring group to complete a settlement plan that helps the refugees integrate into Canadian society. This includes helping them find suitable housing, learn English or French, get a job, make friends, and learn about Canadian culture and values as well as the services available in the community. The sponsoring group must also provide for the reception, care, lodging and settlement assistance for the sponsored refugees in the expected community of settlement for a period of 12 months (or longer in exceptional circumstances, if agreed to by the sponsoring group) from the date of arrival of the refugee or until the refugee becomes self-supporting and no longer requires settlement assistance.

In some cases a cost-sharing arrangement can be undertaken which involves the federal government providing some financial support to assist in the privately sponsored refugee's initial resettlement. As well, privately sponsored refugees and their sponsors may have access to some of the orientation services provided to RAP clients.

Misinformation

A widely circulated e-mail alleges that government-assisted refugees receive much more income support and benefits than Canadian pensioners. This information is not accurate. The e-mail contains misinformation that implies that government-assisted refugees receive far higher monthly income support amounts than what they actually receive. The amount of monthly income support provided to government-assisted refugees is based on prevailing provincial social assistance rates and provides the minimum amount required to cover only the most basic food and shelter needs.

Most refugees that come to Canada have been forced to flee their homes, have suffered unimaginable hardship and have lost just about everything. Many have been living in refugee camps for

many years. When they come to Canada, they have to start their lives over again.

Canadians should be proud of their humanitarian tradition of accepting refugees. Providing refugees and their families with a basic level of support to help them get successfully established in Canada honours both our humanitarian tradition and legal obligations, and is also an investment in helping these refugees become contributing members of our society.

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Response to Sergio Karas

Karas sees stars, stripes and bogeymen: Admiration of American law model stops short of reason

David LeBlanc

My esteemed colleague Sergio Karas is an admirer of all things American, while espousing a very Canadian virtue: recycling. His diatribe "Immigration Bar Under Attack" has been unfurled once again like a well-loved tattered flag. As a tome of self-serving opportunism under the thin guise of consumer protectionism, Mr. Karas' rant is the definitive work.

While Mr. Karas quotes American law extensively, he need wander no farther from home than the Canadian jurisprudence found in *Law Society (British Columbia) v. Mangat*,¹ where a prior attempt to usurp informed consumer choice by eliminating immigration consultants failed. His entire argument against Certified Canadian Immigration Consultants (CCIC), and the Canadian Society of Immigration Consultants (CSIC) is based on hiring a lawyer as the only enlightened choice and that the Supreme Court of Canada was wrong in its *Mangat* decision. He begins his article quoting eloquently and in a scholarly way from

¹ (2001), [2001] S.C.J. No. 66, 2001 CarswellBC 2168, 2001 CarswellBC 2169, R(1)B 2001-26158, 157 B.C.A.C. 161, 256 W.A.C. 161, 16 Imm. L.R. (3d) 1, 205 D.L.R. (4th) 577, 2001 SCC 67, 276 N.R. 339, [2002] 2 W.W.R. 201, 96 B.C.L.R. (3d) 1, [2001] 3 S.C.R. 113 (S.C.C.).