

## Refugee hearing will mean justice for all. (1988, December 30). The Globe and Mail.

# Refugee hearings will mean justice for all

BY HOWARD ADELMAN

Prof. Adelman teaches philosophy and is director of the Centre for Refugee Studies at York University.

ON WEDNESDAY, Immigration Minister Barbara McDougall announced that all 85,000 people claiming refugee status in Canada will be given a hearing before their futures are decided. Much is being made of the fact that Mrs. McDougall ruled out two options supported by many refugee advocates: a general amnesty or a quasi-amnesty in the form of an administrative review (a significant easing of the regulations first ordered by former minister Walter McLean in 1986 when he faced a backlog of 22,000).

However, no one seems to have noticed that she also rejected an even harsher option: giving refugee hearings only to those who qualify under the new federal immigration legislation. Those in the backlog could have been subjected to screening to assess whether they even qualify for a refugee hearing.

Given the four choices — universal hearings for everyone, a general amnesty, administrative review and hearings only for those who qualify — did Mrs. McDougall make the right choice? Further, given that choice, are the procedures for implementing her decision correct and adequate?

In previous statements, the minister had already ruled out a full amnesty. Not only would it have sent out a message around the world that abuse of the Canadian system would be rewarded, but the 4,000 or so claimants rejected by the last administrative review and still in the system would have been given landed immigrant status. Why, then, did Mrs. McDougall not repeat the past practice, and offer another administrative review?

Probably because an administrative re-

view is not the answer. On the surface, it appears neat and tidy. The government, it is claimed, could have started with a clean slate and, after all, it is partly to blame for the problem because the poor legislation in place to handle refugee claims had created a system that invited abuse. In addition, it would have been the humane thing to do; it is easy to imagine the pain and anguish in store for as many as 60,000 people who will be subject to deportation once their refugee claims are rejected. And another administrative review also would have been efficient and very economical; under the new system, just dealing with the backlog will cost in excess of \$100-million.

But this simplicity is deceiving. For ex-

ample, all those rejected by the previous administrative review would have to be given a refugee hearing anyway, as would most of the 40 per cent of claimants (33,907) who have been here less than six months. They haven't been allowed to work legally, and therefore can't prove they have successfully established themselves in Canada (the key criterion under an administrative review). As a result, at least half of the backlog would still have to be given hearings, which would have to be delayed until after the administrative review. This would further complicate the lives of those already in limbo, and would still cost at least \$50-million.

The fact is, by ordering another administrative review, the government would not have started with a clean slate. It would

simply have created a two-stage system requiring formal hearings for 50 per cent of the backlog and still sending out a message that, once its refugee system begins to get clogged, Canada eases up. The result would have been additional costs in the long run, inviting whatever system we devise to be abused. Short-term pain for the government (the \$100-million price tag) while offering a fair hearing to everyone who claims to be a refugee upon entering Canada was needed to obtain a long-term gain.

Refugee claimants should be given a fair hearing. Why would those who support true refugees want anything else?

Also worth noting is the fact that the call

for universal hearings was accompanied by four implementation measures, two that will have consequences for any new refugee claimants as well as those in the backlog. First, the panel reviewing refugee claims will require only one positive decision to allow the claimant to stay. Second, according to Gene Harrigan, Director General of Immigration for Ontario, all claims that are rejected will be reviewed by immigration staff on "humanitarian and compassionate grounds" before anyone is deported.

The third change will allow refugee claimants to work while they wait for their cases to be heard, thus eliminating at one stroke one of the great sources of hardship for those in the system. Finally, the use of the "safe country" provision — by which unsuccessful claimants can be deported but

not sent home — has been suspended, thus undercutting the major objection to the new claims procedure, and the key reason for rejecting an opportunity for a refugee hearing in the new screening process.

Thus, not only has Mrs. McDougall made major advances in the refugee claims procedure in the way she has dealt with the backlog, but she has removed a key poison pill integral to the new refugee determination system. Add two more changes would put her well on the way to redeeming the terrible legislation she has inherited.

She should instruct the refugee review panels (all of which include an immigration appointee under her direct control) that, in cases of doubt, they are to give the clear benefit of that doubt to the claimant. This may already be the implication in requiring refugee claimants to have merely a prima facie case for a refugee claim.

Second, in addition to the informal procedures for reviewing decisions on humanitarian and compassionate grounds before deportation decisions are executed, she should create a review board to see that consistent practices and procedures are used, that all factors have been taken into account and that new hearings are sanctioned when appropriate. With new personnel, little experience and only a short training period, the review panels risk making errors that may endanger people's lives.

The minister also should tell those claimants who voluntarily return to their countries without going through the refugee claims system that the time they spent in Canada will be given positive consideration when they apply for immigration.

Nevertheless, Mrs. McDougall should be congratulated for moving in the right direction, not only in providing universal hearings for all refugee claimants caught in the system's backlog but for setting the stage for universal hearings for all newcomers.

### All Ottawa needs to do now is follow its rules and give claimants the benefit of the doubt