

REFUGEE FORUM



Canada's immigration and refugee policies work in the national interest when they are committed to attracting our future citizens, not when they aim solely to fill short-term labour market gaps. We must provide immigrants and refugees with the tools they need to succeed.

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The Refugee Forum is located at the Human Rights Research and Education Centre, University of Ottawa and enjoys a broad mandate to research Canada's asylum system, inform Canadians about refugee issues and propose improvements to Canada's asylum system. The Forum is undertaking research on the Refugee Appeal Division, judicial review of refugee claims, appointments to the Immigration and Refugee Board, legal representation for refugee claimants and the asylum systems of other countries.

Refugees around the World

Canada has two separate refugee programs, the Overseas Sponsorship Program and the Inland Refugee Program.

The Overseas Sponsorship Program selects refugees overseas, principally from refugee camps, and brings them to Canada where they are granted permanent residence upon arrival. The Canadian program is unique in that it enables both government and private sponsors to identify individual refugees or refugee families for resettlement in Canada. In total, 10,800 refugees were brought to Canada in 2008 – and private sponsorship accounted for about one-third of this number.

The Canadian government charges refugees for the cost of medical examinations and transport expenses and, as a result, many refugees arriving from camps are burdened with loans of up to \$10,000 plus interest while struggling to earn a living and adapting to Canadian life.

For years, private sponsors have complained about unnecessary administrative delays in processing cases. Immigration officials in turn find it difficult to approve the refugees named by the sponsors. The Inland program assesses the refugee status of anyone who seeks refugee protection within Canada or at a Canadian port-of-entry. Most observers agree that the Inland asylum system is in trouble and needs reform. Canada's refugee claim system is too slow – for negative decisions it can take up to eight years to finalize a claim. Thousands of refused claimants remain in limbo for years, waiting for redress from their refused claim or for removal from Canada. The delays hurt legitimate refugees and can attract frivolous claims. In 2008, 7,000 refugees became permanent residents through this program – down from 10,000 in 2007.



Peter Showler

Peter Showler is the Director of the Refugee Forum and the former chairperson of the Immigration and Refugee Board of Canada. He teaches Immigration and Refugee Law at the University of Ottawa Law School. He is also the author of *Refugee Sandwich: Stories of Exile and Asylum*, a work of both fiction and non-fiction that offers direct and intimate insights into the refugee claim process in Canada. Peter is the former Gordon Henderson Chair in Human Rights and is currently a Senior Associate of the Human Rights Research and Education Centre.

There are approximately 14 million refugees in the world today. The majority flee countries with oppressive regimes or fractured by war or internal conflicts. Ninety percent of the world's refugees are located in the Global South – countries which are least able to afford to offer protection to massive numbers of refugees.

Policy Ideas to Reform the Refugee System

1. Increase the number of refugees recruited overseas from 10,000 to 15,000 focusing on protracted refugee situations.

More than 8.5 million people live in refugee camps around the world, principally in the Global South. The largest camps hold more than 150,000 refugees and are managed by the United Nations High Commission for Refugees (UNHCR). The conditions in camps vary widely although many camps suffer from inadequate food rations, shelter, medical services, education, security, and employment opportunities. Refugees say that the most crippling aspects of camp life are the lack of opportunity, the lack of freedom, the lack of hope. More than 60 percent of camp refugees remain for more than ten years.

This is an international problem requiring international solutions. But Canada can dramatically increase resources and its commitment to the overseas program, focusing its efforts on protracted refugee situations. Canada has already initiated a policy to bring more refugees through group sponsorships from protracted refugee situations such as the Bhutanese and Karen refugees from Nepal and Thailand, respectively.

In 2010 the federal government should increase the number of refugees it welcomes through its Overseas Sponsorship Program from 10,000 to 15,000 while making greater use of group resettlement programs.

2. Appoint Immigration and Refugee Board members purely on merit.

The Immigration and Refugee Board (IRB) is an independent tribunal that reports to parliament through the Minister of Citizenship, Immigration and Multiculturalism. In the Inland Refugee Program, a member of the IRB decides whether a claimant who arrives in Canada is a refugee after a hearing where the claimant has the right to be represented by legal counsel. If the individual is accepted as a refugee, he or she can apply for permanent residence. Approximately 45 percent of claimants are accepted as refugees.

The effectiveness and reliability of the refugee claim system in the Inland Refugee Program is dependent on the competence and expertise of IRB members, particularly since each refugee claim is decided by a single member. IRB members are appointed and re-appointed by the federal cabinet. Although there is some initial merit assessment of candidates, the process is ultimately a political and secretive one that does not yield the best candidates available and does not appoint them in a timely manner. A purely merit based appointment and re-appointment of IRB members would greatly improve the quality and speed of refugee claim decisions

and would assure a more timely and effective response to variable claim flows.

Further Reading:

Showler, Peter. (2009). *Fast Fair and Final*. Toronto: Maytree, September. www.maytree.com/policy.

3. Add an appeal to reduce the need for judicial review.

A single IRB member decides whether or not a claimant is a refugee. If the IRB member rejects the claim for refugee status, there is no appeal available to the claimant. An appeal was included in the Immigration and Refugee Protection Act, 2001, but the Refugee Appeal Division has never been implemented.

In lieu of an appeal, the refused claimant has the right to apply to the Federal Court for leave for judicial review. Only 13 percent of leave applications are approved for judicial review after a cursory review of the application. No reasons are given where leave is denied. If leave is granted, the court will review the IRB decision. However, judicial review is limited to errors of law or egregious errors of fact. The court has no authority to grant refugee status, it can only return the claim to the IRB for a second hearing.

An appeal to the Refugee Appeal Division, a separate division of the IRB, will ensure that inevitable errors of fact and law by single-member decision makers will be quickly identified and corrected on a prompt and economical basis. The work load of the Federal Court will be reduced to only address major issues of law.

Further Reading:

Showler, Peter. (2009). *Fast Fair and Final*. Toronto: Maytree, September. www.maytree.com/policy.

4. Abolish the processing fees for refugees.

After being determined refugees by the IRB through the Inland Refugee Program, refugees have 180 days to submit their application for permanent residence. There is a processing fee of \$550 for the principal applicant and \$150 for family members under the age of 22. This is a significant financial barrier for refugees who arrive with few resources.

Some protected persons simply cannot raise the funds before the deadline. In such cases, they are still protected persons and cannot be removed from Canada, but they continue to be treated as a person temporarily in Canada. As such, they are not able to bring their family to Canada. Protected persons can renew their work permits and their SIN cards, but most employers who see that a person has a SIN card valid for one year (beginning with the number 9) and a temporary work permit are dissuaded from investing in such an employee.

In recent years, Canadian courts have not been generous with the legal definition of refugee when the issue has been the capacity of the state to protect victims of crime and serious discrimination. However, Canadian courts have given a liberal interpretation with regards to victims of domestic violence and female genital mutilation, homophobia, and victims of civil wars.

The basis for the Canadian definition is the 1951 United Nations Convention relating to the Status of Refugees which defines a refugee as someone who has a well-founded fear of persecution due to his or her race, religion, nationality, political opinion or particular social group. Since 2001, Canadian law was amended to extend the definition to include persons in need of protection – that is persons who are at risk to their life, torture or cruel and unusual treatment or punishment.

If protected persons are eventually able to acquire the funds for the processing fee, they may apply for landing on “humanitarian and compassionate” grounds. However, the processing times for applying through this stream takes years – a further delay to their full integration into Canadian society.

Only about \$9 million was collected from “Immigration cost-recovery fees for refugees” in 2007-2008. This represents less than two percent of fees collected by Citizenship and Immigration and less than 0.7 percent of the department’s overall budget.

Eliminating the processing fee would entail a straightforward regulatory amendment to the Immigration and Refugee Protection Act.

Further Reading:

Maytree. (2007). *Processing Fees for Refugees*. www.maytree.com/policy.



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