



## CHAPTER 19

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# GUARDING THE BORDER: INTELLIGENCE AND LAW ENFORCEMENT IN CANADA'S IMMIGRATION SYSTEM

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## 1. INTRODUCTION

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Since the terrorist attacks of September 11, 2001, much attention on both sides of the U.S.-Canadian border has been directed towards the two countries' immigration systems. In part this stems from the obvious fact that the perpetrators were foreigners who had gained entry to and plotted the attacks from the United States. Though spared the violence so graphically witnessed south of the border, Canadians remembered the December 1999 arrest of Ahmed Ressam, a refugee claimant who, with fraudulent Canadian identity documents and a car full of explosives, tried to gain entry to the United States to blow up Los Angeles International Airport (Wark 2004–5, 73–75). In this respect, 9/11 rekindled the simmering debate in both countries that immigration policies, particularly in Canada, were far too lax. Many in Canada feared a “Canadian connection” to the attacks and suspected that porous borders were behind it. Some public opinion polls shortly after 9/11 suggested that in fact the vast majority of Canadians favored some sort of North American security perimeter, and common entry requirements for immigrants and refugees. While

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opinions were more sharply divided about accepting American policies to achieve this, it is clear that in the first few months of the post-9/11 world Canadians worried significantly about their border (Andreas and Bierkstekker 2003, 36–37). The Canadian government moved quickly to counter such fears through a host of measures, including the December 2001 “smart border” accord with the United States: a thirty-point commitment to better integrate intelligence and law enforcement activities on border security.

However, concerns about Canada’s borders did not disappear. Government officials, political lobbyists, journalists, scholars, and average citizens in Canada have since weighed in on the immigration-and-border-security question with numerous arguments. The federal government predictably tried to straddle the divide, denying any fundamental weakness in its immigration policies or national-security apparatus, while simultaneously implementing the new “anti-terrorist Act” with Bill C-36 and the supposedly more enforcement-minded Immigration and Refugee Protection Act (IRPA), with Bill C-11.<sup>1</sup> Refugee advocacy groups and immigration lawyers hurried to deny any connection between immigration and terrorism, ultimately equating any suggestion to the contrary to racism and xenophobia. The political right joined their counterparts south of the border in portraying Canada as a safe-haven for criminals and terrorists, in places guarded, as one U.S. Senator demonstrated, only by orange pylons.<sup>2</sup>

One of the top experts on intelligence and security matters in Canada, Reg Whitaker, points out that exaggerations and mythologies continue to frame the border-security question in Canada. He also notes that such myths have serious consequences in terms of trade, domestic politics in Canada, and, indeed, Canadian sovereignty. Whitaker argues that far from being a “Club Med” for terrorists as some allege, Canada’s connections to acts of terror are few. Moreover, he and other experts contend that the main focus of government should be to pursue better security and intelligence within the parameters of multiculturalism, while maintaining its commitment to human rights and civil liberties (Whitaker 2004–5, 53–70, Keeble 2005, 359–372).

Those assertions, however, have not dissuaded critics of border-security and immigration policy in Canada. *National Post* columnist Diane Francis wrote a stinging indictment of Canada’s immigration system and by extension the failure of

<sup>1</sup> For an excellent overview of antiterrorist legislation in Canada see R. Daniels, P. Macklem, and K. Roach, eds., *The Security of Freedom: Essays on Canada’s Anti-terrorism Bill* (Toronto: University of Toronto Press, 2004).

<sup>2</sup> The comment was made by Senator Byron Dorgan (D-North Dakota) in October 2001 during debate on the USA Patriot Act (2001). He noted that over the 4,000-mile land border between the United States and Canada there were 128 ports of entry, of which 100 were unstaffed at night, defended instead by “an orange rubber cone, just a big old orange rubber cone.” Dorgan railed that “[I]t cannot talk. It cannot walk. It cannot shoot. It cannot tell a terrorist from a tow truck. It is just a big fat dumb rubber cone sitting in the middle of the road.” United States Congressional Record (Senate), October 25, 2001, page S10990–S11060, at <http://www.fas.org/sgp/congress/2001/s102501.html> (accessed November 8, 2003).

multiculturalism in her book *Immigration: The Economic Case* (2002). Author Daniel Stoffman leveled a similar attack, aimed more at the supposed myth of demographic need, in *Who Gets In: What's Wrong with Canada's Immigration Program, and How to Fix It* (2002). Journalist Stewart Bell drew out the connections between immigration and terrorism with his book *Cold Terror: How Canada Nurtures and Exports Terrorism around the World* (2004). Together they joined a chorus of retired bureaucrats-turned-critics like William Bauer, a former ambassador, member of the Immigration Refugee Board (IRB), and winner of the Raoul Wallenberg Humanitarian Award; Martin Collacott, another former ambassador who penned the Fraser Institute Public Policy Occasional Paper, *Canada's Immigration Policy: The Need for Major Reform*; and Charles Campbell, once the vice-chairman of the Immigration Appeal Board and author of *Betrayal and Deceit: The Politics of Canadian Immigration* (2000). All lamented the adoption in Canada of liberal immigration policies as a “national religion,” and the consistent failure of the federal government to address the structural weaknesses of the system as well as the possible links between terrorism and global migration. They also echoed the concerns of former CSIS Director Ward Elcock, who in a 1999 report to a Special Senate Committee on intelligence matters noted that, next to the United States, Canada likely harbored more terrorist organizations than any other country in the world (Andreas and Bierksteker 2003, 31–32).

Yet against the backdrop of the on-going “war on terror,” the American occupation of Iraq, and the increasingly hawkish mentality of the U.S. national security and law enforcement communities since 9/11, many have rallied in defense of Canada's approach to security issues. They point out that no direct link existed between Canada and the 9/11 plots, contrary to American perceptions. Howard Adelman, a professor of philosophy and founder of the Center for Refugee Studies at York University in Toronto, reproached critics of Canada's immigration system for failing to “seriously engage scholarly literature,” and in doing so, making “numerous egregious factual errors” (Adelman 2003, 16–19). More bluntly, Adelman accused critics of scare-mongering and racism.

Developments in the United States fuelled such accusations. The creation of the Homeland Security Agency was seen by many Canadians as an illustration of growing paranoia in the United States. The general tightening of restrictions along the shared border, and the increased scrutiny of Canadians seeking admission to the United States only added to such concerns. The detention and removal to Syria of Maher Arar—a Canadian citizen transiting through New York's John F. Kennedy International Airport in September 2002—to many graphically illustrates the excesses of law enforcement with a siege mentality.<sup>3</sup> Some commentators noted that an “ideology of borders” took hold in Washington. Many Canadians

.....<sup>3</sup> Arar was returning to Canada from a trip to Tunisia when intercepted by American officials at JFK airport. Held on suspicion of his involvement in terrorist organizations, he was  
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fear similar attitudes creeping north. Measured against the weight of American economic and political influence, Canadian policies at the border could in fact be drastically changed. If unchecked, American ideals about security could easily dominate Canada's immigration system, ultimately producing a "fortress North America" continental culture with respect to law enforcement (Andreas 2005, 449–64, Rudd and Furneaux 2002, 1–5). With this in mind, calls for a review of Canada's policies are often seen as a "red flag," really advocating an American-style system.

Scholarship on the U.S.-Canadian relationship and their respective immigration systems is substantial. However, when it comes to examining other specifics, such as the immigration intelligence process and problems in enforcing Canadian immigration laws—as this paper seeks to do—scholarship is exceedingly thin. As intelligence expert Anthony Campbell points out, only recently have intelligence issues factored into Canadian foreign, defence, or security policies (Campbell, 2003, 159). With respect to the immigration system, intelligence matters still do not command much attention. Few who have worked on the intelligence and enforcement side of Canada's immigration system would, or could, compromise their positions by speaking publicly. Most naturally wish to avoid being labeled a disgruntled bureaucrat. Nearly all realize that documentary and statistical evidence comes almost exclusively from academia and the government itself, neither of which is predisposed to support any fundamental criticism. Ultimately, this makes for an environment ill-suited to open and honest debate. Rather than being a matter of public discourse, questions about Canada's immigration policy are distinctly political, more about ideology than reality.

deported to Syria—where he was born and still held citizenship. The fact that he is a citizen of Canada, and traveling on a Canadian passport, was evidently not considered important by U.S. authorities. Arar spent nearly a year in a Syrian jail, where he alleges he was regularly tortured. He was released and returned to Canada in October 2003. In February 2004 the Canadian government invoked a Commission of Inquiry headed by Associate Chief Justice of Ontario Dennis O'Connor to investigate and report on the actions of Canadian officials in the case. In September 2006 O'Connor released his report exonerating Arar and affirming that he had no links to any terrorist activity. The report also determined that Arar had been tortured in Syria. After months of negotiations with his legal counsel, in January 2007 the federal government of Stephen Harper issued a formal apology to Arar and agreed to a \$10.5 million settlement, with another \$1.0 million to cover legal fees. However, the United States refused to acknowledge any wrongdoing in the Arar case, or to cooperate with Canadian officials during the inquiry. Arar remains on a "watch list" in the United States for suspected involvement with terrorists organizations. Since January 2004 Arar's lawyers have been before American courts seeking compensatory and punitive damages for violations of his civil, constitutional, and international human rights.

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## 2. INTELLIGENCE COLLECTION IN CANADA'S IMMIGRATION SYSTEM

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Canada's immigration system is governed principally by two federal government bureaucracies: Citizenship and Immigration Canada (CIC) and the Canadian Border Services Agency (CBSA). Until 2003 CIC was responsible for intelligence and law enforcement for dealing with immigration matters, but control of these functions now rests with CBSA, which was created that year through a realignment of CIC with Canada Customs. CBSA falls under the jurisdiction of Public Safety Canada, which was itself created in 2003 to centralize five agencies and departments dealing with national security matters, including the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS).

The Canadian Border Services Agency employs more than 13,000 people, over 7,000 of whom are uniformed officers staffing 1,200 points of service across Canada and 39 international posts. Border control occurs at 119 crossings with the United States and 13 international airports. CBSA also operates at Canada's largest maritime ports, select rail depots, and major mail-processing centers. With respect to legislative authorities it administers and enforces over ninety acts of Parliament, federal and provincial government regulations, and international agreements.<sup>4</sup> Immigration intelligence units within CBSA gather, analyze, and disseminate intelligence collected from a wide range of operations both in Canada and abroad by partner agencies. For example, it works with a number of law enforcement and intelligence partners in the United States in international joint-management teams that police the border in fourteen different regions (Sokolsky 2004–5, 48). Focus is on border security: primarily threats to visitor, refugee, and citizenship programs within Canada immigration's system. In this capacity CBSA works with a number of other Canadian intelligence services, including the CSIS, the RCMP, and the Criminal Intelligence Service of Canada (CISC), as well as provincial, regional, and municipal police forces. CBSA is part of the Integrated National Security Assessment Center (INSAC), which was created in 2004 to coordinate efforts of law enforcement and security agencies in Canada.

The CBSA Immigration Intelligence structure is centered on the National Headquarters (NHQ) branch in Ottawa, with regional units throughout Canada and Migratory Integrity Officers (MIO) working at diplomatic posts abroad. All work to determine the admissibility of persons seeking admission to Canada and the legality of non-citizens remaining in the country. The network is also designed to assist Canadian visa officers working overseas in the issuance of visas and permits to come to Canada. The NHQ Immigration Intelligence Branch consists of three main components, all working as part of its Tactical Intelligence Division: the Modern War

.....<sup>4</sup> Canada Border Services Agency website, <http://www.cbsa-asfc.gc.ca>, accessed November 2008.  
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Crimes Unit, the Security Review Unit, and the Organized Crime Unit. Through these units, NHQ provides all direction and support on matters dealing with terrorism, war crimes and crimes against humanity, organized crime, and illegal migration. As well, it is responsible for document security and fraud detection: providing training, bulletins, and other intelligence to partners within Canada and abroad. NHQ also handles most intra- and inter-governmental intelligence sharing, as well as decision making on policies and program development. Regional units are responsible for field operations and anti-fraud detection throughout Canada, most focused on major urban centers such as Toronto, Vancouver, and Montreal.

Migratory Integrity Officers work in select international locations where populations, transport routings, and criminal syndicates relevant to illegal immigration operate. They deal extensively with local immigration, intelligence, and law enforcement agencies as well as international airlines. Their primary function is the interdiction of persons and documents involved in illegal migration. As vital as the MIO function on the “front line” of border security is, there are only forty-five positions staffed abroad. Nonetheless, they have been successful in curbing the flow of illegal migrants to Canada: by the government’s account, up to 72 percent—or 6,400 people—of known traffic in 2003.<sup>5</sup>

CBSA officers at Canada’s ports of entry collect intelligence on a variety of issues every day. In addition to dealing with the traveling public at large, including legitimate Canadian citizens, residents, visitors, and immigrants to the country, CBSA handles a wide array of cases in which Canadian immigration law is violated. These include persons who come to Canada to live, work, or study without proper legal authority; who misrepresent themselves at the port of entry with respect to identity or purpose; who attempt to enter the country with serious criminal histories; and refugee claimants, often lacking valid identity documents. Many cases in this spectrum—and particularly the trafficking of some refugee claimants—involve criminal and, occasionally, terrorist syndicates. Collecting intelligence on the patterns of such arrivals is essential, and one of the most important functions CBSA front-line officers perform. This includes establishing from where the persons being trafficked originate, by what transportation networks they came to Canada, what travel documents were used, and what contacts they have in the country. Examinations at the port of entry help to elicit such information, as do person and baggage searches. Frequently, intelligence is also gathered from members of the traveling public, those awaiting trafficked persons, airlines, other Canadian government agencies, foreign governments, and open-source material.

Canada Border Services Agency is also a key provider and consumer of intelligence through its partnerships within the Interdepartmental Operations Group (IOG). Formed in 2003, it brings CBSA together with the Department of Justice and the RCMP to investigate cases under Canada’s Crimes against Humanity and War Crimes Act. The IOG helps to coordinate the prosecution and extradition of

<sup>5</sup> Canada Border Services Agency website, <http://www.cbsa-asfc.gc.ca>, accessed November 2008. ....

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individuals tried in Canada for such offences and liaises with foreign governments involved in any cases. CBSA is responsible for applying appropriate legislation under the Immigration and Refugee Protection Act (IRPA) or the Citizenship Act. The Resource and Information Management Center in CBSA's Modern War Crimes Unit provides intelligence to internal and external partners. It maintains a large open-source library with materials drawn from government reports, non-government organizations (NGOs), newspapers, magazines, academic journals and proceedings, and a variety of scholarly publications dealing with human rights in numerous historical and contemporary contexts.<sup>6</sup>

The Center also develops and maintains the Modern War Crimes System: an open-source inventory of people, issues, events, and organizations of interest to intelligence and law enforcement agencies. Analysts, such as those within the Visitor Information Transmission (VIT) unit, specialize on individual programs in the immigration system as well as specific geographic regions, with input and direction from the Modern War Crimes Unit in Ottawa. The information is made available to CBSA officers in Canada and MIOs serving abroad to assist them in their screening of persons seeking to enter Canada. There are presently five regional war-crimes units in Canada responsible for screening persons coming to Canada for possible war-crimes violations. The majority of these cases involve refugee claimants who typically arrive in the country without valid documentation. Enforcement falls within the scope of CBSA's legislative mandates, principally under IRPA, through which war-crimes violators in Canada are prosecuted. The handling of cases involving war crimes is determined by its Intelligence Coordination and Research Division. In instances where further investigation or deliberation is required the RCMP and Department of Justice assist. In some cases intelligence is contributed by or shared with CSIS. The Intelligence Coordination and Research Division is in many respects the central intelligence point for CBSA. In addition to disseminating intelligence and providing training for all agency staff, it also liaises with other Canadian government departments and foreign partners.

### 3. PROBLEMS AT CANADA'S BORDERS

The reality for many who have worked on the intelligence and enforcement front inside Canada's immigration system is simple: there is a serious need for reform. The problems are many. Front-line decisions made by CBSA officers at the borders have often been negated by duty managers, as well as by adjudicators and the courts, based solely on personal beliefs—not within the context of legal interpretations or reasonable doubt. At Toronto's Lester B. Pearson International Airport, for

.....<sup>6</sup> Department of Justice Canada website, <http://canada.justice.gc.ca/eng/pi/wc-cg/oms-ams.html>, accessed November 2008.  
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example, some immigration supervisors have gone as far as ordering their crews not to report or detain anyone. This is also common practice at local enforcement offices, such as the Greater Toronto Enforcement Center (GTEC), the largest one in Canada. Management periodically “reminds” officers that detention facilities are scarce and that the economic costs are too high. They also privately chastise some officers for writing too many enforcement reports. Some managers have even taken it upon themselves to adjudicate cases before any hearings could be held, releasing persons detained under law by front-line officers shortly after their arrival at holding facilities.

Such inner workings speak to a fundamental problem of the system. Management and staff have generally dismal relations. Far from being unified in any approach to their work, front-line officers and managers often resent one another. In addition to the normal personal conflicts and pressures of any workplace, there is the problem of rank, experience, and philosophy. For example, duty managers at Pearson Airport do not always have the most experience. In fact, in the late 1990s many front-line immigration supervisors were hired without any practical immigration experience. Some were taken from other government departments, while others were hired directly off the street through competitions. The result was that crews at Canada’s busiest international airport were led by people with little training or understanding of the job. At higher management levels the same trend has continued, ultimately producing a bureaucratic hierarchy that seldom reflects knowledge or expertise and—at best—is mired in mediocrity.

Compounding matters is the fact that few professional incentives exist for the front-line officer. Pay is relatively low, especially when factoring in the stress of quickly rotating shifts and the often very confrontational nature of the job. Promotion is based exclusively on performance in job competitions, which usually stress theoretical knowledge over practical experience. Practical experience is in fact often a disincentive. Officers who are recognized for their skills, good judgment, and strong work ethic usually have far greater workloads. They are expected to chaperone new officers, handle the most sensitive or difficult cases, and compensate for those who work at a bare minimum of efficiency. There are no financial or professional inducements, and no official recognition from managers. Even strong team bonds with co-workers are considered dangerous in management’s efforts to break up “cliques.” The end result is that the best officers tend to quickly burn out, seek other employment, or—worst of all—become cynical and jaded bureaucrats.

Immigration intelligence and enforcement is also undermined by a lack of training, equipment, and exposure to the work of other security agencies. Basic training of CBSA officers is nine weeks long, but heavily focused on customs matters rather than immigration. In-depth investigation training—interview skills, document analysis, and intelligence debriefings—exists in short supply. Officers are left to their own devices to gain an understanding of patterns and developments in international relations, current affairs, national histories, and cross-cultural issues. ....  
 Equipment, such as ultraviolet lights and microscopes used in the detection of .....



fraudulent documents, is often even scarcer than training. Access to new technologies and improved information databases remains limited.

The 2003 realignment of federal agencies and departments that created CBSA was supposed to remedy these shortcomings. However, the merger of Canada Customs and Canada Immigration at the border has been confused, leaving many officers, particularly on the immigration side, unclear as to their mandate. Front-line CBSA officers staffing the “primary inspection line,” or PIL, focus principally on goods and baggage, a consequence of having former Canada Customs officials running CBSA. Most officers receive precious little training on immigration matters, yet they ask questions as immigration officers in the initial examination of all passengers. They have the authority to grant admission to foreign nationals depending on their applications for entry, and otherwise *may* refer persons to a secondary examination by CBSA immigration officers. The process is not mandatory. In fact when compared to the numbers of people who are admitted at the PIL, those subject to immigration examinations are few.

The problems with this system are enormous. First, given the high volume of persons on any international or trans-border flight, PIL officers cannot realistically spend much time on passengers. The average examination consists of only a few basic questions, a computer check, and the decision to refer for secondary examinations—usually no more than two or three minutes. Without adequate training on what to look for with respect to immigration issues, frequently CBSA officers admit persons into Canada without much consideration. Notorious in this respect is CBSA’s spring and summer hiring of university students under the Public Service Commission’s job-creation programs. After just a few days of rudimentary training, these students become Canada’s front-line defense. At the height of summer, when international travel is at its peak, it is commonplace to see at Canada’s major international airports twenty-one-year-olds with no real understanding or experience guarding the gates. The issue is fiscal, calculated in terms of “person hours” needed to manage PIL, which in turn gives life to budgets, staffing requirements, and—ultimately—bureaucratic power.

Secondly, the reality of border security and immigration matters almost entirely eludes the Canadian public. Even well-educated people have gross misunderstandings about the system. Media accounts of high-profile cases are often strewn with factual errors. They carelessly toss out words like “arrest,” “detained,” and “deportation,” despite the fact that such terminologies have specific legal and administrative meanings, and regardless if the case actually involved such procedures. Moreover, seldom is the proverbial “other side” given. While a depiction of government bungling or the avaricious nature of its officials is quite common, few stories ask hard questions about the person involved: were the grounds for their incarceration valid? Is this person a terrorist? The government itself is also responsible for such misinformation. Bound by Canadian privacy laws, and lacking an effective media-relations wing, the government is purely reactive. It seldom attempts to present another side to an argument, and instead is perceived as inept by Canadians already disenchanted with government bureaucracy.

Indeed, most Canadians know nothing of what transpires at their nation's borders. Many think that people arriving in Canada without proper identification are immediately sent back, or imprisoned in "camps" until hearings can be held. Few understand the division of legal responsibilities, or the actual structure of government departments and processes. Even fewer appreciate the fact that the vast majority of illegal arrivals in Canada are released into the country after only very cursory examinations. They are shocked to find out that Canada's example of detention "camps" is the low-security Toronto Immigration Holding Center on Rexdale Boulevard in Etobicoke, the former *Heritage Inn* hotel, capable of holding no more than 120 people.

The same naïveté is demonstrated when it comes to the very definition of "refugees." The word conjures up images of hollow-eyed, starving masses, or desperate victims of war-torn countries. Sadly, that reality of course exists, and some of the people coming to Canada most certainly meet the definition. Unfortunately, a great number do not. Instead, they are nothing more than economic migrants seeking opportunities in a better country. While understandable, this is not, and realistically cannot be, a determinant of any country's immigration system. If it were, there would be no system of which to speak. National policies and concerns would be invalidated, and the migration of people totally unchecked. The vernacular is important. To those working within the system, there is a distinct difference between "refugees" and "refugee claimants." The former are recognized and processed overseas by Canadian officials. The latter term describes someone coming to Canada to pursue a refugee claim. It makes no presumption of validity, and, under law, is governed by specific restrictions. However, refugee advocates, the media, and refugee claimants themselves make no such distinction. They use the emotionally charged term "refugees" despite any legal specifics. The result is that people are defined as "refugees" regardless of the veracity of the claims. In the world of public opinion, this is a noticeable and effective device (Collacott 2006).

In many respects the basic logistics of traveling to Canada undermine claims to refugee status under international and national definitions. Rather than seeking to avail oneself of the protection of the *first* state to which they flee, as prescribed by the Geneva conventions on refugee protection, people coming to Canada have, by virtue of air traffic patterns, usually come through one or more other nations. Many have in fact resided, often legally, in a third country for a considerable period. While few would admit to this, officers at Canada's borders routinely find in their possession documents, papers, receipts, photographs, and other evidence suggesting a long sojourn outside the alleged country of persecution before coming to Canada. On a relatively frequent basis, officials seize valid passports and identity documents issued by Germany, Sweden, Denmark, and other democratic countries en route to legitimate holders who have just made refugee claims in Canada against third countries. Dramatizing the point further, in 2001, Canada received a total of nearly thirty-seven thousand refugee claimants, of which thirteen thousand crossed over from the United States (Andreas and Bierkstekter 2003, 31). Officers derisively refer

to those from the United States as “refugee shoppers.”<sup>7</sup> Furthermore, many refugee claimants file only after having been in Canada for months, even years without any legal status.

Claimants also arrive with clearly dubious stories. Very few have any pertinent documentation to support their claims. More revealing is the fact that many have in their possession other claims that were successfully pursued in Canada, the immigration equivalent of cheat-sheets. Many cannot accurately account for timelines, known events pertinent to their alleged persecution, or the very basic political or economic dynamics of their country of origin. Under examination, many refugee claimants often concede the implausibility of their stated claims. Officers and critics of the system are convinced that it was precisely the frequency of such revelations that ultimately led to the “streamlining” of refugee claimant examinations at the border, a procedure which under the previous Act (1976) replaced more formal and adversarial interviews upon arrival with “refugee kits” that the person can fill out at their leisure upon release in preparation for determination hearings. The relative ease of making a refugee claim frustrates other immigrants who have come to Canada legally. After years of hard work, waiting, being evaluated, and then making the transition to a new Canadian life, these people see refugee claimants as queue jumpers. The negative perception of refugee claimants held by many Canadians—new and old—is accentuated with revelations that under the old Act there were in effect no limits to the number of times a person could claim asylum (Collacott 2006). It was commonplace for officers to encounter individuals returning to Canada for their second or third refugee claim—despite being refused, ordered away, and obviously having little problem re-entering or leaving the alleged country of persecution.

Originally, Bill C-11 was designed to curb these abuses. Introducing the bill for a second reading in the House of Commons in 2001, then–Minister of Immigration Elinor Caplan argued that the changes would be “tough” while maintaining Canada’s humanitarian obligations. New penalties were to be created to deal with trafficking in humans. Grounds for detention and the criteria for establishing inadmissibility were to be clarified. She placed heavy emphasis on barring serious criminals, human-rights violators, and terrorists. The refugee determination system was to be “streamlined” by consolidating steps, and restricting multiple claims. Acts of fraud, misrepresentation, and defaults on sponsorships were also to be targeted. Caplan

<sup>7</sup> For example, in 2001 the office of the United Nations High Commissioner for Refugees (UNHCR) reported that of the approximate 817,000 Tamil asylum seekers in the world, roughly half (400,000) were in Canada, making Canada the largest recipient of Tamil refugee claimants in the world. Canada Immigration reported that of these the majority first presented themselves at the land borders, coming from the United States. Despite this fact, the number of Tamil claimants in the US for 2001 was just 40,000—lending much credibility to the idea of refugee “shopping” (Citizenship and Immigration Canada *Weekly Intelligence Digest*, June 2001). In light of this situation, in December 2002 Canada and the United States signed a bilateral agreement recognizing one another as “safe havens” for asylum seekers in an attempt to eliminate cross-border refugee claims.

stressed that by closing the “back door,” Canada’s immigration system could open the “front door,” and more effectively focus on attracting highly skilled workers, reunifying families, and protecting genuine refugees.<sup>8</sup>

Criticism against the bill was swift. Before the House of Commons special immigration committee, representatives from the Canadian Bar Association and Amnesty International denounced the proposed changes on the grounds that Immigration Officers would have extraordinary powers. Some lawyers suggested they would become like a “secret police.”<sup>9</sup> The Canadian Bar Association vehemently opposed what it referred to as the “sweeping, unrestricted and draconian powers of arrest and compelled examination” that would be granted officers. It also attacked the proposed elimination of the Immigration Appeal Division, restrictions on leave to appeal for judicial review by the Federal Court on decisions made by visa officers overseas, and special authorities of the Minister in cases involving serious criminality or alleged terrorism.<sup>10</sup> The Canadian Council of Refugees warned that the bill had a “heavy enforcement emphasis,” and “promotes negative stereotypes about refugees and immigrants and caters to xenophobia and racism within Canadian society.” The Council also opposed the use of the term “foreign national” to describe non-citizens on the grounds that it was pejorative. At the heart of these criticisms were concerns that the number of hearings and appeals for refugee claimants in Canada would be dramatically reduced.<sup>11</sup> Criticism was also aimed at plans for expanded detention facilities in Canada, measures to expedite the removal of failed claimants, and increased interdiction efforts against the use of fraudulent documents and human trafficking, the latter two which are seen by advocates as the only means for refugees to come to Canada.

A significantly reformed bill ultimately passed. The Immigration and Refugee Protection Act in fact created a new layer of appeals through the Refugee Appeal Division, which automatically reviews failed claims within IRB structure. Refugee claimants are now technically barred from making multiple applications, but may come back to Canada and apply for a “risk assessment” determination to remain rather than face immediate and permanent removal. Far from being regarded as “foreign nationals,” permanent residents of Canada are now entitled to virtually all the rights of citizenship. Under current port-of-entry policy guidelines, residents are not supposed to be examined by officers at all—despite the fact that under law their right to enter Canada is conditional, and regardless of the fact that much abuse

<sup>8</sup> Speech by Elinor Caplan, Minister of Immigration, in the House of Commons, February 2001, at [http://www.parl.gc.ca/37/1/parlbus/chambers/house/debates/021\\_2001](http://www.parl.gc.ca/37/1/parlbus/chambers/house/debates/021_2001), accessed November 2003.

<sup>9</sup> “Immigration Law Reform Bill,” Public Broadcasting Service at <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/canadalaw.html>, accessed November 2003.

<sup>10</sup> Letter to Parliamentary Committee on Citizenship and Immigration and MPs, Canadian Bar Association at [http://www.cba.org/CBA/News/2001\\_releases/PrintHtml.asp?DocId=45404](http://www.cba.org/CBA/News/2001_releases/PrintHtml.asp?DocId=45404), accessed November 2003.

<sup>11</sup> Canadian Council of Refugees Bill C-11 Brief, March 25, 2001, at <http://www.web.net/~ccr/c11summ.htm>, accessed November 2003.

of Canadian resident status exists. Moreover, and contrary to its critics, Bill C-11 has not translated into a dramatic expansion of officers' powers. Their authorities over refugee claimants in particular remain largely the same as they were under the old legislation. There are no in-depth examinations at the ports of entry, no immediate removals, and no increased detentions.

Having removed the investigative structure from the front lines, refugee determination in Canada basically relies on the honor system. Refugee claimants are asked a series of statutory questions, such as "have you ever been a member of your country's government?" "have you ever supported any organization that supports the overthrow of any government?" and "are you a member of any political group that condones the use of violence?" While fingerprinting and photographing improperly documented arrivals in Canada is routine, little can be done right away to check the person's background, let alone his or her intentions. Confronting a habitually underfunded and over-taxed determination system, the reality is that thorough background checks are not always conducted on individuals coming to Canada.

The ultimate determination of one's claim rests with the IRB, an organization widely discredited on a number of fronts. First, membership on the IRB is by political appointment, thus bringing in the specter of patronage, and, equally, political influence.<sup>12</sup> Secondly, appointments are seldom made on the basis of experience with any dimension of immigration law, or law in general. Very few with front-line experience ever sit on the board. Third, procedural rules of the IRB inherently favor the refugee claimant given the emphasis on forms they filled out in the absence of an adversarial system. Departmental mandates often undermine the work of government hearings' officers, and they are routinely encouraged to concede cases from certain countries regardless of veracity. Negative decisions by the IRB are disproportionately rare, a fact no doubt at the center of Canada's uniquely high refugee-claimant acceptance rate, which has consistently stood as the proportionally highest in the world for many years. Even more notoriously liberal countries like Norway accept proportionately fewer claims, based primarily on a much more rigorous investigative approach to determination. For example, in 2000 Canada recognized the refugee claims of 1,600 Pakistanis and 2,000 Sri Lankans, while the rest of the world combined recognized just 500 (Stoffman 2002, 26–27). For some this demonstrates Canada's generosity and deep humanitarian concerns. For others it represents just how poorly the IRB functions. Even in simple terms, the structure of IRB decision-making is skewed in favor of acceptance. Negative decisions quite logically require legal justification in preparation for appeals and subsequent court proceedings. Until fairly recently, positive decisions required nothing more than an affirmation.

Worse than just government bungling, these problems are in effect security threats. No system is perfect. A weak system is, however, more vulnerable. Assertions

<sup>12</sup> Ibid. This is a point of rare convergence between critics and defenders of the refugee-determination system. For example, in response to proposed changes under Bill C-11 the Canadian Council of Refugees welcomed the consolidation of IRB hearings, but called for a more "transparent, professional and accountable" appointment process.

that no terrorists exist in Canada, and that there are no connections between immigration and terrorism, are equally as dangerous as the belief that all foreigners are dangerous. The fact that Canada has not endured any attacks, and that the events of 9/11 lacked a clear Canadian connection, is not a vindication of the system. Intelligence gathered by Canada's law enforcement and security agencies is, of course, highly classified and politically volatile. However, there is abundant, unclassified evidence to suggest the presence of subversive groups in Canada. Multicultural populations in cities like Toronto are rather obvious potential sources of fundraising, safe haven, and recruitment for criminal and terrorist organizations. It is profoundly naïve to assume that whereas other centers like New York, London, and Paris have witnessed exactly such trends, Canada would somehow be different. Moreover, Canada's liberal immigration controls reinforce the likelihood of these patterns. With respect to refugee determination in particular, this is a particularly salient argument. A higher rate of overall acceptance is, in and of itself, a factor in attracting subversive organizations. Moreover, according to government figures between 1990 and 2000 there were over 320,000 refugee claims at airport ports of entry alone. Nearly 58,000 of these people possessed fraudulent documents or no documents at all.<sup>13</sup>

An excellent illustration of the security problem with respect to refugee determination can be seen with the *Liberation Tigers of Tamil Eelam* (LTTE). Since the early 1980s Canada has taken in many Tamils fleeing Sri Lanka's brutal civil war. In fact, Canada quickly developed one of the largest Tamil communities in the world. However, amongst those refugees seeking asylum were members of the LTTE and other groups widely condemned by the international community for their brutality, including against fellow Tamils. The LTTE established numerous front organizations in Canadian Tamil communities and built extensive criminal enterprises—involved in extortion, weapons procurement, drug and human smuggling, and acts of serious violence, including murder, against rival gang members (Bell 2004, 47–83). After many years of debate and politicking, in April 2006 the government of Stephen Harper officially named the LTTE a “listed entity” under anti-terrorism legislation and the Criminal Code. The decision followed the lead of many other countries, and effectively recognized the LTTE as a national security threat to Canada.

Even before the official ban there were attempts to break up LTTE operations in Canada. However, deporting suspected members of the organization proved extremely difficult. Unveiled in 2001, *Project 1050* was a widely publicized, multi-agency operation to round-up Canada's Tamil gangs. After years of investigations, in October of that year police and immigration officers arrested 51 individuals associated with two rival organizations: *AK Kannan* (or the AKK), and the *Valvettithurai* (or VVT). The AKK—named after the AK-47 assault rifle—is a branch of the *People's Liberation Organization of Tamil Eelam Liberation*, while the VVT started as an offshoot of the LTTE before quickly morphing into a criminal syndicate based in

<sup>13</sup> Citizenship and Immigration Canada Intelligence and Interdiction Report 1990–2001, July 2001.



Toronto. Most if not all of those arrested had come to Canada by making refugee claims. All of them had serious criminal histories in Canada. Many were connected directly to parent organizations in Sri Lanka. Yet despite the evidence, all but ten made it back on to Canadian streets. Witnesses against the accused were too afraid to come forward. Testimony against their clients was discredited by lawyers because it came from members of rival gangs. Immigration judges at the IRB over-turned detention orders, convinced that despite their records the accused posed no danger to the Canadian public. Fully two years after *Project 1050* was implemented only two individuals were removed from Canada. One returned in October 2003. The rest pursued numerous appeals both to the IRB and the Federal Court of Canada (*National Post*, November 22, 2003) to prevent their removal or incarceration.

While some point out that cases like this demonstrate Canada's commitment to due process and a fair judiciary, others consider it a classic example of an immigration system gone awry. In the spring and summer of 2009 such concerns were accentuated when Canada, and more specifically Toronto, became the centre of international Tamil protests in response to the Sri Lankan government's aggressive offensive to finish the LTTE off militarily. For several weeks demonstrators blocked major venues and roads in Toronto, many unabashedly waving the LTTE's notorious flag: seen by other Canadians as a terrorist symbol. Rumors abounded that the protests were at least to some degree orchestrated by senior LTTE officials operating in Canada. Moreover, maintaining sophisticated networks within Canadian Tamil communities, the LTTE may still have some political life left. With large numbers of increasingly frustrated and desperate supporters to draw from, it is not unreasonable to harbor concerns about the continuing national security threats posed by the LTTE or its successors in Canada.

Critics point out that in addition to being a possible security problem, Canada's refugee determination system has undermined the nation's best intentions. Concordia University political science professor Stephen Gallagher characterized the system as "dysfunctional" in a 2002 report to the Canadian Institute of International Affairs. Former IRB official William Bauer described current policies as a "massive corruption of the noble concept of political asylum." At the heart of their criticisms is the fact that by focusing on refugee determination at the nation's borders, Canada has neglected humanitarian responsibilities abroad. Whereas in the late 1980s Canada resettled over two hundred thousand people deemed to be conventional refugees overseas, it currently deals on average annually with just thirteen thousand displaced by war, famine, and natural disaster (Stoffman 2002, 27). With such calamities showing no sign of decline in the twenty-first century, the explanation can only lie with government policy.

Many critics blame in the first instance the law itself, and in particular the April 1985 *Singh* decision by the Supreme Court of Canada. The case involved seven appellants, six of whom claimed association with the *Akali Dal* Party—a Sikh organization fighting for the independence of the Punjab from India. Four of the six Indian ..... nationals were refused admission at the border. One eluded an immigration inquiry ..... and was subject to arrest. Another was admitted as a visitor. The seventh appellant, .....



a Guyanese national, had gained admission on fraudulent documents and was arrested for working illegally. All seven subsequently claimed refugee status and were denied. Their applications to the Immigration Appeal Board for re-determination were also refused, as were their requests for judicial review by the Federal Court of Appeal. The Supreme Court, however, intervened on behalf of the appellants. It ruled that *any* person in Canada was entitled to protection under the Canadian Charter of Rights and Freedoms—not just its citizens or legal residents—and that all refugee claimants were thus entitled to oral hearings of their cases (See Marrocco and Goslett 2003; Campbell 2000, 72–75).

Critics believe that the *Singh* decision has encouraged waves of refugee claims that to any reasonable observer would be considered entirely bogus. They point to claims from people against a host of countries where state persecution has never been established by any international humanitarian agency or independent observer: for example, Hungary, Czech Republic, or Costa Rica. Some critics rightly note that under Canadian law refugee claims from the United States, the United Kingdom, Germany, and other democratic countries are also entertained. In fact, throughout much of 2008 nationals of North and South America made up the majority of refugee claims made at Canadian ports. While representation from Haiti, Colombia, or even Mexico may be understood, CBSA officers noted substantial numbers from Saint Vincent, the Grenadines, and St. Lucia, none considered widely as “refugee-producing countries.” Tying up the legal system, and costing Canadians untold expenses, such claims have done little to enhance the credibility of Canada’s refugee determination process.

From the vantage point of intelligence and law enforcement, another important issue is the connection between refugee claimants and international criminal or terrorist organizations. The business of people smuggling is one of the world’s largest illicit enterprises, and the groups that deal in it reads like a who’s-who of crime (McFarlane 2001, 199–208). With UN estimates that fifty million people are on the move as refugees and refugee claimants, very clearly the market for business is good. Canada is a prime destination for persons smuggled here through the use of fraudulent documents at significant, often overwhelming costs. Depending on the case, the logistics of air travel, and the type of documents used, these criminal syndicates can charge anywhere from several thousand dollars (US) to tens of thousands. Very often, they exact their price by forcing their client to work for them or their associates upon arrival in the target country, usually in other criminal operations like prostitution and the drug trade.

While Canada has joined other countries in joint efforts to interdict the trafficking of people, it is an almost insurmountable problem so long as refugee determination remains so encompassing. Many people fail to realize that in coming to Canada—as opposed seeking determination overseas in their country—refugee claimants are inextricably linked to this deplorable criminal syndicate. Operations by groups in many countries are quite sophisticated, and usually involve an elaborate array of document forgers, agents, safe houses, money launderers, and other tools of the trade. There are even classes for would-be refugees where they are taught



what questions to expect by the immigration officials upon their arrival and how to respond. Some criminal syndicates even have reach within foreign governments, from which they illegally obtain authentic passports and other documents. Others stage break-ins at consular posts overseas to steal legitimate visas. Most groups also target Canadian passports, among the most sought after in the world by virtue of their few visa restrictions in foreign countries and the relative ease with which holders can cross borders. With little recognition of the problem and weak punishments for offenders, the business is unlikely to stop soon.

Having worked closely with immigration lawyers and refugee advocates in preparing the IRPA, the government has not introduced any particular effective changes to the existing order. Critics argue that in fact the new Act propagates bureaucratic backlogs, makes it harder to get rid of people deemed undesirable, and generally undermines any enforcement mandates (Stoffman 2002, 171–72). Officers within the system share the same dim view. After the initial shock of 9/11, and concerns about Canada's security vulnerabilities, it's back to normal. Defenders of the system, and perhaps many Canadians in general, would no doubt oppose any radical reform. Liberal sensibilities are frayed by suggestions that laws and policies be changed to give officers more power, that the number of rights and appeals within the system be limited, or that Canada work more closely with the United States on border security. They would be horrified to even hear recommendations for more detention facilities, and a more adversarial approach to things like refugee determination. However, at issue in this respect is knowledge, a better understanding of what actually takes place. Canadians are not unequivocally naïve or apathetic. They should be allowed through open public discourse to learn the realities of what goes on with Canada's border security. All sides should be heard—no matter how disagreeable the sound. As Canada embarks on a new century it faces a changing national identity and consciousness, at the heart of which lies immigration. This is both the dilemma and the reality for all Canadians.

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