

REFUGEE LAWYERS' ASSOCIATION OF ONTARIO

Media release

For immediate release
March 30, 2010

The Government is Sacrificing Fairness and Canada's Human Rights Obligations For Expediency, Putting Legitimate Refugees At Risk

TORONTO - The Refugee Lawyers' Association of Ontario (RLA) today expressed concern over aspects of the Government's proposed legislation to reform the Immigration and Refugee Protection Act, Bill C-11.

The RLA shares the Minister's interest in clearing delays and backlogs in the processing of refugee claims and has in the past expressed our concern over long delays for refugee claimants to have their hearings. However, we reject the notion that these problems can be resolved at the expense of the rights of refugees and those in need of Canada's compassion. Some of the reforms proposed in this bill violate the basic guiding principles of impartiality and equal access to justice. We reiterate our position that the backlog and delays are largely due to the failure of the government to make appointments to the Immigration and Refugee Board so that it was drastically below its full complement for almost two years.

We welcome the implementation of the Refugee Appeal Division (RAD), which has simply been on hold for the past eight years despite having been approved by Parliament in 2001. "But the legislation allows for the denial of access to the RAD by some groups, which is unacceptable," said Geraldine MacDonald, President of the RLA. "We are seriously concerned that these proposed restrictions will result in some genuine refugees being denied the protection they deserve." It is arbitrary for government officials to choose selected countries and groups that will be prohibited from the right to appeal. Arbitrary justice is not justice at all.

The RLA absolutely opposes the notion of "safe country" lists that deny access to justice for selected countries and classes of persons. While the measure is understandably attractive from an administrative perspective, protection from persecution and torture transcends administrative convenience.

It is especially problematic to deny access to an appeal when first level decisions will be made by civil servants. While there are undoubtedly many good and impartial civil servants in Canada, they will not have the necessary institutional independence in order to render refugee protection decisions that may contradict the political interests or convictions of the government of the day.

Canada's existing Immigration and Refugee Board, functioning as an independent arms-length tribunal, has been lauded the world over as a model of fair refugee decision-making. Having refugee decisions made by employees of the Public Service calls into question the impartiality of the reconstituted Refugee Protection Division and its

separation from political considerations of the government in power. “Political considerations or the sensitivities of countries that the government sees as allies or trading partners, or with whom the government seeks to foster such relationships, have no place in decisions on whether persons deserve protection in Canada, “ states Ms. MacDonald. Removing the independence of the decision makers will destroy one of the things Canadians cherish about our refugee system – its fairness.

The RLA understands the need to have a hearing held in a reasonable time, but the legislated deadlines that are set out in the Bill will in many cases result in unfairness. As lawyers with experience representing claimants new to the country, we see many claimants who are uneducated about the refugee process and many who suffer from trauma and other feelings that inhibit their ability to deal with a bureaucratic process. Therefore, we see serious problems for such claimants with an interview that must be held within eight days, leaving no time to seek legal advice and assistance, and a hearing legislated to be held within 60 days.

Most refugee claimants do not arrive in Canada ready to properly present their claims and they need time to gather evidence. These hearings involve life-and-death decisions for many refugees, and the government should not be so willing to restrict claimants’ ability to present their claims in the interest of expediency.

We are also concerned with the provisions that close off access to the extraordinary remedy of an application for permanent residence on humanitarian and compassionate grounds in the first year after a refugee claim is refused. This can cause harm to some of the most vulnerable persons, who may not meet the requirements for protection under s. 96 and 97 of the Act, but nevertheless face extreme hardship if deported.

We note that the bill was drafted in secret, with consultation only with selected individuals and groups. This lack of broad consultation, in defiance of past practice, means that the Bill should be subjected to public scrutiny. We call on the House of Commons Committee on Citizenship and Immigration to conduct public hearings, to allow sufficient time for submissions by interested parties and to amend the Bill as required to meet the concerns of Canadians and the requirements of the Canadian Charter of Rights and Freedoms and international law.

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The Refugee Lawyers’ Association of Ontario is a non-profit organization of more than 200 lawyers who practice refugee and immigration law.

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