

**AN ANALYSIS OF BILL C-86:
CANADA'S REFUGEE STATUS
DETERMINATION PROCESS**

BY

STEVEN DUMAS

**A Thesis
Submitted to the Faculty of Graduate Studies
in Partial Fulfillment of the Requirements
for the Degree of**

MASTER OF ARTS

**Department of Sociology
University of Manitoba
Winnipeg, Manitoba**

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INTRODUCTION

In June of 1992, the federal government announced new legislation to overhaul the Canadian immigration system including the refugee system. The government maintained that Bill C-86 upheld the basic humanitarian, social, and economic goals of the 1976 Immigration Act, but that the environment in which to achieve these goals had changed dramatically (Immigration Canada, 1992, p.13). Bernard Valcourt, the former Minister of Employment and Immigration said that the 1990's began with "frequent, unpredictable, large-scale movements of people" with more people trying to circumvent normal immigration procedures including criminals and terrorists (Ibid). At the same time, Canada's need for a highly-skilled work force is now greater than ever before. Finally, public support for immigration depends more than ever upon effective management to bring economic and social benefits to all regions of Canada. The objectives for the changes are to improve services and cut costs (Immigration Canada, 1992, p.2).

The previous government blamed the difficulties of the refugee system on several factors. Natural disasters and political upheaval in other countries, and Canada's well known generosity towards refugees produced large numbers of people seeking refuge unpredictably. The system was never designed to handle such large waves of people. Consequently, the department became backlogged with cases.

Canada cannot and should not throw open the doors to all refugees of the world. To do so would encourage abuse of the system and create many social problems. The concern here is that Bill C-86 curbs the numbers of certain classes of legitimate refugees seeking status in Canada. This study will examine the development of Bill C-86 to analyze what the state's specific interests are in refugee policy, how refugees will be affected by the new policies and the potential for lobby groups to change the legislation.

THEORY

Many studies on refugee law lack theoretical guidelines which are essential to analyze the development and consequences of any legislation. The problems in refugee law are simply presented as a series of reactions by the government to control immigration rather than as the result of, and in relation to, the economic structure. Few studies ground refugee and immigration policy in sociological theory.

Studies on early immigration law focus on racism as the main restriction to Canada. Later, when racist provisions were largely removed from the process, ideology was presented as the major selection criteria. Economic self-interest was historically the only common determinant of the types of people admitted. Many studies document the major changes occurring throughout Canadian history, but they do not analyze what interests are served by placing restrictions on refugees.

This study will use theory constructed by Hawkins and the dual systems model of socialist feminism by Ursel to analyze the amendments to the refugee determination process of the Immigration Act. Hawkins's theory focuses on the relationship between the state, non-governmental associations, and interest groups in formulating immigration policy. Dual systems theory provides a broad perspective of immigration policy in relation to patriarchal economic dynamics. Together, these theories explain what interests exist in immigration law, whose interests are served, and the potential for lobby groups to change legislation.

Hawkins

Hawkins (1972) claims that the Department of Immigration has historically been plagued by a lack of focus, organization, and direction. Further, there has been a lack of enthusiasm by civil servants and various ministers to introduce major policy initiatives. The results have been that the department was one of the last to have clear, well thought out policies and an effective, organized bureaucracy. Also, there was not a process for public input or consultation until the 1978 Immigration Act was implemented.

Likewise, voluntary groups (non-governmental organizations) interested in immigration policy have generated little leadership or direction (Hawkins, 1972, p.294). Most of these organizations provide moral support and back-up services to immigrants. Others offer counselling, disseminate information to immigrants, and

consult with government officials on the needs and difficulties of refugees and immigrants. Unlike the United States and Australia, where voluntary associations coordinate activities to reach certain objectives, Canadian voluntary groups essentially work separately. These groups have established little communication either vertically with Ottawa or horizontally with each other.

This state of affairs has resulted in unequal treatment for different ethnic groups (Hawkins, 1972, p.298-300). For example, it has been better to be a Jewish immigrant. Agencies which serve this ethnic group are well organized and well funded. In terms of religious affiliation, it has been better to belong to a smaller church or community than a larger one. Smaller groups are easier to assist.

The volunteer sector's lack of organization has limited its power to influence legislation. Adelman (1982, p.108) notes that churches, historically the most important group in assisting immigrants and refugees, had little influence in developing the 1978 Immigration Act. Out of the 126 organizations submitting briefs to the Special Joint Committee created for this legislation, 45 were church related and 50 out of 200 additional briefs were also church related. Only 5 important ecumenical groups were eventually allowed to appear in front of the committee examining the legislation. Although there has been much public interest in refugee policy, volunteer groups have had little influence over policy formulation.

In the post war era, the influence of non-governmental

associations and other interested groups individuals was limited by the fact that there was little debate on immigration and refugee policy in Parliament (Hawkins, 1989, p.248). This lack of debate was due to the fact that immigration policy had been supported by all three major political parties. Hawkins (1989, p.252) says that where such groups have exerted influence over legislation, it has lain more in the perception of their views by politicians than in any direct impact. Prior to Prime Minister Mulroney's governments, opposition parties have raised few objections to major policy developments. Without support in the House of Commons, it is difficult for issues to be raised and seriously considered.

Some hypotheses regarding the influence of various types of groups upon Bill C-86 may be developed. According to Hawkins, non-governmental organizations (NGO's) will likely exhibit signs of disorganization during the legislative hearings of Bill C-86. More specifically, they will likely profess difficulties in responding to the legislation within allotted time. Because these groups lack vertical and horizontal communication and effective direction and leadership, they will not coalesce with other similar NGO's. Hence, they will not develop a unified approach on specific components of the legislation and they will not have much influence on the final draft of the legislation. Influence is defined as the ability to initiate major changes to any section of Bill C-86: access, process, or criminal inadmissibility and security enforcement sections.

By contrast, legal associations/consultants do possess

effective organization and communication. They have coalesced into a few organizations which represent almost all Canadian immigration lawyers. As such, they have pooled their resources and they have generated a unified direction and strong leadership. Some other interested parties such as the Canadian Labour Congress and various business associations are also well organized and directed. Consequently, they will be more effective than NGO's in changing aspects of the law that they consider important.

After the 1978 Immigration Act was implemented, however, circumstances have changed considerably. The Act established a mandatory consultation process on immigration levels and major policy initiatives. Interest groups and individuals, including business associations and labour unions, are invited to present briefs which are heard by Parliamentary Committees. As well, opposition parties have raised concerns about refugee and immigration law more frequently. Further, there is greater organization and communication among refugee advocates in the 80's and 90's than in previous decades. Matas (1989, p.259), for instance, says that the Canadian Council for Refugees (CCR), an umbrella group which represents 80 refugee assistance organizations across the country, serves as an active vehicle for social change. Compared to the government, the skills and resources of non-governmental organizations (NGO's) are limited. Matas asserts that change can occur, however, if non-governmental organizations (NGO's) work with international organizations such as the U.N. to pressure governments to modify legislation.

Ursel

Dual systems theory examines the relationship between production and reproduction. Dual systems theory examines patriarchy and focuses on the reproduction of human life in relation to the economic mode of production. That is, production will have an impact upon reproduction and reproduction will affect production. Dual systems theory regards immigration as a component of reproduction.

Ursel (1992) has reformulated the relationship between patriarchy, production, and reproduction. Reproduction is defined as the production of human life involving procreation, socialization, and daily maintenance. Reproduction exists in relation to the sphere of production; they are co-determinative and each sphere has its own dynamics and set of social relations. Production may vary in time considerably whereas the reproductive cycle is generational. There are three modes of reproduction in this model: communal patriarchy, familial patriarchy, and social patriarchy. This study will focus on social patriarchy which involves the rise of the welfare state. Immigration and refugee policy will be regarded as a patriarchal tool to ensure control over reproduction.

Ursel contends that the state has historically enforced patriarchy; a set of social relations designed to control reproduction. The state has pursued patriarchy as a tool to reconcile any imbalances or conflicts between production and reproduction. For example, conditions during the post-war period

were characterized by full production, full employment, and a strong organized-labour movement. At this time, capital faced a labour shortage while the family felt the imbalance between production and reproduction as an income shortage (Ursel, 1992, p.230-1). This imbalance was mediated with the introduction of the welfare state. During the post-war period, social expenditures (i.e family allowances, medicare etc.) rose 1000%. Meanwhile, capital was assisted by the state with tax rebates, a liberal open-door immigration policy, legislation facilitating the employment of women, and changes to the Labour Code (Ursel, 1992, p.231-2).

The evolution of the welfare state has itself led to further problems. Because capital only pays for the labour it consumes and makes no provisions for the costs of producing the future labour supply; the state, largely through personal taxation, has compensated for much of the costs of reproduction. Capital's short term interest in securing profits has resulted in the social wage being insufficient to sustain the labour force. Thus, the state intervenes with social programs. The costs of paying for reproduction have contributed to the state's current "fiscal crisis".

These problems are magnified by the fact that in the global economy, capital may easily move to the sources of cheap labour. Women in North America produce small quantities of highly paid, highly skilled, educated labour whereas women in the Third World produce large quantities of low paid, unskilled, uneducated labour. There is a compelling incentive for capital to flee in

search of such labour. Ursel claims that the rise of multinational corporations has increased the portability of capital to move to nations with cheap labour. "Capital's labour supply outgrew the boundaries of state control" (Ursel, 1992, p.290). The state, however, will try to resolve this difficulty with social legislation.

Ursel suggests that the state will now likely introduce social legislation in a two-pronged approach to resolve this current imbalance: immigration of adult productive labour and attempts at privatization of reproductive costs to the family (Ursel, 1992, p.296). The first approach displaces the costs of reproduction to the donor state. The second approach simply transfers reproductive costs to the Canadian family. Thus, Ursel predicts a continued role for patriarchy in dealing with future imbalances.

Some hypotheses may be made about the objectives and effects of refugee policy in Bill C-86 using this theory of patriarchy. Suppositions may also be made regarding the influence of various groups to modify the law. The state will introduce new legislation and modify existing legislation such as the Immigration Act to generate high levels of production and surplus value extraction. Thus, immigration levels for adult productive labour will be increased. This is relatively easy for the government to accomplish with independent immigrants. This class of immigrants is already chosen according to their contribution to the labour market. Increasing productive labour levels is quite explicit in the government's five year immigration plan

(Immigration Canada, 1991, p.3). For instance, in 1991 immigration levels were expected to be 220,000 people. From 1992-1995, annual immigration is expected to be 250,000 people, or 1% of population.

Canada's international agreements, however, declare that refugees are to be selected only in terms of their need for asylum. The state's options for selecting skilled refugees over unskilled refugees are limited within the framework of present international obligations. The state has little control over this aspect of reproduction. To offset reproductive costs within the parameters of international law, legislation will likely enhance the government's control over who may come to Canada. That is, the state will exert major control over accessibility provisions of refugee policy because they have the most significant and direct impact upon reproduction. Once refugees access the system, they attain legal rights.

There is evidence that the state has been successful in this regard (Economic Council of Canada, 1991, p.75-93). Labour from Third World countries comprise a higher proportion of university-educated persons than does the Canadian-born population and participation in the labour force is higher for immigrants than for Canadian-born persons. Refugees find work very quickly and are unemployed for very short periods. The proportion of recent immigrants on welfare is extremely small and similar to native-born Canadians. In terms of the wage gap, there is little discrimination against immigrants except for those from East Asia and the Caribbean. There is incentive for the state to increase

productive labour.

In terms of procedural changes, the state will likely make the process more restrictive for many refugees. There is precedent for these types of restrictions. The battle over oral hearings is one such example. The government would not grant oral hearings until The Supreme Court of Canada ruled that they were necessary to ensure that refugees received fair hearings (Singh vs. The Minister of Employment and Immigration). The government also restricts refugees' power over the process by denying them appeals based on the merits of their claims. Extrapolating from Ursel's theory, this aspect of the law is less important to the state than is accessibility to the system. These sections do not significantly affect reproduction as do others.

With regards to criminal inadmissibility and security enforcement, Ursel's theory would predict that those clauses which strongly affect reproduction will not be subject to modification. For instance, the Immigration Act restricts criminals and other security risks from claiming asylum in Canada. These clauses have a significant impact upon reproduction because they also affect who may or may not access the system. Thus, the impetus is to expand criminal restrictions and not avail them to major changes. These clauses, however, do not bear upon reproduction as directly as do accessibility sections.

Any modifications proposed by non-governmental organizations (NGO's), legal associations/consultants, other interested groups

and individuals and the media that deviate from the state's control over reproduction will be rejected. Considering that most of these groups (NGO's, legal associations, and many interested groups and individuals) want to maintain and possibly expand the rights of refugees, most of their objections will be disregarded. Modifications that may coincide with the state's goals will presumably be accepted. An exception to this hypothesis is that capital may have a greater measure of influence upon the government. This conclusion is based on the fact that they are actively involved in the sphere of production.

Hawkins reveals how Members of Parliament have traditionally been silent on most refugee policy changes. She also explains how the state has implemented legislation with minimal input from various groups and individuals. Dual systems theory explains how the state designs legislation in relation to the economic mode of production. It demonstrates how refugee law will be affected within this dynamic. This study will examine the specific changes to Canada's refugee status determination process. It will analyze how Bill C-86 affects refugees and determine the potential for various groups to change this Bill by lobbying the Parliamentary Committee examining the Bill.

There are four large groups involved in the formation of Bill C-86: several different types of legal associations/consultants, non-governmental organizations (NGO's) and various other interested groups and individuals (see appendix #1) and the media. Legal associations/consultants comprise lawyers and professional immigration consultants. Non-governmental

organizations consist of church organizations, ethnic associations, immigration and refugee advocates, and human rights agencies. Other interested groups and individuals consist of various government departments, health agencies, business and labour groups.

Legal associations/consultants will attempt to enhance or sustain their financial and legal interests. Lawyers and consultants who work on behalf of refugees will likely pursue laws which provide refugees with guaranteed access to legal counsel. Restrictive laws which limit access, shorten the refugee status determination process, and pose greater inadmissibility restrictions are disadvantageous to immigration lawyers. Although legal associations/consultants are well organized, their goals are inimical to state objectives to control the reproduction of human life in Canadian society. Hence, they will likely have little influence upon the legislation.

Non-governmental organizations endeavour to sustain and expand the legal rights of refugees. Several of these groups help refugees settle into Canada by offering moral support and professional services. Many members of these groups are family members of people seeking access to Canada. Many were refugees or immigrants who went through the immigration system (Hawkins, 1972, p.292-4). These organizations have not traditionally been influential in modifying legislation. As well, their objectives are antithetical to greater state control over this facet of reproduction.

Business groups want to secure their financial interests. They want to ensure that new regulations do not negatively affect their economic interests. The state facilitates such interests. Thus, their material objectives combined with their high degree of coordination and ample resources suggest that they will have a notable influence upon the legislation.

Labour is concerned that new policies may affect their interests. They are well organized and possess clear leadership. On the other hand, they want to limit the state's control over reproduction. State control of reproduction may interfere with labour's relationship to production. That is, greater state control can reduce labour's bargaining power by altering the size and composition of the population. Thus, the goals of the state and labour are antagonistic. Labour will likely have minor influence on the Bill.

The media plays a dual role in the formation of the law. The press will report on stories of interest to Canadians. These reports may reveal imbalances between production and reproduction. As such, it may resound the concerns of the state. On the other hand, the media will also reflect the concerns of legal associations/consultants, non-governmental organizations and various other interested groups and individuals. Their influence will depend, in part, upon the types of groups interviewed. Ultimately, the influence of the media will depend upon whether stories coincide with the state's attempts to manage reproduction. All parties involved will try to manipulate the influence of the media.

This third major revision of the Immigration Act in only four years should be perceived as another attempt by the state to gain greater control over the reproductive process to assist production. The government maintains that the amendments to the refugee system have been made in the spirit of humanitarianism. The new system is supposed to deter false claims and be more efficient for genuine refugees. Consequently, the changes are supposed to benefit both refugees and Canadian society. This study will analyze the actions of the state using theory constructed by Hawkins and Ursel.

METHOD

This study will use content analysis to examine the new refugee status determination process. It is chosen for this study because the legislation was implemented only a year and a half ago and all of the consequences of the Bill will not be realized for some time. Using content analysis to examine the actual legislation and statements made by non-governmental organizations, legal associations, interest groups and individuals and the press, will give an accurate account of the ramifications of the legislation and the ability of these groups to change laws by lobbying the Parliamentary Committee. This method has several other benefits (Babbie, 1986, p.281-2). It is economical in terms of time and money and it may be easily repeated if necessary. It is also possible to examine processes over a

long period of time using content analysis. The most significant problem with this method is that it is difficult to record data.

The data will comprise a comparison of certain sections of the Immigration Act with various drafts of Bill C-86, An Act to Amend the Immigration Act and other Acts in Consequence thereof and public briefs of the Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-86 (see appendix #1). The concerns of the various types of groups on the three categories of the legislation will be tabulated. This study will determine the categories of Bill C-86 that were of interest and concern to legal associations/consultants, NGO's and others. Then, the changes to the legislation will be ascertained. The objective is search for a correlation between the legal changes demanded by various groups and individuals and the policies ultimately enacted to measure the influence of these groups.

There will also be newspaper analysis to supplement this study. Non-governmental organizations, legal associations and interest groups may have had little influence upon the formation of refugee policy. It may be that newspaper articles influenced Members of Parliament when they revised the Immigration Act. Newspaper analysis has been chosen over other forms of media investigation because it is also relatively inexpensive, efficient in terms of time, and it is assumed that Members of Parliament

use this form of media to gauge public sentiment.

The papers are chosen from Toronto (The Globe and Mail), Montreal (The Gazette), and Vancouver (The Sun). These papers were chosen because these areas receive the majority of Canada's immigrants and refugees. Thus, it is assumed that there will be significant public interest in immigration matters and a great number of articles on the amendments to the Immigration Act. The period to be studied will be from June 16th, when Bill C-86 was first introduced, until November 5th, when the Parliamentary Committee concluded its hearings.

All stories, except for letters to the editor, will be examined in terms of changes to access to the Refugee Division, procedural modifications and criminal exclusions and security enforcement. The content of each story will be evaluated as being critical, positive or neutral of the amendments proposed by Bill C-86. The measure of influence by the media will be determined by the actual changes made to the different sections of Bill C-86. For instance, if there is significant criticism of particular sections of Bill C-86 and these sections are subsequently modified to specifically address such concerns and problems, then a significant amount of influence may be said to exist. If the converse is true, then the media will not be considered influential in modifying the law.

The potential exists for the concerns of various groups to parallel those found in the media. Thus, there may be a

difficulty in determining causality. That is, it may be difficult to ascertain which group(s) were responsible for particular changes. These limitations will be addressed should this problem manifest itself in the study.

This analysis will demonstrate how effective the press is in modifying legislation. Newspaper stories will likely expose some of the problems between reproduction and production such as the current fiscal predicament of the welfare state, the inefficiencies of refugee policy, the tremendous cost of the entire immigration system, and the accessibility of criminals to Canadian society.

Parts of three particular categories of the legislation will be studied: accessibility provisions, process changes and criminal admissibility measures. These three categories comprise all clauses of the legislation. This body of data will clearly illustrate the state's interests by comparing the provisions that were introduced and those ultimately passed. It will also assess the ability of each of the groups to modify each section of the law. Consequently, it will clarify which groups' interests are being advanced in the Statutes of Canada. The comparisons will indicate the criteria being used to select refugees.

Access to the system will affect who may be given refugee status and how many will be accepted as refugees. Universal access to the process is not evident in Bill C-86 as the federal government has expanded its mandate over who is to be considered in the determination process. New

processing regulations also affect the reproductive sphere. These changes may have a major impact upon refugees as they give the government more control over who will be chosen. Finally, the new criminal and security provisions shall be examined as they can also give the government expanded powers to select and restrict certain refugees.

The objectives of this study are to discern specifically how the state tries to modify refugee law to further control over reproduction. It will also examine the impact Bill C-86 has on refugees. Finally, it will determine the influence of legal associations/consultants, non-governmental organizations, other interested parties, and the newspaper media to change the legislation during the Parliamentary process.

The state tries to attain greater control over reproduction through refugee policy to act on behalf of capital. This is particularly apparent when the state mediates conflicts between reproduction and production that arise. Attaining greater control over refugee selection is just one way that the government can maintain harmony between the two spheres. With greater control over selection, the government can offset social expenditures and increase the skills of the domestic labour force.

The possibility exists, however, that the government does not have total control over the reproductive process. Perhaps lobbyists have a substantial impact upon the provisions in Bill C-86. This aspect will also be

considered. If the government accommodates major demands made by various groups such as refugee and immigration advocates and others to make the system more accessible for refugees, then refugee law cannot be considered a part of the government's firm grasp to control reproduction. Few major concessions in refugee policy will be regarded as rigid control over this element of reproduction.

HISTORY OF REFUGEE POLICY

RACISM

Matas (1989) argues that Canada's refugee determination procedures have always been extremely unfair to legitimate refugees. He believes that it is over-generous to speak of racism in Canadian immigration policy including refugee policy. Rather, we should speak of racism as Canada's immigration policy (1989, p.27).

Hawkins (1972 and 1989) also describes Canadian immigration law as being explicitly racist and selective throughout its history. She notes (1989, p.23-5) that Canada's laws have excluded many groups for several reasons. For one, various governments of the day wanted to keep the West "Canadian" and ensure the retention of British institutions. As well, many governments worried about how some immigrants would adapt to the harsh climate. Finally, Canadian politicians wanted to maintain racial harmony and

avoid many of the conflicts which occurred in the United States. Discrimination in immigration law existed either through complete exclusion of certain classes or by making it virtually impossible for some to immigrate to this country. For instance, upon entrance Asians had to pay considerable head taxes which rapidly increased in size (Hawkins, 1989, p.19). In 1885 they had to pay a tax of \$50.00, in 1900 they paid \$100.00, and in 1903 it was increased to \$300.00. Hawkins points out that this phase of Canadian history (pre WWII) was so racially biased that Chinese and East Indians had no vote until 1947 and the Japanese did not gain the right to franchise until 1949 (Hawkins, 1989, p.23-5).

During the early years of the century, the Minister of the Interior, Clifford Sifton, sought out immigrants who could be useful in settling the Canadian West. At one point he stated:

I think that a stalwart peasant in sheepskin coat born on the soil, whose forefathers have been farmers for 10 generations, with a stout wife and half a dozen children, is good quality (Hawkins, 1989, p.6).

Obviously, "good quality" immigrants were those who could most easily adapt to the difficult climate and cultivate the land. Stewart (1976, p.41) explains that he was referring specifically to Ukrainians, Austro-Hungarians, and Central Europeans. He says:

When it was smart to bring in foreigners to battle the bush, to open the West, or to take on the sort of jobs Canadians shunned, the welcome mat went out; when racism, unemployment, or dogma suggested a change, the mat was whisked away and the door slammed; and when, as now, world opinion demanded the appearance of tolerance and the reality of restrictions, well, our governments have been able to oblige (Stewart, 1976, p.34).

Canada's refugee policy neglects the needs of refugees who flee persecution as it has always been based mainly on race and the economic benefits that can accrue to the host country rather than the needs of the refugee (Dirks 1976). This was certainly true for the first refugees that came to this country around the turn of the last century. Loyalists, refugee slaves, Mennonites, Doukhobors, and a second wave of Mennonites were all admitted due to their ability to work the soil and benefit the economy or provide political power to the government of the day.

It can be said then that the two major group settlements in western Canada between Confederation and the beginning of the century contained people who had fled their homeland for reasons of persecution. Canada accepted these thousands primarily because the land had to be settled and made productive. Humanitarian considerations must be thought of as playing a secondary role (Dirks, 1976, p.34).

During Sifton's era, Canada accepted as many immigrants as was realistically possible. But, after Sifton's term as Minister of the Interior, his successor, Frank Oliver, placed greater restrictions on the massive influx of settlers. He terminated block settlements and barred anyone who could not engage in full time physical labour. These circumstances in combination with restrictive emigration

policies in Europe resulted in a "virtual drying up of recognizable refugee movements to Canada" (Dirks, 1976, p.36). Immigration to Canada reached an all time low between 1915 and 1919. In this latter year, the Canadian government passed an order-in-council preventing the admission of:

immigrants, deemed undesirable owing to their customs, modes of living, and methods of holding property, and because of their probable inability to become readily assimilated and to assume the duties and responsibilities of Canadian citizenship within a reasonable length of time after entry (Dirks, 1976, p.37).

Canada's immigration policy was particularly restrictive during the depression in the 1930's. This era would give the government the opportunity to complete a process of restrictions which would continue well into the next few decades. "It [immigration policy] had been as ethnically selective as it was economically self-serving" (Abella and Troper, 1982, p.5). When the economy suffered from a lack of workers, immigrants were selected from an ethnic hierarchy. At the top were British and American immigrants, in the middle were Northern Europeans and Central Europeans, and at the bottom were Jews, Blacks, and Orientals (Ibid).

When F.C. Blair became the Director of Immigration, the administration of Prime Minister King essentially barred Jews from entering Canada prior to and during World War II. When Hitler became Chancellor of Germany, waves of violence against Jewish people prompted thousands to seek refuge in

other countries. As a result, refugee organizations around the world began lobbying for more liberal immigration policies. Finally, in 1938, the United States proposed a conference at Evian France to deal with the refugee question. Canada attended reluctantly and made no promises to accept more refugees than already indicated in the immigration plan.

During the twelve years of Nazi persecution, the United States admitted over 200,000 Jewish refugees; Britain, 70,000; Argentina, 50,000; Brazil, 27,000; China, 25,000; and Bolivia and Chile each took 14,000 (Malarek, 1987, p.14). Canada admitted only 5,000 (Ibid). Further, in 1939, nine hundred and seven German Jews sought refuge in any Western country that would take them. All countries, including Canada, refused them entrance and they set sail back to Europe. Many died in the gas chambers and crematoria. This journey is referred to as the "voyage of the damned" (Abella and Troper, 1982, p.64).

Many Canadian government officials handling immigration affairs were anti-semitic. Robinson, an assistant to O.D. Skelton said "we don't want too many Jews, but in the present circumstances particularly, we don't want to say so" (Abella and Troper, 1982, p.46). Even Prime Minister King asserted anti-semitic views. He wrote, "If accepting Jewish refugees could threaten Canada's national cohesion, could there not be merit in Hitler's fears about Jews in Germany?" (Abella and Troper, 1982, p.36). Immigration policy would

not be liberalized until the post-war era.

Calliste (1991) argues Canadian immigration policy has not only been based on racism, but on patriarchal and class biases as well. She notes that from 1955 to 1967 most people from the Caribbean were admitted under the domestic scheme. These individuals would provide domestic service in Canada to fulfil the conditions of their immigrant application. Blacks were admitted as a cheap pool of labour only when Europeans could not fulfil this demand. Black women were often stereotyped as being promiscuous, single parents who were likely to become a public burden. Caribbean women were only accepted into Canada when the economy required this type of labour and when Canadian economic interests abroad were threatened. The biases underlying Canadian immigration policy are characterized as originating from uneven development and exploitation of peripheral nations by the centre.

Thus, in keeping with immigration policy, Canada's refugee policy was mainly racist and selective when it was convenient for the government. When the government wanted to develop the West early in the century, the influx of refugees reached very high levels. The state used immigration to facilitate production. When the economy was weak and fewer immigrants sought to live on the land in preference to residing in urban areas, restrictions were placed upon their admission. In 1910, the government admitted 286,839 immigrants. By 1913, this figure was

increased to 400,870 (Immigration Statistics, 1990, p.3).

Although Canada has come a long way in eliminating racism within immigration law due to the introduction of the points system in 1967, Taylor (1991) warns that this should not be misconstrued as meaning that racism is totally absent in Canadian policy-making. In fact, he suggests that implicit racism may have increased and that even the points system may still promote racism as it favours European immigrants (Ibid, p.4). Furthermore, he states that "characterizing the (immigration points system) reform as successful should not be taken to mean that the problems of racism in refugee policy, for example, have been solved" (Taylor, 1992, p.2).

IDEOLOGY

Canada's refugee policy was explicitly racist until the mid-sixties (Taylor, 1991, p.5). This changed when various governments introduced legal measures which significantly diminished racism. Among these developments was the signing of both the 1951 Convention Relating to the Status of Refugees and its Protocol by the Canadian government in 1969. These agreements dictate that Canada protect those who have fled persecution and now reside within Canada. Canada is obligated not to return refugees back to the persecution they fled (the principle of non-refoulement). These obligations were also reaffirmed in Canada's first

clearly defined refugee policy; the 1976 Immigration Act (Hawkins, 1989, p.174-5). Previously, all refugees were admitted on an ad hoc basis. The Act defines who may be admitted as a refugee, the rights applicants enjoy, and the legal process (which became independent from other types of immigration processes) all applicants must follow.

Although there have been many changes which have liberalized refugee law, discrimination has continued. For instance, during some of Canada's largest influxes of refugees (from Czechoslovakia and Uganda) those who held ideological beliefs at variance with the majority encountered difficulties entering Canada (Dirks, 1976, p.229). Ottawa, however, has historically admitted those who could be of value to the nation due to their political, economic, and social characteristics (Dirks, 1976, p.225). Although the government has been rather successful in eliminating racism from the law, this is not to say that a completely universal approach has been reached. In contemporary refugee policy, Dirks (1976, p.258) suggests that people are still likely to be discriminated on the basis of ideological beliefs.

Whitaker (1987, p.9) believes that Canada's immigration and refugee criteria is based on political and ideological biases. These biases emanated from the Cold War era when security concerns were paramount. Other biases such as racism were cloaked under such "national security" concerns. While the United States was quite explicit about barring

certain people and ideas during the Cold War, Canada quietly delivered a similar policy of restricting visitors, immigrants, and refugees holding Communist views.

This double standard in policy was carried out through Canada's major influxes of refugees from Czechoslovakia, Hungary, Uganda, Chile, and Indo-China (Whitaker, 1987, p.254-5). In general, anti-communist refugees from communist countries held a distinct advantage over those from other nations. Even when Canada's security system was branding all immigrants from communist nations as major risks, Canada put forth extra effort in accepting high profile officials into the country after the Czech coup of 1948. The Hungarian revolt of 1956 actually marked a watershed in Canadian immigration policy because Canada received the largest number of refugees in relation to its population (Whitaker, 1987, p. 85). In 1972, Canada accepted a large number of expelled Ugandans who held British passports. During this crisis, Canada once again skimmed off the most economically beneficial people; "the cream of the crop" (Whitaker, 1987, p.255). Dirks says that "in terms of age and educational qualifications, the Ugandan Asians comprised one of the most desirable groups ever to gain admittance to Canada" (cited in Whitaker, 1987, p.255) These individuals easily adapted into Canadian society and there was no ethnic backlash against them. The same was true for the Indo-Chinese refugees who fled in 1979. Canada accepted 60,000 people in only two years. This represented

one-fifth of all refugees admitted in the first thirty-five years in the post-war era. Moreover, 54 per cent of these refugees were privately sponsored. Whitaker states that racism appears to have dwindled but "political colour-blindness was another matter". In 1976 Canada set the first explicit guidelines on how to deal with refugees. They were previously dealt with on an ad hoc basis.

Canada withdrew the welcome mat from those fleeing Chile after the overthrow of the democratically elected Communist government in 1973. This case was different than others because people from Chile were exactly the kind of people security screening was supposed to restrict. "No special waivers were granted and no relaxation of normal standards was initiated" (Whitaker, 1987, p.258). Further, no Canadian officials were sent until three months after the coup and security screenings were very slow even after they arrived. Observers considered Canada's record as one of the worst of all Western countries. Whitaker claims that Canada has created two unequal classes of refugees: those in special designated classes who flee Communist countries and those who come from right-wing dictatorships. Dirks also states that refugees from Latin America do not enjoy the same prompt, liberal treatment as Eastern Europeans (1984, p.297).

In comparison to other countries, Canada's refugee record actually fares quite well. In fact, Canada received the U.N. Nansen Medal in 1986 for humanitarian treatment of

refugees (Whitaker, 1987, p.287). This was the first time the award was given to a whole nation. Nevertheless, contemporary immigration policy is described by Whitaker as a return to a second Cold War. During the Reagan years, Canada continued a policy that restricted people from right-wing regimes including those that lived illegally in the United States and headed north when tougher immigration and labour laws were imposed. Consequently, in the 1980's, there was a different kind of refugee coming to Canada. Fewer had come from the Iron Curtain or the Bamboo curtain, many came from Central and Latin America where wars backed by the United States had led to large displacements of people.

Gilad (1990, p.124-5) also found that ideological discrimination is prevalent in contemporary Canadian refugee policy. Anti-communist refugees from communist nations who may be economic migrants enjoy a special advantage over refugees from right-wing dictatorships in Central America. Anti-Communist refugees have been able to find refuge in Canada because they are "ideologically correct" and they often have specialized skills lacking in Canada which would allow them to meet the independent immigrant point system.

It could be argued that the selection of refugees abroad to come to Canada as immigrants is accepted willingly by the Canadian public because refugees chosen by Canada will not be a continuing drain on the public purse. It may be this factor which permits us to act on our "humanitarian" instincts (Gilad, 1990, p.126).

Anti-Communist refugees are not only highly-skilled, but they are also generally similar in racial and cultural terms. In addition, accepting anti-Communists contrasts the persecution in such countries with the fairness of Canada's legal system.

Ideological discrimination of this sort is possible because of laws which give the Minister a great deal of discretion. One of these is the creation of designated classes. Originally, Canadian officials found that the definition employed to select refugees was overly restrictive and did not allow some "common sense" refugees to meet the legal criteria (Gilad, 1990, p.124). Legally, a 'Convention refugee' means any person who:

- (a) by a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 - (i) is outside the country of his nationality and is unable or, by reason of such fear, is willing to avail himself of the protection of the country, or
 - (ii) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of such fear, is unwilling to return to that country (cited in Gilad, 1990, p.123).

Some people did not meet the individual and persecution components of the legal definition. These groups included Indochinese people from Vietnam, Cambodia, and Laos; the self-exiled from Eastern Europe except from Yugoslavia; and political prisoners and oppressed people which included those from El Salvador, Guatemala, Poland, and Chile. The

original idea behind the creation of this class was to allow persecuted people who could not meet refugee criteria to escape from their country. In practice, it gave the government another "legal" method to pick and choose the most desirable. For instance, highly skilled Eastern Europeans in designated classes do not have to prove persecution to come to Canada. Refugees from El Salvador and Guatemala who are also included in the designated classes category lose this status once they leave their homeland (Gilad, 1989, p.125-6).

CONTEMPORARY DIFFICULTIES-MISMANAGEMENT

The decade of the eighties found immigration officials dealing with a severe backlog of cases—a problem so serious that the department was reorganized in 1989 to specifically deal with this problem. In 1981, there were 3,450 claims awaiting conclusion. By 1983, this number jumped to 6,100 and in 1987 it was 25,000 (Young, 1991, p.2). In 1986, the backlog had become so large that the government had to initiate a thorough review of its operations and implement changes to alleviate the problem. The result was that amnesty (immigrant status) was granted to about 27,300 people who were able to demonstrate their ability to integrate into Canadian society (Economic Council of Canada, 1991, p.96). Although this action temporarily relieved the immediate situation, the number of backlogs continued to

rise quickly after 1986. By 1988, there were approximately 85,000 claims waiting to be processed and concluded (Ibid). On January 1, 1989, the government dealt with the large backlog by introducing Bill C-55 and Bill C-84, a new system of refugee determination which placed greater restrictions on people seeking refuge in this country.

THE PREVIOUS SYSTEM (BILL C-55)

This refugee determination system was controversial and it took 14 months to pass the House of Commons and the Senate (Young, 1991, p.3). It was controversial because it made claims more difficult to initiate. Previously, almost all claims were given the opportunity to be heard. Instead of being split into the Immigration Appeal Board (IAB) and the Refugee Status Advisory Committee (RSAC), the Immigration and Refugee Board (IRB) replaced both of these bodies (Ibid). The IRB was made independent and directly answerable to Parliament.

On the surface, this new system may appear to be just and equitable but in practice there were many features which continued to limit the entrance of certain classes of refugees. It had two stages (Economic Council of Canada, 1991, p.97). The first was a determination of whether claims were eligible to be examined by the refugee determination system and if so, whether or not it they were credible. People were claimed to be ineligible if they

already had refugee status in another country, if they arrived from relatively safe countries, if their claims were already rejected by Canada and they had not left the country by ninety days, and if they had serious criminal records (Ibid). If claims were rejected at this point then claimants could appeal the decision. If decisions were upheld, then refugees could attempt to be accepted under humanitarian and compassionate grounds. On the other hand, if claims were found to be credible, then they were moved on for full hearings before two IRB members. If accepted, then permanent status would be granted. If they were not accepted at this point, then successful appeals could still be made on humanitarian and compassionate grounds.

Canada's refugee determination system gave refugees access to documentation centres with claimants represented by counsel (Economic Council of Canada, 1991, p.99). As well, unanimity was not required for acceptance at either stage in the process; a simple majority vote was required. Unanimity was, however, required for the rejection of claims (Ibid). The rejection rate for claims was very low with less than 1 per cent having been considered ineligible in initial hearings in 1989. Overall acceptance rates, including initial and full hearings was 76 per cent in 1989 and 70 per cent in the first nine months of 1990 (Economic Council of Canada, 1991, p.100). The Economic Council of Canada attributed this figure to the large number of claims made, especially from countries with severe human rights

abuses and because of the large number making it to the full hearing (Ibid). Under the previous system, the overall acceptance rate was between 20-30 per cent.

Matas (1989) reveals many problems with this refugee determination process. He claims that refugee protection is accepted in principle, but denied in practice. "Governments say one thing about refugees and do another. This is not mere confusion, but calculated hypocrisy" (1989, p.18). Canada's refugee system has a great potential for mistakes and little potential to correct them. Matas provides eight reasons why mistakes are easy to make under Bill C-55 (1989, p.128-136).

Claimants are not allowed access to counsel at the first refugee interview by an immigration officer yet this testimony may be used for cross-examinations in hearings later. Any minor mistakes or discrepancies may put the claim in jeopardy. As well, the decision not to claim refugee status is irrevocable. Some claimants believe that claiming visitor's status and applying for refugee status later is a more successful approach than claiming refugee status immediately. Many refugees who flee government persecution are afraid to reveal their situation to immigration officials. Many fear that their testimony may be given to their own government and used against them.

Matas believes that the government has implemented a "hurry-up" environment in refugee law to deter potential claims. The first priority is to remove non-credible basis

claimants. Processing credible claims is a lower priority. The idea is to get quick, final decisions. Lawyers understand that decisions are almost impossible to overturn, yet they are forced to deal with claims very quickly. In addition, the right to a lawyer of choice is sometimes denied due to time limitations. Legal counsel must be ready to deal with the claim at any time set by the adjudicator. If a claimant is ordered removed from the country, legal counsel has only seventy-two hours to appeal. If a lawyer cannot properly prepare under these time constraints, the government will foist a lawyer upon the refugee.

Further, the burden of proof is on the claimant. The United Nations High Commission for Refugees (UNHCR) suggests that refugees be given the benefit of the doubt since few refugees have concrete evidence such as witnesses and documentation to prove their status. Canadian law, however, does not incorporate this recommendation even though Canada is a member of the UNHCR executive committee.

The implementation of adversarial proceedings also creates a greater potential for mistakes to occur. At the credible-basis hearing, the Minister's representative will cross-examine the claimant and try to successfully demonstrate that the claimant is actually not a refugee. The Minister's representative will try to uncover minor discrepancies in an attempt to weaken the credibility of the refugee. The adversarial nature of the proceedings makes it more difficult for the refugee to go through the full set of

hearings.

Judging a case based upon past cases also causes difficulties for refugee claimants. Government decision-makers are told to be suspicious of claims made by people coming from countries with high rejection rates. As such, cases are decided, in part, on the outcome of other cases rather than on the actual merits of the individual case.

The involvement of immigration adjudicators in the refugee process is also problematic. These individuals are not experts in the problems and conditions of other countries. They may also bring with them a bias from their experiences in the immigration department. These officials select immigrants based upon the skills, education, and work experience of applicants and may be more reluctant to allow refugees to stay in Canada if they do not meet immigration criteria.

Mistakes made by the Immigration and Refugee Board are difficult to rectify because there are also no appeals based on the merits of cases. If the Board concludes that claimants are not Convention refugees, then appeals may only examine whether people received fair hearings. If the correct procedure is not followed then the appeal may be successful. But refugees cannot use appeals to show that Immigration officials incorrectly evaluated claims.

The restrictions Canada has imposed on refugees is not simply a Canadian phenomenon but rather a global problem. Countries around the world compete with each other to

maintain restrictive policies. As such, few countries provide oral hearings for refugees to convince government officials of the gravity of their claim. Another manner in which this is done is to narrowly interpret the United Nations' definition of a refugee. Matas says that the technical definition of persecution does not apply to many refugees for several reasons (1989, p.41-3). For one, only individual persecution and not general persecution such as the bombing of a whole village during a civil war applies to refugees. As well, many countries are reluctant to apply refugee status to those who flee violence from ally or friendly states because it labels those states as human rights violators. Finally, there is a bias against temporary protection of refugees. Canada requires that refugees apply for landed immigrant status within 6 months or they are required to leave.

Malarek (1987) believes that there is now a "world refugee crisis" characterized by few nations willing to accept refugees. This crisis has emanated from a fear that an increase in immigration would be accompanied by an increase in crime, over-extended welfare budgets, and a deterioration of culture (1987, p.84). This crisis began after WWII when European nations had liberal and open refugee policies; displaced people were extended hearty welcomes because they did not pose a threat to host nations. Most refugees had similar cultures, religions, backgrounds, and skin colour to people in the host nation. During this

period of economic prosperity, Canada's need for a larger labour force gave the federal government the impetus to act upon humanitarian concerns and accept large numbers of refugees. When economies were flourishing, racism and discrimination were less pronounced, but when the demand for labour waned in the 1970's, moves against immigrants gathered force.

Now that there are more refugees from the Third World, there are greater differences between the language, religion and culture of refugees and the nations which accept them. At the same time, there has been an increase in economic migrants coming from the Third World. In the 1970's, Western Europe received approximately 15,000 to 20,000 refugee applications per year. In 1982, the number of applications reached 60,000 and a year later it was 80,000. In 1986, the number had risen to a startling 198,650 applications. The combined result of xenophobia and an incredible number of refugee claims being made has been that nations which accept refugees have been more reluctant to do so (Malarek, 1987, p.85). In 1985, France had an acceptance rate less than 40 per cent. In West Germany, the acceptance rate was only 16 per cent. In 1980, Switzerland accepted 90 per cent of all applicants but in 1986, this number was reduced to a mere 12 per cent. The dramatic reduction in the number of refugees accepted from countries around the world has created "the global refugee crisis".

According to Malarek, Canada played a major role in the global refugee crisis. Although the government has favoured increasing immigration levels, Malarek contends that policies are directed at "plugging the refugee flow". This has been accomplished by narrowly interpreting the United Nation's definition of a refugee, imposing visa requirements upon specific nationalities, and levying heavy fines upon airlines for improperly documenting people claiming to be refugees. These restrictions have been implemented to restrict the tide of unfounded refugee claims aided by immigration consultants and lawyers involved in forgery rings, and black-market scams. It was not until 1987 that charges were finally laid against such lawyers and consultants. Unfortunately, the action against such people has ultimately led to restrictions upon true refugees.

The unfortunate repercussion of these events [swift and firm action against phoney claims] is that genuine refugees - people fleeing war, vicious totalitarian regimes, civil calamities - were tarred with the same brush as the phoney refugee claimants (Malarek, 1987, p.xi).

The Canadian government used these events to place major restrictions on most refugees. This is partly why Malarek believes that "Canada's immigration system has become a fiasco" (1987, p.xii).

The only groups not discriminated against are those whose skills are in demand, have high levels of education, or can invest large sums of capital into the economy. The investor program, for instance, provides landed immigrant

status to those who have a personal net worth of \$500,000 and intend to invest at least \$250,000 to an investment project in Canada. Malarek says:

Critics argued that the Investor Program was tantamount to selling Canadian citizenship with the rich being the only potential buyers. They said that both the Investor and Entrepreneur Programs lack humanitarian concern, especially when there are so many deserving people that Canada should help (Malarek, 1987, p.227).

The heart of this problem, according to Malarek, is that Canada wants to pick refugees rather than let refugees pick Canada. Immigration officials visit various camps and tend to pick refugees who will not burden the economy. Thus, at times humanitarian considerations are less important than economic concerns. Whitaker has referred to this practice as picking the "cream of the camps" (1987, p.27).

Although this method of selection has resulted in Canada receiving many "quality" refugees rather than the so-called undesirables, it has contributed to many other problems. Malarek contends (1987, p.104) that with better access to air travel in the Third World, refugees who desperately wanted to leave camps came to Canada in greater numbers. Canada's refugee policy was not intended to deal with such numbers arriving in Canada. As well, the Supreme Court's 1985 ruling that the government offer oral hearings to refugees also created havoc in the immigration department. In effect, Canada's refugee determination process became more expensive and less efficient in handling claims.

Canada's Immigration Department is still able to place restrictions on refugees. Universal access to the system is denied and appeals of decisions are made only on a failure in law, fact, or natural justice and not on the merits of a case. Canada also requires persecuted individuals to apply for refugee status in a Canadian embassy in the country in which they live. Often there is no embassy and getting past security guards may be difficult where one exists. In such cases, lawyers are not present and there are no appeals. Finally, Malarek states that political patronage is used in the selection of officials who may not have immigration expertise and will make poor decisions.

THE COST OF REFUGEES

The backlogs in the refugee determination process in combination with short term solutions such as amnesty, have led some to believe that such schemes lead to new refugee claims making their way to Canada (Economic Council of Canada, 1991, p.97). Such a backlog has coincided with a significant amount of abuse. In 1986, the government initiated an administrative review which admitted 27,300 refugee claimants to become Canadians. Between 1986 to 1988 there was a surge of new arrivals and by the end of 1988, there were 85,000 cases waiting to be heard. "Visitors who are not genuine refugees may have applied for refugee status because 'they could remain in Canada as long as five years

until their cases were resolved'" (Ibid). Malarek, by contrast, states that in the eighties only ten per cent of claims were "manifestly unfounded" (1987, p.130).

Large backlogs hinder the entrance of legitimate refugees, help illegitimate applicants obtain status, and drain the resources of the department. In terms of the latter, the Immigration and Refugee Board (IRB) and the Canadian Employment and Immigration Commission (CEIC) spent \$83 million processing claims during the period from January 1, 1989 to March 31, 1990 (Economic Council of Canada, 1991, p.100). Furthermore, they spent \$105 million on the backlog cases and "there is reason to believe that this estimate will prove to be too low" (Ibid).

The provinces also allocate significant amount of resources on social services to refugees (Ibid, p.101). Quebec spent \$56 million on social assistance in 1989 while Ontario and British Columbia spent \$112 million and \$15 million respectively. The federal government also allocated \$73 million on social assistance to refugees and destitute immigrants in 1989 (Ibid). Overall, the two levels of governments spent over \$250 million on social assistance to refugees in 1989 and this figure does not include health costs and language training (Ibid). The Economic Council of Canada conservatively projects that if refugee claims were to increase annually at a rate of 10 per cent, annual expenditures would be at least \$650 million dollars by the year 2000 (1989 dollars) (Ibid).

The Economic Council of Canada asserts that the essential value immigrants' bring to Canada is in a scale economy (larger economy) (1991, p.21-36). When one considers the costs of the refugee determination system during a period of fiscal restraint, the continuation of such a system by the government is unlikely. The government has considered options to reduce the costs of the determination system and some of the amendments to the refugee determination process seem viable. Most of the amendments, however, are designed to curb the entrance of some legitimate refugees into Canada.

THE NEW SYSTEM (BILL C-86)

There are now further measures to cut costs in the determination of refugee claims (Immigration Canada, 1989, p.22-4). The most significant of these changes is that the first level hearings which screened only 5 per cent of claims no longer exists. Immigration Canada believes this change will have the effect of reducing both administrative and legal costs and reducing the time to conclude a claim. As well, the government has also invoked greater sanctions against those people and/or companies who violate the Immigration Act by aiding and abetting those who would illegally enter Canada. The government will also now require that those who do not have proper documentation, come from a prescribed country, or return to the country

from which they fled, will need approval from two members of the Immigration and Refugee Board during their hearing rather than just one. There will also be a number of other changes to speed landing procedures after a claim has been concluded and provide employment authorizations once their claim has been accepted. Family members will also be admitted in a refugee's claim for permanent residence. Finally, the government will also invoke more stringent procedures to remove those determined not to be Convention Refugees.

Bill C-86 should be considered as a patriarchal selective cost-cutting measure as opposed to a policy designed to meet Canada's international legal obligations - responsibilities that were signed into law by the Canadian government. Figure 1 (p.) summarizes the major changes made to the Immigrations Act. The new laws meet Canada's needs, not refugee's needs. That is, Bill C-86 legally fulfils Canada's obligations under the U.N. Convention, but it does not accede its intent.

Throughout the history of refugee law, governments have vigorously tried to control immigration law and maintain restrictions at the expense of humanitarianism. In Canada's earliest years, the government tried to recruit "stalwart peasants" who could develop the West. When the economy waned however, the influx of refugees was kept to a minimum even during the holocaust when the government had some knowledge of what was happening (Abella and Troper, 1982,

p.185-6). In 1939, the state admitted 16,994 immigrants and this figure was reduced to 7,576 by 1942. When the economies of the world were strong, Canada even accepted Caribbean women despite the stereotypes held about them.

The government's restrictions not only facilitated economic production, but they kept social unrest at a minimum. For instance, King would not allow many Jews into Canada because he believed that they would be a social disruption. Legitimization was enhanced by the acceptance of anti-communist refugees. Individuals who flee these nations contrast the problems in communist nations with those of Canada. Further, during the large Indo-Chinese movement there were few problems of integration and, in fact, a large number of Canadians sponsored refugees. Anti-communist refugees not only legitimize Canada's democratic system but they provide many professional skills lacking in the country.

Refugee law is very important because this law deals with life and death circumstances and it is often applied unfairly. At the same time, the Canadian public is largely unaware of the plight of refugees and the problems inherent in Canadian refugee law. As a result, many Canadians consider the process to be too accessible. Further, although refugee policy has been modified several times, it is still not meeting the needs of those who are most affected. This study will document the changes and problems of Canada's new refugee determination process.

FIGURE 1

A SUMMARY AND COMPARISON BETWEEN REFUGEE POLICY
IN THE 1978 IMMIGRATION ACT BILL C-86

	1978 IMMIGRATION ACT	1992 BILL C-86
A C C E S S	-almost all refugees given a hearing.	-more restrictions on hearings.
	-hearings permitted even to those coming from a country of refuge.	-hearings not given to those coming from a country of refuge.
	-hearings permitted even to those coming from a prescribed safe third country.	-hearings not permitted to those coming from a safe third country (may be forcibly returned).
P R O C E S S	-refugees evaluated by the Immigration and Refugee Board.	-refugees evaluated by a Senior Immigration Officer (SIO).
	-claims held in camera.	-claims held in public (except under certain circumstances).
	-legal council permitted.	-legal council not permitted.
	-only 1 vote required for claims to be successful.	-unanimity required for claims to be successful.
	-family members not allowed on refugee applications.	-family members allowed on refugee applications.
C R I M I N A L	-fines levied against people and companies "knowingly" assisting illegal refugees into Canada.	-fines increased exponentially and levied against people and companies assisting illegal refugees ("knowingly" deleted from the clause).

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-criminals not admissible
into Canada (no mention
of terrorists).

-fingerprints and
photographs permitted
on a limited basis.

-7 day review during
detention period.

-greater restrictions
on criminals and
now terrorists.

-fingerprinting and
photographing permitted
on all refugees.

-30 day review during
detention period.

PART II GROUP RESPONSES TO THE AMOUNT OF TIME
 DEVOTED TO THE COMMITTEE STAGE AND THE
 GOVERNMENT'S CONSULTATION ON THE CHANGES

Bill C-86 is the third significant change to Canada's Immigration Act since 1987. Bills C-55 and C-84 were presented in 1987 and later adopted in 1988 (Economic Council of Canada, 1991, p.19). The aim of the first Bill was to rationalize the system and the goal of the second Bill was to combat immigration smugglers (Ibid). Bill C-86 is the most significant of the three major changes to the Immigration Act. The Bill is 113 pages long, contains 128 provisions, and virtually overhauls refugee policy. As such, it attracted extensive attention during the committee stage of the legislative process.

The Legislative Process

Bills pass seven stages before they become law (Public Information Office, 1992, p.14). The first stage is the introduction of the bill; second reading is a debate of the general principle of the bill; the committee stage is a clause by clause analysis by certain members of the opposition and the government and a number of public hearings; the report stage gives members of Parliament the opportunity to move amendments to the bill; third reading includes a vote by all members of Parliament; then the bill passes through a similar process in the Senate; and finally

it is given royal assent.

Although any organization can submit briefs on a bill, not every group is given an opportunity to be heard. When a legislative committee convenes, it invites certain groups to attend and offer their opinions of the bill. The committee can, however, extend hearings and allow more people to meet with the committee.

Many groups encountered difficulties when they prepared their briefs for the Legislative Committee. Table 1 shows the number and the type of groups that said there was inadequate time to respond to the Bill and insufficient consultation on the development of the legislation.

TABLE 1
THE NUMBER OF GROUPS THAT MENTIONED
LACK OF TIME AND CONSULTATION TO BE A
PROBLEM IN RESPONDING TO THE LEGISLATION

		MENTIONED	NOT MENTIONED	
G R O U P S	INTERESTED GROUPS/IND	3	16	19
	LEGAL ASSOC/ CONSULT	4	3	7
	NGO'S	16	8	24
		23	27	50

Almost half of the groups (23/50) argued that the length and

complexity of the legislation combined with the lack of consultation and preparation time made responding to the Committee very problematic. Some groups had approximately five weeks to examine the Bill. First reading of the Bill occurred on June 16th. On June 23rd, the Legislative Committee agreed to invite various individuals and organizations to comment on the provisions and presentations actually began on July 29th. September 1st was the last day for submitting briefs to be heard by the committee.

Different types of groups are disproportionately affected by time constraint and lack of consultation in the legislative process. These differences are due to the resources groups possess and the scope of their objectives (see appendix #2). There were 19 interested parties such as unions, corporations, individuals and others before the legislative committee. In general, interested groups have considerable resources to utilize and they concentrate on a few specific provisions. There were 7 legal associations/consultants making representations to the committee. Legal associations/consultants have substantial resources to utilize but they also have a broad focus and interest in the Bill. The prime objectives of the 24 non-governmental organizations are to advocate on behalf of refugees and immigrants and provide services to them. In general, non-governmental organizations have few resources to draw upon and are concerned with most of the amendments. Consequently, some groups may find participating in the

legislative process more worthwhile than others.

INTERESTED GROUPS AND INDIVIDUALS

Most interested groups and individual did not mention time restrictions and inadequate consultation as important issues. They easily presented their concerns to the committee. In fact, out of the 19 groups, only 3 considered time as a restriction and inadequate consultation to be problematic. These three groups were the Canadian Employment and Immigration Union, the Federation of Canadian Municipalities (FCM), and John Frecker (former member of the Law Reform Commission of Canada).

The Federation of Canadian Municipalities strongly requested further consultation on future changes to immigration and refugee policy. They pointed out that section 3 of the Immigration Act obliges the federal government to consult with different orders of government. This section fails to mention municipalities. Considering that municipalities share a substantial financial burden resulting from immigration policy, they should be given proportionate consultation and input into future changes.

LEGAL ASSOCIATIONS/CONSULTANTS

By contrast, time restrictions were more problematic for legal associations/consultants than they were for

interested groups and individuals. Although they generally enjoy abundant skill, organization, and experience, a majority (4/7) of these groups, including those who presented in early November, found time restrictions and lack of consultation to be problematic. The Law Union of Ontario was particularly troubled by time considerations. They stated:

This is the third major amending package to immigration laws in the last five years, introduced by the Conservative government. Bill C-86 is the most comprehensive. All three immigration bills were introduced without prior debate or consultation. With the 1989 amendments, at least there was public input into the legislative and senate committee process however little change was effected as a result...Clearly, the government does not want meaningful public input (1992, no.11A, p.1).

The Association quebecoise des avocats et avocates en droit de l'immigration were also quite angry about the lack of time to develop a comprehensive brief:

The officials tasked to draft the bill prepared for this for months, if not years. It was their job, and during certain periods many worked full time on the drafting of this bill. The groups, like our own, that submit briefs are frequently made up of volunteers who had to prepare their comments on their own time. We also had to study this bill hastily in the midst of the summer season (1992, no.8A, p.23).

NON-GOVERNMENTAL ORGANIZATIONS

The objectives (section 3) of the Immigration Act state that the government shall design and administer policy in cooperation with non-governmental agencies in Canada.

Although Bernard Valcourt said that "The public has an early opportunity to comment on government proposals" (1992a, p.6), preparation time was clearly an important issue for non-governmental associations. When briefs and comments by non-governmental organizations were analyzed for mentioning time restraints and lack of public input, it was found that 16 out of 24 groups expressed such sentiments.

The Quaker Committee for Refugees pointed out that the lack of time and consultation made it difficult for volunteer group to respond to Bill C-86. They stated:

The Quaker Committee is also disturbed by what it seems like an unprecedented rush to pass this Bill. Not only was it introduced in the summer when many people are on holidays. Some groups have also been refused the opportunity to comment on this Bill that is going to radically change Canada's Refugee policy. In our opinion it is being handled in an undemocratic manner, apparently ignoring many of us who have worked for years with refugees (1992, no.10A, p.35).

The Table de concertation des organismes de Montreal au service des refugies was very critical of the legislative process. Analysing the legislation was difficult for them, they claim, because the government simply did not want to receive any input from Canadians. The timing of the amendments and the organization of non-governmental associations were not mentioned as factors inhibiting response to the committee. They exclaimed:

The Table de concertation des organismes de Montreal au service des refugies deplores the fact that the federal government has completely failed to take into account the recommendations of NGO's for improving the refugee determination process. Furthermore, the federal government has overlooked the importance of holding prior consultations. The legislative provisions are being examined in such a way to prevent any public and democratic debate on the bill (1992, no.8A, p.21).

MOSAIC also believed that the government wanted to inhibit representations by certain groups. They contended that the government was aware that many groups would protest the changes. As such, the government did not consult Canadians on the intended changes drafted in Bill C-86. They said:

The Minister has stated publicly that the government's strategy is to avoid the kind of delays that stalled the passage of Bill C-55. Special interest groups, presumably meaning the immigrant associations, immigrant and refugee services agencies, refugee advocacy groups, religious organizations, lawyers, and human rights organizations, were singled out for criticism by the Minister (1992, no.12A, p.33).

CONCLUSION

As Hawkins noted, the differences in resources, focus, and organization had an enormous effect upon the quality of the briefs that were submitted and their potential influence on the law. For instance, interested groups and individuals had a very narrow focus in the legislation. Some of them retained lawyers to analyze their interests in the legislation. The result is that they were generally well organized, had ample time to study the legislation, and could adequately protect their specific interests.

Legal associations/consultants were also well organized. They had an abundance of experience with immigration law and possessed the skills to quickly analyze the legislation. Unlike many interested groups and individuals, their focus on the legislation was very broad. As a result, their briefs were quite extensive.

Non-governmental associations have not traditionally organized in a concerted effort. Perhaps that was one reason why there were so many different groups responding to the committee rather than a few coalition organizations. But, there were also fewer organizations that attended the hearings compared with number of groups and individuals that attended the hearings for the original Immigration Act (see appendix #3). This may reflect, in part, greater coordination of their resources.

Many NGO's depended on volunteers to accomplish tasks. In addition, they were concerned with several aspects of the legislation. Consequently, they were less effective in presenting their views on the law than the other types of groups; especially when hindered by a lack of response time.

The former federal government claimed that it held extensive consultation with a wide variety of groups. In fact, the government fulfilled its legal obligations to consult with groups to determine immigration levels. There were, however, no prior consultations with groups to overhaul the Immigration Act. Ultimately, the government did extend testimony past the original timeframe. This was

because so many groups asked to be heard and the clause by clause analysis took much more time than initially anticipated.

On November 23rd, 1992, the government invoked another closure motion to establish a timeframe for all amendments to Bill C-86. Warren Allmand, the Liberal Party member on the committee reacted to the motion. He said:

Here we have the most extensive amendment to the Immigration Act since 1976, a bill with 128 sections and 113 pages. Yet at second reading-which by the way was called two days after the bill was tabled-second reading was limited to one and a half days on a closure motion. Now the report stage where 69 amendments including 10 new amendments from the government have been tabled has been limited to one and a half days-a short day last week and one day today-and then the government is limiting third reading to one day tomorrow...We are getting a half day from last Wednesday and another half day today (House of Commons Debates, 1992, p.13773).

Thus, legal associations/consultants and non-governmental organizations made it clear that their difficulties in responding to the committee were due to the government's fast-track agenda and not because of their internal organization. Opposition Members of Parliament shared this view as they also found time to be short.

It would seem valid to assert that the government members were not simply interested in saving Parliament's time when they opted not to extend the length of the legislative process or to consult with various groups on the changes before they were presented. The intent of the government was to avoid the criticism they knew would be

forthcoming. To consult with groups holding objectives that seriously detract from patriarchy would be irrational.

PART III

ACCESSIBILITY

Accessibility refers to the ability of refugees to claim asylum before the Immigration and Refugee Board. Prior to 1978, no precise criteria were established for the acceptance or rejection of refugee claims. Refugees were admitted on an ad hoc basis. The 1978 Immigration Act introduced Canada's first formal refugee selection process. Subsequently, the accessibility provisions of the refugee status determination system were modified on numerous occasions to reduce administrative procedures, clear refugee backlogs, and prevent the entrance of criminals. Bill C-86 was also designed to further these objectives. Bill C-86, however, contained more restrictions than any prior amending package.

Sections 46.01(1) and 114(1)(s)

Sections 46.01(1) and 114(1)(S)/114(8) modified accessibility (see appendix #4 for actual text). Under Bill C-86, the amended sections drastically curtail the number of refugee claimants evaluated by the Board. The state now possesses the legal tools to reduce the department's costs, prevent undesireables from accessing the determination process, and consequently attain greater control over the size and composition of the Canadian population. In short, the state can more effectively correct imbalances between

reproduction and production.

These changes were the most controversial aspects of the Bill. Table 2 shows the number and type of groups that found access provisions to be problematic.

TABLE 2
THE NUMBER OF GROUPS THAT MENTIONED ACCESS
PROVISIONS TO BE A PROBLEM IN THE NEW LEGISLATION

		MENTIONED	NOT MENTIONED	
G R O U P S	INTERESTED GROUPS/IND	5	14	19
	LEGAL ASSOC/ CONSULT	5	2	7
	NGO'S	19	5	24
		29	21	50

Many groups attending the hearings suggested that these sections of the Bill should not be amended. They should be left intact. Of the 50 presentations made to the Legislative Committee, 29 mentioned that accessibility was a problem in the Bill. Most organizations also recommended specific changes to these provisions of the legislation.

Prior to Bill C-86, claimants would pass through a credible basis hearing to determine whether they were eligible for full hearings (Economic Council of Canada, 1991

p.99). Adjudicators and members of the Refugee Division conducted this test to screen out manifestly unfounded claims. Almost everyone who applied received full hearings as only 4 per cent of claims were considered manifestly unfounded (Ibid). This is no longer the case. Clause 36, section 45, of Bill C-86 repeals the first level credible basis hearings and section 46.01(1) transfers this jurisdiction to a single senior immigration officer (SIO). Only one senior immigration officer will decide which cases are eligible for a full hearing based on five grounds:

- (a) prior recognition of refugee status in another country;
- (b) coming from a prescribed country;
- (c) repeat claims;
- (d) prior recognition of refugee status in Canada;
- (e) undesirable persons-criminal and security risks.

Refugee claimants who fall into any of these categories are automatically ineligible for the full hearing.

GOVERNMENT RATIONALE

Canada's refugee policy has required substantial improvements for many years. The department consistently accumulated a large backlog of claimants, processing times were considerably long for both refugees and the government, and consequently, costs were very high. The former Minister of the Department of Employment and Immigration, Bernard Valcourt, stated that these changes will eventually

alleviate these problems (1992a, p.4-7). As well, he maintained that these efficient management techniques will maintain Canada's humanitarian tradition and reduce administrative waste (Ibid). These modifications will also effectively bar criminals and other security risks from Canada. The Minister argued that eligibility grounds are objective criteria by which to evaluate refugees (1992a, p.13). Consequently, one person can accurately evaluate the eligibility of refugees. The system will be more efficient for genuine refugees. Bernard Valcourt stated:

Rather than have a claim turned back as obviously unfounded at a full IRB hearing, senior immigration officers will have the responsibility of assessing each claim against five basic criteria at the moment of a claimant's arrival in Canada. Assessing a claim against these criteria will require no subjective judgement, analysis or interpretation by the officer. The criteria will be clear cut (Ibid).

Further, the government expects that these provisions will reduce the number of asylum shoppers; refugees who claim asylum in several countries and settle in the most desirable country (Valcourt, 1992b, p.21). Senior immigration officers will now bar those coming from "prescribed countries". Section 114(1)(s) of Bill C-86 defines a prescribed country as one that has signed Article 33 of the United Nations Convention. Article 33 obliges signators not to return refugees to the place of persecution.

Bernard Valcourt made compelling arguments for the

changes introduced by Bill C-86. Indeed, there were significant backlogs of refugees, processing periods were excessive, and the department's costs were exorbitant. As a result, the department faced much criticism from refugee advocates, various interested groups and individuals, the media, and the public in general. As Valcourt suggested, "No one has championed the cause of the status quo" (1992a, p.4). The question most groups asked, was whether the government introduced efficiency at the expense of its humanitarian obligations.

INTERESTED GROUPS AND INDIVIDUALS

Few interested groups and individuals considered accessibility to be a problem in the refugee status determination process. Most of these groups were interested in Bill C-86 in so far as their specific concerns were affected. Only 5/19 interest groups and individuals considered accessibility provisions to be flawed. When these interest groups are broken down further into unions, individuals, corporations, government departments, and others, an interesting pattern develops. Of the 5 groups/individuals that considered access to be a problem, 2 were labour unions and 3 were individuals representing their personal concerns. None of the 4 corporations nor any of the government departments were concerned with the provisions defining accessibility. The Canadian Disability

Rights Council also did not criticize accessibility sections, they mainly focused on the new language used to define "disability".

Unions

Among interest groups were two unions: the Canadian Employment and Immigration Union (CEIC) and the Canadian Labour Congress (CLC). Both unions criticized the changes to accessibility. The CEIC argued that all refugee claimants should have the right to the same process. Bill C-86, however, alters the process so that some refugees will gain access to the determination process while others will not. This is because some people may be denied access based on the five criteria applied by senior immigration officers.

The CEIC also had difficulty accepting the safe third country provision. They said:

...the issue of "prescribed country" needs to be resolved. We do not want in a "prescribed country" to see a massive deportation action similar to the United States action in regards to Haitians (1992, no.5A, p.45).

The Canadian Labour Congress (CLC) was much more critical in its analysis of the legislation. The CLC also had difficulty with section 46.01(1) because it did not allow those coming from a prescribed country to gain access to the refugee determination process. The union considered it a poor amendment because some genuine refugees will be

left unprotected. Further, some refugee families will be separated as relatives will now be ineligible for the full hearing.

The CLC also argued that political considerations will inevitably enter into the description of a country as being "safe" (1992, no.8A, p.8). For instance, they point out that the United States would likely be a prescribed safe country. The CLC, however, also said that the United States should be considered unsafe because Haitian refugees have been intercepted at sea before landing on American soil, sent back to Haiti, and therefore not eligible for refugee status in the United States. This provision will also lead to more refugees being sent into orbit. The CLC reacted strongly to this change:

This provision is cynical. It is highly insensitive to the many legitimate and important reasons for refugee claimants not seeking refuge in the first country that they enter. The policy clearly favours only those who can afford the air fare to fly here directly from their country of origin. Because of our geographic location relative to the refugee source countries and because of international travel arrangements most refugees will land or pass through the United States or Europe (1992, no.8A, p.9).

Individuals

Out of the 4 individuals who presented briefs to the committee, three thought that accessibility provisions needed to be changed. James A. Hathaway (1992, no.7A) of Osgoode Hall Law School and Guy Goodwin-Gill (1992, no.10A) of Carleton University stated that section 46.01(2) of the

Immigration Act should be retained. They both argued that this section previously allowed those who could prove a well-founded fear of persecution, to have their claims heard by the refugee division. This right was extinguished. Under Bill C-86, those coming from prescribed countries will not be able to relate their fears of persecution to the Board.

Both of these individuals also found section 114(1)(s) to be lacking in specifics. When prescribing countries as "safe", the Governor-in-Council shall take into account whether the country is a party to the Convention, the country's policies and practices with respect to the Convention, the country's human rights record, and whether the country is a party to an agreement with Canada concerning the sharing of responsibility for refugees (Bill C-86, 1992, p.103). The Bill specifically stated that the Governor-in-Council only has to take these factors into account, but not necessarily be obliged by them.

John Frecker (no.11A, 1992), a former member of the Law Reform Commission of Canada (LRCC), also argued that section 46.01(1) poses many problems because it could restrict many refugees from Canada. Yet, he said that eliminating the credible basis stage from the determination system was a positive step in making the system more efficient. In fact, the LRCC recommended this specific modification. Frecker, however, did not want eligibility, previously determined by two members during first level hearings, to be assessed by

senior immigration officers. He recommended that the new eligibility requirements be abolished so that all refugees may receive full hearings.

Frecker also suggested that refugee policy and immigration policy be administered by two separate departments. This separation is feasible because refugees have been improperly selected by immigration criteria such as level of education, skill levels, occupational experience, and knowledge of Canada's official languages. As well, the refugee division is now large enough to warrant its own department.

Government departments

There were seven different groups representing various levels of government and federal governmental departments. Although most groups before the committee were very critical of the legislation, the seven government departments were essentially neutral or positive in their comments to the legislative committee. The Regional Municipality of Peel in the province of Ontario supported many of the amendments. They pointed out that Pearson International Airport has made them one of the largest immigrant receiving areas in Canada (Regional Municipality of Peel, 1992, no.4A, p.35-6). This status has coincided with burgeoning welfare expenditures and welfare fraud in the region. As such, they endorsed changes to accessibility sections expecting that they will

reduce welfare fraud. Both the Federation of Canadian Municipalities and the Regional Municipality of Peel welcomed any reform of the system that would introduce both efficiency and fairness.

LEGAL ASSOCIATIONS/CONSULTANTS

As expected, legal associations/consultants were very critical of most of the changes to accessibility. Out of the seven groups before the committee, five mentioned that these amendments were problematic. The Refugee Lawyers Association (RLA) was quite critical of these amendments. They declared:

The primary concern of the Refugee Lawyers Association is the manner in which the provisions of Bill C-86 arbitrarily deny genuine refugees access to the refugee determination process, to due process, and punish genuine refugees for actions perfectly consistent with genuine refugee behaviour (1992, no.5A, p.26).

The Canadian Bar Association (CBA) offered one of the most extensive briefs to the Parliamentary Committee. They made several remarks about both section 46.01(1) and section 114(8). For instance, they disapproved of the prospect that people could be excluded from Canada without even getting full hearings. They stated that this may be in contradistinction to Canada's international agreements. They claimed that the grounds to determine eligibility may be controversial and that many need hearings before the Refugee Division. "There is need for a more complete review

of the facts than can be done by a Senior Immigration Officer"(1992, no.17A, p.85).

Most legal associations/consultants had concerns with sections 46.01(1)(b) and 114(1)(s). The first concern was that some refugees become ineligible for full hearings if they had travelled through a prescribed safe third country before arriving in Canada. Refugees must claim asylum at the first safe country they encounter. The RLA gave three reasons (1992, no:5A, p.30-1) why they rejected the new provision:

- a) it will separate traumatized refugee families and favour wealthy refugees who are able to take direct flights over those who are unable to do so.
- b) the provision creates the potential for the prescription or removal of a "safe" country to become politicized.
- c) Canada is not receiving a proportionate per capita share of refugees.

Several groups bluntly pointed out that the state may not possess the political will to prescribe certain states as unsafe. The Refugee Lawyers Association noted that:

A Minister of the Crown is compromised where economic and international consideration may be affected by such a decision (1992, no.5A, p.31).

As a result of these problems, the Refugee Lawyers Association recommended that the entire clause be deleted. They noted, however, that if Parliament did institute this clause, that minimum standards be set to ensure the

protection of refugees. The Bill did not set such standards.

The Lawyers Committee for Human Rights also contended that the revitalization of the safe third country is problematic (1992, no.8A, p.44-50). The situation in the United States, they claim, is a convincing example. Under 46.01(1), Canada would exclude refugees passing through the United States unless they only stopped for a connecting flight. It would be difficult for Canada not to prescribe the United States as a "safe" country. Yet the U.S. has not lived up to its international obligations because they have intercepted Haitian refugees before they entered the United States. As well, the United States imposes a higher level of proof on refugees to attain asylum. They also argued that designated countries should agree in advance to accept back refugees deemed ineligible under these provisions. This way refugees will not be sent into orbit.

The Canadian Bar Association (CBA) also suggested that some refugees will be sent into orbit. The CBA argued that Canada should not exclude people from the process unless they can, in fact, make claims elsewhere (1992, no.17A, p.94). The CBA also maintained that the Immigration and Refugee Board should establish a special research unit to determine which countries provided fair refugee determination processes.

Many groups also criticized the vague language used in section 114(1)(s). The Association quebecoise des advocats

et avocates en droit de l'immigration stated that:

We already have a particularly poorly drafted immigration act which is far from being clear to anyone at first reading, even an accomplished jurist. If the amendments are adopted as they stand, we could win the award for the most ambiguous and poorly drafted immigration act (1992, no.8A, p.23).

To ensure that refugee claimants will not be sent to unsafe states, most legal associations/consultants recommended that such countries respect the whole United Nations Convention and ensure respect for all human rights and refugee claimants. Currently, some countries comply with some elements of the Convention but fail to provide an adequate refugee determination system. Most legal associations/consultants also recommended that third countries be required to have a refugee determination system which meets the standards established by the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR).

The other subsections of 46.01(1) did not go unnoticed. The Canadian Bar Association had problems with 46.01(1)(a) which makes people ineligible if they have been previously recognized as Convention refugees by other countries (1992, no.17A, p.87). This subsection states that refugees will be excluded only if they have come from a country "that is a country to which the person can be returned." The CBA did not agree that such rights exist because there are instances where refugees can legally return to that country but no such right exists in fact.

The world is unstable with situations changing from one

day to the next. If Senior Immigration Officers are unaware of up to date situations, the CBA fears that senior immigration officers may send people back to unstable states. People should be able to seek refugee status in Canada even if they have already gained such status in other countries. Bill C-86 should provide a mechanism so that claimants who face further persecution in the country of refuge be able to make such claims in Canada.

Section 46.01(1)(c) also attracted criticism. This section denies access to refugees with repeat claims. The CBA recognized that this provision is intended to deny claimants from making several claims in order to avoid deportation after an initial negative decision has been made (1992, no.17A, p.98-9). The CBA, however, said that there might be changes in circumstance in the country of origin which should be considered after initial negative determinations have been made. People who do return to the country of origin will have to wait for a period of ninety days before they can make subsequent claims. Incorrect decisions can be made and the legislation should minimize this potential.

NON-GOVERNMENTAL ORGANIZATIONS

Non-governmental organizations volunteer various types of services to refugees. Many of these groups also advocate on behalf of refugees. Whereas interested groups and

individuals and legal associations/consultants have specific vested economic interests in the new legislation, non-governmental organizations generally do not. They analyze many different aspects of the legislation and perceive the effects of the legislation from the standpoint of refugees. Many of these groups consider Canadian refugee policy too restrictive and want the Department of Employment and Immigration to admit more refugees into Canada. As a result, non-governmental organizations had negative responses to the legislation. Most NGO's were not only disturbed by the actual text of the legislation but by its intent and potential application. Many argued that the state's restrictions were not accidental but part of a deliberate long term plan of restrictions determined by economic standards.

The Inter-Church Committee for Refugees expressed concern about the motivation for the changes. They questioned the very foundation of Canada's refugee policy-making and the manner in which it may be applied. They stated:

Canada needs to develop a clear and consistent policy for immigration and refugees. This present set of amendments is guided demonstrably by a particular perspective regarding Canada's economic needs. This perspective tends to affect adversely the processing of people in need of protection (1992, no.4A, p.55).

The Black Coalition of Quebec also argued that Canada's amended refugee policy is formulated and determined by

economic considerations. They noted that "The Bill's objectives and principles make plain that the government cares more about making immigration 'profitable' than the mere wording of the Bill might suggest" (1992, no.12A, p.13).

A majority of NGO's; 19 out of 24 organizations, found that the accessibility sections, 46.01(1) and 114(8), were problematic and they recommended significant modifications to these sections.

Section 46.01(1)(a)

Amnesty International was unable to accept section 46.01(1)(a). They noted that the previous Immigration Act also did not accept claims from those recognized as refugees in other countries (1992, no.4A, p.4-5). Those refugees were ineligible under section 46.01(1)(a). But a latter section, 46.01(2), allowed such claims if there were credible bases for peoples fear of persecution in the country of refuge. Bill C-86 eliminates the latter section so that people recognized as refugees in other states will be ineligible for full hearings. Amnesty International requested this section be left intact.

The Jesuit Centre for Social Faith and Justice Toronto was also opposed to the deletion of section 46.02(2) which gives hearings to those recognized as refugees in other countries (1992, no.10A, p.25-6). The potential exists that

refugees may face persecution in the country of asylum. Jews are good examples of such an occurrence. The Quaker Committee for Refugees oppose provision 46.01(1) because they also have come across refugees who are persecuted by the protectionist state (1992, no.10A, p.36). Recognition by other countries should not preclude refugees from claiming status in Canada.

Section 46.01(1)(b)

Like many legal associations/consultants, most non-governmental organizations had grave misgivings about the safe third country provision. The Chinese Canadian National Council and Chinese Canadian National Council, Toronto Chapter asserted that the safe country policy was unfair (1992, no.8A, p.70). Refugees do not claim asylum in the first country because they may become separated from family and also because they feel a lack of safety and political certainty (Ibid). When refugees do not claim asylum in the first country, their actions should not automatically be labelled "asylum shopping", these actions may be considered as consistent with persecution.

The Inter-Church Committee for Refugees also maintained that this section should be deleted or substantially modified (1992, no.4A, p.58). They pointed out, however, that Canada's record on immigration and refugee policy has historically been poor. They compared 46.01(1)(b) to the

situation which prevailed at the turn of the century. They said:

In 1908, the government passed continuous journey regulations which stipulated that an immigrant would only be permitted to Canada if he or she came to Canada in one continuous journey. At that time, the government ordered CP Steamships to ensure that there were no direct voyages from India to B.C. Historians have correctly criticized the government for using this regulation as an avenue to control which nationalities would be permitted to stay in Canada (Ibid).

They recommended that this section be deleted as many refugees will be denied access to Canada. For instance, 46.01(1)(b) will deny access to Somalis who arrive at American airports and drive directly to the Canadian border (Ibid). Somalis who stop in the United States for a connecting flight will be admitted for a hearing. This provision will favour those with enough resources to come to Canada in one continuous journey (Ibid). The Canadian Ethnocultural Council and the National Organization of Immigrant Women and Visible Minority Women of Canada feared that the safe third country rule will have enormous effects upon Haitians and others who may enter Canada via the United States (1992, no.5A, p.8-9).

The World Sikh Organization was emphatic in its demands to eliminate the safe third country provision. They claimed that 70% of Canada's refugees travel through the U.S. and Europe before getting to Canada (1992, no.9A, p.5). Thus, 70% of Canada's potential refugee claimants could be turned away from Canada under this new provision. They also

worried about the risk of political considerations entering the appointment of safe countries. They said:

How can we consider sending claimants back to the U.S., (1/3 of all claimants come via the U.S.) when we see how brutally they dealt with Haitian refugees. Even after a U.S. court order had ruled that the policy of intercepting Haitian refugees at sea and returning them to Haiti without a hearing was illegal, the Bush administration moved quickly to prevent a court ruling from reopening the flow of refugees (Ibid).

MOSAIC believed that the issue of why a refugee did not make a claim in the third country is an issue to be decided by the Immigration and Refugee Board (IRB), not a senior immigration officer. As the Bill is now written, it is inconsistent with Canada's international commitments (1992, no.12A, p.37). Such decisions should only be made by an impartial tribunal. They argued that refugees should be able to choose the country of asylum. "While Canada may consider a country safe, based on their own experiences, claimants may not" (Ibid).

Section 114(1)(s)

Like legal associations/consultants, many non-governmental associations were opposed to the definition of a safe third country list. The Canadian Ethnocultural Council estimated that the safe third country provision could allow Canadian authorities to possibly return the 40 per cent of refugees who enter Canada through the United States (1992, no.4A, p.25). They also expressed the fear

that political bias and foreign policy considerations may influence the list of safe countries.

The Inter-Church Committee for Refugees (ICCR) suggested that minimum standards be set for a prescribed country list (1992, no.4A, p.59). Currently, Bill C-86 stipulates that the Governor-in-Council must take into account:

- a) whether the country is a party to the Convention;
- b) the country's policies and practices with respect to Convention refugee claims;
- c) the country's record with respect to human rights;
- d) whether the country is a party to an immigration sharing agreement.

Under Bill C-86, a country does not necessarily have to be a signator to the U.N. Convention even though it appears as such. The present minimum standard is too low. The definition of human rights violations should also be changed to include the violation of human rights by whomever because it is not always the state that persecutes peoples (Ibid). Also, nations which generally respect human rights do not always respect particular classes of human rights.

The Canadian Council for Refugees was very critical of section 114(1)(s). They also stated that section 114(1)(s) is worded too generally (1992, no.5A, p.14). For instance, the Governor-in-Council must take certain factors into account but not necessarily follow a course of action if a country does not respect certain conditions. This means

that refugees may be sent to a country that has a poor human rights record. They stated that:

If asylum-seekers are to be sent to another country, they should only be sent to a country that has a refugee determination procedure which meets international standards for fairness, natural justice and due process; that treats refugee claimants in conformity with international standards; that interprets the refugee definition consistently with international standards; and that is signator to the Refugee Convention (1992, no.5A, p.14).

They do not believe that such a rule should exist, but if it did, it should be based on individuals, and not on the country, because many countries treat different classes of people differently (Ibid).

Amnesty International also condemned section 114(8) (1992, no.4A, p.2-4). They did not agree with any provision that sends refugees to a third country unless the government sending them has ensured that claimants would be granted effective and durable protection against refoulement. In order to be considered "safe", that country should (Ibid):

- a) have a refugee determination procedure for refugees which deal with the merits of the case.
- b) ensure that section 114(8) of the Act provide a list of requirements which must be set forth when a country is prescribed.

Bill C-86 does not ensure adequate protection will be available. It should be elaborated upon so that the prescribed country respects that U.N. Convention in spirit and in fact.

MOSAIC agreed that section 114(1)(s) is problematic because it does not provide enough protection for refugees. Some states sign the U.N. Convention article 33 and do not respect the principles of the Convention even though they may even have a refugee determination system (1992, no.12A, p.38). "The law should explicitly state that the country must not show discrimination against any particular ethnic group or nationality."(Ibid). MOSAIC recommended that provisions should be made so that all countries' human rights records be compared to those of Canada's. They were also quite worried whether Canada may enter into immigration sharing agreements with the United States.

The Quaker Committee for Refugees made a compelling argument against the notion of a safe third country list. They simply said that in a meeting with Barbara McDougall (the Conservative Minister of Employment and Immigration before Bernard Valcourt), they could not create an acceptable definition of a safe country. It is impossible to prescribe a safe state for everyone (1992, no.10A, p.37).

Conclusion

In summary, interested groups and individuals were not generally concerned with the changes to accessibility. By contrast, legal associations/consultants did mention the modifications to accessibility provisions as problematic. Despite the fact that they were well organized and combined

their resources effectively, they did not exhibit significant influence on the Bill. They wanted to protect their interests which often coincide with the interests of refugees. These interests are threatened by restricting access to the Immigration and Refugee Division. This Bill will reduce the number of claims made and legal practices will suffer.

Non-governmental organizations were extremely negative towards the changes introduced by Bill C-86 as they advocate on behalf of refugees. Although these groups were united in opposition to these specific amendments, they were not very influential. Sections 46.01(1)(a) to (d), section 114(1)(s), and section 114(8) were not modified in any revision of the Bill including Chapter 49 of the Statutes of Canada, 1992. Accessibility clauses strongly affect the state's management of reproduction. Thus, the state was not willing to accede to any changes.

There were amendments moved by opposition members of the legislative committee. Dan Heap moved that the safe third country clause, section 46.01(1)(b) and consequently section 114(8), be repealed. It was negated on division. In the House of Commons, Members of Parliament had only a day and a half to consider all amendments to the legislation because the government invoked another closure motion on the Bill. Opposition members moved 12 amendments to accessibility provisions and they were all negated on division. Even a motion which simply clarified the

prescribed country definition and did not substantially change the intent or meaning of the clause was negated. Legal associations/consultants and non-governmental organizations were simply ineffective in influencing the state to significantly modify the Bill.

This section has reflected the concerns of interested groups and individuals, legal associations/consultants, and non-governmental organizations as they relate to accessibility. As such, it has examined views which are critical of the Bill. It would be inaccurate to characterize all of the presentations to the Legislative Committee as negative when there were some changes that were applauded by legal associations/consultants and non-governmental organizations. For instance, the changes that were made in regards to sponsorship were welcomed. After refugees are landed, they can include their family members in their application for permanent residence. This means that refugees have can apply for other family members to come also, provided that they can cover the costs incurred.

The government initiated this positive change amidst many changes that were considered negative by NGO's and legal associations and consultants. These changes were the result of the welfare state's attempts to unload its social costs onto the family. Sponsorship is a very effective way to accomplish this goal. The state can accomplish two goals at the same time: please various parties and privatize social costs during a fiscal crisis.

The new clauses which define accessibility are fundamental to the refugee status determination system. These provisions will restrict many refugees. Giving senior immigration officers the power to determine eligibility will provide the state with enhanced powers to restrict particular classes of people; especially during a refugee crisis. The safe third country rule will restrict refugees who cannot afford a direct flight to Canada and must travel great distances. Thus, wealth will indirectly be a criterion for asylum.

The explicit objective of Canada's refugee policy is to protect persecuted people. This objective is fortified by Canada's signature to the 1951 United Nations Convention Relating to the Status of Refugees and its Protocol signed in 1969. But in the context of a low birth rate and a fiscal crisis in the welfare state, immigration and refugee policy has been manipulated to offset reproductive costs and to supplement production. Bill C-86 strikes such a balance. The changes to accessibility have given the state firm control over reproduction in so far as it relates to refugee policy.

PART IV

PROCESS CHANGES

Immigrants may enter Canada if the Canadian government is convinced that they will benefit the nation and not become a public burden. The state ensures that immigrants will not require much assistance from the federal government. Thus, immigrants are allotted points for skills, education level, and occupational experience and other criteria. The more points an immigrant attains, the greater are the chances for acceptance into Canada. Immigration expands the federal tax base and fills skilled labour shortages. The state can control the number of immigrants entering Canada each year. As a result, immigration is perceived by the government to be beneficial to Canadian society.

Refugee policy, on the other hand, is not considered to be beneficial, but Canada must accept refugees. Refugees have certain rights due to various legal agreements the Canadian state has made with the United Nations. Theoretically, the state cannot control the number of applicants or the number of accepted claims. That is, the state has little control over this aspect of reproduction. As well, many refugees are perceived as "economic migrants" abusing the Canadian refugee policy. Economic migrants are generally considered unskilled, uneducated, and an economic burden. Bill C-86 introduces measures to restrict the influx of refugees and reduce costs in the determination of

refugee claims (Immigration Canada, 1989, p.22-4).

Government Rationale

The Department of Employment and Immigration states that the changes to the refugee process under Bill C-86 will reduce both administrative and legal costs and reduce the time to conclude a claim. Bernard Valcourt stated that claimant processing can be reduced from 24 months to a mere two or three months (1992a. p.13). Further, he claims that the waiting period for landed status after a positive IRB decision will be cut from about 24 months to approximately 6 months (1992a, p.14).

Section 45

The most significant process change in Bill C-86 was section 45. This section eliminates first level hearings. For several years, immigration and refugee advocates pressed for the elimination of these hearings as they only screened out approximately 4 per cent of claims. In addition, these hearings lengthened the determination of claims considerably. As such, many groups welcomed this change. Most groups, however, believed that all refugees would be given the opportunity to have their claims put before the refugee division if this first level were removed. This is not the case. The amendments stipulate that senior

immigration officers alone will determine eligibility.

Table 3 shows the reaction to section 45. There were 28/50 groups thought that section 45 should be eliminated or amended once again.

TABLE 3
THE NUMBER OF GROUPS THAT MENTIONED SECTION 45
TO BE A PROBLEM IN THE NEW LEGISLATION

		MENTIONED	NOT MENTIONED	
G R O U P S	INTERESTED GROUPS/IND	3	16	19
	LEGAL ASSOC/ CONSULT	6	1	7
	NGO'S	19	5	24
		28	22	50

INTERESTED GROUPS AND INDIVIDUALS

Interested groups and individuals generally did not consider section 45 to be a very important issue. Only 3/19 interest groups mentioned this clause as being problematic. These interested parties were the Canadian Labour Congress, John Frecker, and Guy Goodwin-Gill.

Goodwin-Gill noted that there is a greater danger of

refoulement when senior immigration officers decide eligibility. This decision should only be made by the Immigration and Refugee Board. The CLC was the only group to make many comments on this section. The CLC praised the government for eliminating the credible basis hearing but did not completely endorse section 45. They held:

We also congratulate the government for the elimination of the "credible basis" stage in the refugee determination process (clause 45). As many groups working with refugees pointed out, when this provision was first proposed in the 1987 legislation, it would prove to be extremely expensive and a waste of time and caused thousands of refugees great pain and unnecessary hardship. They were right. Ninety-five per cent of refugee claimants passed this test. It confirmed that abuse of the system was negligible (1992, no.8A, p.5).

They added a word of caution:

Immigration officers are not independent decision-makers. They do not have, nor should they have any judicial role. The ramifications are enormous. Clearly the decisions are far too serious to be left in the hands of an immigration officer (1992, no.8A, p.6).

There was some support on section 45 from both the Regional Municipality of Peel and the Federation of Canadian Municipalities (FCM). The Regional Municipality of Peel indicated that their 1992 total welfare expenditures for refugees without work permits amounted to \$6.9 million gross or \$1.6 million net (no.4A, p.38). FCM also revealed that in 1991, the region of Peel and metropolitan Toronto paid \$32.6 million for the care of refugees (Federation of Canadian Municipalities, 1992, no.4, p.44). They said:

No authorization to work is granted to a favourable outcome of the credible basis hearing. As a result, refugee claimants relying on social assistance are prohibited from engaging in employment...It is counter-productive and unacceptable, and unfair to legitimate claimants, to establish welfare dependency unnecessarily (Federation of Canadian Municipalities, 1992, no.4, p.46).

The elimination of the first level hearings may reduce processing delays by 3 to 6 months (The Regional Municipality of Peel, 1992, no.4A, p.46). Should this result materialize, Peel's costs will reduce considerably.

FCM and the region of Peel made the case that immigration is a federal program that should only be funded by the federal government. Immigration costs are displaced onto municipalities yet municipalities have little decision-making power over designing the program. Hence, Peel supported this streamlining of the system. They suggested that "The key is to provide faster, fairer and more cost effective decisions" (The Regional Municipality of Peel, 1992, no.4A, p.46).

LEGAL ASSOCIATIONS/CONSULTANTS

Section 45 was much more controversial for legal associations/consultants with 6/7 acknowledging that this section was problematic. The only group that did not mention this clause as problematic was the Lawyers Committee for Human Rights. Most legal associations/consultants were very critical of the new clause.

The Canadian Bar Association, the Association quebecoise des avocats et avocates en droit l'immigration, and the Refugee Lawyers Association maintained that eligibility decisions are frequently complex and require a greater review of the facts than can be done by one immigration officer. Such decisions should be made by adjudicators or members of the IRB.

The Law Union of Ontario and the Organization of Professional Immigration Consultants (OPIC) were far more vociferous than were the former organizations. Rather than question the ability of senior immigration officers to make informative decisions, they questioned the ability of senior immigration officers to make independent, impartial and unbiased decisions. The Law Union of Ontario stated that this section also violates traditional law-making.

There is no apparent right to counsel and no requirement for a hearing before this officer...The Officer making the decision is an enforcement officer, subject to the control and direction of enforcement officials. The fundamental principles of independent and impartial decision-making are breached by this (1992, no.18A, p.78).

The Organization of Professional Immigration Consultants (OPIC) was just as outspoken of this change. They questioned the ability of senior immigration officers to make judicial decisions. They stated:

It appears to OPIC that this signals a return to the old days where a Special Inquiry Officer convened a hearing and acted as prosecutor, judge and jury. To return to this system would be to give up all the gains made in the past several years...We believe that this proposed amendment will be subject to abuse by immigration officials many of whom lack the training, knowledge and experience necessary to make fair and impartial decisions without being unduly influenced by their superiors or peers (1992, no. p.3).

NON-GOVERNMENTAL ORGANIZATIONS

The state had substantial support from non-governmental organizations to eliminate the credible-basis hearings.

Non-governmental organizations wanted universal access to the system. Thus, many organizations supported section 45 but added that they had many problems accepting the fact that senior immigration officers would make decisions formerly made by adjudicators and members of the Immigration and Refugee Board.

A large majority of non-governmental organizations felt that section 45 was problematic. Out of the 24 organizations, 19 protested this clause. The central issue according to most groups centred around the fact that eligibility decisions by senior immigration officers may be manipulated by government or senior immigration officials. Others pointed out that senior immigration officers may not have the necessary knowledge to make accurate determinations. Most organizations were afraid of the fact that refugees will not have legal representation while being

questioned by a senior immigration officer.

The Canadian Ethnocultural Council stated that the new powers given to senior immigration officers in section 45 were very disturbing. They exclaimed:

One of the greatest concerns the CEC has about the proposed amendments is the greater likelihood that genuine refugees may be declared ineligible and refused entry at the border without any recourse. There has been a shift of decision-making authority from the quasi-independent immigration adjudicators and given to senior immigration officers. Decisions will be made without the claimant having a right to a hearing or even a right to counsel (1992, no.4A, p.15).

The Inter-Church Committee for Refugees also maintained that the new system increased the potential for mistakes.

Senior Immigration Officers are not independent decision makers. They are employees of Canada Immigration who receive policy directives from their employers. Some may only have 1 year experience before being designated a senior immigration officer. They come with a certain mindset to their jobs. They are enforcement officers. Decisions will be made without the benefit of counsel and without any meaningful review. Even those of us who receive parking tickets can have that ticket reviewed by someone who is not a parking enforcement officer (1992, no.4A, p. 62).

The Canadian Council for Churches argued that section 45 may violate the Singh Supreme Court decision. According to the court, refugees have the right to an oral hearing before a competent decision-maker when the consequences are as grave as they are. (1992, no.5, p.22). If the first level hearings are eliminated and eligibility is transferred to the jurisdiction of senior immigration officers, then applicants do not have the right to an oral hearing. They

recommended that the Singh decision be applied.

Under section 45, refugees will not have the benefit of council to represent them or have the right to appeal negative decisions as was previously the case. Refugees may be less forthcoming without legal council and a court proceeding. Refugees usually escape persecution from government officials. These new clauses will deter many claims.

Section 69.1(10), (10.1)

Section 69.1 (10) and (10.1) was also raised by 24 groups and individuals before the Members of Parliament as problematic. These paragraphs place a greater burden of proof on some refugees. Prior to Bill C-86, only one member out of two of the Refugee Division hearing a claim, needed to make a positive decision for claims to be successful. The new amendments stipulate that there will be situations where both members of the panel must find people to be Convention Refugees in order to enjoy Canada's protection.

They are:

- (a) when there are reasonable grounds to believe that the person has destroyed or disposed of documents pertaining to his or her identity.
- (b) when the person has, since making the claim, visited the country that the person claims to have left owing to a fear of persecution; and

- (c) when the country that the person claims to have left owing to fear of persecution is a country prescribed by the Governor-in-Council (Prime Minister) as one that respects human rights.

The government asserted that these are reasonable restrictions to place on refugee claimants. If people destroy identity documents, it is assumed that they may be economic migrants or criminals. If refugees return to the country of persecution or they come from a prescribed country which respects human rights, then the threat of persecution is considered to be acceptable. These people are not believed to be in jeopardy. Table 4 shows the number and types of groups that found section 69.1 to be problematic.

TABLE 4
THE NUMBER OF GROUPS THAT MENTIONED SECTION 69.1
TO BE A PROBLEM IN THE NEW LEGISLATION

		MENTIONED	NOT MENTIONED	AGREED WITH CLAUSE	TOTAL
G R O U P S	INTERESTED GROUPS/IND	3	14	2	19
	LEGAL ASSOC/CONSULT	5	2	0	7
	NGO'S	16	8	0	24
		24	24	2	50

INTERESTED GROUPS AND INDIVIDUALS

Only 3/19 interested groups and individuals felt that these measures were problematic. The Canadian Labour Congress was very unhappy with the increased burden of proof upon refugees. They pointed out that most refugees do not arrive with conclusive identification. Unanimity should not be required by those who come without documentation. Refugees must quickly leave threatening situations. They do not have time to acquire the necessary documents and may not be able to prove that they have not destroyed them. Some refugee destroy such documents because they misunderstand the law while others do so to ensure that they cannot be returned to the country of persecution. It would be unfair if some adjudicators were convinced that some such claims were well-founded while other adjudicators were not.

The CLC protested the rationale for the amendments. The government, according to the CLC, instituted these clauses to reduce multiple claims and welfare fraud. But, refugees are not more likely to commit welfare fraud than other Canadians. As well, in 1991, there were only 43 repeat claims out of the total 30,000 claims. "We fail to see any "sense of proportion " in these measures (1992, no.8A, p.7).

Guy Goodwin-Gill did not understand the need for this provision. He stated that each of the three circumstances for requiring unanimity go to the heart of the credibility

of claims. These questions should be dealt with to determine credibility. Goodwin-Gill argued that to legislate such an approach may complicate proceedings rather than simplify them.

The Regional Municipality of Peel said that they strongly supported an increased burden of proof on refugee claimants. Their representative, Mr. Emil Kolb, said:

I can also tell you that today we very much have the support of our police and our chief of police, who is also strongly in support of these measures. He believes that the proposals of this bill are the only certain way to counteract the gross criminal conduct of offenders who have no legal identification papers (1992, no.4, p.49).

They added that the unanimity clause was the only effective way to reduce crimes involving multi-identification.

Welfare fraud was one of their concerns.

LEGAL ASSOCIATIONS/CONSULTANTS

The issue of unanimity was a problem for 5/7 legal associations/consultants. The Association quebecoise des avocats et avocates en droit l'immigration argued that this provision will create two different refugee systems - a system that offers the benefit of the doubt for some and one that does not. They stated that they were unable to understand the necessity for these changes and questioned whether the clause violated the Charter of Rights and

Freedoms. Most groups were critical of unanimity requirements because refugees destroy identity documents.

The Law Union of Ontario and the Canadian Bar Association (CBA) were also opposed to section 69.1 (10) and (10.1) for several reasons. The Law Union of Ontario said that most refugees do not destroy valid documents but false documents. Some refugees destroy valid documents because they are counselled to do so. The CBA added that the clause to remove the benefit of the doubt to those who destroy identity documents will hurt genuine refugees and not the smugglers. The CBA pointed out that the United Nations recommended that the benefit of the doubt be given to all refugees.

The Refugee Lawyers Association RLA was strongly opposed to denying refugees the benefit of the doubt if a senior immigration officer believes that the refugee has destroyed valid identity documents (1992, no.5A, p.27). They declared that "Ironically, the Refugee Division often refuses claims because the claimant was able to obtain such documents from his or her government..." (Ibid). The Refugee Division will do so because requesting identification documents reveals a lack of fear of the persecutor. The RLA explained that agents who make false documents protect themselves by telling refugees to destroy documents or they will be imprisoned and/or sent back to the country of persecution.

Returning to the country of persecution was also

condemned as a reason for requiring positive decisions from both members of the Refugee Board. The CBA said that there may even be some situations where refugees are forced to return to the country of persecution. An example is when refugees visit sick or dying parents.

The Canadian Bar Association and the Law Union of Ontario agreed that the prescribed country rule is dangerous. The CBA suspected that the Governor-in-Council will be unable to react to quick changes in circumstances in other countries. This is because it takes some time before such information can become available. The Law Union of Ontario held that there is no such thing as a country which universally respects human rights. Canada, they claim, violated Donald Marshall's personal rights and the United States has violated the rights of Haitian refugees.

NON-GOVERNMENTAL ORGANIZATIONS

Non-governmental organizations again were very opposed to the government's changes to the burden of proof. There were 16/24 groups who wanted this clause deleted. Many indicated that the government should maintain the burden of proof since refugees have no access to appeals based on the merits of claims. There were 3/19 interested groups and individuals, 3/7 legal associations/ consultants, and 18/24 non-governmental organizations who suggested that appeal provisions be improved. Most recommended an appeal based on

the merits of a claim. The Inter-Church Committee for Refugees said:

When the present Immigration Act was passed, there was much debate about the procedure being fair. It was generally agreed that if there was only one decision-maker, then an appeal on the merits would be required to be consistent with other parts of Canadian Law and to avoid any suspicion of arbitrary decision making...the compromise agreed upon was for a two member panel, but with only one positive vote being sufficient (1992, no.4A, p.64).

The United Nations High Commissioner for Refugees (UNHCR) did not like the new provisions. Unlike other groups, the UNHCR was very moderate when changes were suggested. They commented:

With regards to the question of split decisions, Canada has - as does any other country - a legitimate interest to the extent possible, in identifying all refugee claimants coming to the country. We note, however, that the approach of the proposed 69.1 (10.1) may risk denying protection to persons who meet the convention definition in order to achieve this administrative objective (1992, no.7. p.8).

The requirement for unanimous decisions for those who may have disposed of identity documents was stressed by many associations as problematic. Their reasons varied considerably. Refugees are often forced to use false documents in order to flee their countries. Agents who make fraudulent documents warn refugee clients to destroy them before claiming asylum. Failure to do so, according to these agents, may result in refugee claimants being deported to their country of nationality and/or imprisoned. It is

also common for refugees to forget identity documents because they leave so quickly. Further, it is common that refugees are not in a position to request identity document from persecuting states.

A few organizations opposed unanimity when the people visit the country that they claim to have left owing to fears of persecution. Amnesty International indicated that there may be good reasons for refugees returning to the country of persecution. At the very least, the legislation should allow refugees to put forward valid reasons for entering their country of nationality; it should not be legislated. The Inter-Church Committee for Refugees also recommended such a change. There are some cases when parents are ill, where refugees may want to come to their country of nationality and can actually obtain permission to do so. For example, sometimes rebels in the persecuting state will permit refugees to return for such a visit.

There was also some reaction to unanimous decisions being demanded by those coming from a country prescribed by the Governor-in-Council as one that respects human rights. The ICCR said that circumstances change rapidly and information flows slowly. Amnesty International asserted that human rights abuses can occur in any country at any time. The new provision assumes that individuals from certain countries are less likely to be in need of protection. They also stated that there is no explicit criteria for defining a country which respects human rights.

Amnesty International stated that section 69.1(10) and (10.1) treats claimants on the basis of group derived characteristics rather than individuals' particular circumstances. Therefore, it is discriminatory. They recommended that this section be deleted or amended again.

Section 69(2)

Another change to the Refugee Status Determination System was section 69(2). This section makes all refugee claim hearings open to the public. Previously, all claims were in camera. Under Bill C-86 refugees must share personal stories in front of the media and the public as well as the officers of the court. Table 5 reveals that there were only 10 groups which noted this provision as problematic.

TABLE 5
THE NUMBER OF GROUPS THAT MENTIONED OPEN HEARINGS
TO BE A PROBLEM IN THE NEW LEGISLATION

		MENTIONED	NOT MENTIONED	TOTAL
G R O U P S	INTERESTED GROUPS/IND	1	18	19
	LEGAL ASSOC/ CONSULT	1	6	7
	NGO'S	8	16	24
		10	40	50

INTERESTED GROUPS AND INDIVIDUALS

Although no interested group or individual endorsed section 69(2), there was only one individual who opposed it. Guy Goodwin-Gill stated:

The refugee experience is commonly traumatic and painful. Incidents of shame and humiliation, torture and degradation, which our definitional approach to protection considers crucial to a successful claim, are less likely to be recounted under the prurient gaze of a sensational press (1992, no.10A, p.13).

As such, Goodwin-Gill suggested that this clause should remain as it was prior to Bill C-86.

LEGAL ASSOCIATIONS/CONSULTANTS

Open hearings were not a problem for a majority of legal associations/consultants. Only the Law Union of Ontario opposed this provision. They agreed with Goodwin-Gill that many refugees will not relate torture in front of the public eye. In some cultures, an admission of rape is taboo. They recommended that this clause offer the lowest standard of proof. The court should permit closure if refugees can show any possibility of danger rather than a serious possibility of danger (Law Union of Ontario, no 18A, p.71).

NON-GOVERNMENTAL ORGANIZATIONS

Section 69(2) was put in place, in part, because the press wanted to cover more stories about refugees coming to Canada. Some refugee advocates, 8/24, were worried that section 69(2) will lead to less information coming forthright from refugees. These people may be too intimidated by the new process to give all pertinent information. Many will worry that their family members may be hurt by releasing information of torture and persecution.

Amnesty International was worried that the new provision will have severe negative effects upon refugees.

The existing legislation is sensitive to the fact that many refugee claimants are reluctant to speak about the experiences in a public forum. For example, it is generally very difficult for victims of torture to describe events which have caused them great pain, humiliation and shame. Also, it would be very difficult for refugee claimants to describe acts of persecution in the presence of representatives from their home countries who could now be attending open hearings (1992, no.4A, p.8).

The Ottawa-Carleton Regional Co-ordinating Committee on Violence Against Women also did not like the change. They stated:

Our second point is that it should not be up to the claimant to justify the closing of a refugee hearing to the public under proposed subsection 69(2). It can be very difficult for people to talk about persecution, particularly involving sexual torture. Having to reveal such information...may be something a woman is simply not prepared to do, and thus she will just self-

ensor and not give all the information she ought to in order to have a successful claim. Her claim could be denied because she talks about one of the ways she's been tortured (1992, no.12, p.6-7).

Conclusion

Bill C-86 introduced substantial amendments to the determination of hearings. Senior immigration officers now make decisions which were formerly made by an adjudicator and a member of the Immigration and Refugee Board. In certain cases, refugees have been imparted the burden of proof and all hearings were opened to the public. Appeals are granted by the judge deciding the claim and are not granted on the merits of a claim. Table 6 shows the number and types of groups that considered appeal provisions of Bill C-86 to be problematic.

TABLE 6
THE NUMBER OF GROUPS THAT MENTIONED APPEALS
TO BE A PROBLEM IN THE NEW LEGISLATION

		MENTIONED	NOT MENTIONED	TOTAL
G R O U P S	INTERESTED GROUPS/IND	3	16	19
	LEGAL ASSOC/ CONSULT	3	4	7
	NGO'S	18	6	24
		24	26	50

The responses to process changes and accessibility modifications were similar. Interested groups and individuals were not concerned with changes to refugee hearings. Goodwin-Gill and the Canadian Labour Congress were the only interest group/individual that protested the process changes.

Legal associations/consultants opposed these amendments because legal representation for refugees is diminished and it is more difficult for claims to be successful. As such, their financial interests are directly threatened. Non-governmental organizations opposed the changes for similar reasons but they perceive refugees differently. Non-governmental organizations view refugees as people in need of voluntary services rather than clients requiring legal services for a fee. NGO's do not usually have a vested economic interest in refugees.

The reaction of the Canadian Labour Congress is surprising. Labour unions have often opposed liberal immigration policies because immigrants could potentially threaten wage and job security (see Comack 1986). In other words, unions fear that immigration is used to enhance production at the expense of labour. But the CLC stated:

It is fairly well known that immigration policy is used as a convenient political cover for those advocating policies that are fundamentally racist and sexist. They are part of the same political code used for attacking programs like employment equity, pay equity and fair labour laws. Paradoxically many share the same right wing political philosophy who advocate immigration as a source of cheap labour. It is the

political code that is used to attack the most vulnerable of immigrants-sponsored immigrant women and domestic workers, as well as those seeking refuge...Our solution, therefore, is a commitment to full employment not restrictions on immigration...Because immigration policy is inextricably linked to other government policies related to employment, the low level of investment in training by Canadian employers is one of the consequences of Canadian immigration policy (1992, no.8A, p.13).

Clearly, the CLC argued that the economic policies implemented by the state make immigration threatening. Immigration itself is not a problem. The state uses immigration to fill skilled labour shortages but does not implement a full employment strategy. As such, other state economic policies should be changed but immigrants and refugees should not be restricted any further.

In the end, legal associations/consultants were not successful in changing many of these aspects of Bill C-86. Section 45 and 69.1(10) and (10.1) remained unchanged. Section 69(2) was reverted back as it was written before the Bill was drafted. That is, refugees will still have their hearings conducted in camera rather than in an open forum. This change, however minor, illustrates that various lobby groups can initiate positive social change within a patriarchal context. In the end, it will likely have a positive impact upon potential than would have been the original amendment.

This change, however, is not likely to change the number of refugees successfully claiming asylum in Canada. It does not alter the patriarchal refugee system. The state

is far more likely to accede to an amendment that will not substantially alter the fundamental relationship between production and reproduction.

PART V CRIMINAL AND SECURITY PROVISIONS

The Immigration Department evaluates refugees on three grounds: eligibility, credibility and admissibility.

Eligibility grounds establish whether people conform to the Convention Refuge definition. Credibility refers to the validity of refugee claims. Admissibility pertains to the issue of whether people should be allowed to enter Canada. Bill C-86 broadens security and criminal inadmissibility clauses, increases criminal penalties, and introduces carrier sanctions against transport companies who carry immigrants and refugees.

Government Rationale

The government designed Bill C-86 to protect Canada from criminals and security threats. In the government document called Managing Immigration: a framework for the 1990's, the government argues that the number of illegal migrants is increasing and that people are finding new ways to circumvent Canada's laws. Many immigrants who falsely claim refugee status are supported by professional criminals and smugglers. Convicted criminals may seek refugee status in Canada so that they can avoid extradition for previous criminal acts. Further, some people may not have been convicted of criminal actions but participate in organizations which espouse or carry out illegal actions.

There is also the threat of welfare abuse and those ordered to depart from Canada but remain in the country. As such, Canada requires new laws to prevent these people from coming to Canada.

The new criminal and security clauses are widened to include all members of organizations, terrorists, and others. In addition, refugees unable to produce acceptable identification can now be searched, fingerprinted and photographed. This will reduce the number of crimes involving multiple identity including welfare abuse. Detention reviews have been increased from every 7 days to 30 days for those issued removal orders. Transport companies will also face much more rigorous penalties if they do not properly screen individuals before they transport them.

Section 19

Prior to Bill C-86, individuals would be inadmissible if they had committed an offence that, if committed in Canada, would be punishable for a term of ten years or more unless they can convince the Governor-in-Council that they have successfully rehabilitated themselves and five years had passed since the termination of the punishment (see appendix 4 for specific language). Criminal inadmissibility provisions have been modified extensively. Now, the clauses exclude people if there are reasonable grounds to believe

they have been convicted of such an offence. As well, people will be inadmissible if there are reasonable grounds to believe that they are or were members of an organization that there are reasonable grounds to believe is or was engaged in the commission of an offence punishable by way of indictment.

Table 7 calculates the number and types of groups that were concerned with criminal inadmissibility sections of Bill C-86.

TABLE 7
THE NUMBER OF GROUPS THAT MENTIONED CRIMINAL
INADMISSIBILITY SECTIONS TO BE A PROBLEM
IN THE NEW LEGISLATION

		PROBLEM	NOT MENTIONED	AGREED	TOTAL
G R O U P S	INTERESTED GROUPS/IND	1	15	3	19
	LEGAL ASSOC/ CONSULT	6	1	0	7
	NGO'S	11	12	1	24
		18	28	4	50

INTERESTED GROUPS AND INDIVIDUALS

There were a wide variety of responses to these sections. Three interested groups/individuals supported the changes, 15 did not mention the changes at all, and only the Canadian Labour Congress opposed the new measures. The CLC claimed that the clauses would restrict many innocent people who disagreed with an organizations' illegal operations and did not participate in such actions committed by others in the organization (1992, no.8A, p.10). This could include many trade unionists as unions have often been the first on the list of organizations to be outlawed. As well, many unionists who participated in illegal strikes could be barred under this section. They argued that "If the purpose of this provision is to keep terrorists out, this is not the way to do it. The committee must reject this measure" (1992, no.8A, p.11).

The three groups which supported the changes were the Canadian Employment and Immigration Union; the Royal Canadian Mounted Police, Immigrations and Passport Establishment; and Guy Goodwin-Gill. The CEIC, and Goodwin-Gill simply stated that they endorsed the criminal exclusions and offered no explanations for their convictions. Only the RCMP made their case in favour of the provisions. They declared that there is an increase in organized immigrant smugglers. These organizations, they claim, are becoming more sophisticated in their methods of

operation and they operate internationally. The RCMP also claimed that criminal organizations involved in the distribution of narcotics are getting involved in the smuggling of illegal immigrants. The high profits provide a compelling incentive for such actions. As such, the new laws will assist the police to restrict these people based on membership in criminal organizations.

LEGAL ASSOCIATIONS/CONSULTANTS

Most legal associations/consultants did not share the opinions of interested groups and individuals. In fact, 6/7 disagreed with the new criminal and security laws. The Law Union of Ontario, the Canadian Bar Association, and the Association quebecoise des avocats et avocates en droit de l'immigration opposed the fact that reasonable grounds can be used to imply that people have been convicted of offenses. There should be minimum standards of proof of actual conviction in order to warrant exclusion.

The Law Union of Ontario claimed that the provisions in the Immigration Act are sufficient to exclude major security and criminal threats. Although they understood the intent of the clauses, they maintained that the new approach is too restrictive. They said:

The changes to the above sections are reprehensible and abhorrent to our Canadian concepts of justice. Persons are not judged to be guilty of criminal conduct outside of a criminal court...adjudicators and visa officers will now become criminal court judges. They will be required to determine what act or omission constitutes a criminal offence under Canadian law in the absence of a foreign conviction, because no charges were ever laid (1992, no.18A, p. 41).

The Law Union of Ontario noted that, as written, visa officers and adjudicators are not bound by the rules of evidence, there is no bar to the evaluation of evidence, and there is no standard for the acceptability of evidence in the legal sense (1992, no.18A, p. 42). In addition, an individual must prove that they are innocent of criminal behaviour. The law should require the government to establish that people are guilty.

They suggested that the threshold of guilt is too low and that the reference to reasonable grounds be deleted or that safeguards be established so that the legislation only restricts actual criminal and security threats. There should also be parameters established for the consideration of evidence. Criminal intelligence reports should not be enough to regard immigrants or refugees as inadmissible. People should also have the opportunity to dispute the accuracy of charges laid against them.

There was also significant reaction to section 19(1)(e) which excludes those people who an immigration officer has reasonable grounds to believe are members of an organization that there are reasonable grounds to believe engage in

espionage, subversion against democratic government, or terrorism. The Association quebecoise des avocats et avocates en droit de l'immigration also had many fears about section 19. They said:

This paragraph is so broad that it could include just about anyone in Canada. There are two or three degrees of reasonable grounds in this paragraph and all are unacceptable: reasonable grounds to believe that a person is or was a member of an organization; second, reasonable grounds to believe that the organization committed an indictable offence or an offence punishable under an act of Parliament...there is no mention whatsoever of crime by association in our Canadian legislation (1992, no.8A, p.25).

The Refugee Lawyers Association was also bothered by the changes which they argued will restrict many people who are not criminal or security risks. "Bill C-86 would bar people who have stood up against tyranny and fought for freedom. These claimants would not have their claims heard" (1992, no.5A, p.34). Further, they opposed the fact that this issue is separated from the Refugee Division. All refugee claimants should be heard and the Refugee Division can determine whether the individual are criminals or security threats. These members are well trained in these matters. This approach will decrease the potential for mistakes to occur in refugee decisions.

The Law Union of Ontario had similar concerns with this particular section as they did with the former provisions. Both clauses are worded too broadly. Legitimate claimants will be rejected and possibly sent back to the persecuting

state. They reasoned that members of groups such as the Black Panthers, the American Communist Party, or the African National Congress will be barred from Canada even if these members did not commit crimes or even sympathize with such actions. Bill C-86 should only restrict those people involved with the organization when certain criminal acts were performed. Some people revoke their memberships if an organization begins using violent means to attain their goals. They suggested that the legislation specifically prescribe particular groups that may pose problems.

The Canadian Bar Association also felt that the amendments are worded too broadly. They added that a feasible alternative would be to "define inadmissibility by direct reference to those organizations and persons" which should be excluded (1992, no.17A, p.25). They acknowledged that there may still be problems associated with such an approach, but it will exclude those that the government wishes to target and provide the responsible Minister with a flexible means to react to changing circumstances (1992, no.17A, p.26). Names of specific people and organizations could be added and deleted as required. This alternative would greatly simplify the work to be done by enforcement and immigration officials.

NON-GOVERNMENTAL ORGANIZATIONS

Non-governmental organizations were much less concerned

with the changes to criminal inadmissibility. Out of 24 NGO's, 11 opposed the modifications, 12 did not mention them at all, and 1 organization supported the amendments. Most groups that responded to these clauses understood and welcomed the intent of the legislation, but stated that the clauses will restrict too many genuine refugees who need Canada's assistance.

The Canadian Jewish Congress and the Jewish Immigrants Aid Services (CJC/JIAS) together asserted that these additional clauses were required in the new legislation. They stated that section 19(1)(e) and (f) appeared "promising" in excluding people with reasonable grounds to believe will engage in terrorism. Canadians should not underestimate the potential for terrorist violence. They also welcomed the exclusion of senior members of governments engaged in terrorism, war criminals, perpetrators of crimes against humanity, and ultimately, racist extremists.

Other non-governmental organizations did not welcome the changes as did the CJC/JIAS. There was a consensus that these provisions were over-inclusive. The Quaker Committee for Refugees found that the section dealing with security and criminal exclusions were too far reaching and broad. "It is important that Canadian security is preserved but it is also important that security and criminal exclusion clauses be very clear so that genuine refugees are not turned away at our border". Some people are forced to commit crimes such as serving with a rebel army.

The Table de concertation des organismes de Montreal au service des refugies Inc. were concerned that if immigration officers are the least bit suspicious about claimants, these refugees will have to prove that they are not members of particular organizations. As well, "membership" is so vaguely defined that it could include members of the U.S. Republican Party or members of the RCMP. MOSAIC insisted that the Convention definition of refugees adequately restricts criminals and security threats. The new definition of terrorists is so broad that it will include genuine refugees who have fought for peace and justice in their home country. (1992, no.12A, p.37).

The Canadian Council for Refugees (CCR) said that reasonable grounds to believe that people committed crimes could include mere charges of crimes (1992, no.5A, p.13). The CCR also pointed out that charging people with crimes is a means of state persecution. They find these changes "alarming" (Ibid). Amnesty International also maintained that governments often accuse people of subversion as a means of persecution. The clauses are unacceptable because they do not assess people on the basis of their actions, but rather, on the actions of organizations. Many people who may be restricted from Canada may disagree with an organizations' actions. The Canadian Ethnocultural Council agreed with Amnesty International that people should be judged on the basis of their actions and not the actions of organizations in which they may have been involved. They

also worried what kind of latitude may be given to section 19(1)(k); what constitutes a danger to the security of Canada?

The Chinese Canadian National Council and Chinese Canadian National Council Toronto Chapter challenged the logic behind increasing criminal and security provisions. They suspected that the sections are in place because some Canadian officials associate immigrants and refugees with an increase in crime. They have not seen any evidence to warrant such a correlation. They said:

We are appalled by the suggestions made in the government press releases that refugee claimants are responsible for rampant criminal activities. Such anti-immigrant and anti-refugee sentiments is shared by many in our society and is in fact escalated by the recession. The proposed Bill which entrenches such distorted views will help perpetuate them (1992, no.8A, p.66).

In addition, the clauses are inadequate because they are all-encompassing. Freedom fighters such as members of the African National Congress could be excluded from making refugee claims in Canada. This is "guilt by association" (1992, no.8A, p.69).

They argued that the law already provided sufficient safeguards against criminals and other security threats. The problem, as they perceive it, is one of enforcement and implementation. Finally, they said that these matters should never be dealt with by immigration officers with "all their biases and prejudices" because they can refuse

claimants on unsubstantiated and subjective factors (Ibid).

The Canadian Civil Liberties Association concentrated their entire brief on these changes. They proposed that permanent residents should not be deported by the simple association with an organization. Such organizations include perfectly legitimate and acceptable people. The RCMP, for instance, was found at one time to open mail in circumstances prohibited by law. Other groups that may be denied admissibility to Canada include members of Greenpeace, the American Civil Rights Movement, followers of Martin Luther King and others. They questioned what grounds may constitute a membership in a group. Will membership include actual payments of dues, delivering flyers, participating in rallies, stuffing envelopes, or licking stamps? Will this definition include past and/or present members? They proclaimed that many people resign their membership when they learn the organization they support are involved with improprieties.

They were very disturbed about that fact that the Bill proposes to deport those whom they anticipate will engage in certain acts. They responded:

This is effectively deportation by clairvoyance. People who have relocated themselves and their families on the basis of a grant of permanent residence in this country should be subject to deportation only for what they are doing or have done, not for what anyone's crystal ball indicates they are going to do (1992, no.7A, p.7).

Minister Valcourt reacted strongly to these phrases as made by the Canadian Civil Liberties Association. He reacted with the following statement:

Bill C-86 would allow Canada to more effectively intercept or remove individuals who belong to criminal or terrorist organizations but who have no record of conviction...Some critics have called this measure "deportation by clairvoyance". That makes for a colourful sound bite but it also serves to trivialize a serious problem." (Valcourt, July 27th, 1992, p.11).

Sections 85 to 97.1

Transport companies were given greater responsibility for ensuring that immigrants and refugees are properly documented. Further, the amendments also changed the way obligations and liability costs will be enforced. Transport companies will provide the government with security deposits which will be drawn against for medical and/or removal costs. The Minister may direct senior immigration officers to detain vehicles for up to 48 hours for failure to comply with security deposits. Penalties for carrying improperly documented passengers are significantly increased, administrative fees are introduced for improperly documented people and criminal prosecution is now an option when a carrier does not honour its administrative fees.

The government invoked greater sanctions against people who violate the Immigration Act by assisting those who would illegally enter Canada. The 1978 Immigration Act provided

finer to "every person who knowingly organizes, induces, aids or abets" or attempts to do so for those without a valid visa, passport, or travel document. For a conviction on indictment, the fine was as high as ten thousand dollars, or imprisonment for no longer than five years, or both. Bill C-86 increases fines up to one hundred thousand dollars. On summary conviction, imprisonment was not to exceed six months, or a fine of two thousand dollars, or both. Bill C-86 increases the prison term to one year and the fine to ten thousand dollars.

Table 8 shows the reactions of groups to carrier sanctions.

TABLE 8
THE NUMBER OF GROUPS THAT MENTIONED CARRIER SANCTIONS
TO BE A PROBLEM IN THE NEW LEGISLATION

		PROBLEM	NOT MENTIONED	AGREED	TOTAL
G R O U P S	INTERESTED GROUPS/IND	4	12	3	19
	LEGAL ASSOC/ CONSULT	1	6	0	7
	NGO'S	4	20	0	24
		9	38	3	50

INTERESTED GROUPS AND INDIVIDUALS

Interested groups and individuals were divided on the issue of carrier sanctions as 12/19 interest groups did not refer to the changes, 3/19 supported the clauses, and 4/19 groups opposed the amendments. The Canadian Employment and Immigration Union; the Regional Municipality of Peel; and the Royal Canadian Mounted Police, Immigration and Passport Establishment supported the carrier sanctions. The CEIC simply stated that transport liability is a positive aspect of the Bill. The Regional Municipality declared that airlines should be held responsible for the passengers they bring to Canada. Thus, these companies should face commensurate sanctions if they do not uphold their responsibility in this matter. The RCMP stated that transport companies must be liable for identification of refugees because once claimants arrive in Canada, it is too late to correctly screen them. Officers cannot send claimants back on the plane on which they arrived (1992, no.6, p.43).

Capital reacted vigorously to these changes. Indeed, this was the only issue in the entire Immigration Act in which they showed a notable interest. These groups consisted of The Air Transport Association of Canada, the Association of Airline Representatives in Canada, the International Air Transport Association, and the Chamber of Shipping of British Columbia and Shipping Federation of

Canada.

The Air Transport Association of Canada (ATAC) said that they have had a positive working relationship with Immigration Canada for some time. Both parties have worked together to train airline agents in intercepting illegal immigrants. ATAC's members, however, are still not as well trained as are immigration officials to intercept illegal immigrants. Hence, they oppose many of the new carrier sanctions.

IATA said that Canada has great appeal for those wishing to leave their countries. This is due to Canada's social services and an asylum process that permits claimants to remain in Canada for long periods while they await the processing of their claims. The stage is set for problems to occur. Airline agents are not immigration documentation experts, they are unable to do this job professionally. The solution would be to develop co-operative efforts with other countries so that governments would check such passengers, but airlines are targeted because governments know they possess the means to "force the issue" (1992, no.4A, p.121).

Many groups responded to section 89(2). This paragraph forces airlines to provide the government with adequate areas, offices, laboratories and other facilities, including buildings, accommodation, equipment, furnishings and fixtures, for proper examination and detention of people. IATA argued that this section seems to allow for indefinite detention. They suggested that time limits be established

for the use of these facilities. ATAC insisted that diligent processing of immigrants and refugees would negate the need for these facilities.

Section 89.1 forces transportation companies to retain passengers' visas, passports, and travel documents from the time the transportation company embarks people at the final embarkation point until they are presented to an immigration officer. IATA and ATAC both claimed that foreign governments and the Canadian government do not allow transportation companies to hold their citizens' documentation. These documents are government property. IATA maintained that transport companies should only be held responsible for the costs of returning passengers and no other fines or penalties. Even fines for returning passengers are unfair at times because transport companies bear the burden of returning people seven or eight years or more after an immigrant or refugee arrived in Canada. AARC and ATAC asked for a statute of limitations for returning people.

IATA and ATAC criticized the language used in section 91.1. This section introduces administrative fees to be assessed against companies bringing classes of inadmissible people to Canada. They feared that the government could extract detention costs, legal fees, staff costs, court costs without any limitation. These costs should be levied against individuals and not transport companies. IATA suggested that if the committee retained this paragraph, a

defined amount with limits prescribed and an appeal also be instituted.

IATA and AARC objected to sections 92(1) to (5) which allow immigration officials to seize vehicles if the company fails to comply with directions issued by the Minister through the senior immigration officer. IATA declared:

In effect IATA members are considered guilty until such time as they can prove their innocence which is contrary to the basic principles of the Canadian Constitution...Further the concept of seizing a hundred million dollar aircraft, disrupting schedules and submitting the travelling public to undue hardship...seems more than unreasonable (1992, no.4A, p.125-6).

AARC suggested that these provisions be deleted or, failing this, a bank letter should suffice rather than the seizure of aircraft worth up to \$150 million (1992, no.4A, p.129).

Finally, IATA reacted to section 97.1 which stipulates that if transport companies do not obey regulations such as holding identity documents and do not remove people they are required to, these companies are subject to penalties. They claimed that the fines are increased tenfold without any justification for the increases. They insisted that no fines should be issued unless there is a blatant disregard for the law.

LEGAL ASSOCIATIONS/CONSULTANTS

Carrier sanctions were only briefly mentioned by one legal association/consultant: the Refugee Lawyers Association. They disagreed with the increase in penalties for those who assist travellers to Canada and turn out to be improperly documented. They asserted:

The Refugee Lawyers Association believes that it is inappropriate to punish those who have assisted those subsequently found to be Convention refugees or allowed to remain in Canada on humanitarian grounds (1992, no.5A, p.28).

In effect, transport companies are held liable for improperly documenting all refugees including Convention refugees.

NON-GOVERNMENTAL ORGANIZATIONS

The issue of carrier sanctions was only mentioned by one legal association/consultant. Likewise, it was a minor issue for most non-governmental organizations as only 4 groups mentioned it as problematic. These organizations included Amnesty International, the Canadian Council for Refugees, the Canadian Ethnocultural Council and the Canadian Hispanic Congress.

Amnesty International considered carrier sanctions against companies transporting people without proper identification is inconsistent with a full commitment to the

Convention (1992, no.4A, p.6). These clauses obstruct the flight for safety of refugees without identification. "The Convention becomes a meaningless document if individuals are not able to reach countries where they can seek refuge" (Ibid). This provision should be repealed. If the committee proceeded with the liabilities, they should at least not levy penalties when an individual is found to be a Convention refugee.

The Canadian Council for Refugees urged the committee to revoke all penalties against those who assist refugees. They said:

Indeed this is a subject that appears to take more space in the Bill than any other...Carrier sanctions are a venerable and shameful part of Canadian immigration law. They date back to the original Act of 1978. They become, however, [sic] harsher with each amendment. With the Bill, the sanctions become draconian (1992, no.5A, p.22-3).

The CCR noted that these sanctions were deemed unconstitutional by the Federal Republic of Germany because they restrict access to the asylum process. Carrier sanctions are unfair to both transport companies and to refugees.

The Canadian Ethnocultural Council recognized that immigrant smuggling is a serious crime, but they regarded the penalties involved as excessive. These penalties will not only hurt airlines and refugees, but humanitarian organizations as well. If such an organization assists one

genuine refugee who does not have sufficient documentation, they can be convicted of an indictable offence carrying a jail term of five years and a fine of up to \$100,000.

Section 110

Bill C-86 also allows the government to search, photograph and fingerprint refugees arriving without proper identification. There was some reaction from various groups offended by the fact that the Minister said that there is no reason for concern. He said:

Critics of the new legislation have been quick to jump on the issue the fingerprinting of refugees. Far from being Machiavellian, the motivation is quite simple. We want to know who is coming through our door...Since 1989...More than 23,000 individuals arrived at Canada's three major international airports without valid identification documents (Valcourt, July 27th, 1992, p.9).

Minister Valcourt suggested that there was no cause for concern and table 9 shows that there was little reaction to these changes.

TABLE 9
 NUMBER OF GROUPS
 THAT FOUND FINGERPRINTING AND PHOTOGRAPHING
 TO BE A PROBLEM IN THE NEW LEGISLATION

		PROBLEM	NOT MENTIONED	AGREE	TOTAL
G R O U P S	INTERESTED GROUPS/IND	1	15	3	19
	LEGAL ASSOC/ CONSULT	0	7	0	7
	NGO'S	8	16	0	24
		9	38	3	50

INTERESTED GROUPS AND INDIVIDUALS

There was a mixed reaction by interested groups and individuals to the searching, fingerprinting and photographing issue. Out of 19 interested groups and individuals, 15 made no reference to the provisions. The Canadian Labour Congress opposed the changes. Three groups, the Royal Canadian Mounted Police, Immigration and Passport Establishment; the Regional Municipality of Peel; and the Air Transport Association of Canada supported the amendments.

The Federation of Canadian Municipalities agreed with many of the changes to the Act. They understood the need to identify refugees and immigrants, but they stated that they

had not made a decision regarding the manner in which refugees and immigrants should be identified. By contrast, the Canadian Labour Congress did not support these changes. They argued that the powers of immigration officers to detain, search, photograph, and fingerprint people are already substantial. The effect of the amendments will be to deter and harass individuals trying to enter Canada (1992, no.8A, p.6).

The RCMP said that this provision was a positive step. They claimed that the use of fingerprints would be the only way to eliminate any potential for error in identifying refugees. "This would not be the case if we were to conduct identification checks using biographical data only" (1992, no.6, p.26). The Regional Municipality of Peel stated that this amendment would be essential to the integrity of the immigration system. Although they recognized that crime among immigrants and refugees is an isolated problem, they nonetheless insisted that fingerprinting and photographing is the only means to effectively limit this practice. Finally, the Air Transport Association of Canada strongly supported the authority given to immigration officers to search people for identity documents (1992, no.4A, p.136). They exclaimed that the inability of immigration officers to search people for identity documents is ridiculous.

LEGAL ASSOCIATIONS/CONSULTANTS

Not one legal association/consultant mentioned the changes to this section. This is particularly interesting since both the Law Union of Ontario and the Canadian Bar Association made extensive presentations to the committee. In fact, they made comments to almost every amendment put forward. It may be that these changes do not affect the outcome of refugee hearings. Personal searches may not produce evidence that could be detrimental to cases. As such, perhaps legal associations/consultants were not directly affected by these changes.

NON-GOVERNMENTAL ORGANIZATIONS

Out of the 24 non-governmental organizations, only 8 mentioned that they opposed the idea of searching, photographing and fingerprinting refugees. Some groups maintained that these measures were motivated by sensational media stories of welfare fraud. Others argued that the clauses will generate stereotypes of refugees as criminals. Finally, some stated that identifying refugees in this manner could be dangerous if this information is shared. These NGO's agreed that these provisions discriminate against refugees.

The Canadian Council for Refugees argued that there is no more justification for fingerprinting and photographing

refugees on the basis of welfare fraud than there is for doing so to a particular sex, race, or ethnic group. This should only be done on a case by case basis. The Canadian Ethnocultural Council did not support this section because it implies that refugees are more prone to crime than others. "It should be noted that abuses by refugees such as welfare fraud are overblown" (1992, no.4A, p.26). It seems photographing and fingerprinting every refugee to prevent welfare fraud is inefficient and unfair (Ibid). The Canadian Council for Refugees, the Manitoba Interfaith Immigration Council Inc. and the Canadian Ethnocultural Council suggested that these provisions are discriminatory and violate the Charter of Rights and freedoms. The Manitoba Interfaith Immigration Council Inc. asked the committee why all welfare clients and other Canadians are not fingerprinted.

The World Sikh Organization said that these clauses were not acceptable. Fingerprinting all claimants re-enforces the view that refugees are criminals. They also claim it is a potentially dangerous practice. They cite a disturbing example:

Prime example is the 174 refugee claimants who landed in Nova Scotia on July 12, 1987. They were all photographed and fingerprinted. This information was then shared with the government of India, the very government that was persecuting them...Had they been sent back, their lives would be in serious jeopardy (1992, no.9A, p.4).

Section 103

The last issue of enforcement is the matter of pre-hearing detention. Previously, detention reviews were held every seven days after the initial interview. They were also held in camera. These rules have changed as the government legislated that they be held publicly and once every 30 days after the initial interview. Bill C-86 also places the burden of proof on the detainee to prove that they would not be a public threat and that they will appear before an adjudicator.

Ironically, there was little reaction by various groups to the major changes to pre-hearing detentions. This is ironic because it has been suggested that governments have used detentions to effectively deter refugees from seeking asylum (see Helton, 1991). Table 10 shows the reactions by various groups to these provisions.

TABLE 10
THE NUMBER OF GROUPS THAT MENTIONED DETENTIONS
TO BE A PROBLEM IN THE NEW LEGISLATION

		MENTIONED	NOT MENTIONED	TOTAL
G R O U P S	INTERESTED GROUPS/IND	1	18	19
	LEGAL ASSOC/ CONSULT	4	3	7
	NGO'S	8	16	24
		13	37	50

INTERESTED GROUPS AND INDIVIDUALS

The CLC was the only interest group to protest the changes made to detention periods. Once again, many groups did not comment upon these changes because of the narrow focuses of interested groups and individuals. Most groups analyzed only one aspect of legislation. The CLC was one of the few that analyzed several aspects of the legislation.

The CLC held that it is unacceptable for detainees to be held for a month without recourse after an initial review done within 48 hours. It is rare for detainees to get legal counsel and have someone post a bond within 48 hours (no.8A, p.11).

LEGAL ASSOCIATIONS/CONSULTANTS

There were four groups that mentioned these changes as problematic. The Association quebecoise des avocats et avocates en droit de l'immigration, the Law Union of Ontario, the Lawyers Committee for Human Rights, and the Organization of Professional Immigration Consultants protested these changes. They all agreed that the length of the detention period is excessive under Bill C-86.

The Association quebecoise des avocats et avocates en droit de l'immigration suggested that detentions be reviewed every 7 days unless people specifically waive this right. In these cases, reviews should take place at least every 30 days even if people waive this right.

They said that section 103(7) was unacceptable. It states that people may be detained if there is reason to believe that they pose a danger or would not show up for inquiries or the continuation thereof. Adjudicators must be satisfied of this or else they must order the release of these people. The proposed legislation is unacceptable since the burden of proof is on the people in detention. This violates the fundamental principle of peoples' rights to freedom.

They also opposed detention reviews being held in public because they could adversely affect claimants. Sometimes people must reveal things that could put them in jeopardy. It is often difficult to prove that the life,

liberty or security of people would likely be threatened. In any case, the provision exists that if refugees should wish to have the review conducted in public, they may. There is no justification for reviews being held in public.

The Lawyers Committee for Human Rights pointed out that section 103(6) or lengthening the detention review is problematic. Arbitrary and prolonged detention is prohibited by general human rights law and Article 9(1) of the International Covenant on Civil and Political Rights. Detentions are only authorized where necessary to protect society and to ensure appearances in court. The risks of arbitrary detentions are increased by Bill C-86.

Finally, the Organization of Professional Immigration Consultants stated that circumstances may change within the 30 days that may warrant release. People may have to wait 30 days before another review could take place. This is simply too long. As well, there is nothing in the new legislation for people to get back their bonds or security deposits after they have been released and the reasons for holding the bonds are void. The situations are such that people can wait for up to a year for their money to be returned to them.

NON-GOVERNMENTAL ORGANIZATIONS

Section 103 was opposed by only 8/24 groups appearing before the committee. Some groups insisted that these

paragraphs violate the Charter of Rights and Freedoms. Others attacked it from the standpoint of being unfair. The Chinese Canadian National Council said that the necessity of these changes has yet to be demonstrated by the government. The Act should not be amended unless there are factual problems with the existing law.

The Quaker Committee for Refugees was quite concerned about the use of detentions. They pointed out that detentions are terrifying for refugees. As well, they make working on claims much more difficult (1992, no.10A, p.38). Amnesty International held that the potential exists for longer detention periods to deter potential claimants from seeking and obtaining protection. Detentions may hurt the preparation of claims, have debilitating effects on clients, causing abandonment of claims and deter others from even attempting to obtain protection.

Amnesty International suggested that claimants should at least be reviewed every seven days for at least the first two weeks and that a paragraph should be included to allow detainees to bring forward applications for release before adjudicators if there are changes in circumstance. The amended Act forces people to put forward convincing reasons for release. The burden of proof is on detainees whereas it was previously on the government. Amnesty International agreed with MOSAIC in regarding section 103(7) as a violation of the Charter of Rights and Freedoms.

The Canadian Civil Liberties Association (CCLA) viewed

the extension of detention reviews as both unacceptable and unnecessary (1992, no.7A, p.13). They stated that the government's justifications for these changes were inadequate. The government claimed that delays such as the need to obtain proper travel documents rarely change quickly. Often the 7 day review is unnecessary. The CCLA said, however, that such changes do occur. In addition, weekly reviews necessitate reviews of the reasons for detentions.

They also objected to the fact that the onus is on detainees to prove that they are good risks to attend hearings before adjudicators and that they will not endanger the public. "As a matter of logic, how can people satisfy such an onus? It is difficult to prove negative propositions" (1992, no.7A, p.14). They recommended that the government have the burden to prove that detainees may endanger the public and not appear before adjudicators.

The Interchurch Committee for Refugees also disagreed with lengthening the period of detention reviews. They said that it will result in many more people being detained at public expense for longer periods of time. A large number of detainees are released at the first seventh day review because it is often difficult for detainees to meet with family or a bondsman within this period of time. What is worse, is that Canada is essentially imposing:

a criminal sentence on an innocent person, against whom no evidence has been presented, who is simply awaiting official action like an inquiry. Thirty days in jail with no review is the kind of punishment that should not be permitted because the person arrived on a Friday and could not contact relatives or counsel (1992, no.4A, p.67).

They suggested that after the initial 48 hour review, a 7 day review follow before moving on to a longer review period.

Conclusion

In conclusion, the government made drastic changes to criminal and security provisions. These ranged from criminal inadmissibility clauses to carrier sanctions to amendments relating to the enforcement of the Act including searching, photographing, fingerprinting, and detention of refugees.

The most important of these changes, as far as extending patriarchal control over the legislation, are the criminal inadmissibility clauses and detention reviews. They are the most important because they can significantly limit the number of successful claims proven valid and they can most drastically alter the number of refugees who chose to claim asylum in Canada. Refugees will be deterred from claiming asylum in Canada if the potential exists that they will be subject to further harassment, and in a sense, further persecution.

The changes to criminal inadmissibility were not changed greatly. In this respect, the patriarchal emphasis of Bill C-86 remains intact. Interestingly, there were other changes that arose from these briefs and they were not vigorously contested. For instance, the state did amend the detention review paragraphs back to every 7 days and they are still held in camera. The change in the length detention reviews will not give the state greater control over reproduction. Legal associations/consultants and non-governmental organizations were able to limit the patriarchal intent of the Bill in this regard.

This victory, however, should be tempered. The changes do not drastically alter the material imperative of refugee selection. Both criminal inadmissibility clauses and detention reviews would have to be altered to affect the major purpose of this Bill.

There were some other interesting elements arising from this section. Capital suffered great losses. Instrumental Marxists would have great difficulties explaining these losses because they believe that the state acts on behalf of capital. But this was not the case in this circumstance. As well, labour and capital were in agreement on issues of carrier sanctions. It would seem contradictory for the CLC to agree with capital on issues which involve the admissibility of refugees. In fact, these positions are not contradictory because capital was represented by a few organizations which were financially threatened by the

changes. It would have been interesting if the Canadian Manufacturers Association or the Canadian Chamber of Commerce had made their views on the Act. As it was, only a specific section of capital was represented.

THE MEDIA

Introduction

Thus far, the changes to the Immigration Act and the responses by various groups to them have been discussed in detail. The media can also influence legislation. It shapes public opinion and is influenced by what Canadians consider important on a daily basis. This section analyzes the potential of the media to modify Bill C-86.

The Montreal Gazette, the Vancouver Sun, and the Globe and Mail are examined in the period from June 16th, 1992 when Bill C-86 was first tabled until November 5th, 1992, when the legislative committee examining Bill C-86 concluded its hearings. All stories regarding Bill C-86 are included in this analysis except for letters to the editor. There were a total of 220 immigration stories. There were 44 which explicitly referred to Bill C-86 and only 35 articles specifically analyzed the actual clauses of Bill C-86. The content of these articles are the focus of this section.

The media was generally critical of Bill C-86. Table 12 shows the critical, positive and neutral depiction of access, process, criminal/security and other clauses in all newspaper articles.

TABLE 11
 NEWSPAPER ARTICLES DEPICTIONS OF ACCESSIBILITY,
 PROCESS, CRIMINAL AND SECURITY CLAUSES AND OTHER
 OF BILL C-86

		ARTICLE'S DEPICTION			
		CRITICAL	POSITIVE	NEUTRAL	
C L A U S E S	ACCESS	15	3	0	18
	PROCESS	12	3	0	15
	CRIME/ SECURITY	17	7	3	27
	OTHER	2	2	1	5
		46	15	4	

ACCESS

There were 18 reports on accessibility provisions. There were 15 stories that were critical of the clauses while only 3 were positive. Most of these reports examined the potential impact of the safe third country clause. For instance, in "Refugees feared as welfare load: Federal ban on working called passing the buck", Michael Murphy, the acting executive director for MOSAIC said the safe third country provision alarmed him. He was particularly

concerned with the prospect that Central Americans may be sent back to the United States since the U.S. rejects and deports so many Central Americans. Dennis Mcree, an immigration lawyer and chair of the National Immigration Section of the Canadian Bar Association, said "I don't see why investors should jump the queue over other people..." (The Vancouver Sun, 1992, A1).

The Montreal Gazette was also critical of Bill C-86 in regards to accessibility. In "Let Justice guide refugee policy; not immigration", Leclerc states that:

In Valcourt's bill, more or less ignorant officers with no judicial independence, will have the power to send asylum-seekers back to their distress, while the right to a lawyer is denied (1992, August 7, p.B3).

He adds that the government is not able to efficiently handle both refugee claims and immigration selection simultaneously. These departments should be split.

The Globe and Mail also reported on the changes to accessibility introduced by Bill C-86. In "Immigration overhaul sought: Sweeping proposals would favour skilled, curb refugee appeals" Oziewicz interviewed several organizations interested in the new law. He quoted David Matas of the Canadian Council for Refugees as saying:

Mr. Valcourt confirmed that implementation of the so-called "safe third country" concept would cut refugee claimants arriving in Canada by at least 40 per cent (The Globe and Mail, 1992, June 17, p. A1).

Representatives of the Refugee Lawyers Association pointed out that political considerations will enter into the description of safe third countries.

In another article entitled "Refugees risk torture, execution if forced back, Amnesty charges: New Immigration bill violates Charter, committee told", the Globe again interviewed groups opposed to the legislation. Amnesty International maintained that the Bill was "very harsh" and penalized genuine refugees to get at the abusers. Ellen Turkey, chairwoman of the Inter-Church Committee for Refugees, claimed that the changes to accessibility would favour those who are able to afford a direct airline connection to Canada. Finally, the Canadian Ethnocultural Council pointed out that the Bill could block the entrance of members of the ANC or Chinese students fighting for democracy.

Similarly, Estanislao Oziewicz ran a story for the Globe and Mail on August 27 called "Canada urged to show more humanitarianism". This story again interviewed David Matas of the Canadian Council for Refugees. Matas stated that Canada has a strict definition of a refugee. It subjects refugees to immigration criteria such as medical and security screening and proving that refugees can successfully establish themselves in Canada. Canada only wants the cream. Matas added that the proposals would result in Canada receiving only the young, healthy, the best skilled, and the best educated.

On September 14, 1992, the Montreal Gazette published the results of a poll showing Canadians holding "harder views" towards immigration. In "Government polls find Canadians less tolerant of immigrants: Ottawa announced tougher immigration laws after survey showed growing dislike of foreigners", LaPointe explained how a survey of 1,800 adults and 14 other gatherings taken in January 1992 found a "harder view" towards immigration and a growing acceptance of dislike of foreigners (p.A6). One-third of the respondents agreed that it was important to keep out people who are different from most Canadians and over one-half were worried that they may become a minority if immigration is unchecked. The poll also found that one-half of Canadians felt that the government admitted too many immigrants and that Quebecers were the most tolerant of immigration. This poll was accurate within 2.3 percentage points 19 times out of 20. A very similar report of this survey came from the Globe and Mail.

On the same day, the Vancouver Sun also released a government poll on Canadians' views of immigration (Harper, 1992, September 14, p. A4). In defending the Act, Valcourt said that Canadians may be divided into five different categories of people. The first group comprising 22% of Canadians were considered xenophobes. They were fearful about their future and found immigrants threatening. The second group of 28% of Canadians were leaning intolerant. They were flirting with racial intolerance. There were only

21% of Canadians that were middle of the road and had no reaction to immigration. Finally, 14% of Canadians were labelled "contented compassionates" who held no negativity towards immigration and a mere 16% of Canadians were considered "open cosmopolitans". The latter group of people were the most compassionate and were likely to be immigrants themselves.

Some other stories focused on establishing appropriate levels of immigration. In "Minister would double immigration: Valcourt emphasizes his views are personal, not federal policy" (Farrow, 1992, p. A1), the Minister said that he would like to increase immigration to 500,000 annually. In particular, he claimed that he would like to have no limits on refugees or investor immigrants. The latter create jobs by providing investment capital. Michael Murphy of MOSAIC said that these comments were "silly off-the-cuff comments made by a minister who wants to appear to be pro-immigration" (Farrow, 1992, A1).

Gender

Gender inequality was also a major theme of refugee policy. All three newspapers explained that women face not only state persecution, but gender persecution as well. A Canadian Press story in the Vancouver Sun called "Female refugees face extra hurdles entering Canada" on September 18, 1992 (Canadian Press, 1992, p.A2), explained that gender

persecution should be added to the definition of refugees. Lori Pope of the Ottawa-Carleton Regional Committee on Violence Against Women said that the current definition reflects mens' experiences while women's experiences were ignored. Although she attended the legislative committee examining Bill C-86, she held out little hope of changing the law.

On September 24, 1992, the Sun reported "Lobby groups split over gender refugee question" (Canadian Press, 1992, p.A3) posed the question on whether the UN definition should be modified. Ed Broadbent suggested that it should be changed but Rebecca Cooke of the University of Toronto said that it would lead to a massive flood of female refugees. Elsa Musa of the Canadian Council for Refugees says that this type of persecution is underrepresented and immigration lawyers claim that success with such cases is poor.

PROCESS CHANGES

In all three papers, there were 15 stories that examined the changes to the refugee status determination system. Of these stories, 12 were critical while 3 were positive of the proposals. These stories reported on the changes in the burden of proof, the issue of appeal rights and the removal of the credible basis stage of the process.

The issue of amendments to the processing of claims played a secondary role for the Montreal Gazette. Most

articles stated that the changes were positive as they shortened the process (Montreal Gazette, June 18, 1992, p.A5). This process could take up to 2 years until conclusion. The only major criticism was that the right to a lawyer was denied (Montreal Gazette, August 7, 1992, p. B3). There were few criticisms about the major changes to the process such as the elimination of the credible basis stage. This is due, in part, because most groups were in agreement that eliminating the credible basis stage was positive change.

The articles rarely focused on the changes to the limitations of appeal rights or changes to the burden of proof. The most critical report of process changes appeared in the Vancouver Sun entitled "Refugees feared as welfare load: Federal ban on working called passing the buck". This article pointed out that if the new refugee policy is implemented, refugees will be "dumped onto provincial welfare rolls" (The Vancouver Sun, 1992, June 17). It will also result in greater welfare abuse and negative images of refugees. Although most groups supported shortening the refugee status determinations process, they added that refugees should be given the opportunity to work as soon as their claims are accepted.

The criticisms of process changes in the Globe and Mail focused on open hearings, the problems with the sponsorship program and the limitations of appeal rights. On September 4, 1992 Estanislao Oziewicz ran "Refugee sponsor system

'failing': Council study cites hardship". In this report, the Canadian Council for Refugees asserted that the sponsorship program was in a state of virtual collapse. The CCR explained that the problems were institutional, endemic, and structural. The essence of the problem is that "decisions are arbitrary and capricious.. ..families are split. Files are lost. Claimants are misinformed" (Oziewicz, September 4, 1992, p. A7).

On June 18, 1992 Estanislao Oziewicz also wrote "Proposals on refugees come under attack: Control measures for non-citizens, unnecessarily harsh groups charge". This article featured the comments made by non-governmental organizations. Spokespeople for the Interchurch Committee for Refugees said:

The lack of a meaningful appeal already makes the law incapable of guaranteeing refugees protection from the threat of wrongful deportation (Oziewicz, June 18, 1992, p. A10).

In "Bill threatens refugees' rights, churches say: Groups say new legislation would make it virtually impossible to appeal cases to higher courts" by Geoffrey York, the National Organization for Visible Minority Women called the Bill punitive and stated that it violated the human rights of refugees. The Canadian Council of Churches also condemned the new appeals process (Globe and Mail, July 31, 1992, p. A4). They asserted that refugees lost the right to legal assistance and court appeals.

The processing of claims was also the central focus of "Planned refugee law called wrongheaded: Specialist says proposal for treaties threatens determination system", (Estanislao Oziewicz, August 31, 1992, p. A6). In the article, James Hathaway, of Osgoode Hall Law School at York University, claimed that the new Bill will cost taxpayers millions in the future. This is because of the provisions to enter into treaties with other nations. For instance, if refugees enter Canada via the United States, Canada has the right to send them back to the U.S. to find asylum. According to Hathaway, Canada's responsibilities would not end there. Canada would be financially and legally obligated to pay for the processing costs of these refugees.

CRIME/SECURITY ENFORCEMENT

The issue of criminal and security enforcement clauses were widely discussed. There were 27 articles focusing specifically on the criminal and security provisions of the new Act. Out of these reports, 17 were critical of the clauses, 7 were positive and 3 were neutral. The provision to fingerprint all refugees was the most controversial proposal.

Only 2 days after the legislation was released, the Montreal Gazette released an article entitled "Immigration reform on right track: Plan should help most while deterring bad apples". This story defended the section on

fingerprinting of refugees. "How can Canada check to see if such people are rapists or murderers in their home country if it cannot even verify the claimants' names?" The author added that this provision will reduce welfare fraud.

On August 7, 1992 the Montreal Gazette released a very critical story on the new legislation. It pointed out that all countries around the world are closing their doors - a new iron curtain is being built. Further, the author claimed that the department has been discriminatory by allowing Yugoslavian immigrants into Canada while restricting Somalis. He pointed out that "Still, Valcourt and his acolytes talk senselessly of criminals to fingerprint or terrorists to stop at the border" (Montreal Gazette, August 7, 1992, p. B3).

The Globe and Mail published a report called "A sensible approach to immigration reform". Although this article was rather positive of the changes introduced by the government, it asked why identity cards could not replace fingerprints to identify refugees.

The issue of criminal inadmissibility also arose frequently. Estanislao Oziwicz's article "Immigration bill called garbage" examined the criticisms made by the Canadian Civil Liberties Association (CCLA). The CCLA demanded that the government scrap its section on criminal inadmissibility because its wording was so broad. They called it "deportation by clairvoyance". They claimed that the Palestinian Liberation Organization (PLO) may have a bowling

league or a credit union but these people would be unnecessarily restricted even if they have done nothing wrong. Gregory James of the Refugee Lawyers Association said that it could restrict Kurdish guerillas fighting against Saddam Hussein. Alan Borovoy exclaimed "I think it would behove the government to withdraw a lot of this refuse" (Oziewicz, June 20, 1992, p.A8).

Bernard Valcourt reacted strongly to these charges in a story by Geoffrey York which appeared on July 28, 1992. Valcourt claimed that the department would push ahead with the controversial legislation despite widespread criticism. York stated:

Mr. Valcourt took a jab at the Canadian Civil Liberties Association, which has condemned Bill C-86 for allowing "deportation by clairvoyance". The criticism "serves to trivialize a serious problem," he said (York, July 28, 1992, p. A4).

A follow-up article by Geoffrey York on July 30, 1992, observed the testimony made by groups appearing before the legislative committee. Amnesty International suggested that one of the worst provisions would be to restrict those who engaged in "subversion" against democratic government. They asserted that governments often use this charge as a means of persecution. Carried to the extreme, it could include those who committed no criminal acts who were members of an organization 30-40 years ago that no longer exists. They added that the section which keeps refugees in detention for

30 days if not released in 48 hours may impede the preparation of claims and thus violates the Charter of Rights and Freedoms.

The Vancouver Sun was equally critical of the amendments. On September 15, 1992 Tim Harper published a scathing review of the legislation. He began:

Critics of Bernard Valcourt's plan to overhaul Canada's immigration system, the first major reworking of our policy in more than 15 years, say the federal government is hell-bent on trashing that reputation (Harper, September 15, 1992, p. A4).

The report explains that Bill C-86 allows fingerprinting and photographing of all refugee claimants. Harper interviewed Bob White of the Canadian Labour Congress who said that the Bill makes Canada a less compassionate member of the international community. Carter Hoppe of the Canadian Bar Association said that "virtually everyone in the entire world is inadmissible under this Act" (Harper, September 15, 1992, p.A4).

The Minister again took notice of the criticisms about the amendments. In fact, the Vancouver Sun received a letter from Bernard Valcourt on September 24, 1992 regarding the media's treatment of the legislation. In "New reality means new legislation needed", Valcourt explained that he wanted to respond to Tim Harper's "analysis". Valcourt said that the Immigration and Refugee system are both facing strong pressures. He said that he had three objectives when

he changed the law: to improve management, to better protect Canadian society, and to streamline the refugee system with fair decisions.

Valcourt was particularly upset about the word "forced" being used to portray the mobility provision of the new Act. The mobility provision restricted the movements of immigrants. It allotted extra points for immigrants intending to reside in areas with low population (i.e. outside Vancouver, Montreal and Toronto). He claimed that people were moving to certain areas in Canada voluntarily.

He said that organized smuggling of immigrants was growing as well as the use of counterfeit passports and travel documents. In terms of the demand for fingerprinting of refugees, Valcourt said that it is no different from the identification required to cash a cheque in this country. "Fairness and balance are the litmus test of this legislation. I believe that an objective analysis will show that this legislation meets that test" (The Vancouver Sun, Sept 24, 1992, A19).

The issue of carrier sanctions went largely unnoticed. It was only mentioned twice. In the only article which included representatives from the airline industry, these spokespeople said that the Bill would unduly burden them. One person said that "even if we put a soldier next to every passenger, we couldn't enforce this (The Globe and Mail, 1992, July 30, p. A6)."

CONCLUSION

In conclusion, the media had a negligible influence upon the development of the amended Immigration Act. In terms of access, the media was very critical but it did not have a strong effect on the final draft of the legislation. On the other hand, the polls released by the government discouraged more liberal changes in the development of the law. This fact, in the context of unequal application of the law, can imply that the number of all people regardless of gender should be limited.

In terms of process changes, the media was again quite critical and there were some minor changes to these provisions. But there were few articles revealing the negative effects of lack of appeals. Interestingly, the media rarely mentioned the problems of open hearings and these sections were eventually altered. The media did not critically report on the negative aspects of this change because they wanted refugee hearings to be open so that they could report on them (see Farrow June 29, 1992; Farrow, July 6, 1992; and the Vancouver Sun, July 31, 1992).

In terms of crime and security enforcement, the press criticized the changes introduced by Bernard Valcourt. Although many stories covering the actual changes might have put the legislation in a negative light, there was greater support for these changes than any others. The issue of fingerprinting was criticized extensively and the state did

slightly modify its procedures. The government agreed to destroy refugee's fingerprints once they became Canadian citizens. In regards to criminal inadmissibility clauses, the state did not relent. The clauses strongly affect the control of reproduction so the state is not willing to agree to changes very easily. It is also less controversial for the government to have articles explaining the introduction of a restrictive amendment than it is to have stories of criminals entering Canada with ease.

CHAPTER 49 OF THE
STATUTES OF CANADA IN PERSPECTIVE

It is apparent that interested groups and individuals, legal associations/consultants non-governmental organizations and the media had little influence in the development of Bill C-86 (see appendix #4 for text). In terms of accessibility provisions, there were absolutely no changes effected even though many different types of groups recommended changes. Most of the changes to the actual process also remained intact. Many different groups, with the exception of interested groups and individuals, insisted that changes be made to these clauses. Finally, there were few changes made to criminal and security clauses with the exception that fingerprints will be destroyed once refugees attain permanent residency and detentions periods are shortened.

Interestingly, there were few groups that attended these set of hearings compared to the hearings initiated in 1976 (see appendix #3). In part, this was due to the fact that many non-governmental organizations have disappeared or have combined with other organizations. The original Immigration Act was also a significant development in social policy and the state sought out the opinions of over 200 various groups when they held hearings across the country.

But Bill C-86 was also a significant policy development, yet only 50 organizations appeared. There was, however, no desire for public input. The government had

held consultations on immigration policy in 1990. The government already knew what kinds of changes would be requested was not willing to implement many of these changes in 1992. Thus, there was little consultation on the legislation to various groups and the legislative committee did not lengthen the hearings to allow all groups to attend.

Access

Non-governmental organizations were strongly opposed to the changes made to accessibility. Section 46.01 and 114(1)(s) defined more categories of ineligible refugees. They are ineligible if they already have refugee status in another country, if they came from or through a prescribed country, if they are repeat claimants in Canada, if they returned to the country of persecution, and if they are deemed ineligible due to criminal and security inadmissibility.

In general, non-governmental organizations and legal associations/consultants made strong presentations. Hawkins claims that legal associations/consultants would have more influence on the legislation than NGO's. In the end, however, both of these types of groups were ineffective in modifying the Bill substantially. This was a great loss for these groups because accessibility is the most important aspect of refugee law. It is the most important facet of the law because it most strongly challenges state management

of reproduction.

Now that senior immigration officers decide questions of eligibility, the potential exists for many refugees to be effectively restricted from Canada. These changes will also lead to greater access for wealthier refugees. Ministers responsible for refugees will have much greater control over the selection of refugees. Ministers can direct SIO's to plug the refugee flow if it becomes a tidal wave. Any significant changes to this section would have meant that the government attained substantially less control over reproduction. As such, the state refused to relent.

Process changes

There were four different aspects dealt with in process changes. These were: section 45 which gave SIO's the power to decide eligibility, section 69.1(10) which required some refugees to attain unanimous approval from adjudicators, and section 69.1 (10.1) which made hearings open for public scrutiny.

Once again, non-governmental organizations and legal associations/consultants made the most recommendations to alter these sections. Their internal dynamics and resources seemed inconsequential to the changes in the bill. On substantive matters, they were once again ineffective. Recommendations which ran counter to the objectives of controlling this element of reproduction were quickly voted

down.

The only change effected by these categories of groups was the decision to keep refugee hearings in camera. It would seem, however, that this was not a significant victory for non-governmental organizations and legal associations/consultants. This change will personally benefit refugees as they will not have to recount events of pain and suffering in public, but this legal alteration does not reduce the state's control of reproduction.

As a result of these changes to the refugee status determination process, more refugees will be turned down. Senior immigration officers are likely to turn away many claimants when crises erupt. Split votes may also occur and some refugees will be asked to leave. Of all process changes, the unanimity clause had the greatest bearing upon reproduction.

Crime/Security Enforcement

Criminal and security sections were very extensive. They extended the definition of criminals and security risks, they created new search, photographing, and fingerprinting regulations. As well, this section extended detention regulations, and introduced new carrier sanctions. The most challenging of these clauses to patriarchy are the redefinition of criminals and the detention regulation because they have the greatest impact upon the entrance and

selection of refugees. Interestingly, legal associations/consultants and non-governmental organizations were able to shorten detention periods. This change was affected because many groups pointed out that appeals could be successful based on unfair procedures. Detentions negatively affect the preparation of refugee claims. This was a significant change to Bill C-86.

This section was different from the others because this was the only area in which interested groups, in particular capital, made many suggestions. Contrary to my hypothesis, capital did not have great influence on the committee members. Perhaps this may be explained by the fact that the capitalist class before the committee only included various transport companies rather than a broad cross-section of the capitalist class. In addition, the changes that they requested also detracted from the state's mediation attempt. As such, they were given a sympathetic hearing but did not gather any support for changes. The changes that were eventually made to the committee were the least controversial. The state was generally willing to make minor modifications as long as they did not detract from the main purposes of the Bill.

FIGURE 2

A SUMMARY AND COMPARISON BETWEEN REFUGEE POLICY
IN BILL C-86 AND CHAPTER 49 OF THE
STATUTES OF CANADA

	1992 BILL C-86	1992 STATUTES OF CANADA CHAPTER 49	GROUP CONSENSUS/ DIVISION
A C C E S S	-more restrictions on hearings.	-no change.	-no effect. -consensus within groups.
	-hearings not given to those coming from a country of refuge.	-no change.	-no effect. -consensus within groups.
	-hearings not permitted to those coming from a safe third country (may be forcibly returned).	-no change.	-no effect. -consensus within groups.
P R O C E S S	-refugees evaluated by a Senior Immigration Officer (SIO).	-no change.	-no effect. -consensus within groups.
	-claims held in public (except under certain circumstances).	-claims now held in camera.	-no effect. -little reaction.
	-legal council not permitted.	-no change.	-no effect. -consensus within groups.
	-unanimity required for claims to be successful.	-no change.	-no effect. -consensus within groups.
	-family members allowed on refugee applications.	-no change.	-no effect. -general consensus.

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-fines increased exponentially and levied against people assisting illegal refugees into Canada. ("knowingly" deleted).	-no change.	-no effect. -little reaction/ some division between groups.
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-greater restrictions on criminals and now terrorists.	-no change.	-division among and between groups.
-fingerprints and photographs permitted on all refugees.	-no change.	-division among and between groups.
-30 day review during detention period.	-7 day review during detention period.	-division among and between groups.

THEORY

Hawkins stated that most NGO's lacked vertical or horizontal communication and were ineffective in attaining support from members of the opposition. She claimed that traditionally NGO's were unorganized. There was some evidence to support this conclusion. Many NGO's were strongly affected by the lack of time and consultation. This may reveal a lack of vertical and horizontal communication relative to other types of groups. Many NGO's, however, claimed that this was due to the fact that the Bill was extraordinarily large and complex, hearings began shortly after the Bill was introduced, and the legislation was introduced during the summer when voluntary organizations were less active.

There is also evidence to show that NGO's are organized and exhibit effective communication. Out of 50 submissions to the legislative committee, nearly half, 24, were NGO's. The committee had to select certain groups for hearings. Many of these groups joined in a coalition force to represent the views of more Canadians. The Globe and Mail released a story about this coalition's objectives (Oziewicz, 1992, p.A6). As well, the Vancouver Sun published a story about a coalition formed in British Columbia (Bolan, 1992, p.B3). Most of these statements were made by non-governmental organizations. In many briefs submitted to the legislative committee examining Bill C-86,

NGO's stated that they possessed others groups briefs and supported the efforts they made. As well, most groups had very similar objectives and made similar remarks to the committee. These groups submitted informative presentations and managed to receive significant support of the opposition members Warren Allmand and Dan Heap. It would seem that the situation has changed since the 1970's. An historical analysis, however, would be necessary to adequately refute or validate Hawkins theory of group effects on legislation.

Yet, these groups were nevertheless ineffective at substantially changing the Bill. Newspaper articles revealed that Canadians were not in the mood for a more liberal immigration and refugee policy. As well, their objectives strongly detracted from the state's goals of gaining control over reproduction to supplement production and reducing the state's costs associated with reproduction.

Patriarchal states seek to control reproduction. This control takes the form of social policies that often subordinate women. Immigration is a tool of patriarchy to benefit production. Indeed, this is not a new revelation. Bernard Valcourt explicitly stated that he wanted to relax regulations on investor and entrepreneurial immigrants because they create jobs (Farrow, 1992, p.A1).

Currently, Canada's national unemployment rate is 10.2 per cent. This coincides with low birth rates and a high debt load of over \$500 billion. As such, social programs are under greater pressure and they must operate with

smaller budgets. The state must mediate this imbalance between reproduction and production. The state's mediation is forged in government cutbacks in the social safety net or, as Ursel defines it, privatization of reproductive costs to the family.

Canadian families experience greater reproductive costs and the state also displaces its reproductive costs onto other states. That is, the state modifies its immigration policy to attract capital and reduce the number of refugees and other types of immigrants that may drain the public purse. Currently, immigration levels are set at 1 per cent of total population or approximately 250,000 people annually. The system attracts business/entrepreneurs and an independent immigrant selection which allots points to those with skills and experience. The Vancouver Sun and the Globe and Mail revealed that business immigrants and entrepreneurs invested approximately \$4 billion into the British Columbia economy in 1992 (see Matas, 1992, p. A9; Farrow, 1992, p. A1). In fact, some analysts claimed that British Columbia was spared the worst parts of the recession because of the high levels of investment made by immigrants (Farrow, 1992, p. A1).

The Alberta Association of Immigrant Serving Agencies (AAISA) had concerns about these objectives of immigration policy. They said:

Second, and equally important, maybe even more important, is the potential to drain the Third World of needed, trained, skilled people-people who are needed in the countries where they live. We have some philosophical concerns about that selection for excellence (1992, no.12, p.28).

Even if this concern is shared among many interested groups and individuals, legal associations/consultants, and non-governmental organizations, it is difficult for them to convince the government, or many Canadians for that matter, that the system should be changed to detract from these goals. In other words, if the immigration system enhances production then there will be little impetus to alter it significantly.

CONCLUSION

It has been mentioned that the restrictions found in Bill C-86 are not unique. The United States, for example, has many similar restrictions in spite of laws that also seem very liberal. Anker notes (1991, p.268) that the 1980 U.S. Refugee Act created the first set of legal procedures for determining asylum cases. The main purpose of the Act was to put an end to the ad hoc procedures that characterized U.S. immigration policy and the end of selection based on "ideological, foreign policy, and geographic considerations" (Ibid). This objective has not been met. In an examination of the adjudication court, Anker says that ad hoc decisions are still made in the Executive Office of Immigration Review (EOIR). The EOIR holds formal administrative hearings by an immigration judge who is a lawyer.

Anker found that refugees were restricted by an exaggerated burden of proof, informal and restrictive evidentiary rules, adjudicator partiality problems in foreign language interpretation, rejection of objective human rights assessments, inconsistent standards, inappropriate role of social and ideological factors, bureaucratic inefficiencies and causes of delay (1991, p.270-5.). In her analysis of the EOIR, Anker implies that ideological, foreign policy, and geographic criteria have guided U.S. immigration and refugee policy. She does not

state that economic criteria have affected U.S. refugee policy.

Zucker and Zucker (1989) also state that the policies and practice of the liberal U.S. Refugee Act were never enacted. They state:

"the policies and practices instituted under this landmark legislation have violated the original intent of Congress, and, in some respects, our obligations under international treaty" (1991, p.224-5).

They also argue that political biases re-emerged under the Act because of the partiality of adjudicators.

Helton (1991, p.253-67) compares the use of detention of asylum-seekers in both Canada and the United States to deter many claims. He claims that the use of detention in the United States fell into disuse in the 1950's but was re-introduced in the 1980's after an influx of Haitian and Cubans sought asylum in the United States (Helton, 1991, p.153). Helton suggests that for the 100-150 refugee claimants held in detention at any one time, the conditions range from inhumane to inconsiderate (Adelman, 1991, p. xviii). The use of detention is considered an effective means to "prompt the individual to leave and encourage others contemplating a journey to go elsewhere" (Helton, 1991, p.253). Although Helton's "detention as deterrent" thesis is very convincing, he does not explicitly explain why Canada and the U.S. want to deter refugees.

In general, most of the relevant literature on the United States asylum process has focused on ideological and

racist restrictions, and American foreign policy considerations within U.S. immigration law. (see Carens, 1991; Martin, 1991; DaSilva and Nef, 1991; and Gibney, 1991 and others). There are fewer analyses of economic considerations playing a major role in the selection of refugees. Indeed, there is an unstated fallacious assumption that both countries simply do not want refugees. This paper contains no such postulation. Canada is an immigration country because it makes economic sense to be one. In addition, Canada has agreed to be legally obliged to accept refugees. It would be a misconception, however, to assume that these agreements arise simply from humanitarian impulses (for example see Dirks, 1976 and 1984; Abella and Troper, 1982; Calliste, 1991). In a patriarchal state, the emphasis is to accept certain classes of refugees that are valuable to that state.

It would be incorrect to assume that Canada has simply followed the same route as has the United States in imposing restrictions on refugees although Canada and the U.S. have negotiated refugee sharing arrangements. Countries around the world have, in fact, erected barriers against refugees and implemented refugee sharing agreements, particularly in Europe. CBC Prime Time News presented a story entitled "Asylum Seekers" on January 5, 1994. It revealed that successfully claiming asylum in many European countries is almost impossible. They note, that many European countries have erected the safe third country concept as a tool to

limit the number of refugees entering and claiming asylum.

They stated:

It was simple in cold war days. The Iron Curtain did West Germany a favour. It could open its arms to refugees; safe in the knowledge that only a trickle could get through. Ten years ago, 20,000 people sought asylum in Germany. After the collapse of Communism, the trickle became a flood. Last year 438,000 applied, just at the moment when Germany was assimilating 16-million East Germans...And what's a safe country? ...Every entrance to Germany by foot (CBC Prime Time News, 1994, p.2).

Germany is unique in so far as Germans have witnessed a flood of refugees trying to access the country. CBC Prime Time News points out that similar restrictions also now exist in France and Britain. All countries fear floods of refugees reaching their borders. The idea is to implement strong legislation to give control over reproduction before waves become floods.

Social change

In light of all of these developments, there was generally little that lobby groups said or did which influenced the legislation significantly. What is the potential for groups to attain positive social change? If the state wants immigration policy to enhance production, what could be done to achieve the goal of refugee protection in a patriarchal context? What should the present minister responsible for this Act, Sergio Marchi, do to change the Act within realistic financial limitations?

In terms of access, the elimination of the credible basis stage was an improvement. Most refugee cases proceeded to the second stage of hearings anyway. This was simply a waste of precious time and resources. But all claimants should be directed to the single set of hearings except those who are immediately found criminally inadmissible. This change would ensure that all claimants have access to legal representation and that they are not being adjudicated by a senior immigration official with no experience as an impartial judge.

It seems reasonable to conclude that senior immigration officers either do not want to accept such responsibility, are unable to make such informed judgements or that there are few refugees who are not eligible for the full hearing as less than 1% of claimants are rejected by SIO's inland and at ports of entry. Since the inception of this clause, only 81 claimants were found ineligible in 1993, and 60 were found ineligible by the end of July 1994 (Immigration Statistics). This change would also eliminate the fear that the state interferes with immigration in so far as certain classes of people gaining access to the hearings.

In terms of process changes, all claims should be treated equally. Certain classes of refugees should not lose the benefit of doubt while others retain it. As well, all hearings should be conducted in camera except under exceptional circumstances. These changes can be implemented in a financially responsible manner if the government

replaces the two person adjudication panel with only one member. Although such a change would clearly incite non-governmental organizations, it would be a much more reasonable way of adjudication than having SIO's determine some cases. As well, the Law Reform Commission of Canada noted that there are many problems of "collegiality" among members; they rarely disagree. In fact, adjudicators disagree in less than 1% of cases (Immigration Statistics).

This change would reduce costs and distribute precious resources in a much more efficient manner. The department would be able to handle a greater volume of cases more quickly. Further, appeals based on matters of law and fact should be retained, but claimants should have their claims reviewed by an impartial panel before deportation orders commence to ensure quality decisions occur.

The government would also be well advised to revamp and increase the number of sponsored refugees. These are individuals who come to Canada and their expenses are paid for by Canadian citizens related to the individuals or organizations. This would have several benefits. The government could reduce social expenditures on refugees including a portion of processing costs. It would reaffirm the government's commitment to family reunification, and it would regulate the number of refugees Canada would accept according to the will of ordinary Canadians. Finally, it would reduce racist claims that refugees live on welfare or that the refugee system is flooded with economic migrants

wanting to jump the queue to get welfare. Costs would be assumed by family members.

In terms of criminal inadmissibility, the legislation is too confining. Many newspaper articles and immigration officials claim that the process for restricting a known criminal without a criminal record is cumbersome. It is so unwieldy that many criminals enter the country. If, in fact, this is the case, it would seem prudent that bureaucratic changes should be executed rather than redefining criminals and terrorists. Perhaps, restricting a known criminal should only take the signature of the Minister of Immigration and a Federal Court Judge. A greater number of government signatures does not ensure greater protection of immigrants. All government signatories will likely agree.

In terms of fingerprinting and photographing, the government should introduce an identity card. There is a problem of crimes involving multiple identity. Although this may be a minor problem, it becomes quite controversial when it hits the presses and it makes Canadians suspicious of the size and scope of the problem. It feeds racism and stereotyping of immigrants and refugees.

With regards to carrier sanctions, there should also be further modifications. Airlines should take responsibility for checking travel visas, but they should not have to determine refugee claims and refuse those without valid documentation. Several lobby groups stated that refugee

policy is meaningless if refugees cannot come to Canada. Many Convention refugees are unable to produce documentation for legitimate reasons. In this context, airlines should have to pay for the return airfare of criminals, but they certainly should not have to pay for the processing of legitimate claimants recognized as Convention refugees.

A Separate Department?

There were many groups which suggested that the government create a department which alone would deal with refugee claims. John Frecker (1992), a former member of the Law Reform Commission of Canada, and others suggested that it would allow the state to administer refugee policy without the constraints of immigration workers being involved in the process. Immigration officials, it is argued, cannot evaluate refugee claims objectively because their experience with immigrants automatically prejudices them into evaluating claims based on immigration criteria. A separate department, would alleviate such concerns.

Realistically, such a recommendation is not feasible. Currently, the trend seems to be the coalition of state departments to reduce administrative waste. As well, there are many associated costs related to creating new departments. Clearly, this is probably not a feasible suggestion in present circumstances.

Perhaps, the key to solving the problems of racism,

sexism, frivolous judgements and other types of discrimination as well as reducing criminal elements may be in a greater integration of both immigration and refugee policy. Taylor (1992), suggests that the immigration points system has reduced such discrimination since its inception. Consideration might be given to the development of such a system for refugee policy. The difference would be that refugees would have a totally different set of points allocated for different criteria. As an example, during a full hearing, Board members may hear testimony and allot points for issues such as the credibility, eligibility, and admissibility of claims. 40 points may be allotted for proving a well-founded fear of persecution. This category could be subdivided into 20 points for revealing a credible claim, 10 points being given for coming from a prescribed country, and 10 points for eligibility criteria as already found in the Act. Another 40 points could be attained for admissibility. These points could be reduced based on criminal and medical inadmissibility. A further 10 points could be gained by showing a reasonable potential for successful integration into Canadian society and a further 10 points for being sponsored. Claimants could require a passing mark of 55 points.

The only differences with this system is that it would be easier to administer, it would quantify claims, and would reduce charges that decisions are reached arbitrarily. Obviously, the weighting of points may be altered to more

accurately evaluate claimants. If refugee claims were based on such a system, it could be administered by immigration and refugee officials yet it would retain all of the same principles of current refugee policy. Quantifying claims in this manner would also reduce controversial aspects of claims. As such, there might be fewer contestable issues for lawyers to appeal and the need for further appeals based upon the merit of claims might also be less needed. Reviews could be based upon whether the adjudicator allotted the proper number of points for each category. This could be reviewed internally after negative decisions have been reached. Finally, this approach would reduce costs especially compared to creating another state department associated with another bureaucracy.

CONCLUSION

In conclusion, the issue of refugee determination is a delicate one. Traditionally, it has been one in which politicians have been hesitant to administer. There are many organized lobby groups with a variety of differing goals. The position of minister responsible for the program can receive a great deal of political pressure.

Bernard Valcourt approached the position with a strong-handed approach. He quietly developed major changes to the Immigration Act and proceeded with them rather quickly. Political expedience was clearly an effective strategy.

On the other hand, he did not implement the legislation within his original timeframe. It became law a month later than he wished. This is because the legislative committee continued with its clause by clause analysis longer than expected.

In the midst of this approach, there were few changes that were made before the legislation was finally put on the Statutes. The state knew what kinds of changes various lobby groups would want and kept them in mind when drafting the Bill. The state was only willing to accede to a few of these changes.

Future significant alterations to the Immigration Act and other pieces of legislation will likely be made in similar fashion regardless of the political stripe of the government. The federal state and provincial governments will presumably examine health care, welfare, education and labour legislation with the intention of reducing reproductive costs. In other words, the scope of these programs will be reduced and Canadian families will assume these costs. Immigration is just one aspect of the sphere of reproduction.

The state will likely accede to a few demands made by various lobby groups and the passage of future bills will also be expedient. If refugee lobby groups, particularly non-governmental organizations, are not able to mount very strong campaigns, they will have to press for positive social changes for refugee protection that also meet the

patriarchal state's objectives of balancing reproduction and production. This is true for other social movements. The two objectives need not always be mutually exclusive.

APPENDIX #1
ORGANIZATIONS APPEARING
BEFORE THE LEGISLATIVE COMMITTEE

Interest Groups and Individuals

- #1) Air Transport Association of Canada, brief, 4A:130-140. (4:99, 103-9, 111, 117-20).
- #2) Association of Airline Representatives in Canada, brief, 4A:128-9. (4:101-3, 11-20).
- #3) Canada Employment and Immigration Union, brief, 5A:40-45. (5:95-113).
- #4) Canadian Disability Rights Council, brief, 4A:69-117. (5:79-95, 97-8).
- #5) Canadian Labour Congress, brief, 8A:1-15. (8:6-28).
- #6) Canadian Public Health Association, 11:6-27.
- #7) Canadian Security Intelligence Service, 14:48,54.
- #8) Chamber of Shipping of British Columbia and Shipping Federation of Canada, brief, 11A:30-48. (11:119, 124-42).
- #9) Justice Department, 14:57-65.
- #10) Federation of Canadian Municipalities, 4:42-61.
- #11) Frecker, John, brief, 11A:10-29.
- #12) Goodwin Gill, Guy, Carleton University, brief, 10A:9-17.
- #13) Hathaway, James C., Osgoode Hall Law School, York University, brief, 7A:27-39.
- #14) Immigration Association of Canada, letter from Claude Isbister, 10A:18-21. (10:56-68).
- #15) International Air Transport Association, brief, 4A:118-127. (4:98-101, 110-1, 115-8).
- #16) National Health and Welfare Department, 6:4-24.
- #17) Ottawa-Carleton Regional Municipality Health Department, brief, 8A:54-63. (8:85-98).
- #18) Peel Regional Municipality, brief, 4A:30-52.

- #19) Royal Canadian Mounted Police, Immigration and Passport Establishment 1191/91, 6:24-43.

Non-Governmental Organizations

- #20) Alberta Association of Immigrant Serving Agencies, brief, 12A:1-3. (12:25-37, 39-45).
- #21) Amnesty International, brief, 4A:1-12. (4:7-25)
- #22) Black Coalition of Quebec, brief, 12A:4-18. (12:40-5, 47-53).
- #23) Canadian Civil Liberties Association, brief, 7A:9-26. (7:98-113).
- #24) Canadian Council for Refugees, brief, 5A:11-24. (5:37-58).
- #25) Canadian Council for Churches, 5:20-36.
- #26) Canadian Ethnocultural Council, brief, 4A:13-29. (4:26-42).
- #27) Canadian Hispanic Congress, brief, 7A:40-5. (7:130-149).
- #28) Canadian Jewish Congress and Jewish Immigrant Aid Services, brief, 10A:1-8. (10:5-29).
- #29) Carnegie Endowment for International Peace, 11:85-105.
- #30) Chinese Canadian National Council, brief, 8A:64-70. (8:98-118).
- #31) Citizenship Council of Manitoba, brief, 12A:19-30.
- #32) Inter-Church Committee for Refugees, brief, 4A:53-68. (4:62-79).
- #33) Jesuit Centre for Social Faith and Justice, brief, 10A:22-32. (10:68-87).
- #34) Manitoba Interfaith Immigration Council Inc., 12:54-78.
- #35) MOSAIC, Multilingual Orientation Services Association for Immigrant Communities, brief, 12A:31-40. (12:78-99).

- #36) National Indo-Canadian Council, brief, 11A:1-9. (11:65-84).
- #37) National Organization of Immigrant and Visible Minority Women of Canada, brief, 5A:1-10. (5:5-19).
- #38) Ottawa-Carleton Regional Co-ordinating Committee on Violence Against Women, 12:5-14, 16-24.
- #39) Quaker Committee for Refugees, brief, 10A:33-40. (10:87-101).
- #40) Table de concertation des organismes de Montreal au service des refugies Inc., brief, 8A:16-21. (8:28-48).
- #41) United Nations High Commissioner for Refugees, 7:5-23.
- #42) Vigil, Toronto, Ontario, brief, 12A:41-46. (12:99-116).
- #43) World Sikh Organization, brief, 9A:1-10. (9:4-21).

Legal Associations/Consultants

- #44) Association quebecoise des avocats et avocates en droit de l'immigration, brief, 8A:22-38. (8:49-67).
- #45) Canadian Bar Association, National Immigration Law Section, brief, 17A:1-133. (7:23-79).
- #46) Law Union of Ontario, brief, 18A:1-96. (11:29-60).
- #47) Lawyers Committee for Human Rights, brief, 8A:39-53. (8:67-84).
- #48) Lexbase, brief, 8A:71-86. (8:118-134).
- #49) Organization of Professional Immigration Consultants Inc., brief, 7A:1-8. (7:80-97).
- #50) Refugee Lawyers Association, brief, 5A:25-39. (5:58-76).

APPENDIX #2
STATEMENT OF OBJECTIVES

#1) AIR TRANSPORT ASSOCIATION OF CANADA

The objective of the Air Transport Association of Canada is to represent its 115 operators and 94 associate members. Among these members are Air Canada and Canadian Airlines International, large and small charter carriers, helicopter companies, flying schools, and three of the largest U.S. airlines (Air Transport Association of Canada, 1992, p. 4A:131).

#2) ASSOCIATION OF AIRLINE REPRESENTATIVES IN CANADA

The AARC is a Canadian group of 30 foreign actively operating air carriers into Canada. They were formed in 1978 to advance the interests of the major air lines in Canada including three of the largest airlines in the country (Association of Airline Representatives in Canada, 1992, p. 4A:128).

#3) CANADA EMPLOYMENT AND IMMIGRATION UNION

An explicit purpose or objective was not fully disclosed. They did state, however, that CEIU:

...is a Component of the Public Service Alliance of Canada, represents nearly all of the unionized members at both the Immigration Branch and the Immigration and Refugee Board, and we welcome this opportunity to present our members' views on this major overhaul of the legislation with which they work every day (CEIU, 1992, p. 5A:40).

The CEIU is a union which represents its members concerns.

#4) CANADIAN DISABILITY RIGHTS COUNCIL

The CDRC is a coalition-style organization. Its objectives are to create legal strategies to promote the equality rights of people with disabilities. They advocate on behalf of those with disabilities (Canadian Disability Rights Council, 1992, p. 4:81).

#5) THE CANADIAN LABOUR CONGRESS

The Canadian Labour Congress is a union which represents its 2.2 million members and their families. They are interested with the development of Canadian laws and Canada's role in the international community (Canadian Labour Congress, 1992, p. 8:6).

#6) CANADIAN PUBLIC HEALTH ASSOCIATION

To advise and assist the government in Canadian health policy.

#7) CANADIAN SECURITY INTELLIGENCE SERVICE

A federal institution involved in matters of public security.

#8) CHAMBER OF SHIPPING OF BRITISH COLUMBIA AND SHIPPING FEDERATION OF CANADA

The Chamber of Shipping of British Columbia was first founded in 1923. It is now a non-profit organization which fosters co-operations among its members, represents the industry to all levels of government and seeks solutions to problems (The Chamber of Shipping of British Columbia, 1992, p. 11A:32). The Shipping Federation of Canada was established in 1903. Its objective is to:

...protect the interests of its members on all matters affecting the operation of international shipping. Its primary areas of concern include legislation, regulations and policies governing subjects as diverse as Canada's ports, pollution prevention, marine pilotage, and overland operations (The Shipping Federation of Canada, 1992, p. 11A:34).

#9) JUSTICE DEPARTMENT

A federal government department which administers justice policy in Canada.

#10) FEDERATION OF CANADIAN MUNICIPALITIES

The Federation of Canadian Municipalities represents municipalities across Canada to the federal and provincial governments.

#11) JOHN FRECKER

To represent his views on this Bill as a former member of the Law Reform Commission of Canada.

#12) PROFESSOR GUY GOODWIN-GILL, PROFESSOR OF LAW,
CARLETON UNIVERSITY

To represent his views on this matter as a professor of law, particularly in immigration law.

#13) JAMES HATHAWAY

To represent his views on this matter as an academic with experience in this area.

#14) IMMIGRATION ASSOCIATION OF CANADA

To represent his views on this matter as a former Member of Parliament with experience in this area.

#15) INTERNATIONAL AIR TRANSPORT ASSOCIATION

An association created by a Canadian Act of Parliament. This group's purpose is (International Air Transport Association, 1992, No.4A, p.119):

- 1). To clarify for airlines the intent of new and proposed government legislation in the member countries;
- 2). To draw the attention of governments to the difficulties certain of the programmes would create for airlines;
- 3). To seek co-operative positions enabling airlines to review the feasibility of meeting, within their operational and legal limitations, the requirements of governments.

#16) NATIONAL HEALTH AND WELFARE DEPARTMENT

The National Health and Welfare Department is a federal government department. They said:

HWC provides policy advice on all health matter pertaining to immigration. HWC is also mandated to provide a medical assessment to CEIC on all prospective immigrants and certain visitors identified by visa, immigration officers, based upon immigration legislation (Health and Welfare Canada, 1992, No.6, p.4).

**#17) OTTAWA-CARLETON HEALTH DEPARTMENT,
REGIONAL MUNICIPALITY OF OTTAWA-CARLETON**

A medical board for the Municipality of Ottawa which protects Canadians from communicable diseases.

#18) REGIONAL MUNICIPALITY OF PEEL

Region of Peel is an area of Ontario which comprises Brampton, Mississauga, and Caledon. It was interested in this piece of legislation because they are a major recipient of immigrants and refugees in Canada. They represent the taxpayers of this area.

**#19) ROYAL CANADIAN MOUNTED POLICE, IMMIGRATION AND
PASSPORT ESTABLISHMENT**

The administration and normal enforcement removal mechanics of the program are the responsibility of Employment and Immigration Canada, while the RCMP is responsible for the criminal enforcement of the Immigration Act (RCMP, 1992, No.6, p.25).

NON-GOVERNMENTAL ORGANIZATIONS

#20) THE ALBERTA ASSOCIATION OF IMMIGRANT SERVING AGENCIES

The Alberta Association of Immigrant Serving Agencies (1992, no.12, p.25) (AAISA) is a provincial organization comprised of 13 immigrant settlement/integration agencies in Alberta. These are local non-profit organizations who offer settlement and integration services to immigrants regardless of their ethno-cultural background.

#21) AMNESTY INTERNATIONAL

Amnesty International's (1992, no.4A, p.2) stated objectives is that it is an international human rights organization which works for the release of prisoners of conscience, those arbitrarily detained for the non-violent expression of their beliefs. They are also opposed to torture and the death penalty in all circumstances. They make submissions to the Canadian government when they believe that people are at risk. In this case, they are concerned that refugees may be sent to arbitrary torture, detention, and execution due to the changes to the Immigration Act.

#22) BLACK COALITION OF QUEBEC

The Black Coalition of Quebec (1992, no.12A, p.6) has worked in defence of human rights since 1969. It was one of the first bodies to battle discrimination in all its forms and to represent the community's interests in education, immigration, socio-professional training and many other areas.

The Coalition's specific areas of interest are in:

- human rights;
- assistance for refugees;
- education; and
- vocational training.

#23) CANADIAN CIVIL LIBERTIES ASSOCIATION

The Canadian Civil Liberties Association (1992, 7A:10) stated that they promote legal protection against unreasonable invasion by public authority and to promote fair legal procedures for the resolution of conflict.

#24) CANADIAN COUNCIL FOR REFUGEES

The objectives for this group were not stated explicitly. They did say, however, that:

The Canadian Council for Refugees is an umbrella organization. There are about 130 different other organizations in Canada that are concerned with refugees, both sponsorship and settlement. Many of the other organizations that you have heard or will hear are members of the Canadian Council for Refugees (1992, no.5, p.37).

#25) CANADIAN COUNCIL FOR CHURCHES

We are speaking only on behalf of the council which has its own history and concern in this area. In countries where refugees arrive it is often the churches which are on the front lines of the reception programs, and the refugees come as members of the family of God welcomed into a caring community (CCC, 1992, no.5, p. 20).

#26) CANADIAN ETHNOCULTURAL COUNCIL

The CEC (1992, no.4A, p.14) is a non-profit group, non-partisan coalition representing 37 ethnocultural organizations which in turn represent over 2,000 provincial and local organizations across Canada. They were formed in 1980 to advance multiculturalism in Canada. The major concern of the Council is to secure the equality of opportunity, rights and dignity for ethnocultural minorities and all other Canadians.

#27) CANADIAN HISPANIC CONGRESS

The Canadian Hispanic Congress is an ethnic organization which advocates on matters pertaining to the more than "400,000 Canadians of Hispanic origin.

**#28) CANADIAN JEWISH CONGRESS/
JEWISH IMMIGRANT AID SERVICES**

The CJC (1992, no.10A, p.2) is the representative organization of Canada's Jewish community of some 350,000. Since its inception in 1919, Congress has actively fulfilled its mandate as a vehicle for national advocacy on a wide range of political and social issues affecting Jews in Canada and the nation as a whole.

#29) CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

The Carnegie Endowment for International Peace is a U.S. organization that advocates on matters relating to peace and security. They possess a separate immigration section.

**#30) CHINESE CANADIAN NATIONAL COUNCIL AND
CHINESE CANADIAN NATIONAL COUNCIL TORONTO CHAPTER**

This organization's mandate (1992, no.8A, p.65) is to promote equality, human rights and equal participation for all Canadians. We believe in basic, fundamental Canadian values such as equal justice and democracy. They want to eliminate racism and other forms of discrimination faced by visible minorities.

#31) CITIZENSHIP COUNCIL OF MANITOBA

An organization actively involved in providing assistance to refugees in Manitoba.

#32) INTER-CHURCH COMMITTEE FOR REFUGEES

The Inter-Church Committee for Refugees is a coalition of ten national church bodies formed in 1980. The ICCR's mandate (1992, no.4A, p.54) includes a responsibility to coordinate the positions of the churches with respect to the Canadian government policies and a responsibility to monitor the world refugee situation, the work of the UNHCR, and Canadian responses. Since their formation they have urged reforms of the refugee system.

#33) JESUIT CENTRE FOR SOCIAL FAITH AND JUSTICE

The Jesuit Centre for Social Faith and Justice was founded in 1979, and its mission (1992, no.10A, p.23) is to promote social, economic, and political change in Canada and Central America. The Centre is an expression of the Society of Jesus' commitment to the service of faith of which the promotion of justice in the world today is an integral dimension.

An element of the Jesuit Centre's work since 1984 is the Jesuit Refugee Service /Canada(JRS/Canada). JRS/Canada is part of an effort of the Society of Jesus to respond to the crisis of refugees world-wide.

#34) MANITOBA INTERFAITH IMMIGRATION COUNCIL INC.,

The Manitoba Interfaith Immigration Council Inc., is a non-governmental organization that provides voluntary services to refugees "to help people to become good Canadians (The Manitoba Interfaith Immigration Council Inc., 1992, no.12, p.71).

#35) MOSAIC

Mosaic (Multilingual Orientation Services Association for Immigrant Communities) is a non-profit society operating in the Lower Mainland of British Columbia (MOSAIC, 1992, no.12A, p.32). Since 1972, MOSAIC has provided integration services to new immigrants and refugees through settlement programs, employment preparation, language instruction, community development, interpretation, translation, information and referral. The 70 staff of MOSAIC work directly with newcomers from all over the world, and are able to provide services in excess of 50 languages.

#36) NATIONAL INDO-CANADIAN COUNCIL

The objectives of the National Indo-Canadian Council (1992, no.11A, p.2) are:

*To encourage and assist Indo-Canadians to participate fully in Canadian society and to address to matters that specifically concern Canada.

*To provide members with a national forum in civic, social and economic matters.

*To foster among Indo-Canadians and others an understanding, appreciation, retention and security of the heritages of the peoples from the Indian sub-

continent and, thus to play a role in the promotion of Canadian Multiculturalism.

*To be involved with the rest of the Canadian society in the promotion of global humanitarianism and multicultural endeavours of our country.

*To promote good will and positive relationship among people of Canada and of India.

*To encourage the establishment of centres and services to meet the needs and aspirations of Indo-Canadians in the spirit of respect and appreciation of differences

**#37) NATIONAL ORGANIZATION OF IMMIGRANT
AND VISIBLE MINORITY WOMEN OF CANADA**

Since its inception in 1986, the NOIVMWC (1992, no.5A, p.3) has as its main goal to enable, encourage and empower immigrant and visible minority women to bring about equitable social, economic, and political systems.

In order to achieve this objective, the organization has engaged in several activities including advocacy for and on behalf of immigrant and visible minority women and responding to government legislations which impact upon their lives.

**#38) OTTAWA-CARLETON REGIONAL CO-ORDINATING COMMITTEE ON
VIOLENCE AGAINST WOMEN**

The Ottawa-Carleton Regional Co-ordinating Committee on Violence Against Women stated:

We are here as representatives from the Immigrant and Visible Minority Women Against Abuse. This is an organization that was started a few years ago in response to the need for services in Ottawa-Carleton...We have been trying to provide sensitive and cultural services to these women who find themselves in an abusive situation in their households and among their family members (Ottawa-Carleton Regional Co-ordinating Committee on Violence Against Women, 1992, no.12, p.5).

#39) THE QUAKER COMMITTEE FOR REFUGEES

The Quaker Committee for Refugees stated that they have "a long history of helping the victim of war. We believe there is that of a God in every person. Since 1651 we have had a strong testimony for peace which we conveyed to the English government at that time. Since then we have refused to engage in military service...We have been working for refugees by comforting, counselling and helping refugees to settle into Canada (1992, no.10A, p.34).

#40) Table de concertation des organismes de Montreal au service des refugies

An umbrella group for non-governmental agencies involved in welcoming and assisting refugees.

#41) UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

The mandate of the UNHCR is to provide international protection to refugees.

#42) VIGIL TORONTO

Vigil Toronto is a volunteer, non-governmental organization which began in May 1989. For the last three years they have been assisting people when they believe them to be Convention refugees who may face deportation from Canada (Vigil, 1992, no.12A, p.41).

#43) WORLD SIKH ORGANIZATION

The World Sikh Organization is an ethnic organization to combat racism and discrimination. They represent over 22,000 Sikhs in Canada (World Sikh Organization, 1992, no.9, p.15).

**#44) THE ASSOCIATION QUEBECOISE DES AVOCATS
ET AVOCATES EN DROIT DE L'IMMIGRATION**

A Quebec association comprising virtually all lawyers in the province who practice immigration law and have immigrants and refugees as their main clients (1992, no.8A, p.23).

**#45) THE NATIONAL IMMIGRATION LAW
SECTION OF THE CANADIAN BAR ASSOCIATION**

The Canadian Bar Association is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers, students and judges across Canada. The Association's primary objectives include improvement in the law and in the administration of justice (1992, no.17A, p.4).

#46) LAW UNION OF ONTARIO

The Law Union of Ontario also did not state their general objectives. They are, however, an organization which represents the concerns of all lawyers practising in Ontario. It likely has similar objectives as the CBA, but within the province of Ontario.

#47) LAWYERS COMMITTEE FOR HUMAN RIGHTS

The Lawyers Committee for Human Rights (1992, no.8, p.67) has worked to promote international human rights and refugee protection. This includes promoting non-discrimination and fairness for refugees seeking protection in the United States or elsewhere.

#48) LEXBASE

A communications network distributing information concerning the Canadian immigration delivery system, policy and planning, and immigration jurisprudence. About 200 immigration law offices from Vancouver to St. Johns are directly linked to Lexbase (1992, no.8A, p.73).

**#49) ORGANIZATION OF PROFESSIONAL IMMIGRATION CONSULTANTS
Inc.,**

OPIC stated (1992, no.7A, p.1) that:

The organization was founded to regulate and represent immigration consultants. The majority of our membership comprises ex-civil servants, who at one time, were responsible for the delivery of the immigration program, either in Canada as immigration officials or overseas as visa officers.

#50) REFUGEES LAWYERS ASSOCIATION

A legal association for Education and Advocacy in the Area of Refugee Law (1992, no.5A, p.25).

APPENDIX #3
WITNESSES WHO APPEARED BEFORE
THE SPECIAL JOINT COMMITTEE ON IMMIGRATION POLICY
(1976)

Andras, The Honourable Robert, Minister of Manpower and Immigration.

Gotlieb, Alan, Deputy Minister of Manpower and Immigration.

Henripin, Jacques (Prof.), University of Montreal.

Head, Wilson (Prof.), York University.

Zemans, Frederic (Prof.), Osgoode Hall.

Ruby, Clayton.

Price, Stephen, Director, Parkdale Legal Aid Services.

Hawkins, Freda (Prof.), University of Toronto.

Papachristou, Basile.

Sheehan, Terry, Acting Director General, Facilitation, Enforcement, and Control Branch, Department of Manpower and Immigration.

Lortie, Gerard, Director, Service d'aide aux voyageurs et immigrants (Centre for Social Services), Montreal.

Robichaud, Jean-Bernard, Bureau Chief, Service d'aide aux voyageurs et immigrants (Center for Social Services), Montreal.

Brown, Kay (Miss). Consultant of Social Services for Immigrants and Migrants, Toronto.

Raynauld, Andre (Dr.), Chairman, Economic Council of Canada.

Duchini, Father Joseph, Notre-Dame de Pompei Parish, Montreal.

Gaudreau, Father Clement, Notre-Dame du Mont-Carmel Parish, Montreal.

Black Community Central Administration of Montreal.

Bedoukian, Kerop, of the Armenian Congress.

Ramaiah, V.S.

Guccardo, Frank, Lavoie-Roux, Therese (Mme.), of the Montreal Catholic School Commission.

Protestant School Board of Greater Montreal.

Guindon, Hubert (Prof.), Department of Sociology, Concordia University.

Ambruz, Jozef.

Duggal, J.L.

Bureau of the Haitian Christian Community in Montreal.

Hargreaves, Monette, Boyer, Leduc and Richer (lawyers), Montreal.

Service aux immigrants catholiques (Services for Catholic Immigrants), Montreal.

Mitescu, Daniela (Mrs.) Centre d'information et de recherches pour immigrants (Immigration Information and Research Centre), Montreal.

Brunel, John.

Thomas, T.V. (Mrs.), Federation of the United Hellenic Societies of Montreal.

Canadian Orient Christian Association, Montreal.

Association Homophile de Montreal, Homophile Association of Montreal).

Centre Homophile Urbain de Montreal (Metropolitan Montreal Homophile Centre).

Centre Humanitaire d'Aide et de Liberation (Centre for Humanitarian Services and Liberation), Montreal.

Committee Against Racism, Montreal.

Bergeron, Henri-Paul.

Vaccaro, Rosina (Mrs.).

Maison d'accueil de Montreal pour les Immigrants (Montreal Immigrant Welcoming House).

The Montreal Community Church.

Lachance, Guy (Mrs.).

Lachance, Guy.

Bertrand, Guy.

Joyce, Alan.

The Order of Engineers of Quebec.

Guifoyle, Norman.

The Grand Committee of Hungarian Churches and Societies of Montreal.

The Montreal Chinese Community Service Centre.

Goldberg, Marvin E. (Prof).

Faculty of Management, McGill University.

The Christian Community of Our Lady of Gualdeloupe, Montreal.

The Ukranian Canadian Community of Montreal.

Theberge, Marie (Mme).

Beaudoin, Gilles, Mayor of Trois-Rivieres.

Gendreau, Father Georges, representing the Archbishop of Trois-Rivieres.

Joyal-Andre.

Landry, Jean-Claude.

Bastien, Gerald.

Institut politique de Trois-Rivieres.

Le Comit d'accueil aux Neo-Canadiens (The New Canadians Welcoming Committee), Trois-Rivieres.

Arc en Ciel Association, Sherbrooke.

Centre Multicultural, (The Multicultural Centre), Sherbrooke.

Service d'aide aux Neo-Canadiens (Neo Canadian Assistance Service), Sherbrooke.

Association des Italiens de Sherbrooke (The Sherbrooke Italian Association).

Do, Magali (Mme).

Fiores et Carnavals ambulants (Mobile Fairs and Carnivals, Sherbrooke.

Alacaque, Roger.

Service aux etudiants d'outre-mer (Overseas Students Services), Sherbrooke.

Association canadienne d'educations de langue francaise (Canadians French Language Education Association), Quebec.

Haberman, Michael.

Makdissi, Marie-Louise (Miss).

Centre d'animation our le service outre-mer (Animation Centre for Overseas Service), Quebec.

Bien-etre des immigrants (Immigrant welfare), Quebec.

Tetu, Michael.

Filtreau, Jacques.

Clement, Daniel.

Dorval, Jean-Guy.

Yaremko, Michael.

Brulotte, Raymond.

Conseil de la Vie Francaise en Amerique (French Life in America Board), Quebec.

Lavallee, Paul-Henri.

Beauce Carnaval Inc.

Centre d'integration pour les immigrants (Immigrant Integration Centre), Quebec.

Saunders, George, Director General, Research Projects Group, Manpower Services, Department of Manpower and Immigration.

Montgomery, Donald, Secretary Treasurer, Canadian Labour Congress.

The Sudbury City Council, Mine, Mill, and Smelter Workers Union, Sudbury.

Sudbury Citizens Committee.
West Indian Society of Sudbury.
India Canada Association, Sudbury.
Chakravity, M. (Prof.).
Smith, L. (Mrs.).
Ecole Secondaire Macdonald-Cartier (Macdonald-Cartier Secondary School), Sudbury.
Tschirky, J.A.
Burke, Donna (Mrs.).
Fletcher, Paula (Ms), Sudbury Regional Multicultural Centre.
Robertson, John.
Ontario Project on Population and Immigration.
The Filipino Ad Hoc Committee on the Green Paper.
B.C. Interfaith Citizenship Council.
B.C. Wildlife Federation.
Surrey-White Rock Citizen's Committee on Immigration.
Kehoe, Jack (Prof.).
Karim, Bahabur.
Surrey Business and Professional Women's Association.
Baumgartel, B.W.
Sara, H.S.
Fairey, Peter.
Gregory, George.
The British Columbia Human Rights Council.
Philips, Art, The Mayor of Vancouver.
Kalbach, Warren (Prof.) Sentinel Secondary School, West Vancouver, Grade Eleven.
Debrouich-Schuster, Peter.

Black, Elizabeth (Mrs.).
Progressive Conservative Youth Federation.
Anderson, Vivienne (Mrs.).
Federation of B.C. Naturalists.
B.C. Human Rights Commission.
Family Planning Association of B.C.
East Indian Canadian Citizens' Welfare Association.
Gay People of Simon Fraser University.
Marticulate Canadians (Vancouver).
Lamba, Yash.
Engineer, H.M.
The Vancouver Opportunities Program.
Powis, Sandy (Miss).
Bryce, Murray D.
B.C. Provincial Council of Women.
Chinese Benevolent Association.
Mental Patients Association (Vancouver).
Deccan Cultural Society of B.C.
Status of Women and Laws Committee of the University Women's
Club of Vancouver.
Canadian Scientific Pollution and Environmental Control
Society.
Dhaliwal, Herb.
Costello, Paul.
Baillargeon, C.
Chiang, Rudolph.
Martin, Edward.
Thompson, Niel S.

Osborne, Tom.
Vancouver School Board
Wong, S.T. (Prof.), Department of Geography, Simon Fraser
University.
The United Way of Greater Vancouver.
Star, Spencer (Prof.).
The Community Resources Board, Vancouver West End.
Fraser, J.D.
Federation des Franco-Colombiens.
Phillips, L.
B.C. Interchurch Committee for World Development Education.
Immigration Policy Action Committee.
Immigrant Women Advocate Committee.
Ethnic Press Association of B.C.
Handsworth Secondary School.
British Columbia Construction Association.
Canadian Association of Industrial and Mechanical Allied
Workers.
Junker, W.
Stott, Adrian.
Baker, Perry.
Banascher, Leo.
Crowson, David.
Simon, P.C. (Dr.).
Rampuri, G.S.
North Shore Unitarian Church.
Taylor, L.H.
Horne-Payne, John R.

von Platen, Graf.
Haisla Nation (American Indian Movement).
Chinese Free Masons.
Filipino Ad Hoc Committee on the Green Paper.
Struyk, Emile.
Myrtle, Peter.
Jamaica Caribbean Association of British Columbia.
Gay Alliance Toward Equality (Vancouver).
Nelzer, Irene.
Petrie, John.
Legal Aid Society of B.C. (Kamloops).
Moffat, Robert M.
Danks, Sandra (Miss).
McInuity, Jan (Miss).
Scatchard, C.K., District Administrator of Immigration,
Department of Manpower and Immigration, (Kamloops, B.C.).
Canadian Scientific Pollution and Environmental Control
Sovietz (SPEC-Kamloops).
Sikh Temple, Sikh Cultural Sovietz.
Notre Dame University.
Nelson Overseas Students Assistance Committee.
Kamloops Community Y.M.C.A.
Hospital Reform Group of Prince George.
McLean, Warren.
Grimson, G. (Mrs.).
Gabriel, C. (Mrs.).
Prince George Peace Development Committee (B.C. Interfaith
Citizenship Council).
Rayner, F.J. (Rev.).

Chartrand, Gladys (Miss).
Alexander, David (Dr.).
Royal Canadian Legion, Newfoundland and Labrador Command.
St. John's and District Ministerial Association.
Association of Registered Nurses of Newfoundland.
Interchurch Project on Population.
Newfoundland Status of Women Council.
Newfoundland-Labrador Human Rights Association.
Helwig, P.
International Grenfell Association.
Community Homophile Association (St. John's).
Friends of India Association.
Government of Newfoundland.
Pratt, Pearl (Mrs.).
Interchurch Project on Population (New Brunswick).
Gay Friends.
Jamieson, Patrick.
Canadian Federation of University Women (Fredericton Branch).
Fortras, Andre (Dr.).
Conservation Council of New Brunswick.
Stocker, Joyce (Mrs.).
Canadian Association of Statutory Human Rights Agencies.
Committee Against the Green Paper.
Association of Indo-Canadians, Inc.
The Anglican Church of Canada: National Task Force on the Green Paper.
Canadian Polish Congress.

Ontario Project on Population and Immigration.
Philippine Progressive Study Group.
Gay Alliance for Equality, Toronto.
Pan Hellenic Association.
Latvian National Federation of Canada.
Interchurch Committee Chile, Canadian Council of Churches.
Hawkins, Freda (Prof.) University of Toronto.
Jewish Immigrant Aid Services of Canada.
Hungarian Canadian Federation.
Toronto Committee to Oppose The Green Paper.
Social Planning Council of Metropolitan Toronto.
Toronto Working Group of Sovietz of Friends.
Canadian Association for the Mentally Retarded.
Y.W.C.A. of Metropolitan Toronto.
National Survival Institute C.A.I.T. (Halian Trade Unionists).
Interchurch Project on Population, Ontario.
Trinity United Church, Toronto.
Association of East African Asians.
Federation of Engineering and Scientific Associations.
Zero Population Growth.
Metro Toronto Committee of the Communist Party of Canada - Marxist-Leninist.
Scarborough West Advisory Group.
Cross-Cultural Communication Group.
McCallum, Margaret (Miss).
Dixon, R.G.
Metro Agencies Action Committee.

Barr, Douglas.

Dufresne, Debbie (Mrs.).

Bartol, Zlata (Miss).

The Ontario Advisory on Multiculturalism.

United Church of Canada.

Best, Alf, Q.C.

Loweth, Elizabeth (Mrs.).

Canadian Civil Liberties Association.

Metro Toronto Y.M.C.A.

Western Guard Party.

Halian Business and Professional Men's Association.

Progressive Conservative Metro Group, Toronto.

Indian Immigrant Aid Services.

Campbell, Donald.

St. Matthews United Church.

Japanese Canadian Citizens Association.

Gilbart, John.

Kudelka, John.

India Club and Asia Publications.

The Law Union of Ontario.

Sellery, L.M. (Mrs.).

The Peoples Assembly on Canadian Foreign Policy.

Students' Legal Aid Society of the University of Toronto.

The Centre for Spanish Speaking People.

The Windsor Chamber of Commerce.

The Local Council of Women of Windsor.

Brown-John, C. Lloyd (Dr.) University of Windsor.

The Kent-Essex Liberal Study Group of the Green Paper.

Windsor Gay Unity Group.

Alexander, Philip H.

Multicultural Council of Windsor-Essex County.

Thompson, W.

Program Committee, Iona College, University of Windsor.

Essex-Windsor Liberal Association.

Spellman, J.W. (Prof.) University of Windsor.

Njoku, Emeka.

Windsor West Indian Association.

Creighton-Kelly, Chris.

Drobnik, Louis.

Canadian Human Rights Party.

Victor Copps, Mayor of Hamilton.

Society for Hamilton Area International Response.

Order of Sons of Italy of Ontario.

Mwalwanda, Cornelius T.

Badneduck, Tore.

World Federalists of Canada.

Porter, Frances.

Dundas Voice of Women.

The McMaster Campus Ministers' Council.

India-Canada Society of Hamilton and Region.

The Graduate Students' Union, McMaster University.

Gerstenberger, Rolf.

Immigrant Advisory Committee of London.

London Council of Women.

Green Paper Study Group-Kitchner Waterloo.
London Association for International Development.
The Chinese Cultural Centre of Kitchner.
Henderson, Gordon.
McKerdy Association of Chaplains in Waterloo.
Kitchner Chamber of Commerce.
Wahlston, Doug (Dr.).
Presbyterian Church of Canada.
Boyce, George.
Global Community Centre of Kitchner.
Connor, Peter.
Swytink, Margaret.
London Council of Women.
Presbyterian Church of Canada.
Henderson, Gordon.
Hamilton and District Council of Women.
McLean, David.
Ukranian Canadian Committee, Ontario Provincial Council.
World Congress of Free Ukrainians.
Women's Institute of Welland West.
Brampton and District University Women's Club.
Prophetic Committee of Hamilton Conference, United Church of
Canada.
Rose, Robert.
Housing and Urban Development Association of Canada.
Immigration Council of Manitoba.
Charles, J.K. (Prof.) Lakehead University.

International Union of Students.
Ad Hoc Committee to Oppose the Green Paper.
Brandon Canada - India Association.
Crockett, Frank.
The Canada Free Press Club.
Hykawy, M.H.
Labossiere, Gerald (Rev.).
College universitaire de Saint-Bonafice.
Societe Franco-Manitobaine.
Manitoba Fashion Institute.
Ukranian Canadian Committee.
Manitoba Japanese Canadian Citizens Association.
India Association of Winnipeg.
The Federation of Provincial Medical Licensing Authorities
of Canada.
Manitoba Chinese Canadian Ad Hoc Committee on the Green
Paper.
Conway, Myrtle (Dr.).
Gays for Equality.
The City of Winnipeg.
Buenting, James (Rev.).
Afro-Caribbean Association of Manitoba, Inc.
Revolutionary Marxist Group.
Winnipeg Labour Council.
Mennonite Central Committee (Canada).
Sherman, Bud, M.P.L.
Projet Canadien inter-eglise sur la population.
Interchurch Project on Population.

Narvey, Kenneth.
United Nations Association, Winnipeg Branch.
Canadian Mental Health Association, Regina.
Pappas, Ernie.
India Association of Saskatchewan.
Gupta, H.N. (Dr.).
Interchurch Project on Population, Regina.
Regina Committee for World Development.
Saskatchewan Federation of Labour.
Gay Community Centre of Saskatoon.
India-Canada Cultural Association of Saskatoon.
Sachdev, Mohinder s. (Prof.).
Saskatoon Council of Churches.
Arusha Cross-Cultural Centre, Calgary.
Bentley, C.F. (Dr.) University of Alberta.
Fort Saskatchewan High School, Edmonton.
Marshall, F.C. (Dr.).
Blake, Rose (Mrs.).
The International Club of Calgary.
Pickett, Jack.
McCarthy, E.D.
Alberta Branch of the Canadian League of Rights.
Hawrelak, W., Mayor of Edmonton.
Sax, F. Donald.
Council of India Societies of Alberta.
Rogers, Mrs. Edith.
Killoran, Jim.

Wasuita, O.G.

Edmonton Cross Cultural Learner Centre and the Edmonton Interfaith Society.

Task Force on Population.

Calgary Interfaith Community Action Committee.

University of Alberta's Chaplains' Association.

Chinese Graduates' Association of University of Alberta.

Operation We Care.

Alberta Cultural Heritage Council.

Gardner, John.

Pal, Harindar S.

Konrad, Herman W.

Ukranian Professional and Business Men's Club and the Provincial Council of the Ukranian Canadian Committee.

Ricafort, F.E.

Peacock, Fletcher.

Mangold, Ruby.

Yates, Arthur.

Hall-Beyer, Bart.

Benman, Jashua.

Hameed, Syeda.

Williams, John H.

Colin, Wynne, Deputy Mayor City of Yellowknife.

Hodgson, S.M. Commissioner of the Northwest Territories.

Haines, Paul.

Dupuis, Robert.

Blanchard, Alex.

Padgham, Mrs. Terry.

MacQuarrie, Bob.
Ormiston, Jim.
Milligan, Susan.
Alexander, Colin.
Jordan, Tony.
Zakem, Frank, Mayor of Charlottetown.
Government of Prince Edward Island.
Protestant Family Service Bureau.
Ten Days for World Development.
Prince Edward Island Ministerial Association.
Social Action Commission of the Roman Catholic Diocese of
Charlottetown.
Canadian Catholic Organization for Development and Peace.
Prince Edward Island Civil Liberties Association.
Prince Edward Island Multicultural Council.
Fine, J.C.
Charlottetown Chamber of Commerce.
Indo-Canadian Group of Prince Edward Island.
Knights of Columbus (Charlottetown).
Council of Religious Sisters of the Diocese of
Charlottetown.
Dregger, Fred.
Atlantic Institute of Education.
Andstein, Robert.
International Education Centre, St. Mary's University.
Lotz, Jim.
Amnesty International, Halifax.
Bishop, E.R.

Wiles, Michael.

Brown, Roger.

City of Halifax, Social Planning Department.

Atlantic Provinces Economic Council.

Bhalla, Surrender.

Halifax-Dartmouth Committee of the Communist Party of
Canada, Marxist-Leninist.

Mallach, Mike.

Hankey, Wayne (Rev.).

Nova Scotia Association for the Advancement of Coloured
People.

Black United Front of Nova Scotia.

Indo-Canadian Association of Nova Scotia, Dartmouth.

Gay Alliance for Equality, Halifax.

O'Brien, Kenneth (Dr.).

Filippino Association of Nova Scotia.

The Women's Centre, Halifax.

Royal Canadian Legion.

Lithwick, Harvey (Dr.).

Toronto School Board.

Pickering, Edward.

Mining Association of Canada.

Canadian Bar Association.

Association canadienne-française de l'Ontario (French-
Canadian Association of Ontario).

National Union of Students.

Royal College of Physicians and Surgeons.

Immigration Appeal Board.

Department of Manpower and Immigration, the Minister and Senior Officials.

National Demographic Policy Secretariat.

Canadian Labour Congress.

Manpower and Immigration Union of the Public Service Alliance of Canada.

APPENDIX #4
COMPARISON OF THE 1976-77 IMMIGRATION ACT WITH
BILL C-86 AMENDMENTS AND CHAPTER 49 OF THE STATUTES
OF CANADA, 1992

PROVISIONS ON ACCESS

Clause 36, Section 46.01

Clause 36:(1) Subsections 46.01(1) to (3) of the Immigration Act read as follows:

46.01 (1) A person who claims to be a Convention Refugee is not eligible to have the claim determined by the Refugee Division if

- (a) the claimant has been recognized by any country, other than Canada, as a Convention Refugee and has been issued a valid and subsisting travel document by that country pursuant to Article 28 of the Convention;
- (b) in the case of a claimant who is the subject of an inquiry caused pursuant to paragraph 23(4)(a), the claimant came to Canada from a country other than the country of the claimant's nationality or, where the claimant has no country of nationality, the country of the claimant's habitual residence,
 - (i) that has been prescribed as a country that complies with Article 33 of the Convention either universally or with respect to persons of a specified class of persons of which the claimant is a member, and
 - (ii) whose laws or practices provide that all claimants or claimants of a particular class of persons of which the claimant is a member would be allowed to return to that country, if removed from Canada, or would have the right to have the merits of their claim determined in that country;
- (c) the claimant has, since last coming to Canada, been determined
 - (i) by the Refugee Division, the Federal Court of Appeal or the Supreme Court of Canada not to be a Convention refugee or to have abandoned the claim, or

- (ii) by an adjudicator and a member of the Refugee Division as not being eligible to have the claim determined by that Division or as not having credible basis for the claim;
- (d) the claimant has been finally determined under this Act, or determined under the regulations, to be a Convention refugee;
- (e) the claimant is
 - (i) a person is described in paragraph 19(1)(j),
 - (ii) a person
 - (A) described in paragraph 19(1)(c), or
 - (B) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed who the Minister has certified constitutes a danger to the public in Canada, or
 - (iii) a person described in paragraph 19(1)(e), (f) or (g) or 27(1)(c) or 2(c) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act; or
- (f) in the case of a claimant to whom a departure notice has been issued, the claimant has not left Canada or, having left Canada pursuant to the notice, has not been granted lawful permission to be in any other country.

(2) Notwithstanding paragraph (1)(a), a person is eligible to have a claim determined by the Refugee Division if, in the opinion of the adjudicator or the member of the Refugee Division considering the claim, the person has a credible basis for a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion in the country that recognized the person as a Convention refugee.

(3) For the purposes of paragraph (1)(b),

- (a) a claimant who is in a country solely for the purpose of joining a connecting flight to Canada shall not be considered as coming to Canada from that country whether or not the person was lawfully in that country.

- (b) a claimant who comes to Canada from a country shall be considered as coming to Canada from that country whether or not the person was lawfully in that country.

Bill C-86 amendments read as follows:

36. (1) Subsections 46.01(1) to (3) of the said Act are repealed and the following substituted therefor:

46.01 (1) A person who claims to be a Convention Refugee is not eligible to have the claim determined by the Refugee Division if the person

- (a) has been recognized as a Convention refugee by a country, other than Canada, that is a country to which the person can be returned;
- (b) came to Canada, directly or indirectly, from a country, other than a country of the person's nationality or, where the person has no country of nationality, the country of the person's habitual residence, that is a prescribed country under paragraph 114(1)(s);
- (c) has, since last coming into Canada, been determined
 - (i) by the Refugee Division not to be a Convention refugee or to have abandoned the claim, or
 - (ii) by a senior immigration officer not to be eligible to have the claim determined by the Refugee Division;
- (d) has been determined under this Act or the regulations, to be a Convention refugee; or
- (e) has been determined by an adjudicator to be a person described in paragraph 19(1)(c), subparagraph 19(1)(c.1)(i) or paragraph 19(1)(e),(f),(g),(j),(k) or (l).

(2) The Minister may, by order, suspend the application of paragraph (1)(b) for such period, or in respect of such classes of persons, as may be specified in the order.

(3) For the purposes of paragraph (1)(b),

- (a) a person who is in a country solely for the purpose of joining a connecting flight to Canada shall not be considered as coming to Canada from that country.
- (b) a person who comes to Canada from a country shall be considered as coming to Canada from that country whether or not the person was lawfully in that country.

Clause 36 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

36. (1) Subsections 46.01(1) to (3) of the said Act are repealed and the following substituted therefor:

46.01 (1) A person who claims to be a Convention refugee is not eligible to have the claim determined by the Refugee Division if the person

- (a) has been recognized as a Convention refugee by a country, other than Canada, that is a country to which the person can be returned;
- (b) came to Canada, directly or indirectly, from a country, other than a country of the person's nationality or, where the person has no country of nationality, the country of the person's habitual residence, that is a prescribed country under paragraph 114(1)(s);
- (c) has, since last coming into Canada, been determined
 - (i) by the Refugee Division not to be a Convention refugee or to have abandoned the claim, or

- (ii) by a senior immigration officer not to be eligible to have the claim determined by the Refugee Division;
- (d) has been determined under this Act or the regulations, to be a Convention refugee; or
- (e) has been determined by an adjudicator to be
 - (i) a person described in paragraph 19(1)(c), subparagraph 19(1)(c.1)(i) and the Minister is of the opinion that the person constitutes a danger to the public in Canada, or
 - (ii) a person described in paragraph 19(1)(e), (f), (g), (j), (k) or (l) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act.

(1.1) A person who claims to be a Convention Refugee on or after the day on which this subsection comes into force is not eligible to have the claim determined by the Refugee Division if

- (a) the person had, before that day, claimed to be a Convention Refugee and the person was determined not to have a credible basis for the claim;
- (b) the person was before that day, issued a departure notice; and
- (c) the person has not left Canada since the departure notice was issued.

(2) The Minister may, by order, suspend the application of paragraph (1)(b) for such period, or in respect of such classes of persons, as may be specified in the order.

(3) For the purposes of paragraph (1)(b),

- (a) subject to any agreement entered into pursuant to section 108.1, a person who is in a country solely for the purpose of joining a connecting flight to Canada shall not be considered as coming to Canada from that country; and
- (b) a person who comes to Canada from a country shall be considered as coming to Canada from that country whether or not the person was lawfully in that country.

Clause 101, Subsection 114(1)(s)

Clause 101: Subsection 114(1)(s) of the Immigration Act reads as follows:

114(1) The Governor in Council may make regulations

- (s) prescribing for the purposes of paragraph 46.01(1)(b), any country as a country that complies with Article 33 of the Convention either universally or with respect to persons of a specified class of persons, having regard to whether the country is a party to the Convention, the country's policies and practices with respect to Convention refugee claims and the country's record with respect to human rights;

Bill C-86 amendments read as follows:

101 (7) Paragraphs 114(1)(q.2) to (s) of the said Act are repealed and the following substituted therefor:

- (s) prescribing, for the purposes of sharing responsibility for the examination of persons who claim to be Convention refugees, countries that comply with Article 33 of the Convention;

Clause 102 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

(7) Paragraphs 114(1)(q.2) to (s) of the said Act are repealed and the following substituted therefor:

- (s) prescribing, for the purposes of sharing responsibility for the examination of persons who claim to be Convention refugees, countries that comply with Article 33 of the Convention;

PROVISIONS ON PROCEDURE

Clause 60(6), Subsection 69.1(10)

Clause 60:(6) Subsection 69.1(10) of the Immigration Act reads as follows:

(10) In the event of a split decision, the decision favourable to the claimant shall be deemed to be the decision of the Refugee Division.

Bill C-86 amendments read as follows:

60. (6) Subsections 69.1(10) to (12) of the said Act are repealed and the following substituted therefor:

(10) Subject to subsection (10.1), in the event of a split decision, the decision favourable to the person who claims to be a Convention refugee shall be deemed to be the decision of the Refugee Division.

(10.1) Where, with respect to any person who claims to be a Convention refugee, both members of the Refugee Division hearing the claim are satisfied

- (a) that there are reasonable grounds to believe that the person, without valid reason, has destroyed or disposed of documents that pertain to the person's identity,
- (b) that the person has, since making the claim, visited the country that the person claims to have left, or outside of which the person claims to have remained, by reason of fear of persecution, or
- (c) that the country that the person claims to have left, or outside of which the person claims to have remained, by reason of fear of persecution is a country that is prescribed under paragraph 114(1)(s.1) to be a country that respects human rights,

then, in the case of a split decision on the claim, the decision not favourable to the person shall be deemed to be the decision of the Refugee Division.

Clause 60(6) of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

60. (6) Subsections 69.1(10) to (12) of the said Act are repealed and the following substituted therefor:

(10) Subject to subsection (10.1), in the event of a split decision, the decision favourable to the person who claims to be a Convention refugee shall be deemed to be the decision of the Refugee Division.

(10.1) Where, with respect to any person who claims to be a Convention refugee, both members of the Refugee Division hearing the claim are satisfied

- (a) that there are reasonable grounds to believe that the person, without valid reason, has destroyed or disposed of identity documents that were in the person's possession,
- (b) that the person has, since making the claim, visited the country that the person claims to have left, or outside of which the person claims to have remained, by reason of fear of persecution, or
- (c) that the country that the person claims to have left, or outside of which the person claims to have remained, by reason of fear of persecution is a country that is prescribed under paragraph 114(1)(s.1) to be a country that respects human rights,

then, in the case of a split decision on the claim, the decision not favourable to the person shall be deemed to be the decision of the Refugee Division.

Clause 35, Sections 43-46

Clause 35: Sections 43 to 46 of the Immigration Act reads as follows:

45. (1) The adjudicator is the presiding officer at an inquiry continued in accordance with subsection 43(3) or a hearing held pursuant to subsection 44(3).

(2) Every person who claims to be a Convention refugee at an inquiry or hearing referred to in subsection (1) shall file, in the manner and form prescribed by the rules of the Board, documentation respecting the claim with the adjudicator.

(3) Section 29, subsection 30(1) and section 112 apply, with such modifications as the circumstances require, with respect to a hearing held pursuant to subsection 44(3) as if the hearing were an inquiry.

Bill C-86 amendments read as follows:

Clause 35. Sections 43 to 46 of the said Act are repealed and the following substitutes therefor:

45. (1) Where a person's claim to be a Convention refugee is referred to a senior immigration officer, the senior immigration officer shall

(a) subject to subsection (2), determine whether the person is eligible to have the claim determined by the Refugee Division; and

(b) if the person is the subject of a report under subsection 20(1) or 27(1) or (2) or has been arrested pursuant to subsection 103(2), take the appropriate action referred to in any of subsections 23(4) and (4.2) and 27(4) and (6) or section 28.

(2) Where a person referred to in subsection (1) is alleged to be a person described in paragraph 19(1)(c), subparagraph 19(1)(c.1)(i) or paragraph 19(1)(e), (f), (g), (j), (k), or (l), the senior immigration officer shall not make the determination referred to in paragraph (1)(A) until an adjudicator determines that the person is, or is not, a person described in any of those paragraphs.

(3) On making a determination under paragraph (1)(a), the senior immigration officer shall notify the person in writing of the determination and, where the person is determined not to be eligible to have a claim to be a Convention refugee referred to the Refugee Division, shall include in the notification the basis for the determination.

(4) The burden of proving that a person is eligible to have a claim to be a Convention refugee determined by the Refugee Division rests on the person.

(5) Every person who claims to be a Convention refugee shall truthfully provide such information as may be required by the senior immigration officer to whom the person's claim is referred for the purpose of determining whether the person is eligible to have the claim determined by the Refugee Division.

Clause 35 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

Clause 35. Sections 43 to 46 of the said Act are repealed and the following substitutes therefor:

45. (1) Where a person's claim to be a Convention refugee is referred to a senior immigration officer, the senior immigration officer shall

- (a) subject to subsection (2), determine whether the person is eligible to have the claim determined by the Refugee Division; and
- (b) if the person is the subject of a report under subsection 20(1) or 27(1) or (2) or has been arrested pursuant to subsection 103(2), take the appropriate action referred to in any of subsections 23(4) and (4.2) and 27(4) and (6) or section 28.

(2) Where a person referred to in subsection (1) is alleged to be a person described in paragraph 19(1)(c), subparagraph 19(1)(c.1)(i) or paragraph 19(1)(e), (f), (g), (j), (k), or (l), the senior immigration officer shall not make the determination referred to in paragraph (1)(A) until an adjudicator determines that the person is, or is not, a person described in any of those paragraphs.

(3) On making a determination under paragraph (1)(a), the senior immigration officer shall notify the person in writing of the determination and, where the person is determined not to be eligible to have a claim to be a Convention refugee referred to the Refugee Division, shall include in the notification the basis for the determination.

(4) The burden of proving that a person is eligible to have a claim to be a Convention refugee determined by the Refugee Division rests on the person.

(5) Every person who claims to be a Convention refugee shall truthfully provide such information as may be required by the senior immigration officer to whom the person's claim is referred for the purpose of determining whether the person is eligible to have the claim determined by the Refugee Division.

Clause 59, Subsections 69(1)-(3)

Clause 59: (1) Subsections 69(1) to (3) of the Immigration Act now read as follows:

69. (1) In any proceedings, before the Refugee Division, the Minister may be represented at the proceedings by counsel or an agent and the person who is the subject of the proceedings may, at that person's own expense, likewise be represented.

(2) Subject to subsection (3), proceedings before the Refugee Division shall be conducted in camera unless it is established to the satisfaction of the Division, on application by a member of the public, that the conduct of the proceedings in public would not impede the proceedings and that the person who is the subject of the proceedings or any member of that person's family would not be adversely affected if the proceedings were in public.

(3) The Refugee Division shall allow any representative or agent of the United Nations High Commissioner for Refugees to attend any proceedings before it as an observer and, at the request or with the consent of the person who is the subject of the proceedings, shall allow any other person to attend the proceedings as an observer if, in the opinion of the Division, the attendance of that other person is not likely to impede the proceedings.

Bill C-86 amendments read as follows:

Clause 59(1) Subsections 69(1) to (3) of the said Act are repealed and the following substituted therefor:

69. (1) In any proceedings before the Refugee Division, the Minister may be represented at the proceedings by counsel or an agent and the person who is the subject of the proceedings may, at that person's own expense, be represented by a barrister or solicitor or other counsel.

(2) Subject to subsections (3) and (3.1), proceedings before the Refugee Division shall be conducted in public, and shall be held in the presence of the person who is the subject of the proceedings wherever practicable.

(3) Where the Refugee Division is satisfied that there is a serious possibility that the life, liberty or security of any person would be endangered by reason of any of its proceedings being held in public, it may, on application therefor, take such measures and make such order as it considers necessary to ensure the confidentiality of the proceedings.

(3.1) Where the Refugee Divisions considers it appropriate to do so, it may take such measures and make such order as it considers necessary to ensure the confidentiality of any hearing held in respect of any application referred to in subsection (3).

(3.2) Notwithstanding any measure taken or order made pursuant to subsection (3) or (3.1), the Refugee Division shall allow any representative or agent of the United Nations High Commissioner for Refugees to attend any proceedings before it as an observer.

Clause 59 of Chapter 49 of The Statutes of Canada, 1992 now reads as follows:

Clause 59(1) Subsections 69(1) to (3) of the said Act are repealed and the following substituted therefor:

69. (1) In any proceedings before the Refugee Division, the Minister may be represented at the proceedings by counsel or an agent and the person who is the subject of the proceedings may, at that person's own expense, be represented by a barrister or solicitor or other counsel.

(2) Subject to subsections (3) and (3.1), proceedings before the Refugee Division shall be held in the presence of the person who is the subject of the proceedings, wherever practicable, and be conducted in camera or, if an application therefor is made, in public.

(3) Where the Refugee Division is satisfied that there is a serious possibility that the life, liberty or security of any person would be endangered by reason of any of its proceedings being held in public, it may, on application therefor, take such measures and make such order as it considers necessary to ensure the confidentiality of the proceedings.

(3.1) Where the Refugee Division considers it appropriate to do so, it may take such measures and make such order as it considers necessary to ensure the confidentiality of any hearing held in respect of any application referred to in subsection (3).

Clause 69, Section 80

Clause 69: (1) Section 80 of the Immigration Act reads as follows:

80. An appeal to the Appeal Division shall be heard in public but if any party thereto so requests the Appeal Division may in its discretion direct that the appeal be heard in camera.

Bill C-86 amendments read as follows:

69. Section 80 of the said Act is repealed and the following substituted therefor:

80. (1) Subject to subsections (2) and (3), an appeal to the Appeal Division shall be conducted in public.

(2) Where the Appeal Division is satisfied that there is a serious possibility that the life, liberty or security of any person would be endangered by reason of the appeal being conducted in public, the Appeal Division may, on application therefor, take such measures and make such order as it considers necessary to ensure the confidentiality of the appeal.

(3) Where the Appeal Division considers it appropriate to do so, the Appeal Division may take such measures and make such order as it considers necessary to ensure the confidentiality of any hearing held in respect of any application referred to in subsection (2).

Clause 69 of Chapter 49 of The Statutes of Canada, 1992 now reads as follows:

69. Section 80 of the said Act is repealed and the following substituted therefor:

80. (1) Subject to subsections (2) and (3), an appeal to the Appeal Division shall be conducted in public.

(2) Where the Appeal Division is satisfied that there is a serious possibility that the life, liberty or security of any person would be endangered by reason of the appeal being conducted in public, the Appeal Division may, on application therefor, take such measures and make such order as it considers necessary to ensure the confidentiality of the appeal.

(3) Where the Appeal Division considers it appropriate to do so, the Appeal Division may take such measures and make such order as it considers necessary to ensure the confidentiality of any hearing held in respect of any application referred to in subsection (2).

SECURITY PROVISIONS**Clause 11, Subsection 19(1)**

Clause 11: (1) The relevant portions of subsection 19(1) of the Immigration Act read as follows:

19. (1) No person shall be granted admission who is a member of any of the following classes:

- (c) persons who have been convicted of an offence that, if committed in Canada, constitutes or, if committed outside Canada, would constitute an offence that may be punishable under any Act of Parliament and for which a maximum term of imprisonment of ten years or more may be imposed, except persons who have satisfied the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the termination of the sentence imposed for the offence;
- (e) persons who have engaged in or who there are reasonable grounds to believe will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, except persons who, having engaged in such acts, have satisfied the Minister that their admission would not be detrimental to the national interest;
- (f) persons who there are reasonable grounds to believe will, while in Canada engage in the subversion by force of any government;

Bill C-86 amendments read as follows:

11. (1) Paragraphs 19(1)(a) to (c) of the said Act are repealed and the following substituted therefor:

- (1) No person shall be granted admission who is a member of any of the following classes:

(c) persons who have been convicted in Canada of an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more;

(c.1) persons who there are reasonable grounds to believe

(i) have been convicted outside Canada of an offence, or

(ii) have committed outside Canada an act or omission

that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more, except persons who have satisfied the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be;

(c.2) persons who there are reasonable grounds to believe are or were members of an organization that there are reasonable grounds to believe is or was engaged in the commission of any offence that may be punishable under any Act of Parliament by way of indictment or in the commission outside Canada of an act or omission that, if committed in Canada, would constitute such an offence, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

(2) Paragraphs 19(1)(e) and (f) of the said Act are repealed and the following substituted therefor:

(e) persons who there are reasonable grounds to believe

(i) will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,

(ii) will, while in Canada, engage in or instigate the subversion by force of any government,

(iii) will engage in terrorism, or

(iv) are members of an organization that there are reasonable grounds to believe will

- (A) engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,
- (B) engage in or instigate the subversion by force of any government, or
- (C) engage in terrorism;

(f) persons who there are reasonable grounds to believe

- (i) have engaged in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,
- (ii) have engaged in terrorism, or
- (iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in
 - (A) acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, or
 - (B) terrorism,

except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

(3) Subsection 19(1) of the said Act is further amended by striking out the word "or" at the of the paragraph (i) thereof and by adding the following paragraphs:

- (k) persons who constitute a danger to the security of Canada and are not members of a class described in paragraph (e), (f) or (g); or
- (l) persons who are or were senior members of or senior officials in the service of a government that is or was engaged in terrorism, systematic or gross human rights violations or war crimes or crimes against humanity within the meaning of subsection 7(3.76) of the Criminal Code, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

(4) Section 19 of the said Act is further amended by adding thereto, immediately after subsection (1) thereof, the following section:

- (1.1) For the purposes of subsection (1), "senior members of or senior officials in the service of a government" means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes
- (a) heads of state or government;
 - (b) members of the cabinet or governing council;
 - (c) senior advisors to person described in paragraph (a) or (b);
 - (d) senior members of the public service;
 - (e) senior members of the military and of the intelligence and internal security apparatus;
 - (f) ambassadors and senior diplomatic officials;
and
 - (g) members of the judiciary.

Clause 11 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

11. (1) Paragraphs 19(1)(a) to (c) of the said Act are repealed and the following substituted therefor:

(1) No person shall be granted admission who is a member of any of the following classes:

- (c) persons who have been convicted in Canada of an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more;
- (c.1) persons who there are reasonable grounds to believe

- (i) have been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more, or
- (ii) have committed outside Canada an act or omission that constitutes an offence under the laws of the place where the act or omission occurred and that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more,

except persons who have satisfied the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be;

(c.2) persons who there are reasonable grounds to believe are or were members of an organization that there are reasonable grounds to believe is or was engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence under the Criminal Code, the Narcotic Control Act or Part III or IV of the Food and Drug Act that may be punishable by way of indictment or in the commission outside Canada of an act or omission that, if committed in Canada, would constitute such an offence, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

(2) Paragraphs 19(1)(e) and (f) of the said Act are repealed and the following substituted therefor:

- (e) persons who there are reasonable grounds to believe
 - (i) will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,
 - (ii) will, while in Canada, engage in or instigate the subversion by force of any government,
 - (iii) will engage in terrorism, or

- (iv) are members of an organization that there are reasonable grounds to believe will
 - (A) engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,
 - (B) engage in or instigate the subversion by force of any government, or
 - (C) engage in terrorism;
- (f) persons who there are reasonable grounds to believe
 - (i) have engaged in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,
 - (ii) have engaged in terrorism, or
 - (iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in
 - (A) acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, or
 - (B) terrorism,

except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

(3) Subsection 19(1) of the said Act is further amended by striking out the word "or" at the of the paragraph (i) thereof and by adding the following paragraphs:

- (k) persons who constitute a danger to the security of Canada and are not members of a class described in paragraph (e), (f) or (g); or
- (l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations or war crimes or crimes against humanity within the meaning of subsection 7(3.76) of the

Criminal Code, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

(4) Section 19 of the said Act is further amended by adding thereto, immediately after subsection (1) thereof, the following section:

(1.1) For the purposes of subsection (1)(1), "senior members of or senior officials in the service of a government" means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

- (a) heads of state or government;
- (b) members of the cabinet or governing council;
- (c) senior advisors to person described in paragraph (a) or (b);
- (d) senior members of the public service;
- (e) senior members of the military and of the intelligence and internal security apparatus;
- (f) ambassadors and senior diplomatic officials;
and
- (g) members of the judiciary.

Clause 73, Subsection 85(1)

Clause 73:(1) The relevant portion of subsection 85(1) of the Immigration Act reads as follows:

85. (1) Subject to subsection (2) a transportation company that has brought a person to Canada shall convey that person or cause that person to be conveyed

- (a) to the country from which that person came to Canada, or to such other country as the Minister may approve at the request of the company, in the case of a person who is allowed to leave Canada pursuant to subsection 20(1) or 23(4) or required to leave Canada by reason of making of a rejection order;

- (b) to the United States, in the case of a person who is required to leave Canada by reason of the making of a direction to return to that country pursuant to subsection 20(2), 23(5) or 43(4); or

Bill C-86 amendments read as follows:

73. (1) Paragraphs 85(1)(a) and (b) of the said Act are repealed and the following substituted therefor:

- (a) to the country from which that person came to Canada, or to such other country as the Minister may approve at the request of the company, in the case of a person who is allowed to leave Canada pursuant to subsection 20(1) or 23(4) or (4.2) or who is required to leave Canada by reason of the making of a rejection order;
- (b) to the United States, in the case of a person who is required to leave Canada by reason of the making of a direction to return to that country pursuant to subsection 20(2), 23(5); or

(2) Section 85 of the said Act is further amended by adding thereto the following subsections:

(3) A transportation company is liable to pay all removal costs of any person whom it is required to convey or cause to be conveyed pursuant to this section if the person has not been granted admission and at the time of arrival in Canada was not in possession of a subsisting visa.

(4) A transportation company is entitled to be reimbursed by Her Majesty for the removal costs that it incurs in conveying or causing to be conveyed pursuant to this section any person who has been granted admission or who at the time of arrival in Canada was in possession of a valid and subsisting visa.

(5) This section does not apply in relation to persons who enter Canada as or to become members of a crew.

Clause 74 of Chapter 49 of the Statutes of Canada, 1992 reads as follows:

74. (1) All that portion of subsection 85(1) of the said Act preceding paragraph (c) thereof is repealed and the following substituted therefor:

85. (1) Subject to subsection (2) a transportation company that has brought a person to Canada may be required by the Minister to convey that person or cause that person to be conveyed,

- (a) to the country from which that person came to Canada, or to such other country as the Minister may approve at the request of the company, in the case of a person who is allowed to leave Canada pursuant to subsection 20(1) or 23(4) or (4.2) or who is required to leave Canada by reason of the making of a rejection order;
- (b) to the United States, in the case of a person who is required to leave Canada by reason of the making of a direction to return to that country pursuant to subsection 20(2), 23(5); or

(2) Section 85 of the said Act is further amended by adding thereto the following subsections:

(3) A transportation company is liable to pay all removal costs of any person whom it is required to convey or cause to be conveyed pursuant to this section if the person has not been granted admission and at the time of arrival in Canada was not in possession of a subsisting visa.

(4) A transportation company is entitled to be reimbursed by Her Majesty for the removal costs that it incurs in conveying or causing to be conveyed pursuant to this section any person who has been granted admission or who at the time of arrival in Canada was in possession of a valid and subsisting visa.

(5) This section does not apply in relation to persons who enter Canada as or to become members of a crew.

Clause 74, Section 86

Clause 74: Section 86 of the Immigration Act reads as follows:

86. (1) Where, pursuant to section 85, a transportation company is required to convey or cause to be conveyed any person who has not been granted admission, it is liable to pay all removal and detention costs of the person unless the person at the time of arrival in Canada was in possession of a valid and subsisting visa.

(2) Where any person who is held in detention for an examination or inquiry under this Act is subsequently granted admission, the transportation company that brought that person to Canada is liable to pay all detention costs of the person unless the person at the time of arrival in Canada was in possession of a valid and subsisting visa.

(2.1) A transportation company is not liable to pay the detention costs of any person incurred more than seventy-two hours after the arrival of that person in Canada, unless the person is a person referred to in section 87 or a person who came to Canada as a member of a crew and, without the approval of an immigration officer, failed to be on the vehicle when it left the port of entry.

(3) A transportation company is not liable to pay the removal or detention costs of any person who is ordered removed from, or is detained in, Canada after having been granted admission, unless that person is a person referred to in section 87 or came into Canada as a member of a crew and, without the approval of an immigration officer, failed to be on the vehicle when it left a port of entry.

Bill C-86 amendments read as follows:

74. Section 86 of the said Act is repealed and the following substituted therefor:

86. Where a person enters Canada as or to become a member of a crew of a vehicle and ceases to be a visitor pursuant to subsection 36(1), the transportation company that operates that vehicle shall convey that person, or cause that person to be conveyed, to the country from which that person came to Canada, or to such other country as the Minister may approve at the request of the company, and the company is liable to pay all removal costs in respect of that person.

Clause 75 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

74. Section 86 of the said Act is repealed and the following substituted therefor:

86. Where a person enters Canada as or to become a member of a crew of a vehicle and ceases to be a visitor pursuant to subsection 36(1), the transportation company that operates that vehicle shall convey that person, or cause that person to be conveyed, to the country from which that person came to Canada, or to such other country as the Minister may approve at the request of the company, and the company is liable to pay all removal costs in respect of that person.

Clause 75, Subsection 87(1)

Clause 75: (1) Subsection 87(1) of the Immigration Act reads as follows:

87. (1) Where pursuant to section 85, a transportation company is required to convey any person, or cause any person to be conveyed, from Canada, it shall be notified thereof and given an opportunity of conveying that person or causing that person to be conveyed on one of its own vehicles or otherwise.

(2) Subsection 87(3) of the Immigration Act reads as follows:

(3) The transportation company obligated under section 85 is liable, on demand, to reimburse Her Majesty for all removal and detention costs incurred under subsection (2) in respect of the person conveyed from Canada.

Bill C-86 amendments read as follows:

75. (1) Subsection 87(1) of the said Act is repealed and the following substituted therefor:

87. (1) Where pursuant to section 85 or 86, a transportation company is required to convey a person, or cause a person to be conveyed, from Canada, it shall be notified of that requirement and be given an opportunity to convey that person, or to cause that person to be conveyed, on one of its own vehicles or otherwise.

(2) Subsection 87(3) of the said Act is repealed and the following substituted therefor:

(3) The transportation company referred to in subsection (1) is liable, on demand, to reimburse Her Majesty for all removal costs incurred under subsection (2) in respect of the person conveyed from Canada.

Clause 76 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

76. (1) Subsection 87(1) of the said Act is repealed and the following substituted therefor:

87. (1) Where pursuant to section 85 or 86, a transportation company is required to convey a person, or cause a person to be conveyed, from Canada, it shall be notified of that requirement and be given an opportunity to convey that person, or to cause that person to be conveyed, on one of its own vehicles or otherwise.

(2) Subsection 87(3) of the said Act is repealed and the following substituted therefor:

(3) The transportation company referred to in subsection (1) is liable, on demand, to reimburse Her Majesty for all removal costs incurred under subsection (2) in respect of the person conveyed from Canada.

Clause 76, Subsection 89(2)

Clause 76: Subsection 89(2) of the Immigration Act reads as follows:

(2) The Minister may require any transportation company to provide, equip and maintain free of charge to Her Majesty buildings, accommodation or other facilities for the proper examination and detention of persons brought to Canada or to be removed from Canada on the vehicles, bridges or tunnels of the company.

Bill C-86 amendments read as follows:

76. Subsection 89(2) of the said Act is repealed and the following substituted therefor:

(2) The Minister may, in writing, require any transportation company to provide, equip and maintain free of charge to Her Majesty adequate areas, offices, laboratories and other facilities, including buildings, accommodation, equipment, furnishings and fixtures, for the proper examination and detention of persons brought to Canada or to be removed from Canada via the vehicles, bridges, tunnels or airports of the company.

(3) The Minister may

- (a) cause to be made such improvements as the Minister considers desirable to any facility provided pursuant to subsection (2);
- (b) post, on or about the facility, any signs that the Minister considers appropriate for its operation or safe use; and
- (c) continue to use the facility for as long as the Minister requires it for the purposes mentioned in subsection (2).

(4) Where a facility provided pursuant to subsection (2) is not adequate for the purposes mentioned in that subsection, the Minister may require the transportation company to carry out any construction or repairs in order to render the facility adequate for those purposes, and if the transportation company fails to do so, the Minister may have

the construction or repairs carried out and the transportation company shall be liable for all reasonable costs incurred by the Minister, which costs may be recovered by Her Majesty in right of Canada.

(5) A requirement under subsection (4) shall be communicated by the personal delivery of a notice to the transportation company, or by sending the notice to the transportation company, and the notice may specify the period within which or the manner in which the construction or repairs are to be carried out.

(6) Subject to subsection (7) and to any regulations made under paragraph 114(1)(q.11), a dispute over the adequacy of a facility may be resolved by arbitration in accordance with the Commercial Arbitration Act.

(7) Any facility that fails to meet the applicable requirements of Part II of the Canada Labour Code shall be deemed not to be adequate for the purposes mentioned in subsection (2).

Clause 77 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

76. Subsection 89(2) of the said Act is repealed and the following substituted therefor:

(2) The Minister may, in writing, require any transportation company to provide, equip and maintain free of charge to Her Majesty adequate areas, offices, laboratories and other facilities, including buildings, accommodation, equipment, furnishings and fixtures, for the proper interviewing, examination and detention of persons brought to Canada or to be removed from Canada via the vehicles, bridges, tunnels or airports of the company.

(3) The Minister may

(a) cause to be made such improvements as the Minister considers desirable to any facility provided pursuant to subsection (2);

(b) post, on or about the facility, any signs that the Minister considers appropriate for its operation or safe use; and

(c) continue to use the facility for as long as the Minister requires it for the purposes mentioned in subsection (2).

(4) Where a facility provided pursuant to subsection (2) is not adequate for the purposes mentioned in that subsection, the Minister may require the transportation company to carry out any construction or repairs in order to render the facility adequate for those purposes, and if the transportation company fails to do so, the Minister may have the construction or repairs carried out and the transportation company shall be liable for all reasonable costs incurred by the Minister, which costs may be recovered by Her Majesty in right of Canada.

(5) A requirement under subsection (4) shall be communicated by the personal delivery of a notice to the transportation company, or by sending the notice to the transportation company, and the notice may specify the period within which or the manner in which the construction or repairs are to be carried out.

(6) Subject to subsection (7) and to any regulations made under paragraph 114(1)(q.11), a dispute over the adequacy of a facility may be resolved by arbitration in accordance with the Commercial Arbitration Act.

(7) Any facility that fails to meet the applicable requirements of Part II of the Canada Labour Code shall be deemed not to be adequate for the purposes mentioned in subsection (2).

Clause 77, Section 89.1

Clause 77: Section 89.1 of the Immigration Act reads as follows:

89.1 Every transportation company bringing persons to Canada shall, before presenting each passenger seeking to come into Canada to an immigration officer as required by subsection 89.1(1), ensure that the passenger is in possession of such valid and subsisting visa, passport or travel document as it is required by this Act or the regulations.

Bill C-86 amendments read as follows:

77. Section 89.1 of the said Act is repealed and the following substituted therefor:

89.1 (1) Every transportation company shall ensure that the persons it brings to Canada are in possession of all visas, passports and travel documents required by this Act or the regulations unless the visas, passports and travel documents are being held by the company in accordance with any regulations made under paragraph 114(1)(q.1).

(2) Subsection (1) applies from the time the transportation company embarks the persons at the final embarkation point before arrival in Canada until they are presented to an immigration officer for examination in accordance with subsection 89(1).

Clause 78 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

78. Section 89.1 of the said Act is repealed and the following substituted therefor:

89.1 (1) Every transportation company shall ensure that the persons it brings to Canada are in possession of all visas, passports and travel documents required by this Act or the regulations unless the visas, passports and travel documents are being held by the company in accordance with any regulations made under paragraph 114(1)(q.1).

(2) Subsection (1) applies from the time the transportation company embarks the persons at the final embarkation point before arrival in Canada until they are presented to an immigration officer for examination in accordance with subsection 89(1).

Clause 79, Subsection 90(2)

Clause 79: is a new provision and is not present under the 1976-7 Immigration Act.

Bill C-86 amendments read as follows:

79. The said Act is further amended by adding thereto, immediately after section 91 thereof, the following section:

91.1 (1) The Minister may, in accordance with the regulations, make a preliminary assessment of an administration fee against a transportation company in respect of any member of a class or persons prescribed for the purposes of this section

(a) who is brought to Canada by the company and who is the subject of a report pursuant to paragraph 20(1)(a) or a report pursuant to paragraph 27(2)(f) for having eluded examination; or

(b) who enters Canada as or to become a member of the crew of a vehicle operated by the company and who is the subject of a report pursuant to paragraph 27(2)(e) as a member of a crew who has ceased to be a visitor pursuant to paragraph 26(1)(c.1).

(2) Notice of a preliminary assessment under subsection (1) shall be given to a transportation company in accordance with any regulations and, within thirty days after the notice is given the company may file written submissions with the Minister regarding the assessment.

(3) After considering any submissions filed under subsection (2), the Minister may confirm, vary or rescind the preliminary assessment and the company shall, in accordance with any regulations, be given notice of the final assessment.

Clause 80 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

80. The said Act is further amended by adding thereto, immediately after section 91 thereof, the following section:

91.1 (1) The Minister may, in accordance with the regulations, make a preliminary assessment of an administration fee against a transportation company in respect of any member of a class or persons prescribed for the purposes of this section

(a) who is brought to Canada by the company and who is the subject of a report pursuant to paragraph 20(1)(a) or a report pursuant to paragraph 27(2)(f) for having eluded examination; or

(b) who enters Canada as or to become a member of the crew of a vehicle operated by the company and who is the subject of a report pursuant to paragraph 27(2)(e) as a member of a crew who has ceased to be a visitor pursuant to paragraph 26(1)(c.1).

(2) Notice of a preliminary assessment under subsection (1) shall be given to a transportation company in accordance with any regulations and, within thirty days after the notice is given the company may file written submissions with the Minister regarding the assessment.

(3) After considering any submissions filed under subsection (2), the Minister may confirm, vary or rescind the preliminary assessment and the company shall, in accordance with any regulations, be given notice of the final assessment.

(4) Where notice is given pursuant to subsection (2) and no written submission is filed within the period referred to in that subsection, the preliminary assessment shall be deemed to be a final assessment, and the transportation company shall be liable under the assessment on the day that immediately follows the expiration of that period.

(5) Where notice of final assessment is given to a transportation company pursuant to subsection (3), the transportation company shall be liable under the assessment on the day the notice of final assessment is sent to the company.

Clause 80, Section 92(1) to (5)

Clause 80: (1) Subsections 92(1) to (5) of the Immigration Act read as follows:

92. (1) The Deputy Minister may issue a direction to any transportation company requiring it to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all fines and other amounts for which it may become liable under this Act.

(2) Where a vehicle owned or operated by a transportation company that has not deposited a sum of money or other security pursuant to a direction issued under subsection (1) comes into Canada, the Deputy Minister may issue a direction to the master of the vehicle or to the transportation company requiring the master or company to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all fines and other amounts for which it may become liable under this Act in respect of that vehicle.

(3) Where the Deputy Minister is of the opinion that any prescribed security deposited pursuant to a direction under subsection (1) or (2) does not provide a sufficient guarantee that the transportation company will pay all fines and other amounts for which it may become liable under this Act, the Deputy Minister may return the security to the master or the transportation company that deposited it and issue a direction thereto requiring the master or company to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, as the Deputy Minister deems necessary as such a guarantee.

(4) Where the master of a vehicle or a transportation company fails to comply with a direction under subsection (1), (2) or (3), the Minister may direct that a vehicle of the transportation company be seized and held until the master or company complies with the direction.

(5) Where a transportation company becomes liable to pay any fine or other amount under this Act, the Minister may direct

(a) that the fine or amount be deducted from any sum of money deposited as a guarantee in respect of the company pursuant to a direction under subsection (1), (2) or (3) or be realized from any prescribed security so deposited; or

(b) where no sum or security has been so deposited, that a vehicle of the company be seized and held until the company pays the fine or amount.

Bill C-86 amendments read as follows:

80. (1) Subsection 92(1) to (5) of the said Act are repealed and the following substituted therefor:

92. (1) The Deputy Minister may issue a direction to any transportation company requiring it to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all amounts for which it may become liable under this Act after the direction is issued.

(2) Where a vehicle owned or operated by a transportation company that has not deposited the required sum of money or other security pursuant to a direction issued under subsection (1) comes into Canada, the Deputy Minister may issue a direction to the master of the vehicle or to the transportation company requiring the master or company to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all amounts for which it may become liable under this Act in respect of that vehicle after the direction is issued.

(3) Where the Deputy Minister is of the opinion that any security deposited pursuant to a direction under subsection (1) or (2) does not provide a sufficient guarantee that the transportation company will pay the amounts, the Deputy Minister may issue a direction to the master or the company that deposited the security requiring the master or company to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, as the Deputy Minister deems necessary as additional security.

(4) Where the master of a vehicle or a transportation company fails to comply with a direction under subsection (1), (2) or (3), the Minister may direct an immigration officer

(a) to detain any vehicle of the transportation company for a period of not more than forty-eight hours; or

(b) to seize and hold any vehicle of the company, including any vehicle detained pursuant to paragraph (a).

(5) Where a transportation company becomes liable to pay any amount under this Act and the required sum of money or prescribed security has not been deposited in respect of the transportation company pursuant to a direction under subsection (1), (2) or (3), the Minister may direct that an immigration officer

(a) detain any vehicle of the company for a period of not more than forty-eight hours; or

(b) to seize and hold any vehicle of the company, including any vehicle detained pursuant to paragraph (a).

(5.1) A transportation company shall comply with the orders of an immigration officer given pursuant to a direction to detain a vehicle of the company under subsection (4) or (5).

Clause 81 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

81. (1) Subsection 92(1) to (5) of the said Act are repealed and the following substituted therefor:

92. (1) The Deputy Minister may issue a direction to any transportation company requiring it to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all amounts for which it may become liable under this Act after the direction is issued.

(2) Where a vehicle owned or operated by a transportation company that has not deposited the required sum of money or other security pursuant to a direction issued under subsection (1) comes into Canada, the Deputy Minister may issue a direction to the master of the vehicle or to the transportation company requiring the master or company to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all amounts for which it

may become liable under this Act in respect of that vehicle after the direction is issued.

(3) Where the Deputy Minister is of the opinion that any security deposited pursuant to a direction under subsection (1) or (2) does not provide a sufficient guarantee that the transportation company will pay the amounts, the Deputy Minister may issue a direction to the master or the company that deposited the security requiring the master or company to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, as the Deputy Minister deems necessary as additional security.

(4) Where the master of a vehicle or a transportation company fails to comply with a direction under subsection (1), (2) or (3), the Minister may direct an immigration officer

(a) to detain any vehicle of the transportation company for a period of not more than forty-eight hours; or

(b) to seize and hold any vehicle of the company, including any vehicle detained pursuant to paragraph (a).

(5) Where a transportation company becomes liable to pay any amount under this Act and the required sum of money or prescribed security has not been deposited in respect of the transportation company pursuant to a direction under subsection (1), (2) or (3), the Minister may direct that an immigration officer

(a) detain any vehicle of the company for a period of not more than forty-eight hours; or

(b) to seize and hold any vehicle of the company, including any vehicle detained pursuant to paragraph (a).

(5.1) A transportation company shall comply with the orders of an immigration officer given pursuant to a direction to detain a vehicle of the company under subsection (4) or (5).

Clause 81, Section 93

Clause 81: Section 93 of the Immigration Act reads as follows:

93. (1) Where a transportation company, owner or master has, in the opinion of a senior immigration officer, failed to comply with any provision of this Part or any regulation made pursuant to paragraph 114(1)(q), (q.1), (s), (bb), (cc), (dd), (ee), (ff) or (gg), the Minister, on giving written notice to the transportation company, may direct that an amount, not exceeding the maximum amount that the company, owner or master may be found liable to pay, be deducted from any sum of money deposited as a guarantee in respect of the company pursuant to a direction under subsection 92(1), (2) or (3) or be realized from any prescribed security so deposited.

(2) Where a transportation company is given notice pursuant to subsection (1), it may, within ninety days after receiving the notice, file a notice of objection, after which the Minister shall

(a) rescind or vary any direction made by the Minister pursuant to subsection (1) to meet the objection; or

(b) take such proceedings as are appropriate to determine whether the transportation company is liable to pay the amount that the Minister directed be deducted or realized.

Bill C-86 amendments read as follows:

81. Section 93 of the said Act are repealed and the following substituted therefor:

92.1 (1) Where a master or transportation company does not deposit the required sum of money or other security in accordance with a direction under subsection 92(1), (2), or (3), the Minister may, on the expiration of thirty days after the date of the direction, certify that it has not been deposited.

(2) On production to the Federal Court, a certificate under subsection (1) shall be registered in that Court and, when registered, the certificate has the same effect, and all proceedings may be taken to enforce it, as if it were a judgement obtained in that Court for a debt of the amount specified in the certificate.

(3) The fees for registering the certificate are recoverable in the same way as if they had been certified and the certificate had been registered under this section.

93. The Minister, on giving written notice to a transportation company, may direct that any amount for which the transportation company is liable pursuant to subsection 85(3), section 86, subsection 87(3) or section 91, or any administration fee finally assessed against the transportation company pursuant to section 91.1, be deducted from any sum of money deposited as a guarantee in respect of the company pursuant to a direction under subsection 92(1), (2) or (3), or be realized from any prescribed security so deposited.

Clause 82 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

82. Section 93 of the said Act are repealed and the following substituted therefor:

92.1 (1) Where a master or transportation company does not deposit the required sum of money or other security in accordance with a direction under subsection 92(1), (2), or (3), the Minister may, on the expiration of thirty days after the date of the direction, certify that it has not been deposited.

(2) On production to the Federal Court, a certificate under subsection (1) shall be registered in that Court and, when registered, the certificate has the same effect, and all proceedings may be taken to enforce it, as if it were a judgement obtained in that Court for a debt of the amount specified in the certificate.

(3) The fees for registering the certificate are recoverable in the same way as if they had been certified and the certificate had been registered under this section.

93. The Minister, on giving written notice to a transportation company, may direct that any amount for which the transportation company is liable pursuant to subsection 85(3), section 86, subsection 87(3) or section 91, or any administration fee finally assessed against the transportation company pursuant to section 91.1, be deducted from any sum of money deposited as a guarantee in respect of the company pursuant to a direction under subsection 92(1), (2) or (3), or be realized from any prescribed security so deposited.

Clause 86, Sections 97.01

Clause 86: Sections 97.01 and 98 of the Immigration Act read as follows:

97.01 Every transportation company that contravenes section 89.1 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

98. Every person who knowingly contravenes any provision of this Act or the regulations or any order or direction lawfully made of given thereunder for which no punishment is elsewhere provided in this Act is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

Bill C-86 amendments read as follows:

86. Sections 97.01 and 98 of the said Act are repealed and the following substituted therefor:

97.1 (1) Every person who contravenes subsection 88(1), 89(1), 90(2) or 92(5.1), or any provisions of the regulations designated pursuant to paragraph 114(1)(q.12) for the purposes of this subsection, is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding ten thousand dollars; or

(b) for a subsequent offence, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or both

(2) Every person who contravenes section 89.1 is guilty of an offence and liable

(a) on conviction on indictment,

(i) for a first offence, to a fine not exceeding twenty-five thousand dollars, or

(ii) for a subsequent offence, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both; or

(b) on summary conviction,

(i) for a first offence, to a fine not exceeding ten thousand dollars, or

(ii) for a subsequent offence, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or to both.

(3) Every person who contravenes any provision of the regulations designated pursuant to paragraph 114(1)(q.12) for the purposes of this subsection is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding five thousand dollars; or

(b) for a subsequent offence, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(4) No person shall be found guilty of an offence under this section if it is established that the person exercised all due diligence to prevent its commission.

98. Every person who knowingly contravenes any provision of this Act, or the regulations or any order or direction lawfully made or given thereunder for which there is no punishment is elsewhere provided in this Act is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Clause 87 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

86. Sections 97.01 and 98 of the said Act are repealed and the following substituted therefor:

97.1 (1) Every person who contravenes subsection 88(1), 89(1), 90(2) or 92(5.1), or any provisions of the regulations designated pursuant to paragraph 114(1)(q.12) for the purposes of this subsection, is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding ten thousand dollars; or

(b) for a subsequent offence, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or both

(2) Every person who contravenes section 89.1 is guilty of an offence and liable

(a) on conviction on indictment,

(i) for a first offence, to a fine not exceeding twenty-five thousand dollars, or

(ii) for a subsequent offence, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both; or

(b) on summary conviction,

(i) for a first offence, to a fine not exceeding ten thousand dollars, or

(ii) for a subsequent offence, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or to both.

(3) Every person who contravenes any provision of the regulations designated pursuant to paragraph 114(1)(q.12) for the purposes of this subsection is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding five thousand dollars; or

(b) for a subsequent offence, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(4) No person shall be found guilty of an offence under this section if it is established that the person exercised all due diligence to prevent its commission.

98. Every person who knowingly contravenes any provision of this Act, or the regulations or any order or direction lawfully made or given thereunder for which no punishment is elsewhere provided in this Act is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Clause 93, Subsection 103(6) to (8)

Clause 93: Subsections 103(6) to (8) of the Immigration Act now read as follows:

(6) Where any person is detained pursuant to this Act for an examination, inquiry or removal and the examination, inquiry or removal does not take place within forty-eight hours from the time when that person is first placed in detention, that person shall be brought before an adjudicator forthwith and the reasons for the continued detention shall be reviewed and thereafter that person shall be brought before an adjudicator at least once during each seven day period, at which times the reasons for continued detention shall be reviewed.

(7) Where an adjudicator who conducts a review pursuant to subsection (6) is not satisfied that the person in detention poses a danger to the public or would not appear for an examination, inquiry or removal, the adjudicator shall order that the person be released from detention subject to such terms and conditions as the adjudicator deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

(8) Where an adjudicator has ordered that a person be released from detention pursuant to paragraph (3)(a) or subsection (7), that adjudicator or any other adjudicator may at any time thereafter order that the person be retaken into custody and held in detention if the adjudicator becomes satisfied that the person poses a danger to the

public or would not appear for an examination, inquiry, or removal.

Bill C-86 amendments read as follows:

103(4) Subsections 103(6) to (8) of the said Act is repealed and the following substituted therefor:

(6) Where any person is detained pursuant to this Act for an examination, inquiry or removal and the examination, inquiry or removal does not take place within forty-eight hours after that person is first placed in detention, that person shall be brought before an adjudicator forthwith and the reasons for the continued detention shall be reviewed, and thereafter that person shall be brought before an adjudicator at least once during each thirty day period, at which times the reasons for continued detention shall be reviewed.

(7) Where an adjudicator who conducts a review pursuant to subsection (6) is satisfied that the person in detention is not likely to pose a danger to the public and is likely to appear for an examination, inquiry or removal, the adjudicator shall order that the person be released from detention subject to such terms and conditions as the adjudicator deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

(8) Where an adjudicator has ordered that a person be released from detention pursuant to paragraph (3)(a) or subsection (7), that adjudicator or any other adjudicator may at any time thereafter order that the person be retaken into custody and held in detention if the adjudicator becomes satisfied that the person is likely to pose a danger to the public or is not likely to appear for an examination, inquiry or removal.

(9) Subject to subsections (10) and (11) and to any rules of the place where a person is detained, a review under subsection (6) of the reasons for the person's continued detention shall be conducted in public.

(10) An adjudicator who is satisfied that there is a serious possibility that the life, liberty or security of any person would be endangered by reason of a review of the reasons for a person's continued detention being held in public may, on application therefor, take such measures and make such order as the adjudicator considers necessary to ensure the confidentiality of the review.

(11) An adjudicator who considers it appropriate to do so may take such measures and make such order as the adjudicator considers necessary to ensure the confidentiality of any hearing held in respect of any application referred to in subsection (10).

Clause 94 of Chapter 49 of the Statutes of Canada, 1992, now reads as follows:

103(4) Subsections 103(6) to (8) of the said Act is repealed and the following substituted therefor:

(6) Where any person is detained pursuant to this Act for an examination, inquiry or removal and the examination, inquiry or removal does not take place within forty-eight hours after that person is first placed in detention, that person shall be brought before an adjudicator forthwith and the reasons for the continued detention shall be reviewed, and thereafter that person shall be brought before an adjudicator at least once during each seven days immediately following the expiration of the forty-eight hour period, and thereafter at least once during each thirty day period following each previous review at which times the reasons for continued detention shall be reviewed.

(7) Where an adjudicator who conducts a review pursuant to subsection (6) is satisfied that the person in detention is not likely to pose a danger to the public and is likely to appear for an examination, inquiry or removal, the adjudicator shall order that the person be released from detention subject to such terms and conditions as the adjudicator deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

(8) Where an adjudicator has ordered that a person be released from detention pursuant to paragraph (3)(a) or subsection (7), that adjudicator or any other adjudicator may at any time thereafter order that the person be retaken into custody and held in detention if the adjudicator becomes satisfied that the person is likely to pose a danger to the public or is not likely to appear for an examination, inquiry or removal.

(9) Subject to subsections (10) and (11) and to any rules of the place where a person is detained, a review under subsection (6) of the reasons for the person's continued detention shall be conducted in public.

(10) An adjudicator who is satisfied that there is a serious possibility that the life, liberty or security of any person would be endangered by reason of a review of the reasons for a person's continued detention being held in public may, on application therefor, take such measures and make such order as the adjudicator considers necessary to ensure the confidentiality of the review.

(11) An adjudicator who considers it appropriate to do so may take such measures and make such order as the adjudicator considers necessary to ensure the confidentiality of any hearing held in respect of any application referred to in subsection (10).

Clause 98, Section 110

Clause 98: (1) and (2) The relevant portion of subsection 110(2) of the Immigration Act reads as follows:

(2) An immigration officer may

(a) require persons who seek admission, persons who make an application pursuant to subsection 9(1) or section 10 or 16, persons who are arrested pursuant to section 103 and persons against whom a removal order or conditional removal order has been made to comply with such regulations as are prescribed providing for the identification of such persons;

(c) seize and hold any travel or other documents in the possession of any person in Canada if the immigration officer believes on reasonable grounds that those documents have been fraudulently or improperly obtained or used or that action is necessary to prevent the fraudulent or improper use of those documents.

Bill C-86 amendments read as follows:

98. (1) Paragraph 110(2)(a) of the said Act is repealed and the following substituted therefor:

(a) require the following persons to comply with the regulations providing for their identification, namely,

(i) persons who seek admission,

(ii) persons who make an application pursuant to subsection 9(1), section 10, subsection 10.2(1) or section 16,

(iii) persons who are arrested pursuant to section 103,

(iv) persons against whom a removal order or conditional removal order has been made, and

(v) persons who claim to be Convention refugees;

(a.1) search persons seeking to come into Canada who the immigration officer believes on reasonable grounds have not revealed their identity or who have hidden on or about their person documents that are relevant to their admissibility and may search any vehicle that conveyed the persons to Canada and their luggage and personal effects;

(a.2) search persons seeking to come into Canada who the immigration officer believes on reasonable grounds have committed, or who are in possession of documents that may be used in the commission of, an offence under section 94.1, 94.2 or 94.4 may search any vehicle that conveyed the persons to Canada and their luggage and personal effects;

(2) Paragraph 110(2)(c) of the said Act is repealed and the following substituted therefor:

(c) seize and hold any travel or other documents if the immigration officer believes on reasonable grounds that they have been fraudulently or improperly obtained or used or that action is necessary to prevent their fraudulent use.

Clause 99 of Chapter 49 of the Statutes of Canada, 1992 now reads as follows:

98. (1) Paragraph 110(2)(a) of the said Act is repealed and the following substituted therefor:

(a) require the following persons to comply with the regulations providing for their identification, namely,

(i) persons who seek admission,

(ii) persons who make an application pursuant to subsection 9(1), section 10, subsection 10.2(1) or section 16,

(iii) persons who are arrested pursuant to section 103,

(iv) persons against whom a removal order or conditional removal order has been made, and

(v) persons who claim to be Convention refugees;

(a.1) search persons seeking to come into Canada who the immigration officer believes on reasonable grounds have not revealed their identity or who have hidden on or about their person documents that are relevant to their admissibility and may search any vehicle that conveyed the persons to Canada and their luggage and personal effects;

(a.2) search persons seeking to come into Canada who the immigration officer believes on reasonable grounds have committed, or who are in possession of documents that may be used in the commission of, an offence under section 94.1, 94.2 or 94.4 may search any vehicle that conveyed the persons to Canada and their luggage and personal effects;

(2) Paragraph 110(2)(c) of the said Act is repealed and the following substituted therefor:

(c) seize and hold any travel or other documents if the immigration officer believes on reasonable grounds that they have been fraudulently or improperly obtained or used or that action is necessary to prevent their fraudulent use.

(3) Section 110 of the said Act is further amended by adding thereto, immediately after subsection (2) thereof the following subsection:

(2.1) Subject to section 6 of the Privacy Act, any fingerprints that were taken pursuant to paragraph 114(1)(o) of a person who is subsequently determined under this Act to be a Convention Refugee shall be destroyed when the person becomes a Canadian Citizen.

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