



# Maytree Policy in Focus

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## **Reforms to the Refugee System Are Needed**

- In some ways, Canada's inland refugee system is a model. It provides a route to permanent residence, gives most claimants a hearing, and is designed to provide a good first decision.
- But the system is also deeply flawed. Decision-makers are politically appointed rather than chosen solely on merit.
- There is no reliable appeal process.
- The system is under-resourced, so there is a backlog of 60,000 claims.
- Most problematically, the system is slow to remove failed claimants. It can take up to eight years to finalize a claim.
- The delays hurt legitimate refugees and can attract frivolous claims.
- However, Canada should not look to Europe for answers.
- European systems screen asylum seekers at the border based primarily on country of origin and have been widely criticized by experts. They also focus on early and quick decisions by government officials that are not reliable and result either in unjust removals or high overturn rates at the appeal level.

**Featured Research  
SUMMARY**

**Fast, Fair  
and Final:  
Reforming  
Canada's  
Refugee  
System**  
by Peter  
Showler.  
Maytree,  
2009.

This report puts forward a proposal for reforming the inland refugee system. The proposal recognizes that it is difficult to make decisions about refugee status. It is therefore important to have a dedicated and professional tribunal. The report identifies the need for an appeal process and good legal counsel.

With these steps in place, the author suggests that the Pre-removal Risk Assessment, most Humanitarian and Compassionate applications, as well as their related judicial reviews will no longer be necessary. If this proposal were implemented, the entire process would only take thirteen months.

# Background and Context

In 2008, approximately 36,000 people arrived in Canada and made a refugee claim. It is important to have a strong system to determine who is a refugee in order to meet our legal and moral obligations to protect individuals who are escaping violence, torture or death.

## **Who is a refugee?**

According to the 1951 United Nations Convention relating to the Status of Refugees, a refugee is someone who has a well-founded fear of persecution due to their race, religion, nationality, political opinion or particular social group. As a signatory, Canada has agreed not to return anyone who arrives at its borders to their country of origin if they will be subject to persecution. Canada has supplemented the Convention definition with the concept of "a person in need of protection." That is, someone who is in danger of torture or is at risk of death and cruel or unusual punishment.

## **How do refugees arrive in Canada?**

Canada has two separate refugee programs, the Overseas Sponsorship Program and the Inland refugee program. The first program selects refugees overseas, principally from refugee camps, and brings them to Canada where they are granted permanent residence upon arrival.

The Inland program assesses the refugee status of anyone who seeks refugee protection within Canada or at a Canadian port-of-entry. This *Maytree Policy in Focus* deals only with the Inland refugee system.

## **How does the Inland refugee system work?**

An individual makes a claim for refugee status at the port-of-entry or a CIC office and, if eligible, is referred to the Immigration and Refugee Board (IRB) for a hearing.

There is no appeal available of negative IRB decisions. However, the refused claimant has the right to apply to the Federal Court for leave for judicial review. If the Federal Court reviews the claim and overturns the IRB decision, the claim is sent back to the IRB for a new hearing.

The refused claimant (often after a long delay) will receive a notice that the Canadian Border Services Agency (CBSA) is prepared to begin removal. At that point, the refused claimant can apply to CIC for a Pre-Removal Risk Assessment (PRRA). The PRRA decision could also be subject to judicial review.

At any time during the refugee claim process, a claimant can also apply for permanent residence on humanitarian and compassionate grounds (an "H&C" application). The H&C application is usually based on events that have occurred in Canada such as marriage, children born and raised in Canada or long-lasting and sustaining links with their community. H&C decisions can also be subject to judicial review, and removal is delayed until the H&C application is completed.

## **How long does the current inland system take to make refugee decisions?**

Approximately 45% of claimants are accepted as refugees after an initial IRB hearing and can apply for permanent residence. But the IRB is understaffed and there is a backlog of more than 60,000 people. It can take up to 18 months for a refugee claimant to get a hearing.

It can take up to eight years, and an average of four to six years, for a refused claimant to be removed from Canada.

These delays keep legitimate refugees in limbo and could attract frivolous claims from individuals who would use the refugee system in order to receive a work permit.

## Featured Research

### FAST, FAIR AND FINAL: REFORMING CANADA'S REFUGEE SYSTEM

PETER SHOWLER

MAYTREE, 2009

The paper proposes reforms to the inland refugee system that would be based on three pillars: 1) a good first decision, 2) a reliable appeal, and 3) prompt removal of failed claimants.

This proposal would minimize the number of steps in the refugee process, by creating a strong system that would remove the need for the Pre-Removal Risk Assessment, most Humanitarian and Compassionate applications (H&C) and their associated judicial reviews.

It recommends the creation of a new Refugee Tribunal with two divisions, a Refugee Claim Division and a Refugee Appeal Division, to replace the IRB. Unlike the IRB, the tribunal members would not be politically appointed. Instead, they would be appointed solely on merit.

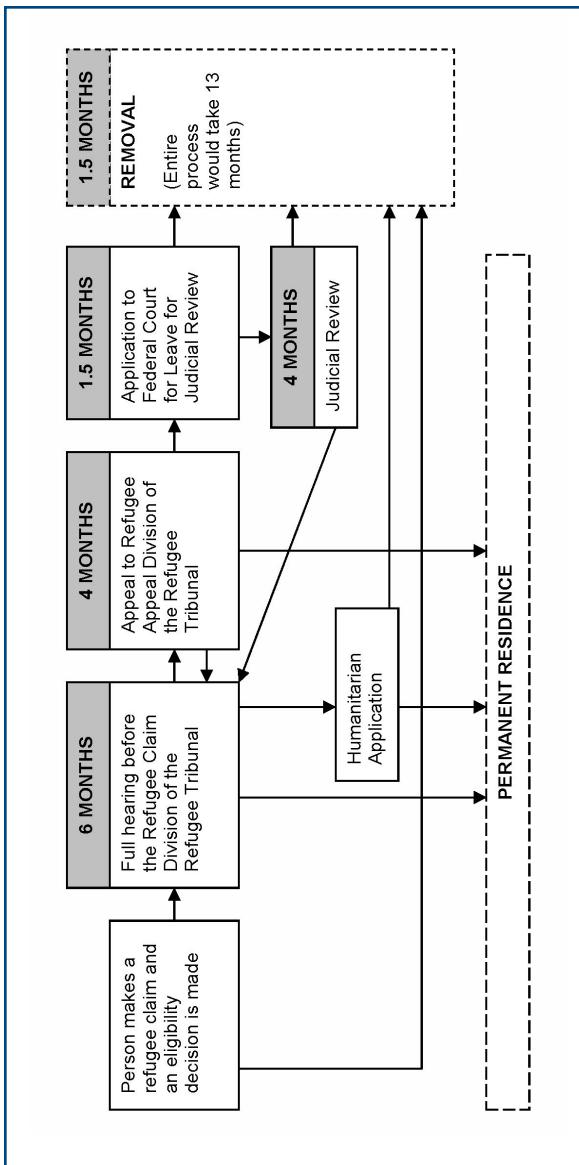
The Refugee Claim Division would employ informal procedures to allow refugees to tell their story, and each claimant would be represented by a lawyer.

Under this proposal, refugee claims would be decided in six months, reviewed in four months and removed within three months of a negative appeal decision. It would reduce the claim process from several years to an average of thirteen months.

The proposal would ensure accurate and fair decisions and result in the timely removal of failed claimants.

*Peter Showler is the Director of the Refugee Forum at the University of Ottawa and the former Chairperson of the Immigration and Refugee Board of Canada (1999-2002). For the past two years, Professor Showler and the Refugee Forum, in cooperation with the Institute for Research and Public Policy, have been engaged in a comparative study of the asylum systems of several of the industrialized countries including the United Kingdom, France, Belgium, the United States and Australia. The policy proposals and commentary are based on that research. The Institute intends to publish Professor Showler's research paper in the coming months.*

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Canada's inland refugee system attracted considerable controversy over the summer of 2009. Visa restrictions on Mexico and the Czech Republic have been linked to flaws in the refugee system, and the federal government has called for reform.

While the federal government has not yet put forward specific proposals, it has indicated that it favours an approach similar to that of the United Kingdom. In the UK system, public service officials make the first-level asylum decisions, and claimants from particular countries of origin, who are deemed to have unfounded claims, are directed into a fast track procedure for a rapid decision and removal.

Such an approach is understandably attractive. However, variations of this model of asylum have been employed by most European countries with mixed results. Quick decisions by poorly trained decision-makers have resulted in too many mistakes, and legitimate refugees have been unjustly deported to persecution. Public servants are not independent and make badly reasoned decisions based on policy and poor country information. In addition, these changes did not make the system more efficient overall. Most of these European asylum systems have multiple levels of appeal. Poor decisions by public servants at the front end of the system have placed heavy burdens on the appeal processes. Counter-intuitively in some cases this has resulted in a slow process with failed claimants remaining in the country for too long a period.

## **Could Canada ban refugees from democratic countries?**

Being a democratic country does not mean that human rights abuses do not occur. There are several democracies that discriminate or abuse certain portions of their own population.

Even if the government is not persecuting its citizens, other elements of society, such as extremists, may be, at which point the issue is whether the government is willing and able to protect its citizens. Mexico is one example. The Mexican government does not commit atrocities against its own people, but the police have serious problems with corruption and are often unable or unwilling to protect citizens who have been targeted by narco-traffickers. About 11% of Mexican refugee claimants were accepted in 2008. While a low percentage, it means that about 600 people would have been at risk of death or serious violence had we not carefully considered their claims.

## **Additional Work by Peter Showler**

### ***Making their Mark: Canada's Young Refugees. Celebrating Ten Years of the Maytree Scholarship Program. Maytree, 2009.***

This document highlights the success of Maytree's Scholarship program, which provides financial student aid to young refugees living in Canada without family in Canada. The students' scholastic and professional success is chronicled. The report includes an essay by Peter Showler which suggests a number of reforms to improve the system.

### ***Refugee Sandwich: Stories of Exile and Asylum. Montreal: McGill University Press, 2006.***

This book describes the inland refugee system from the perspective of various players including legal counsel, federal court judges, interpreters, hearing officers, claimants and board members. The stories included provide insight into the complexities of making refugee decisions.



### **About Maytree Policy in Focus**

*Maytree Policy in Focus*, a publication of Maytree, identifies and shares practical research to help inform policy- and decision-making.

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Established in 1982, Maytree is a private foundation that promotes equity and prosperity through its policy insights, grants and programs. The foundation has gained international recognition for its expertise in developing, testing and implementing programs and policy solutions related to immigration, integration and diversity in the workplace, in the boardroom and in public office.

