Brief to the Standing Committee on Citizenship and Immigration

regarding

Bill C-11, *Immigration and Refugee Protection Act*

(revised from August 18, 2000 brief re Bill C-31)

By

THE MAYTREE FOUNDATION
170 Bloor Street West, Suite 804
Toronto, ON M5S 1T9
Tel: (416) 944-2627
Fax: (416) 944-8915
info@maytree.com
Website: www.maytree.com

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INTRODUCTION

The Maytree Foundation welcomes this opportunity to comment on Bill C-11, the proposed *Immigration and Refugee Protection Act.*

The Maytree Foundation is a Canadian charitable foundation established in 1982. Our interest in refugees and immigrants goes back to the early years of the Foundation. The objectives of the Foundation's current Refugee and Immigrant Program are threefold: (a) to assist newcomers in accessing suitable employment in part by promoting fair recognition of the skills, education and experience they bring with them; (b) to accelerate the settlement and landing process for refugees who experience undue delays in obtaining permanent resident status; and (c) to build on the strengths and capacities of refugee and immigrant organizations and leaders.

The Maytree Foundation supports projects which improve services for newcomers, assist Convention refugee youth in their post-secondary education and training pursuits, provide opportunities that build the leadership capacity of organizations and individuals, and through a variety of means, inform and educate the public and policymakers about the issues facing refugees and immigrants today.

While we have a strong interest in much of what is – and what isn't – contained in Bill C-11, we will largely limit our comments in this brief to those areas that relate directly to the objectives of our Refugee and Immigrant Program.

This brief reiterates many of the concerns raised by the Foundation with respect to Bill C-31 in our August 18 brief to the Standing Committee and in our earlier published commentaries, *Don't Slam the Door* (Ottawa: Caledon Institute of Social Policy, January 2001) and *The New Immigration Act: More Questions Than Answers* (Ottawa: Caledon Institute of Social Policy, May 2000).[1]

[1] Attached as Appendix A and Appendix B.

GENERAL COMMENTS

We would like to begin by affirming the decision to distinguish between the objectives of the immigration program and the objectives of refugee protection. We believe that this is an important improvement on the current *Immigration Act*. We also support the effort to make the legislation more accessible both by its improved organization and its use of plainer language.

We are concerned, however, by the tenor of the Bill. The Bill is much more about who cannot come to Canada and how they will be removed, than it is about who we will welcome, who we will protect, and how we will do that.

Bill C-11 substantially increases the discretionary power of immigration officers to make decisions that will profoundly affect peoples' lives. In many cases there is little or nothing in the Bill to guide these decisions in any meaningful way. It is true that Bill C-11 includes some real improvements from its predecessor, Bill C-31, in this regard. We applaud the Minister, for example, for emphasizing in s. 3(d) the key principles of equality and freedom from discrimination. We also affirm inclusion in s. 60 of the principle that minor children should be detained only as a last resort. However, as important as these principles are, they are far from adequate. Moreover, the Bill severely lacks avenues to appeal discretionary decisions.

Recommendation 1:

> *We urge the Standing Committee on Citizenship and Immigration to review Bill C-11 and the regulations with an eye to including in the Bill both guiding principles and guaranteed access to independent review for any substantive discretionary authority given to immigration officers. The fundamental principle of due process should be reflected throughout the immigration and refugee protection system.*

We are also concerned about the process by which the government has chosen to reform the immigration and refugee protection regime, and the implications for the future. In our earlier submission and commentaries on Bill C-31 we expressed our concern with the fact that so much of the substance of the new immigration and refugee protection regime has been left to regulations without so much as guiding principles being enshrined

in the Bill. We recognize the pragmatic benefits of this shift: it would allow for a more responsive and malleable system that could respond more readily to rapidly evolving circumstances. However, this approach also shields profound decisions of national and even international importance from public scrutiny and democratic input. It removes authority from elected legislators, who are accountable to the people of Canada, and puts it in the hands of a largely invisible civil service.

Recommendation 2:

> *We urge the Committee to review Bill C-11 and the regulations with an eye to shifting into the legislation those issues that properly require democratic input.*

Another area of concern has to do with the missed opportunity to fully recognize Canada's international obligations in the new Bill. Canada is a signatory to and has ratified numerous international human rights conventions and covenants. While some attempt has been made to include such obligations in the Bill, they are included partially and somewhat inconsistently. S. 3(2)(b) lists as an objective of the Act "to fulfil Canada's international legal obligations with respect to refugees", and selected provisions of the UN *Convention relating to the Status of Refugees*, the *Convention Against Torture* and the *Convention on the Rights of the Child* are incorporated into various sections of the Bill. However, many provisions of these conventions are not included in the Bill, or in some cases are directly contravened by the Bill's provisions. If the government of Canada takes seriously its international human rights obligations, it should incorporate those obligations and commitments into this legislation.

Recommendation 3:

> *We urge the Committee to recommend that the Minister include international human rights obligations as binding minimum standards for the application of the Act. Specifically we propose that the following be added to s. 3(3):*
>
> > *"This Act is to be construed and applied in a manner that:…*
> > *e) complies with Canada's international human rights obligations, including the Convention relating to the Status of Refugees, the Convention Against Torture and the Convention on the Rights of the Child."*

Also of some concern and disappointment is the question of immigrant and refugee selection. Though selection issues have been left out of Bill C-11 to be addressed entirely through regulations, there is no evidence to date that the Minister or her Department has given any serious critical thought to some of the assumptions *underlying* the current approach to immigrant selection. The Minister has made some positive announcements regarding plans to expand the family class somewhat, lower the age limit for individuals to sponsor immediate family members, and to allow for in-Canada landing for certain categories, and The Maytree Foundation applauds these changes. We also affirm the inclusion in s. 12(2) of parents as members of the family class. However, the changes that have been announced presuppose that the fundamentals of the current system are appropriate. Even the plan to move away from occupation-based selection of independent immigrants to a system based on transferable skills (see below) does little more than tinker with and update the current selection system.

While it may be that the current system is really the one that best reflects Canada's current and future needs and our role in the global community, The Maytree Foundation believes that immigration legislative reform should not leave these fundamental assumptions unexamined. Canadians and their government should engage in an open discussion of our immigration responsibilities, goals and priorities, and assess from the ground up the best route to achieving them.

For example, the current system is a mix of family class immigrants, entrepreneurs, skilled workers, investors, refugees and other humanitarian classes, and live-in caregivers. Each class has a set of criteria that must be met for acceptance into the class. Are these really the best categories? Who is being kept out by these categories? What about the numbers and relative proportions? Why do we accept just over half as many refugees that we did in 1991? Why is the family class shrinking in comparison to the economic classes?

To answer these questions we need to rethink some basic assumptions. For example, do we see immigration as being primarily about filling short-term labour market gaps, or meeting long-term economic strategies? Is it about reunifying families or supplying enough young workers to the labour (and tax-paying) pool to keep the health

and pension benefits flowing for retiring baby-boomers? Or is immigration first of all about building a vibrant, diverse, healthy society?

We often hear about Canada's need to compete with other countries for the world's best educated, most skilled, wealthiest immigrants. But why should we restrict "economic" migration to these; why not expand our focus to include anyone who truly wants to adopt this country as their home and who has the skills and the ability to land on their feet? What responsibilities do we have to the countries from which we draw immigrant professionals and tradespeople? Where do our humanitarian commitments fit into the scheme, and should they really be subject to quotas? What are our priorities as a country, and what role does immigration play in meeting those priorities?

It is disappointing that these questions have not been publicly posed or addressed by the federal government to date. It is the Foundation's view that these fundamental questions are a crucial element of the overhaul of the immigration system, for the answers may have major implications for how we want to design a system to meet our true priorities.

Unfortunately, it appears that the federal government is too far along the legislative process now to step back and consider these deeper questions. (Recognizing the need for informed public debate on immigration in Canada, The Maytree Foundation has launched a series of public forums across Canada, entitled *Who Should Get In?* The first session was held in Toronto on February 28, 2001.[2])

Of similar importance to the question of immigration priorities is the development and co-ordination of effective settlement policies and services for immigrants and refugees in Canada. Currently, the federal government holds the bulk of the responsibility for immigration policy and funding. However, responsibility for settlement services lies with local institutions, particularly community-based agencies funded by the federal government to provide narrowly defined services primarily through the Immigration

[2] A **transcript** of the February 28, 2001, forum is attached as Appendix C.

Settlement and Adaptation Program, the Language Instruction for Newcomers program, and federal-provincial agreements.

Provinces have varying roles in settlement in so far as settlement occurs within the parameters of general provincial responsibility for health, welfare and education. As noted, several provinces have assumed responsibility for settlement through federal/provincial agreements. Bill C-11 specifically requires that the Minister consult with the provinces on both immigration numbers and distribution, as well as "the measures to be undertaken to facilitate [immigrants'] integration into Canadian society" (s. 10(2)).

Municipalities – particularly Canada's largest urban immigrant-receiving centres – are closely involved in immigrant settlement. As Canada's largest and most diverse city, Toronto, for example, houses refugees through its emergency shelter system, provides a broad range of public health services to newcomers, offers income and shelter support to immigrants and refugees in need, and addresses issues of access and equity throughout the municipal corporation and its various services. Local schools serve immigrants as part of Toronto's general population. About two-thirds of Toronto's inner city schools offer ESL classes to students.

Despite the vital role that city governments play in immigrant settlement, Toronto and other major cities do not have a seat at the policy-setting table. While we recognize the traditional and constitutionally protected partnership of the federal and provincial governments in immigration matters, we believe that it is time for the federal government to invite Canada's largest cities to the table to explore the possibility for a direct relationship between the federal government and large cities. Local governments are best placed to assess the actual needs of their residents and communities, and to develop programs that suit those needs.

Recommendation 4:

> *We urge the Committee to recommend that the Minister work with Canada's largest immigrant-receiving cities to explore a direct role for the cities in immigration and settlement policy development.*

ACCESS TO PROFESSIONS AND TRADES

While Bill C-11 does not directly address the issue of recognition of foreign credentials in Canada and access to professions and trades (APT) for newcomers, there are a number of elements in the immigration system that have a direct impact on this issue.

The problem

Many occupations are regulated to protect the health and safety of Canadians. Prospective employees seeking to work in one of these regulated occupations must obtain a license from the government of the province in which they wish to work (in the case of a trade), or from the provincial occupational regulatory body (in the case of a profession). This is the case for all those seeking entry into a regulated occupation, whether trained in Canada or abroad.

While it is generally possible, if difficult, for Canadians licensed in one province to gain recognition of their qualifications and licensure in another province, gaining recognition of foreign credentials is in many cases next to impossible. Due to a variety of factors including the unfamiliarity of regulatory bodies, employers and academic institutions with foreign educational, training, technological and professional standards, many of the immigrants most highly valued in the General Occupations List face major and sometimes insurmountable barriers to obtaining occupational licensure. The result is a highly educated and experienced underclass of immigrant professionals and tradespeople who are unemployed or underemployed in Canada.[3]

[3] Citizenship and Immigration Canada reports that between 1991 and 1994, for example, 10,279 immigrants arrived in Canada listing civil, mechanical, chemical or electrical engineering as their intended occupation [Citizenship and Immigration Canada 1994; 1995; 1996; 1997]. By April 1996, according to Statistics Canada, only 5,770 of the immigrants who arrived between 1991 and 1996 were practising these professions (though how many were doing so as licensed engineers is unknown) [Statistics Canada 1999]. This figure means that nearly half (44 percent) of the immigrants who came to Canada between 1991 and 1994 intending to work as a civil, mechanical, chemical or electrical engineer were not so employed in 1996.

Making this comparison even more striking is the fact that Citizenship and Immigration data include only immigrants who intended to work at the time of arrival. By contrast, Statistics Canada data include all immigrants irrespective of entrance category. The number of foreign-trained engineers (who arrived between 1991 and 1996) practising in Canada in 1996 would have been even lower than the number presented by Statistics Canada, as this figure inevitably would include nonworkers at the time of arrival who since have acquired Canadian credentials [Brouwer 1999b].

The mismatch between the skills and education of foreign-trained professionals and tradespeople and their actual occupations once in Canada creates substantial costs, both to individual immigrants and their families, and to Canadian governments, businesses and the economy.

According to a Price Waterhouse report commissioned by the Ontario government, failure to recognize foreign academic credentials alone (not to mention foreign work experience) results in losses to the Ontario economy due to:

- increased costs to the welfare system and social services;

- losses to employers who are unable to find employees with the skills and abilities they desperately require;

- costs associated with unnecessary retraining for foreign-trained individuals; and

- the loss of potential revenue from foreign-trained individuals who are unable to work and contribute to the tax base and other parts of the economy [1998: iii].

The same report cites an Australian study of the economic impact of not recognizing foreign credentials:

> "Similar to Ontario in demographic, socio-economic, cultural and immigration characteristics, Australia quantified the loss to their national economy, due to the nonrecognition of foreign degrees, as ranging from $100 million to $350 million (US) in 1990. This represents 200,000 immigrants who failed to gain recognition and never returned to their pre-migration occupations" [1998: 1-3].

By failing to recognize foreign qualifications, Canada is forgoing the windfall to its economy of educated and fully qualified workers for whose education and training Canada has not paid a cent. For example, the Canadian Labour Force Development Board reported in 1999 that the costs to Canada of raising and educating the immigrants who arrived

between 1992 and 1997 would have been more than a billion dollars [Training and Development Associates 1999: 13].

The arrival each year of so many well-qualified immigrants also could counteract the much-debated brain drain of Canadian-educated workers to the US if the credentialism policies were reviewed. According to Dr. Ivan Fellegi, Chief Statistician of Canada: "University educated migrants coming to Canada outnumber those leaving for the US by four to one" [1999].

The role of CIC

For most immigrants, the first official point of contact and source of information about immigration to Canada is the local Canadian consulate or embassy. Visa officers provide prospective immigrants with basic information about living and working in Canada, and process immigration applications. In cases where applicants are applying as skilled workers, visa officers employ the point system to determine whether these prospective workers meet Canada's labour market needs.

Unless informed otherwise by a visa officer, many immigrants who are accepted as skilled workers understandably mistake the federal government's granting of points for their occupation, education and training as recognition and approval of their qualifications. These immigrants assume that they then will be able to practise their profession or trade in Canada. In fact, however, the number of points granted by a visa officer and the Department of Citizenship and Immigration has no bearing on an individual’s ability to practise an occupation in Canada.

Some visa officers may refer immigrants to one of several academic credential assessment services in Canada. For a fee, these agencies will assess foreign academic credentials and provide information on Canadian equivalencies. Such information may be useful for some immigrants who seek a general sense of the Canadian equivalent of their credentials; however, the assessments are little more than the particular agency’s opinion. While some agencies’ evaluations are more widely recognized than others, none are binding on employers, educational institutions or regulatory bodies. Most occupational

regulatory bodies undertake their own independent assessments regardless of the evaluations of these agencies, and many employers are not even aware of the existence of these assessment agencies.

In some fields, there are national professional associations that evaluate the credentials of immigrants. The Canadian Council of Professional Engineers, for example, conducts 15,000 evaluations of foreign credentials each year, charging immigrants $175 for each assessment. Again, while these assessments – which the Association of Professional Engineers of Ontario (the regulator) refers to as "informal assessments" – may carry some weight, they are not binding on provincial regulatory bodies, which have sole authority to grant or withhold licenses. The Association argues: "it is not helpful to have 'informal' approvals completed in the country of origin when there is a high probability that those so 'approved' will have tremendous difficulty becoming licensed." [1999: 17]

The Association proposes that the national body discontinue this practice and that instead the provincial regulator conduct "formal" – i.e. binding – assessments [1999: recs. 4.2.1 and 4.2.2]. Given that the provincial regulators are the only bodies that have the authority to issue binding assessments, this proposal makes some sense. However, assessments by regulators must be clearly distinguished and separate from immigrant selection, for immigrant selection involves much bigger questions of nation building that are properly the domain of the government. If regulators are to be given a role in the immigration process, it must be in assessing credentials of accepted immigrants who want to assure themselves that they will be able to practice their profession in Canada by seeking pre-licensure before moving to Canada. The federal government could provide the appropriate referrals to provincial regulators (for those planning to seek entry into a regulated profession) or to provincially mandated academic credential assessment services (for those who do not plan to work in a regulated occupation).

Recognizing the growing problem of lack of access to trades and professions facing newcomers, and anticipating further difficulties as a result of an increased emphasis on skilled workers rather than family class immigrants in the mid-1990s, the federal government set up a joint federal-provincial working group on access to professions and

trades. The objectives of this task force are to provide more information to prospective immigrants as they make their decision to come to Canada, and to work toward a network of provincially mandated credential evaluation services with transparent and portable credential assessments [Citizenship and Immigration Canada 1998a: 31].

To date, however, the partnership has resulted only in a series of fact sheets that have been distributed to visa posts, and an October 1999 national conference on qualification recognition (where the problems faced by newcomer professionals and tradespeople seeking recognition in Canada was a major and recurring theme).

New initiatives

Many of these problems are now widely recognized, and Minister Caplan has made some announcements intended to address some of them. These announcements include the following:

- Skilled worker criteria

The problems plaguing the selection process for independent immigrants are well known. Because the General Occupations List is perennially several years out of date, Canada recruits immigrants qualified to work in specific occupations that reflected labour market needs of several years before. By the time these immigrants arrive in Canada, there is a good chance that the market will have shifted, and their occupational skills will no longer be in demand.

Minister Caplan has indicated that selection of skilled workers will no longer focus on specific occupational qualifications but will focus instead on transferable skills. This sounds like a reasonable measure, given the failure of the current occupation-based system to serve its goals. However, without any further details about what skills will be targeted and how they will be measured, it is impossible to offer any substantive comments on whether or not such a system would be better than what currently exists. Without the benefit of any knowledge of the new system, we would nevertheless urge the Minister not to undervalue work experience as compared with formal education. To do so could end up

preventing tradespeople from entering Canada, along with many whose education was acquired not through college or university but through apprenticeship or other non-formal routes.

We must offer one further important caution: the elimination of occupation-related points in the selection system should not be used to relieve the federal government – and specifically the Department of Citizenship and Immigration – of responsibility for seeking out ways to facilitate access to professions and trades for immigrants and refugees.

It is true that by eliminating occupation-specific selection criteria the government will no longer be sending the same message to immigrants that the current system does: i.e. that acceptance into Canada implies recognition by Canadian regulators and employers of occupational qualifications. Changing selection criteria may protect the Department from some of the blame it currently receives for the APT situation. However, it would be irresponsible for the Department to therefore wash its hands of the APT issue.

Consider as an example a mechanical engineer with a graduate degree and ten years' experience in the field. Under the current system she might be accepted in part on the basis of her specific occupational qualifications. Under the proposed system she might be accepted instead on the basis of her "transferable skills." Either way she arrives in Canada with a specific and well-honed set of skills, abilities and knowledge. While her expectations of success in her own field might be lower under the "transferable skills" model than under the current system, under either system it is in the best interest of both the individual immigrant and her family, and the Canadian economy and society, for her to be employed in the field that makes the best use of her training and abilities – mechanical engineering.

The problems faced by foreign-trained professionals in Canada, if allowed to continue unaddressed, will work directly against the federal government's goal of raising immigration levels to 1% of the Canadian population. Unless action is taken to address the problems facing immigrants seeking access to professions and trades in Canada, it is

unlikely that Canada will be able to meet the Minister's increasing immigration targets in the coming years.

- Provision of information

There have been indications that the federal government will continue to work on the provision of information on occupational and regulatory requirements to prospective immigrants. This is certainly an important program and should be pursued. Currently, many highly qualified immigrants arrive in Canada fully expecting to enter into their professions or trades quickly, having been kept completely in the dark about the barriers preventing access to their occupations in Canada. Provision of full, objective information will help future immigrants to make more informed decisions about whether or not to come to Canada, and what challenges they will face upon arrival here.

Like the elimination of occupation-based selection criteria, however, the provision of information about regulated occupations is not a solution to the problem of APT. The federal government must go well beyond such passive measures – essentially managing expectations rather than changing results – to become an active facilitator and champion for the immigrants it brings into Canada.

Federal leadership

In the January 30, 2001, Speech from the Throne the Governor General promised that, in addition to seeking to attract skilled workers, the federal government "will also work in co-operation with the provinces and territories to secure better recognition of the foreign credentials of new Canadians and their more rapid integration into society." The Maytree Foundation applauds this commitment. Indeed, we believe that the federal government has an overarching responsibility to facilitate the settlement and integration of newcomers, including their occupational settlement. Having brought immigrants and refugees to Canada, the federal government has an obligation to encourage the recognition and Canadianization of their skills, so that they are able to access appropriate employment as quickly as possible.

In order to exercise this responsibility and undertake its Throne Speech promise, The Maytree Foundation believes the Minister of Citizenship and Immigration should take a leading role in seeking and implementing solutions to the barriers that currently prevent immigrant professionals and tradespeople from accessing their professions in Canada.

APT has been a political football for far too long. We fully recognize that there are many jurisdictions and interests involved and that neither a single Minister nor the federal government more broadly has the authority to unilaterally impose a solution on all parties. Nevertheless, it is very clear that unless one of the stakeholders shows some leadership and commitment to solving this problem, the hopes, skills, talents and knowledge of countless highly qualified immigrants to Canada will continue to be wasted. The Minister of Citizenship and Immigration, as Minister in charge of selecting immigrants to Canada and overseeing their settlement, is clearly very well-placed to take some leadership in this area.

The Minister's role should be both to champion the cause of immigrants seeking recognition of their qualifications and access to their professions or trades, and to facilitate multi-stakeholder solutions. This will require close co-operation with the federal Ministers of Human Resources Development, Labour, and Canadian Heritage, as well as with the provinces – and through them regulators, educational institutions and academic credential assessment services.

In order to formalize this responsibility, it should be included as one of the objectives in Bill C-11, along with a mechanism for annual reports to the legislature on progress made on the issue.

Recommendation 5:

> *We urge the Committee to recommend that the Minister of Citizenship and Immigration formally adopt the role of champion for immigrants seeking recognition of their occupational qualifications.*

Recommendation 6:

> *We urge the Committee to recommend that the objective of facilitating recognition of immigrants' occupational qualifications and accelerating*

access to regulated professions and trades be included in s. 3(1) of Bill C-11.

While solutions to the APT problem will require co-operation and negotiation with provincial and non-governmental stakeholders, there are a number of steps that the Minister can take immediately. For example, as a first step the Minister could convene a meeting with her Cabinet colleagues in Human Resources Development and Labour to develop a National Action Plan on Access to Professions and Trades. This program could include:

- An internship program within federal departments and agencies that would provide foreign-trained professionals and tradespeople with all-important Canadian work experience.

- A media awareness campaign to counter some of the prevailing negative myths about the standards of immigrant professionals and to encourage employers to hire newcomers.

- An expanded data collection and analysis program to track the occupational settlement of immigrant professionals and tradespeople.

- A National Mentoring Program to provide immigrant professionals and tradespeople with crucial contacts in their industries, and insights into how the system works.[4]

The second stage of a national APT program would involve building partnerships with other stakeholders to work out ways around the jurisdictional barriers that have stood in the way of significant progress on APT for many years. Avenues to explore in this regard include:

- Pilot projects within the Provincial Nominees Program. Given that regulatory bodies derive their authority from provincial governments, involving the provinces in the

[4] The Foundation has observed astonishing success in the mentoring programs we have funded, and would be very pleased to provide detailed information to the Committee or the Minister. (See also Silkowska-Masior, B. and T. Szajkowski, *Mentorship Program for New Canadians* (Ottawa: Caledon, September 1998).

process is a crucial step in reforming regulatory treatment of foreign qualifications. The Provincial Nominees Program transcends jurisdictional boundaries to give provinces a hand in immigrant selection. Since the jurisdictional question has already been overcome in this program, it would seem to be a good venue for pilot projects on APT. For example, provinces could be granted additional numbers of nominees in specific professions where there are labour shortages, provided that they undertake to work with the relevant regulatory bodies both in the selection of the nominees and in facilitating rapid licensure. If they achieve some success in this pilot program, provinces and regulators might be encouraged to make systemic changes to facilitate recognition of foreign credentials on a wider scale.

- Building on the Social Union Framework Agreement and the Agreement on Internal Trade. These interprovincial agreements include commitments to harmonizing professional standards across the country with the goal of making professional and trades accreditation portable from province to province. Many regulators are currently examining their credential assessment processes and core competencies to determine which ones are crucial and non-negotiable and which may be open to change and adjustment in the interest of harmonization with other jurisdictions. Perhaps the momentum created by the July 2001 deadline for such harmonization can be built upon in order to expand the scope of mutual recognition to the international scene. In addition, the provinces could be encouraged to include as a component of the SUFA interprovincial standards for regulatory body accountability and transparency with respect to the assessment and recognition of foreign qualifications. Similarly, the SUFA could include interprovincial standards for academic credential assessment, and a commitment to portability of assessments conducted by provincially mandated services.

Recommendation 7:

> *We urge the Committee to recommend that the Minister of Citizenship and Immigration, in collaboration with the Ministers of Human Resources Development and Labour, develop a National Action Plan on Access to Professions and Trades.*

Recommendation 8:

We urge the Committee to recommend that the National Action Plan on Access to Professions and Trades include two areas of focus: (a) one that the federal government can undertake within the parameters of its own jurisdiction; and (b) one that builds on the federal government's role as champion and involves negotiation and collaboration with the provinces, regulatory bodies, employers, educational institutions, community groups and others, and that goes beyond the limited parameters of current programs.

Recommendation 9:

We urge the Committee to recommend that the Minister report annually to the legislature on implementation of the National Action Plan on APT. This report should include both aggregate data on immigrant access to their intended regulated occupations, and policy and practice advancements towards improved access to professions and trades for immigrants. This reporting requirement should be incorporated in s. 94 of Bill C-11.

REFUGEE PROTECTION

Bill C-11 includes both positive and negative measures relating to refugee protection in Canada. Some of the Foundation's comments on these are addressed in the aforementioned commentaries on Bill C-31 or above under "General Comments." While most of the remainder of this brief will be focused on refugees in legal limbo, we would like to preface this discussion with a few further observations and recommendations on other refugee-related elements of Bill C-11 of particular concern to us.

The Maytree Foundation applauds the introduction of an appeal on the merits for negative protection decisions by the Refugee Protection Division of the IRB. The lack of such an appeal is a significant blemish on the reputation and quality of the current refugee determination system. While we understand the economic and efficiency arguments for limiting this appeal to a paper review in general, there are situations where justice can only be served by a claimant and counsel appearing in person before an independent decision maker.

Recommendation 10:

> *We urge the Committee to recommend that, at a minimum, the option of an oral appeal be available where issues of credibility are at stake, or where new evidence is to be provided.*

Likewise, we affirm the proposal to consolidate all protection-related decisions within the IRB, and the inclusion of the *UN Convention Against Torture* as grounds for protection. However, we are disturbed that the Bill exempts Canada in certain situations from respecting Article 3 of the Convention, which prohibits countries from returning anyone to a country where they face torture (s. 115(2)).

Recommendation 11:

> *We urge the Committee to recommend that the principle of non-return to torture be adopted in Bill C-11 without exception. This would bring the Bill into compliance with Article 3(1) of the* UN Convention Against Torture. *(See Recommendation 3, above.)*

A related concern has to do with the application of the *UN Convention on the Rights of the Child*. Bill C-11 mentions the principle of the "best interests of the child" at several points, and the Foundation supports this step. However, as a signatory to the Convention, Canada has an obligation not just to acknowledge the principle, but to make it a primary consideration in cases affecting minors.

Recommendation 12:

> *We urge the Committee to recommend that the principle of the best interest of the child be incorporated in Bill C-11 as a primary consideration in all decisions affecting minors. This would bring the Bill into compliance with Article 3(1) of the* UN Convention on the Rights of the Child. *(See Recommendation 3, above.)*

REFUGEES IN LEGAL LIMBO

The impact of Bill C-11 on the problem of "legal limbo" – the long delays experienced by some Convention refugees seeking permanent resident status – is somewhat ambiguous and contradictory. While there are elements of the Bill that offer

some faint hope that changes may be on the way to eliminate some existing barriers to landing, other proposals suggest that the situation may worsen.

The fact that Bill C-11 does not eliminate the problem of legal limbo is of great concern to The Maytree Foundation. The current situation is untenable – thousands of Convention refugees are living in legal limbo in Canada today. They are unable to travel outside of Canada; they are barred from sponsoring family members to come to Canada[5]; they are denied access to loans for post-secondary education (see below); and they often face difficulties getting good jobs (due to employers' reluctance to hire and train someone with only temporary status). Refugees in legal limbo also are denied a voice in the democratic process.

There are a number of steps that can be taken to reduce or eliminate existing barriers to landing, and to minimize the impact of not having landed status. These are addressed below.

Identity documents

Since 1993 the *Immigration Act* has required that in order to be granted permanent resident status, Convention refugees must provide a "valid and subsisting passport or travel document or a satisfactory identity document" (s. 46.04(8)). Since the imposition of this requirement increasing numbers of Convention refugees lacking "satisfactory" identity documents have had their landing "suspended" indefinitely. They are left in legal limbo –

[5] Family reunification is the main concern of most refugees. According to former Immigration Minister Lucienne Robillard, family reunification is "the cornerstone of Canadian immigration policy" [Citizenship and Immigration Canada 1999]. Yet Convention refugees who apply for landing alone (for example, because at time of application they are unable to locate their families overseas, and don't want to defer their application indefinitely) must complete their own landing before they can sponsor their families.

Any extended family separation has consequences for emotional and financial health. Refugees carry the extra burden of knowing that their spouses and children often are living in very precarious circumstances in their country of origin, or in desperate conditions in a Third World refugee camp. Psychological problems experienced by families that have suffered severe trauma are exacerbated [Canadian Council for Refugees 1995: 14-20].

The imposition of this obstacle to family reunification contradicts not only Canada's stated commitment to bringing families together, but also international human rights norms. The United Nations Convention on the Rights of the Child recognizes the right of children to be reunited with their parents [Article 10]. The Final Act of the Conference that adopted the 1951 Convention on the Status of Refugees also recognized the importance of family unity.

the untenable situation of having been granted Canada's protection from persecution but denied permanent status here – including the rights and privileges that go with such status.

Recognizing that the document requirement was a barrier to many refugees who simply could not acquire "satisfactory" documents due to the lack of a functioning government in their country of origin, in 1997 the federal government introduced a special program for undocumented refugees from Somalia and Afghanistan. The Undocumented Convention Refugee in Canada Class provided for landing of Convention refugees from those two countries even without the required documents, after a five-year waiting period.

The UCRCC program has been a failure. In 1996 the Department of Citizenship and Immigration estimated that there were 7,500 undocumented Somali and Afghan refugees in Canada [Citizenship and Immigration Canada 1998c: 3342]. *Yet as of July 1, 2000, according to statistics provided to The Maytree Foundation by the Department of Citizenship and Immigration last August, only 1,980 Convention refugees have been landed under UCRCC – just a quarter of the original group!* [Citizenship and Immigration Canada 2000a]

Moreover, it appears that between 1996 and mid-2000 an additional 4,637 refugees from Somalia and Afghanistan have been granted Convention status in Canada by the IRB [Immigration and Refugee Board 2000; 1999; 1998; 1997], and only 3,160 have been landed under the regular process [Citizenship and Immigration Canada 2000b; 2000c], adding a further 1,477 refugees to the pool of Somali and Afghan Convention refugees in limbo.

The UCRCC program is discriminatory both to those included in it and to those who are excluded. Somalis and Afghans who through no fault of their own do not possess the required documents face a waiting period not applied to other refugees who do possess the required documents. However, lack of documentation is not a problem limited to Somalis and Afghans. Most refugee-producing countries are significantly less document-oriented than we are in Canada, and it is much less common for ordinary citizens of those countries to possess identity documents as a matter of course. Moreover, the nature of

refugee flight makes possession of identity and travel documents even less likely – very few refugees have the time to apply for documents before taking flight; often it is dangerous to do so. Even where the refugee possesses documents, there often simply isn't time to go home and retrieve them before fleeing. For these refugees, even the flawed UCRCC program is unavailable, and they therefore have their landing suspended indefinitely.

S. 20(1)(a) of Bill C-11 requires that to be landed all "foreign nationals" must establish "that they hold the visa or other document required under the regulations…" No exception appears to have been made for refugees or other protected persons. Although the explicit denial of landing to anyone lacking "a valid and subsisting passport or travel document or a satisfactory identity document" (s. 46.04(8) of the current *Act*) is thus not included in the new Bill, it is difficult to ascertain the full implications of this change. A great deal will, once again, depend on the regulations. If the regulations are framed in a way that fully recognizes the fact that refugees are frequently unable to obtain the requisite documentation, we will have advanced significantly. If, however, the regulations simply pick up the language of the current *Act* nothing will have changed.

Unfortunately, it appears likely that the Minister intends to retain the document requirement even for refugees and those deemed in need of protection. This interpretation is supported by the fact, that in the materials accompanying the release of the Bill, the Minister has re-announced her December reduction of the waiting period for UCRCC landing from five years to three (indicating therefore that the UCRC program is to be continued, and since UCRCC is only necessitated by the document requirement, it would seem safe to assume that the Minister proposes to maintain that as well).

In *Refugees in Limbo and Canada's International Obligations* (Ottawa: Caledon, September 2000)[6], Professor Guy Goodwin-Gill of the University of Oxford, an authority on international refugee law, and Judith Kumin, Representative to Canada for the UN High Commissioner for Refugees, examine Canada's legislation and practices with respect to undocumented refugees in light of our obligations under the 1951 *UN Convention relating*

[6] Attached as Appendix D.

to the Status of Refugees. They find that Canada is not, in fact, complying with Articles 25 (administrative assistance), 27 (identity papers) and 28 (travel documents). The authors make it clear that as a signatory to the Convention, which Canada ratified in 1969, we have an obligation to provide undocumented refugees with the same freedoms and rights provided to documented refugees. We are required to issue official identity papers to all determined refugees in Canada who are without travel documents, without exception. We are also required to issue travel documents to all recognized refugees – including those whose landing has been "suspended" due to lack of satisfactory identity documents from their countries of origin.

Requiring identity documentation from Convention refugees is not only inherently unjust and contrary to international law; it is also unnecessary. The Immigration and Refugee Board conducts a thorough investigation into identity during the refugee determination process. It has developed detailed and rigorous procedures for doing so, with a very strong track record of accuracy. The Maytree Foundation has proposed that these procedures should be accepted as sufficient by the Department for the granting of permanent resident status[7], and we reiterate that proposal here. The same position is argued forcefully by Professor Goodwin-Gill and Ms. Kumin.

The argument that the identity document requirement deters refugees who otherwise might destroy their documents has been effectively countered by the Department of Citizenship and Immigration itself: "This trend (of undocumented arrivals) continues, despite legislative provisions aimed at encouraging refugees and claimants to retain whatever documentation they may possess" [Citizenship and Immigration Canada 1998c: 3341].

Nor is national security a valid reason to automatically withhold permanent resident status from *all* undocumented Convention refugees. The Department, in co-operation with the Canadian Security Intelligence Service and the RCMP, conducts background checks on all landing applicants, documented or undocumented. Where there is reason to suspect that

[7] See Brouwer, A. *What's In A Name? Identity Documents and Convention Refugees* (Ottawa: Caledon, March 1999).

a landing applicant poses a danger to Canada, these authorities advise the Minister to deny landing. *Should new evidence of war crimes come to light after landing, it is still possible to arrest and deport the person in question.* Furthermore, to date there have been no reports of criminals or terrorists having been found among Convention refugees during the UCRCC waiting period.

Lack of documentation is not an indication that an applicant may be a perpetrator of war crimes; in fact, it would seem generally to be quite the opposite. Common sense suggests that, in most cases, those who held positions of power in oppressive governments would have access to any documents they need.

Finally, as a blanket requirement applied to all Convention refugees, the policy results in the denial of landing to even the most completely, undeniably innocent: the children.

It would appear that the Minister has made an attempt to respond to the arguments of Professor Goodwin-Gill, Maytree and others by adding a new clause to Bill C-11 that was not included in Bill C-31 or in the current *Act*. Ss. 31(1) of the new Bill provides: "A permanent resident *shall* be, and a protected person *may* be, provided with a document indicating their status." (Emphasis added.) While the purpose of such a status document is not explained in the Bill, Departmental officials have indicated that one of the purposes is to allow those holding such documents to use them when seeking access to other government services. The document thus appears to be a partial attempt to comply with Article 25 of the 1951 *Convention relating to the Status of Refugees*, which requires States to provide administrative assistance to undocumented refugees in their territories. However, the wording of ss. 31(1) (status documents "may" be provided to a protected person, whereas they "shall" be provided to permanent residents) means some refugees may *not* be provided with a status document. This leaves the door open for continued violation of Article 25, which does not provide for any exceptions in the extension of administrative assistance.

Nor, apparently, is the status document intended to serve as an identity document, so it does not address concerns regarding Canada's non-compliance with Article 27. And while Departmental officials have indicated that the new status document will allow some Convention refugees (and presumably also other protected persons) to apply for travel documents, undocumented refugees – those who have no other documents to use to apply for travel documents – will remain ineligible. (Ss. 32(f) provides that regulations will set out "the circumstances in which a document indicating status or a travel document may or must be issued, renewed or revoked.") It is thus clear that the provision does not meet Canada's obligations under Article 28 of the 1951 Convention either.

Recommendation 13:

> *We urge the Committee to recommend that the new status document be granted to all protected persons as well as all permanent residents, in keeping with Canada's obligation to provide administrative assistance under Article 25 of the* UN Convention relating to the Status of Refugees. *This can be done be replacing the word "may" with the word "shall" in s. 31(1) of Bill C-11. (See also Recommendation 3, above.)*

Recommendation 14:

> *We urge the Committee to recommend that identity papers be provided to all undocumented refugees who have been granted protection by the Refugee Protection Division of the Immigration and Refugee Board. This would bring Canadian practice into compliance with Article 27 of the* UN Convention relating to the Status of Refugees. *This provision could be included in s. 31 or s. 107. (See also Recommendation 3, above.)*

Recommendation 15:

> *We urge the Committee to recommend that Convention refugees – including those lacking identity papers from their country of origin – be issued travel documents upon being granted protection by the Refugee Protection Division of the Immigration and Refugee Board. This would bring Canadian practice into compliance with Article 28 of the* UN Convention relating to the Status of Refugees. *This should be done through the addition of a clause under s. 31. (See also Recommendation 3, above.)*

Security screening

The Maytree Foundation strongly supports the continuation of a thorough security screening process in order to protect Canadian security. Those who pose a threat to the lives and safety of Canadians must not be allowed to stay here. However, we also firmly believe that the security screening process must be fair, that innocent Convention refugees should not be subjected to long and unnecessary delays, and that there must be full respect of human rights and due process. We believe in transparency in government and in a publicly accountable civil service. As it stands, the security screening process fails to meet these requirements.

(The Minister has announced plans to make some changes to the security screening process, but few details are available to date. Our analysis thus focuses on the current system first, with comments on the proposed changes following thereafter.)

Currently, security screening of refugees is conducted after refugee determination and prior to landing. In most cases this screening does not add significantly to the processing time. Some cases, however, are passed on to the Canadian Security Intelligence Service (CSIS) for more thorough review and investigation, and a recommendation to CIC on whether or not to land the person. Some of the Convention refugees referred for further investigation end up in long term limbo as neither CSIS nor CIC makes a decision on their case.

Perhaps the biggest problem in the current screening process lies in the wording of ss. 19(1)(f)(iii) of the current *Act*, which lists as inadmissible "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…terrorism." The words "members" and "terrorism" are not defined in either the *Act* itself or in accompanying regulations.[8] Rather than rectify this problem, Bill C-11 simply carries it over into the new legislation, via s. 34.

[8] This issue is currently before the Supreme Court of Canada in *R v. Suresh*.

This lack of definition has led to the over-broad application of the section to people whose "membership" consists of nothing more than being involved in a particular newcomer community and espousing the goal of political liberation or autonomy for their people. While details are very difficult to obtain from either CSIS or CIC on these matters, it would appear that whole communities are currently being placed under suspicion. For example, CSIS seems not to differentiate between the desire of many Turkish Kurds for political autonomy for their people, active membership in the political wing of the PKK, and participation in terrorist activities. Yet the vast majority of Kurds from Turkey have come to Canada and been recognized as refugees precisely because they face persecution from Turkish authorities at home, often because they are seen by the Turks as supporters of Kurdish independence.

The way CSIS reads the *Immigration Act* would allow it to apply the "member" of a "terrorist organization" label to nearly every member of the Kurdish community in Canada – men, women, even children. The only way for these individuals to avoid the label appears to be that they refrain from exercising their *Charter*-guaranteed right to express their political support for Kurdish independence from Turkish rule, and that they refrain from participating in completely legal community events and organizations. The Iranian and Tamil communities face similar targeting by CSIS.

In an April 2000 report on a complaint by a Kurd from Turkey who has been awaiting completion of his security review for some seven years, the Security Intelligence Review Committee criticized CSIS for its broad interpretation of "membership" and "terrorism", noting that if CSIS had applied its interpretation of those words to Nobel laureate Nelson Mandela, he too would have failed the test and been barred from the country [Security Intelligence Review Committee 2000]. The Committee called on CSIS to develop a more sophisticated analytical framework for the terms.

We agree that a more sophisticated analysis is crucial, but we believe that the definitions should be public, and should be tied directly to ss. 34(c) and (f) of Bill C-11 (s. 19(2)(f)(iii) in the current *Immigration Act*).

Recommendation 16:

> *We urge the Committee to recommend that the terms "members" and "terrorism" be fully defined either in Bill C-11 itself or in accompanying regulations.*

(On a related matter, we affirm the removal of the past tense with regard to membership in a terrorist organization – i.e. replacing "are or were" in the current Act [s. 19(2)(f)(iii)] with "being" in Bill C-11 [s. 34(f)].)

Another central concern in the existing security review process is the question of accountability. CSIS has guidelines setting out the length of time in which it must complete its investigation and submit its recommendation to CIC, and an oversight body, the Security Intelligence Review Committee, which can hear complaints about how CSIS conducts its business.

It appears that currently SIRC's recommendations do not carry the kind of authority that a watchdog body's should carry. For example, in reviewing CSIS actions and recommendations in the aforementioned case with respect to the security clearance of a Kurdish refugee from Turkey, SIRC had full and unimpeded access to all the expertise and evidence that CSIS had compiled, as well as full arguments from the complainants themselves. On the basis of its careful, impartial and lengthy deliberation on all the facts, SIRC found that CSIS has erred in advising CIC that the complainant was inadmissible, and recommended that CSIS advise CIC that the individual be landed promptly. However, these recommendations are not binding.

A year has passed since the SIRC report was tabled, and there has been no action on the case by CIC. Even more disturbingly, a second complainant whose case was examined at the same time as the one mentioned above, and who received a similar endorsement for landing from SIRC, has very recently received a refusal letter from CIC, directly contradicting the recommendation of SIRC. A third complainant in parallel proceedings before SIRC is in the same circumstances as the first case discussed above.

For SIRC to have any real credibility, its recommendations must be binding on CSIS, and must supersede CSIS' own recommendations on the security reviews of the claimants. A watchdog must have teeth for it to serve any protective function. While we recognize that SIRC matters are not strictly within the purview of the Minister of Citizenship and Immigration, the Minister is nevertheless responsible to ensure that Convention refugees applying for permanent residence receive fair treatment and that inadmissibility decisions are made justly.

Recommendation 17:

> *We urge the Committee to recommend that the Minister work with the Solicitor General to expand the authority of SIRC to make its recommendations binding upon CSIS, at least with respect to inadmissibility decisions.*

While CSIS has timelines to meet and an oversight body, the Security Review section of the Department of Citizenship and Immigration has neither of these. The fact is that while some of the delays in security screenings of prospective permanent residents are caused by CSIS, many others are due to inaction on the part of the Department.

There is no excuse for keeping people in a state of long-term legal limbo simply because the Department has not come to a decision. The intimidating process of being investigated by an intelligence agency, and the uncertainty and fear in which those under investigation live, causes severe emotional and psychological pain for many refugees who have fled from fear and intimidation at home. The Department should be held accountable for its decisions and should work within strict timelines for decision making.

Recommendation 18:

> *We urge the Committee to recommend that a reasonable time limit for security reviews be established. If at the end of that period neither CIC nor CSIS has discovered evidence for a finding of inadmissibility, then the person should receive a security clearance and be landed promptly. Only where there are valid reasons to extend the investigation should this time limit be exceeded, and then only upon application to the Minister for an extension.*

It must be borne in mind that the Minister retains authority to revoke landed status and even citizenship should new evidence appear that indicates that the individual is a security threat.

The proposed changes

The Minister has announced plans to move towards front-end screening for inadmissibility. S. 100(1) stipulates that an immigration officer is required to make an eligibility decision and refer eligible claims to the Refugee Protection Division of the IRB within 72 hours of receipt of a claim. However, under s. 100(2)(a) consideration of eligibility, and hence referral to the IRB for a protection decision, may be suspended while a determination is being made with respect to inadmissibility. In addition, s. 103 allows an officer to "claw back" or suspend a claim that has already been referred to the Refugee Protection Division but that is under investigation for inadmissibility.

In principle, front-end screening for security and serious criminality makes good sense. The Maytree Foundation agrees – as, we believe, would most Canadians – that people who pose a serious threat to Canadian security should be identified and removed as quickly as due process and our human rights obligations allow. In addition, starting the screening process early will presumably significantly reduce or eliminate the problem of Convention refugees in security limbo as described in the preceding pages. However, our observation of the current system of security screening gives us cause for serious concern about front-end screening.

In the absence of details about how the proposed screening system will function, all we can do is state some of our concerns, in the hope that the Committee will either be able to provide answers or will seek full explanations from the Minister before passing judgement on the Bill.

- Shifting the limbo problem rather than resolving it

We are concerned that front-end screening will shift the limbo problem from post-determination to pre-determination. Notwithstanding the problems out lined above with

respect to the current screening system, at least those refugees being screened today are protected from *refoulement* and have access (albeit inadequate) to social services, education, health care, etc. Under the proposed new system, the screening will take place before a refugee has been granted protection, as refugee determination is to be suspended until an admissibility decision has been rendered. This will leave those being investigated in a much more vulnerable situation, as mere claimants. They will lack the protection against *refoulement* guaranteed to Convention refugees. Unless changes are made to a wide range of laws and regulations, they will have extremely limited access to social services. For example, their medical coverage will be for emergencies only. Not only will they be ineligible for student loans, they will be charged foreign student fees. And the list goes on. Long-term limbo as a Convention refugee is bad enough; shifting limbo to the pre-determination stage would be an extremely regressive and draconian step.

- The screen itself: how wide or narrow?

How wide or narrow will the security and criminality screen be at the starting point? That is, what measures will be taken to ensure that overworked officers faced with an initial 72-hour window don't simply refer anyone who raises even the slightest question as to admissibility to CSIS for investigation, thus significantly increasing the number of people in limbo? This is a basic question of balancing and risk management, and will need to be clearly articulated either in the legislation or in regulations (with guiding principles in the legislation), to give guidance to officers.

- Discriminatory screening

Will some sort of profiling be used to select those claimants that share characteristics that suggest a higher risk of inadmissibility? If so, how will the Minister ensure that this profiling does not result in discrimination based on race, national or ethnic origin, religion or other Charter-protected ground? Some critics contend that the current security screening process has a discriminatory impact on certain groups. Given the much more severe implications of security limbo if it happens at the predetermination stage,

these criticisms – and litigation – will only increase. Again, clear, reasonable criteria for suspending claims are needed.

- Transparency and accountability

What steps will be taken to ensure transparency and accountability in the security screening process? There must be narrow time limits for the suspension of claims. Our recommendations 16-18 apply equally to front-end screening as to the current process.

Fees

In February 2000, the Minister announced that Convention refugees were to be exempted from the $975 right of landing fee. The Maytree Foundation, like many others, had advocated this measure for some time[9], and we applaud the Minister for her resolve in removing the fee from refugees in the very first federal budget following her appointment. However, we would like to remind the Minister that exempting refugees from the right of landing fee is only a first step.

We continue to be concerned that the right of landing fee is delaying family reunification, as even refugees, once landed, must pay the right of landing fee to sponsor their adult family members. Because the right of landing fee is charged at a flat rate to all newcomers, with no relation to the applicant's ability to pay, it represents a much more significant obstacle to landing for the poor and those who come from poor countries, than it does for middle class or wealthy newcomers.

As then-Canadian Human Rights Commissioner Max Yalden put it, "The fear is not that the new policy is racially targeted in itself but that it will primarily deter immigrants from Third World countries, most of whom are not only relatively poor, but also non-white." [Canadian Human Rights Commissioner 1995: 39]

[9] See Brouwer A., *Protection with a Price Tag*, (Ottawa: Caledon, June 1999).

Recommendation 19:

> *We urge the Committee to recommend that the $975 right of landing fee be removed from all dependants of refugees and members of humanitarian classes.*

Also of continuing concern to us is the $500 processing fee for landing, for which, unlike the right of landing fee, there is not even a loan program. The arguments that were applied to the right of landing fee apply equally to the processing fee. It too is a flat-rate fee and thus has a differential impact; it too may delay family reunification. Moreover, like the right of landing fee, it violates the spirit, if not the letter, of Article 34 of the 1951 *Convention relating to the Status of Refugees*, which Canada ratified in 1969. The Convention states:

> "The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to *reduce as far as possible the charges and costs* of such proceedings." (emphasis added)

Recommendation 20:

> *We urge the Committee to recommend that the $500 processing fee ($100 for youth) be removed from refugees and humanitarian classes, as well as their dependants. This would bring Canadian practice into compliance with Article 34 of the* UN Convention relating to the Status of Refugees**.** *(See also Recommendation 3, above.)*

Student loans

While the issues and recommendations discussed above deal primarily with the causes of legal limbo, there are also changes that can be made to existing legislation to minimize the impact of living without permanent resident status. One of these is to eliminate the barrier to college and university student loans for Convention refugees who are not yet landed.[10]

[10] For a full discussion of this issue see Brouwer, A., *Equal Access to Student Loans for Convention Refugees* (Ottawa: Caledon, 1999), attached as Appendix E.

Currently, the *Canada Student Financial Assistance Act* restricts access to student loans to citizens and landed immigrants. Regulations governing the provincial loans programs mirror this restriction on access.

Without student loans, many Convention refugees cannot afford the rising costs of postsecondary education, and thus cannot go to college or university until they have attained landed status – which for refugees from Somalia and Afghanistan is *at least* three years, and for others is much longer.

Unable to afford to study, such students will likely have little choice but to seek minimum wage work. By the time they are landed and eligible for student loans, they may no longer be in a position to study full time. This is a waste of the talents and prospects of these Canadians-in-waiting. It is estimated that roughly 1000 prospective students who are Convention refugees may be affected [Brouwer 2000].

Based on the above estimate of 1000 eligible students, the federal government would be required to lend an additional $4 million per year, on top of the $1.6 billion lent to approximately 370,000 permanent residents and Canadian citizens. Convention refugees are likely a good risk: repayment rates for other immigrant loans programs are around 92%. Thus the *cost* of providing loans to eligible Convention refugees would be well under $1 million [Brouwer 2000].

While the solution to this problem is in the jurisdiction not of the Minister of Citizenship and Immigration but of the Minister of Human Resources Development, it would be appropriate for the Immigration Minister and for this Committee to call on the HRD Minister to make the necessary amendment to the *Canada Student Financial Assistance Act.*

Recommendation 21:

> *We urge the Committee to recommend that the Minister of Citizenship and Immigration work with the Minister of Human Resources Development to amend ss. 2 (1) of the Canada Student Financial Assistance Act to make Convention refugees and other protected persons eligible for student loans, alongside permanent residents and Canadian citizens.*

Social Insurance Number

Another problem frequently complained about by refugees in limbo is the fact that their Social Insurance Number, which begins with a 9, is a barrier to adequate employment. The reason is that most employers recognize that a number beginning with a 9 indicates that the holder has only temporary status in Canada. For some employers, this is a disincentive to hire the person, at least for a long-term position or one that requires training, because they are unwilling to invest in someone who may not be around a few days, weeks or months later. For other employers, seeing a Social Insurance Number that begins with a 9 is a signal that the person can be paid less than permanent residents and citizens because their employment opportunities are limited.

The federal government's intent to indicate to employers that a particular person may not be employed unless they provide a valid employment authorization is quite reasonable. The problem lies in the application of the same marker to refugees as to others who do not have permanent resident status in Canada. As noted above, Convention refugees who have been granted protection by the IRB are in the vast majority of cases here to stay and may not be returned to their country of origin. They are therefore in a fundamentally different position from others who in Canada on a temporary basis. This distinction must be made clear to prospective employers.

Recommendation 22

We urge the Committee to recommend that s. 90 of Bill C-11 be amended to provide that either:

(a) Convention refugees and other protected persons be excluded from the class of persons to be issued special Social Insurance Number Cards; or

(b) if Convention refugees and other protected persons are to be issued special Social Insurance Number Cards, that these cards identify them as persons who have been granted permanent *protection in Canada, in distinction from those with* temporary *status in Canada.*

CONCLUSION

The problems facing foreign-trained professionals and refugees in legal limbo discussed above are just a few areas of concern in the immigration and refugee protection system. There are many others. Considering that the Department has the mammoth job of managing the immigration to Canada of more than 200,000 immigrants and refugees each year, it is little wonder that there are numerous gaps and flaws in the system, and that even where processes are effective for the majority, there are nevertheless numerous people who are not well-served. There are unacceptable delays, lost files, mismanaged cases, inconsistencies, lapses in judgement and systemic failures. Many of these problems occur behind the closed doors of a Department not known for its transparency or accountability.

Those who fall through the cracks of this imperfect system have no formal venue to make complaints. Many rely on interventions by their political representatives. A few manage to bring their cases to the attention of the Minister herself, often through the help of community advocates. While this system has worked for some, it is a very inconsistent, *ad hoc* approach that inevitably leaves out some who have very valid complaints but may not have access to an advocate or whose MP does not have sufficient expertise to intervene effectively on their behalf.

The Minister has indicated her willingness to personally hear about cases that "fall through the cracks." However, given the size of the department and its enormous case load, the grave implications of flaws in the system for which there are no existing systemic remedies, and the responsibility of the federal government to ensure that all its departments and agencies are publicly accountable and transparent, to rely on personal intervention by the Minister is clearly impractical.

The Maytree Foundation believes that a formal complaints procedure needs to be established. Specifically, we would urge the Minister to establish an arm's-length Ombudsperson's Office. This Office should be resourced and empowered to hear complaints, issue recommendations, and table a public report to the legislature on an annual basis.

Recommendation 23:

> *We urge the Committee to recommend that an arm's-length Ombudsperson's Office be established to hear complaints about any activities undertaken by the Department, to make recommendations, and to table annual public reports to the Legislature.*

Finally, many community agencies, MPs, researchers and other concerned individuals and organizations (such as The Maytree Foundation) seeking to examine the functioning of the immigration and refugee protection program by acquiring and analyzing relevant statistical data are constantly frustrated by the inability to obtain necessary data from the Department. This is not solely a problem caused by Departmental unwillingness to provide information; it is also caused by inadequate collection of relevant data.

The Maytree Foundation has been surprised on several occasions that certain data that are readily available to the Department and that do not violate privacy concerns simply are not collected or tracked – data that we would consider crucial to policy analysis and development both by the Department itself and by independent analysts and observers such as the Foundation. Without the collection and disclosure of relevant aggregate data and statistics covering all stages of the immigration and settlement process, it is extremely difficult for the Department to provide public accountability.

We therefore would urge the Minister to consult with her Department and with other interested parties to develop an ethically sound plan to improve the Department's data collection and to facilitate public access to data.

Recommendation 24:

> *We urge the Committee to recommend that current data collection systems in the Department of Citizenship and Immigration be reviewed, and that after consulting with interested parties the Department launch an enhanced, ethically sound data collection and sharing program.*

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

We urge the Standing Committee on Citizenship and Immigration to review Bill C-11 and the regulations with an eye to including in the Bill both guiding principles and guaranteed access to independent review for any substantive discretionary authority given to immigration officers. The fundamental principle of due process should be reflected throughout the immigration and refugee protection system.

Recommendation 2:

We urge the Committee to review Bill C-11 and the regulations with an eye to shifting into the legislation those issues that properly require democratic input.

Recommendation 3:

We urge the Committee to recommend that the Minister include international human rights obligations as binding minimum standards for the application of the Act. Specifically we propose that the following be added to s. 3(3):

"This Act is to be construed and applied in a manner that:…
e) complies with Canada's international human rights obligations, including the Convention relating to the Status of Refugees, the Convention Against Torture and the Convention on the Rights of the Child."

Recommendation 4:

We urge the Committee to recommend that the Minister work with Canada's largest immigrant-receiving cities to explore a direct role for the cities in immigration and settlement

Recommendation 5:

We urge the Committee to recommend that the Minister of Citizenship and Immigration formally adopt the role of champion for immigrants seeking recognition of their occupational qualifications.

Recommendation 6:

We urge the Committee to recommend that the objective of facilitating recognition of immigrants' occupational qualifications and accelerating access to regulated professions and trades be included in s. 3(1) of Bill C-11.

Recommendation 7:

We urge the Committee to recommend that the Minister of Citizenship and Immigration, in collaboration with the Ministers of Human Resources Development and Labour, develop a National Action Plan on Access to Professions and Trades.

Recommendation 8:

We urge the Committee to recommend that the National Action Plan on Access to Professions and Trades include two areas of focus: (a) one that the federal government can undertake within the parameters of its own jurisdiction; and (b) one that builds on the federal government's role as champion and involves negotiation and collaboration with the provinces, regulatory bodies, employers, educational institutions, community groups and others, and that goes beyond the limited parameters of current programs.

Recommendation 9:

We urge the Committee to recommend that the Minister report annually to the legislature on implementation of the National Action Plan on APT. This report should include both aggregate data on immigrant access to their intended regulated occupations, and policy and practice advancements towards improved access to professions and trades for immigrants. This reporting requirement should be incorporated in s. 94 of Bill C-11.

Recommendation 10:

We urge the Committee to recommend that, at a minimum, the option of an oral appeal be available where issues of credibility are at stake, or where new evidence is to be provided.

Recommendation 11:

We urge the Committee to recommend that the principle of non-return to torture be adopted in Bill C-11 without exception. This would bring the Bill into compliance with Article 3(1) of the UN Convention Against Torture. *(See Recommendation 3, above.)*

Recommendation 12:

We urge the Committee to recommend that the principle of the best interest of the child be incorporated in Bill C-11 as a primary consideration in all decisions affecting minors. This would bring the Bill into compliance with Article 3(1) of the UN Convention on the Rights of the Child. *(See Recommendation 3, above.)*

Recommendation 13:

We urge the Committee to recommend that the new status document be granted to all protected persons as well as all permanent residents, in keeping with Canada's obligation to provide administrative assistance under Article 25 of the UN Convention relating to the Status of Refugees. *This can be done be replacing the word "may" with the word "shall" in s. 31(1) of Bill C-11. (See also Recommendation 3, above.)*

Recommendation 14:

We urge the Committee to recommend that identity papers be provided to all undocumented refugees who have been granted protection by the Refugee Protection Division of the Immigration and Refugee Board. This would bring Canadian practice into compliance with Article 27 of the UN Convention relating to the Status of Refugees. *This provision could be included in s. 31 or s. 107. (See also Recommendation 3, above.)*

Recommendation 15:

We urge the Committee to recommend that Convention refugees – including those lacking identity papers from their country of origin – be issued travel documents upon being granted protection by the Refugee Protection Division of the Immigration and Refugee Board. This would bring Canadian practice into compliance with Article 28 of the UN Convention relating to the Status of Refugees. *This should be done through the addition of a clause under s. 31. (See also Recommendation 3, above.)*

Recommendation 16:

We urge the Committee to recommend that the terms "members" and "terrorism" be fully defined either in Bill C-11 itself or in accompanying regulations.

Recommendation 17:

We urge the Committee to recommend that the Minister work with the Solicitor General to expand the authority of SIRC to make its recommendations binding upon CSIS, at least with respect to inadmissibility decisions.

Recommendation 18:

We urge the Committee to recommend that a reasonable time limit for security reviews be established. If at the end of that period neither CIC nor CSIS has discovered evidence for a finding of inadmissibility, then the person should receive a security clearance and be landed promptly. Only where there are valid reasons to extend the investigation should this time

limit be exceeded, and then only upon application to the Minister for an extension.

Recommendation 19:

We urge the Committee to recommend that the $975 right of landing fee be removed from all dependants of refugees and members of humanitarian classes.

Recommendation 20:

We urge the Committee to recommend that the $500 processing fee ($100 for youth) be removed from refugees and humanitarian classes, as well as their dependants. This would bring Canadian practice into compliance with Article 34 of the UN Convention relating to the Status of Refugees**.** *(See also Recommendation 3, above.)*

Recommendation 21:

We urge the Committee to recommend that the Minister of Citizenship and Immigration work with the Minister of Human Resources Development to amend ss. 2 (1) of the Canada Student Financial Assistance Act to make Convention refugees and other protected persons eligible for student loans, alongside permanent residents and Canadian citizens.

Recommendation 22

We urge the Committee to recommend that s. 90 of Bill C-11 be amended to provide that either:

(a) Convention refugees and other protected persons be excluded from the class of persons to be issued special Social Insurance Number Cards; or

(b) if Convention refugees and other protected persons are to be issued special Social Insurance Number Cards, that these cards identify them as persons who have been granted permanent *protection in Canada, in distinction from those with* temporary *status in Canada.*

Recommendation 23:

We urge the Committee to recommend that an arm's-length Ombudsperson's Office be established to hear complaints about any activities undertaken by the Department, to make recommendations, and to table annual public reports to the Legislature.

Recommendation 24:

We urge the Committee to recommend that current data collection systems in the Department of Citizenship and Immigration be reviewed, and that after consulting with interested parties the Department launch an enhanced, ethically sound data collection and sharing program.

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APPENDICES

A. *Don't Slam the Door*, by Andrew Brouwer (Ottawa: Caledon Institute of Social Policy, January 2001).

B. *The New Immigration Act: More Questions Than Answers*, by Andrew Brouwer (Ottawa: Caledon Institute of Social Policy, May 2000).

C. *Who Should Get In?* edited transcript of February 28, 2001 Forum in Toronto (unpublished).

D. *Refugees in Limbo and Canada's International Obligations*, by Guy S. Goodwin-Gill and Judith Kumin (Ottawa: Caledon Institute of Social Policy, September 2000).

E. *Equal Access to Student Loans for Convention Refugees*, by Andrew Brouwer (Ottawa: Caledon, February 2000).