

# QUEUE THE RHETORIC: REFUGEES, RESETTLEMENT AND REFORM

Shauna Labman\*

## INTRODUCTION

The day before Citizenship and Immigration Canada (CIC) introduced the legislative package to reform Canadian refugee law in 2010, the Ministry announced an expansion of Canada's resettlement program to bring over more needy refugees. According to CIC, the expansion amounted to a potential increase of 2,500 resettlement places per year.<sup>1</sup> That this announcement preceded the introduction of Bill C-11, *Balanced Refugee Reform Act*<sup>2</sup> by one day demonstrates two important points. First, refugee resettlement is distinct from refugee law. Second, resettlement now sits in juxtaposition to in-country asylum. This article will chronicle the increasing tendency of the Canadian government to position resettlement against in-country asylum rather than present the two streams of refugee protection in their traditionally complementary roles. The consequence is an evasion and erosion of Canada's international legal obligations to refugees.

Resettlement is defined by UNHCR as "the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status."<sup>3</sup> In 2009, global resettlement offered a solution for 112,400 refugees.<sup>4</sup> This amounts to just over 1%

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\* Ph.D. Candidate, Faculty of Law, University of British Columbia; Trudeau Scholar & Liu Scholar.

<sup>1</sup> Citizenship and Immigration Canada, News Release, "Expanding Canada's Refugee Resettlement Programs" (29 March 2010) online: CIC <<http://www.cic.gc.ca/english/department/media/releases/2010/2010-03-29.asp>>.

<sup>2</sup> Bill C-11, *Balanced Refugee Reform Act*, 3d Sess, 40th Parl, 2010 (assented to 29 June 2010), SC 2010, c 8.

<sup>3</sup> Department of International Protection, *Resettlement Handbook* (Geneva: United Nations High Commissioner for Refugees, November 2004) online: UNHCR <<http://www.unhcr.org/protect/3d4545984.html>>.

<sup>4</sup> UNHCR, *2009 Global Trends* (Geneva: United Nations High Commissioner for Refugees, 15 June 2010) at 12, online: UNHCR <<http://www.unhcr.org/4c11f0be9.html>>.

of the global refugee population that sat at 10.4 million at the end of 2009.<sup>5</sup> Three states have traditionally been the leaders in resettlement: Canada, Australia and the United States of America. In total, 24 states offer resettlement programs with yearly resettlement numbers ranging from single digits to tens of thousands.<sup>6</sup> Resettlement is performed by states in recognition of international responsibility-sharing as refugee flows focus geographically in particular regions. There is no international legal obligation to resettle refugees. Resettlement is a voluntary act.

The announced increase in Canadian resettlement numbers was not a legislative change. In fact, the announcement simply amounted to a willingness by the government to increase the number of resettled refugees it voluntarily accepts each year.<sup>7</sup> The announcement for increased resettlement was seen as positive by many refugee advocates. Refugees themselves cheered.<sup>8</sup> The Canadian Council for Refugees likewise welcomed the government's commitment to increased resettlement.<sup>9</sup> In contrast, the legislated reform received much criticism from refugee advocates. While professing to reduce delays and abuse, it was seen as an attempt to tighten borders and significantly reduce access to asylum.<sup>10</sup> The announced increase in resettlement, in advance of the legislative change has the effect of countering allegations that government reform signals a move away from refugee protection. As the resettlement announcement concluded: "Providing increased support for resettled refugees clearly demonstrates Canada's ongoing humanitarian commitment and affirms our long-standing tradition as a leader in international refugee protection."<sup>11</sup>

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<sup>5</sup> *Ibid* at 2.

<sup>6</sup> Argentina, Australia, Brazil, Bulgaria, Canada, Chile, the Czech Republic, Denmark, Finland, France, Iceland, Ireland, Japan, the Netherlands, New Zealand, Norway, Paraguay, Portugal, Romania, Spain, Sweden, the United Kingdom, the United States of America, Uruguay. UNHCR, *UNHCR Projected Global Resettlement Needs 2011* (Geneva: United Nations High Commissioner for Refugees, July 2010) at 1, n1, online: UNHCR <<http://www.unhcr.org/4c31e3716.html>>.

<sup>7</sup> CIC does intend to increase the Resettlement Assistance Program budget by \$9 million a year: Citizenship and Immigration Canada, *Backgrounder - Bill C-11: The Balanced Refugee Reform Act* (2010), online: CIC <<http://www.cic.gc.ca/english/department/media/backgrounders/2010/2010-06-29.asp>>. Many would argue this increase has been overdue since the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] shifted government assisted resettlement to more vulnerable refugees.

<sup>8</sup> Minister of Citizenship and Immigration, Jason Kenney made the announcement at an Ottawa immigration centre where it was reported that over 100 refugees gathered to hear the speech and cheered at the increases. Norma Greenaway, "Tories tackle refugee backlog while opening door to those in camps overseas," *Victoria Times Colonist* (30 March 2010) A8.

<sup>9</sup> Canadian Council for Refugees, Media Release "CCR welcomes opening of door to more privately sponsored refugees" (21 July 2010) online: CCR <<http://ccrweb.ca/en/bulletin/10/07/21>>.

<sup>10</sup> Amnesty International Canada, Canadian Council for Refugees, Refugee Lawyers Association of Ontario, Joint Public Statement "Bill C-11 Needs Thorough Review" (27 April 2010) online CCR <http://ccrweb.ca/en/bulletin/10/04/27>; Avvy Go, Barbara Jackman, Andrew Brouwer, "Refugee Reforms Trade Fairness for Haste," *The Toronto Star* (4 May 2010).

<sup>11</sup> *Supra* note 1.

Beyond softening the blow of restrictive legislation, the expressed willingness to increase resettlement at the same time that access to asylum is reduced serves to divide refugee flows into two categories of deserving and undeserving. This is a rhetoric that has increasingly crept into the discourse over the last decade but was applied with vigor by the current government in anticipation of the legislative reform. When the boatload of Sri Lankans arrived on the coast of British Columbia in October 2009 traveling in the bottom of a decrepit cargo ship with limited supplies and facilities, Immigration Minister Jason Kenney suggested the arrival of the migrants put Canada at risk of developing “a two-tier immigration system - one tier for legal, law-abiding immigrants who patiently wait to come to the country, and a second tier who seek to come through the back door, typically through the asylum system.”<sup>12</sup> The statement belies the fact that Canada does have a two pronged system – an *Immigration and Refugee Protection Act*<sup>13</sup> that legislates the entrance of both immigrants and refugees. There is no back door. There is an immigration door and an asylum door. While there is a clear legal process for entering Canada as an immigrant, it is specifically acknowledged in the 1951 Refugee Convention<sup>14</sup> and by signatories to the Convention, including Canada, that asylum seekers cannot be penalized for illegal entry. The reality is that the asylum system presumes that refugees may lack an alternative to illegal flight.

The difficulty is that refugees are not the only people seeking to enter Canada. Economic migrants may pose as refugees, and security concerns increasingly lead to fears that individuals with ties to crime and terrorism may also enter. A globalized world means that even Canada’s once relatively inaccessible borders are now more easily accessed. As a result, asylum seekers have been clumped with other illegal entrants.

Another boat, arriving in British Columbia in August 2010 provided further opportunity to promote the dichotomized rhetoric. As the vessel neared Canadian waters, the Immigration Minister’s spokeswoman used its approach to reiterate: “Our government is committed to cracking down on bogus refugees while providing protection to those that truly need our help.”<sup>15</sup> The illogical implication was that those who approach Canada on their own to access the asylum system are not genuine refugees and do not truly require Canada’s help. Upon the boat’s arrival on 13 August 2010, the Minister for Public Safety, Vic Toews, pledged to introduce future legislation to distinguish between refugee claimants arriving by boat and those by other means.<sup>16</sup>

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<sup>12</sup> Jane Armstrong & John Ibbitson, “Seeking a safe haven, finding a closed door,” *The Globe and Mail* (20 October 2009) A1.

<sup>13</sup> *Supra* note 7.

<sup>14</sup> *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150, art 31(1), Can TS 1969 No 6, art 1F(b) (entered into force 22 April 1954).

<sup>15</sup> Stewart Bell, “Canada monitors suspicious vessel,” *National Post* (16 July 2010) A1.

<sup>16</sup> John Ibbitson, Steven Chase & Marten Youssef, “Ottawa plans new rules for boat migrants,” *The Globe*

An editorial in the *Globe and Mail*, Canada's national newspaper, suggested the solution was for the Canadian government to resettle "legitimate" Tamil refugees.<sup>17</sup> The inference was that the legitimate refugees would not be found on the boat nor be dependent on smugglers but were either still in Sri Lanka or in neighbouring countries, conveniently far away from Canada.

Rather than introducing further legislation targeting the mode of entry as initially implied, the Government introduced Bill C-49, *Preventing Human Smugglers from Abusing Canada's Immigration System Act*,<sup>18</sup> in October 2010. The proposed Act was introduced in Vancouver in front of the *Ocean Lady*, the vessel that brought the first boatload of Sri Lankan migrants the year before. Beyond targeting boat arrivals, the bill allows the Minister to designate an arrival of a group of migrants, as few as two people, as irregular, thereby subjecting all designated foreign nationals in this group, including children, to mandatory detention for at least one year and other penalties including a 5 year bar from applying for permanent resident status even once determined to be legitimate refugees.<sup>19</sup> The anti-smuggling legislation was swiftly criticized by refugee advocates for wrongly punishing refugees while not effectively targeting smugglers.<sup>20</sup>

Continuing with the tendency to play asylum seekers against resettled refugees, on the same day that Bill C-49 was introduced, the Public Safety Ministry released a document titled "Canada's Generous Program for Refugee Resettlement Is Undermined by Human Smugglers Who Abuse Canada's Immigration System"<sup>21</sup> The media release describes refugees waiting for resettlement as:

waiting patiently and legally in the refugee queue to come to Canada. These refugees choose to wait for the chance to come to Canada legally, rather than pay human smugglers to help them jump the queue. The Government of Canada appreciates their respect for our laws. In the fullness of time, that patience will be rewarded for many with a letter from Citizenship and Immigration Canada welcoming them to the Canadian family.

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*and Mail* (13 August 2010) A1.

<sup>17</sup> "Keeping a Lookout for Tigers," Editorial, *The Globe and Mail* (12 August 2010) A16.

<sup>18</sup> Bill C-49, *Preventing Human Smugglers from Abusing Canada's Immigration System Act*, 3d Sess, 40th Parl, 2010.

<sup>19</sup> *Ibid* at ss 3-4, 9.

<sup>20</sup> Canadian Council for Refugees, Media Release, "Government bill punishes refugees" (21 October 2010) online: CCR <<http://www.ccrweb.ca/en/bulletin/10/10/21>>.

<sup>21</sup> Public Safety Canada, News Release, "Canada's generous program for refugee resettlement is undermined by human smugglers who abuse Canada's immigration system" (21 October 2010) online: PSC <<http://www.publicsafety.gc.ca/media/nr/2010/nr20101021-6-eng.aspx>>.

Two days later, CIC issued a news release indicating Canada will extend its resettlement measures for Iraqi refugees for at least two additional years.<sup>22</sup> The release quoted Minister Kenney repeating the queue-jumping allegations from the backgrounder:

It is unfair to those seeking to come to Canada through legitimate, legal means such as the measure I am announcing today, when others pay human smugglers to help jump our immigration queue. When this happens, Canada's immigration system becomes less fair, and less balanced.

The government's rhetoric is misrepresenting the complementary history of Canadian refugee law, the reality of minimal resettlement numbers, the extent of the government's commitment to increase resettlement, and the legitimacy of asylum seekers entering Canada by any means possible.

### A COMPLEMENTARY SCHEME

Canada ratified the 1951 Refugee Convention and its 1967 Protocol on 4 June 1969.<sup>23</sup> The *Immigration Act, 1976*,<sup>24</sup> was the first Canadian legislation to place government refugee policy in statutory form by recognizing refugees as an immigrant class,<sup>25</sup> and set out a process for refugee admissions. By signing the Convention, Canada promised not to send back, or *refoule*, refugees who claimed asylum in Canada. Article 31 of the Refugee Convention prevents the imposition of penalties for illegal entry by asylum seekers. There is an implicit recognition in signing the 1951 Convention that refugees may come to Canada. That these refugees might need to enter a country illegally in order to make their refugee claim was predicted, addressed and accepted by the 1951 Convention and its signatories, including Canada.

Yet at the outset of Canada's refugee legislation, overseas resettlement was at the forefront of Canadian refugee protection. This was because so few refugees had access to Canada, legally or otherwise. As recently as 1986 and 1987, Canada's *Annual Report to Parliament on Immigration* states that "Canada's refugee program is directed primarily toward persons in legitimate need of third country resettlement; that

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<sup>22</sup> Citizenship and Immigration Canada, News Release, "Canada to resettle more Iraqi refugees" (23 October 2010) online: CIC <<http://www.cic.gc.ca/english/department/media/releases/2010/2010-10-23.asp>>.

<sup>23</sup> UNHCR, *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol* online: UNHCR <<http://www.unhcr.org/protect/3c0762ea4.html>>.

<sup>24</sup> SC 1976-77, c 52.

<sup>25</sup> *Ibid*, s 2(1).

is, people who cannot be repatriated voluntarily or settled in first-asylum countries.”<sup>26</sup> Canada was not a first-asylum country. The 1990 *Annual Report to Parliament on Future Immigration Levels* was the first time Canada acknowledged that it “has become a country of first asylum for thousands of people.”<sup>27</sup> The acknowledgement was tied to the implementation of a new in-Canada refugee determination system on January 1, 1989.<sup>28</sup> The follow up report in 1991 was the first to include a new section on “The Refugee Determination System.”<sup>29</sup> It acknowledged the shifting focus of the program from resettlement toward a dual protection system: “The government remains committed to its program for resettlement of refugees from abroad. However, Canada’s program is moving away from resettling mass movements of persons... towards emphasis on protection cases.”<sup>30</sup> With access to asylum increasing, both resettlement and *non-refoulement*, the international law that obliges signatory states to not send back refugees who have arrived within the state’s territory, were recognized as necessary protection tools.

The Overseas Processing Manual that guides Canadian visa officers in resettlement admission determinations begins with the statement:

The objective of Canada’s Refugee and Humanitarian Resettlement Program is to uphold Canada’s humanitarian tradition in the resettlement of refugees and persons in “refugee-like” situations. It is a discretionary program that complements Canada’s in-Canada refugee determination system, which fulfils Canada’s obligations under the *1951 Convention Relating to the Status of Refugees* (the Refugee Convention) to provide asylum and protection to Convention refugees who arrive on Canadian soil.<sup>31</sup>

Despite this clear direction to its visa officers, recent statements by the government seem to have forgotten both that resettlement and in-country refugee asylum claims are complementary rather than contradictory programs and that it is the in-country asylum claims that fulfill Canada’s international legal obligations.

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<sup>26</sup> Employment and Immigration Canada (Dept.), *Annual Report to Parliament on Future Immigration Levels* 1986 (Ottawa: Employment and Immigration Canada, 1986) at 8; Employment and Immigration Canada (Dept.), *Annual Report to Parliament on Future Immigration Levels* 1987 (Ottawa: Employment and Immigration Canada, 1987) at 10.

<sup>27</sup> Employment and Immigration Canada (Dept.), *Annual Report to Parliament: Immigration Plan for 1991-1995* (Ottawa: Employment and Immigration Canada, 1990) at 5.

<sup>28</sup> *Ibid* at 5, 11.

<sup>29</sup> Employment and Immigration Canada (Dept.), *Annual Report to Parliament: Immigration Plan for 1991-1995 Year Two* (Ottawa: Employment and Immigration Canada, 1991) at 10.

<sup>30</sup> *Ibid* at 7.

<sup>31</sup> Citizenship and Immigration Canada, *OP5: Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-Protected Persons Abroad Classes* (2006) at 8 online: CIC < <http://www.cic.gc.ca/english/resources/manuals/op/op05-eng.pdf>>.

The resettlement of refugees is a voluntary action completely within the discretion of the Canadian government. The government is free to increase or decrease resettlement numbers and is not legally bound to operate a resettlement program at all. Relatively speaking, Canada has a strong resettlement program. Combined, Canada, Australia and the United States receive 90% of UNHCR's resettlement referrals.<sup>32</sup> They are Western states far removed from refugee flows. In-country claims of asylum triggering *non-refoulement* occur but never in the numeric masses encountered by the refugee receiving countries neighbouring refugee producing countries. Large-scale resettlement programs serve to recognize these geographic realities and contribute to international refugee burden sharing. For this, Canada should be commended.

Yet, while CIC's resettlement backgrounder highlights that Canada resettles one out of every ten refugees resettled globally, it fails to acknowledge that just over 1 percent of the global refugee population is in fact resettled.<sup>33</sup> The impression the Minister of Immigration is presenting of refugees waiting patiently for the chance of resettlement belies the reality that resettlement more closely resembles a "ticket in a lottery" than a place in a queue.<sup>34</sup> Resettlement, even in increased numbers, is a solution for very few of the world's refugees. It cannot and will not replace direct in-country asylum claims.

### MISLEADING NUMBERS

Twice in 2010, the Canadian government paired announcements of restrictive refugee policy with increased resettlement. This pairing wrongly presents a dichotomy of resettlement refugees as genuine and asylum seeking refugees as undeserving queue jumpers. While this rhetoric seeks to justify a preference for resettlement, the reality is that the government increases to resettlement numbers are not as clear or as large as presented. The Canadian resettlement program consists of both government-assisted refugees, who receive government support and sponsored refugees who are supported by private groups. Government-assisted refugees make up the majority of resettled refugees with privately sponsored refugees amounting to 40% of yearly resettlement in 2009, and an average of just over 30% in the preceding four years.<sup>35</sup> The resettlement increase announced in advance of the first 2010 reform is a commitment to resettle

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<sup>32</sup> United States Department of State, United States Department of Homeland Security, United States Department of Health and Human Services, (Submitted on Behalf of the President of the United States) *Proposed Refugee Admissions for Fiscal Year 2010* Report to the Congress at 3.

<sup>33</sup> *Supra* note 4 at 12.

<sup>34</sup> Refugee Council of Australia, *The Size and Composition of the 2000-2001 Humanitarian Program: Views from the Community Sector* (Refugee Council of Australia: Camperdown, NSW, 2000) at 53.

<sup>35</sup> Citizenship and Immigration Canada, *Facts and Figures 2009- Immigration Overview: permanent and temporary residents*, online: CIC <[www.cic.gc.ca/english/resources/statistics/facts2009/permanent/01.asp](http://www.cic.gc.ca/english/resources/statistics/facts2009/permanent/01.asp)>.

2,500 more refugees. However, only 500 of these refugees are from the Government-Assisted Refugees Program, the remaining 2,000 come from the private sponsorship program. The actual numeric consequences of this commitment are not known at the time of writing this article.

Every year the government announces a numeric range for resettlement and aims to resettle within that range. Annual resettlement targets are established by the Minister of Citizenship and Immigration following consultations with CIC, provincial governments, Canadian non-governmental organizations and UNHCR. The annual resettlement target is then allocated among visa offices on the basis of estimated resettlement need, although additional places can be requested.<sup>36</sup> For 2010, the range given in the 2009 Annual Report to Parliament for government-assisted refugees was 7,300 to 8,000.<sup>37</sup> The lower number of 7,300 has been maintained since 2005. The 2010 range marks an increase to the upper number, which previously sat at 7,500. Yet there is no guarantee of actual increased resettlement without an increase to the lower end. Even with such a lower end increase, the government failed to meet the lower threshold of 7,300 in 2008.

The 2010 range for private sponsorship was 3,300 to 6,000.<sup>38</sup> While there was no change from the two previous years in the lower end of this range, the upper end marked an increase from the limit of 4,500 of the last three years. In 2007, the Standing Committee on Citizenship and Immigration released a report in which they addressed the Government's tendency to change upper but not lower thresholds.<sup>39</sup> The Standing Committee recommended the Government increase the lower threshold from 3,000 to 4,000.<sup>40</sup> The Government responded with an increase of just 300 in 2008.<sup>41</sup> The Canadian Council for Refugees has noted that, while the 2009 private sponsorship numbers marked a significant increase,<sup>42</sup> the total number of refugees granted permanent residence in 2009 was significantly lower at 22,844 than the decade average of 28,000.<sup>43</sup>

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<sup>36</sup> Government of Canada, "Country Chapter: CANADA" in *Resettlement Handbook*, *supra* note 3 at 3.

<sup>37</sup> Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration 2009*, Section 2 online: CIC <<http://www.cic.gc.ca/english/resources/publications/annual-report2009/section2.asp>>.

<sup>38</sup> *Ibid.*

<sup>39</sup> House of Commons Standing Committee on Citizenship and Immigration, *Safeguarding asylum: sustaining Canada's commitments to refugees*, Norman Doyle, MP, Chair (Ottawa: Standing Committee on Citizenship and Immigration, 2007) at 4.

<sup>40</sup> *Ibid* at 8.

<sup>41</sup> *Supra* note 37.

<sup>42</sup> *Supra* note 35.

<sup>43</sup> Canadian Council for Refugees, Media Release, "CCR welcomes opening of door to more privately sponsored refugees" (21 July 2010) online: CCR <<http://ccrweb.ca/en/bulletin/10/07/21>>.



It is unclear what difference the announced 2,000 increase to private sponsorship will make. Sponsorship did not meet the upper limit in 2008.<sup>44</sup> The government cannot simply increase private sponsorships by fiat; citizens are required to take on the obligations and expenses. Private sponsorship enables groups of individuals and private organizations to sponsor refugees for resettlement. The sponsorship group takes on the responsibility of providing assistance, accommodation, and support for up to one year. While the Canadian government covers the administrative costs of the program, private individuals provide the financial support attached to settling the refugees. In 2006, the Canadian Council for Refugees assessed the annual financial costs of private sponsorship at \$79 million, with an additional volunteer contribution of more than 1,600 hours per refugee family.<sup>45</sup> It is questionable for the government to boast of intending to accomplish a task it has left to private citizens. It is also questionable whether such a promise can actually be fulfilled.

## CONCLUSION

The recent discourse, coming from both the government and the media, represents an increasing tendency to conflate the protection categories of asylum and resettlement and present them as interchangeable, thereby justifying a focus on resettlement at the expense of asylum. But the truth is that there is no refugee queue and only one door permitting access to asylum and resettlement. The government is legally obliged to keep that door open for asylum seekers and chooses to resettle additional refugees. Resettlement cannot replace asylum as the only entry through the door. Images and allusions to queue-cutting and entrance through the back door are misleading and detrimental to responsible protection. Any increased focus on resettlement must not be in exchange for reduced access to asylum or an abandonment of the commitment to *non-refoulement*.

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<sup>44</sup> *Supra* note 37. Only 3,512 refugees came to Canada under the private sponsorship program in 2008 despite the previous upper range of 4,500.

<sup>45</sup> Canadian Council for Refugees, *The Private Sponsorship of Refugee Program: Current Challenges and Opportunities* (April 2006) at 2, online: CCR <<http://www.ccrweb.ca/PSRPBriefing.pdf>>.