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Adjudication lottery for refugees

Sean Rehaag

Toronto Star (30 August 2007) A8.

This summer, the minister of citizenship and immigration announced revisions to the appointment procedures for new Immigration and Refugee Board adjudicators. Under the revised process, the minister has a direct role in naming members of a body that will screen candidates for IRB appointments.

The Canadian Council for Refugees, the Canadian Bar Association and the former IRB chair, Jean-Guy Fleury, have all criticized the new procedures for unduly politicizing the appointment process.

Among the most difficult decisions IRB adjudicators make are refugee determinations. False negative decisions can result in refugees being returned to countries where they face persecution, torture or even death. Conversely, too many false positive decisions may jeopardize the refugee determination system as a politically viable institution if public perception that the system is open to abuse becomes widespread.

Unfortunately there is serious cause for concern regarding the quality of Canadian refugee determinations. Particularly troubling is that, according to data recently obtained through Access to Information procedures, refugee claim grant rates in 2006 fluctuated wildly among IRB adjudicators.

Some adjudicators accorded refugee status in virtually every case they heard, including Robert Owen (100 per cent) and Gilles Ethier (95 per cent). In contrast, others accorded refugee status in only a handful of cases, such as Roger Houde (7 per cent) and Suparna Ghosh (9 per cent).

The IRB argues that variations in grant rates are due to how cases are assigned. Some adjudicators receive a high volume of expedited cases, which frequently result in positive decisions because cases are expedited only if they appear to be well-founded. Some adjudicators specialize geographically, hearing

cases from countries with especially high or low grant rates.

Case assignment, however, does not fully account for the variations in grant rates. For example, in unexpedited cases from China, Thomas Pinkney (82 per cent) had much higher grant rates than Diane Tinker (44 per cent). Similarly in unexpedited cases from Nigeria, Susan Kitchener (92 per cent) accorded refugee status much more frequently than Ken Sandhu (15 per cent).

In fact, massive disparities in grant rates across IRB adjudicators persist, even when these rates are adjusted to take into account expedited cases and country of origin.

In recent years, measures have been taken to insulate IRB appointments from political patronage. As a result, until last week, two different bodies vetted candidates for appointments. Political actors had no direct role in naming the members of one of these bodies.

Even then, adjudicators with dramatically divergent approaches to refugee adjudication continued to receive appointments – as indicated by the differences in grant rates.

In this context, the recently announced changes to the selection process, and in particular the increased prominence of the minister in the process, do not bode well.

Many refugees in Canada have fled countries where political interference in adjudicative institutions runs rampant. For such refugees, the enhanced role of political actors in IRB appointments – and the inconsistency of the decisions made by IRB appointees – must seem eerily familiar.

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