

# Race and Nationality Restrictions in the Immigration Act: Is a Revision Overdue?

Allen M. Linden

*Osgoode Hall Law School of York University*

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>  
Commentary

## Citation Information

Linden, Allen M.. "Race and Nationality Restrictions in the Immigration Act: Is a Revision Overdue?." *Osgoode Hall Law Journal* 2.2 (1961) : 243-254.

<http://digitalcommons.osgoode.yorku.ca/ohlj/vol2/iss2/6>

This Commentary is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

**RACE AND NATIONALITY RESTRICTIONS IN THE IMMIGRATION ACT: IS A REVISION OVERDUE?** Canada's position in a Commonwealth of Nations embracing Anglo-Saxon as well as Afro-Asian nations is one of challenge. We have the singular opportunity to demonstrate that we can adjust to an international society of multi-racial equals within the Commonwealth and without. In this time of peril, we must re-assess our immigration policy. It must be consistent with the ideals to which we profess to adhere, since we offer these ideals to the emerging nations as alternatives to the Communist route to national maturity.

---

<sup>17</sup>Dr. Fox suggests that the inherent nature of a patent right would prohibit one co-owner from dealing with his interest so as to diminish the share in the monopoly enjoyed by the co-owner.

<sup>18</sup>A license prevents that from being unlawful which, but for the license, would be unlawful.

<sup>19</sup>It is suggested, that one co-owner may grant an exclusive licence, reserving in himself no interest in the patent. In such case, the share of the monopoly enjoyed by the other co-owner would not be reduced since the licensee would in effect, be stepping into the shoes of his licensor (co-owner) for the duration of the period.

\*Mr. Ord is in the Second Year at Osgoode Hall Law School.

Our deeds do not match our words. Our immigration policy has failed to keep abreast of changing conditions in a time of social upheaval. It continues to harbour racial and national prejudice, secret quotas, administrative abuses, and lack of effective judicial review. Major revision is long overdue.

A: *ADMISSION TO CANADA*

I: *Non-immigrants*

Our *Immigration Act* is a hybrid. It does not set out groups of prohibited persons and then provide for the admission of all others. It does not set out the persons who shall be admitted and then exclude all others. It adopts parts of both these methods by prohibiting some categories from entry and by creating other groups from which prospective applicants may be admitted.

A person may be allowed to enter Canada as a non-immigrant<sup>1</sup> if he is a diplomatic or consular officer, representative or official of another country coming to Canada to carry out his official duties. Visiting armed forces and their families, tourists, visitors, clergymen who enter to carry out their calling, people passing through Canada on their way to another country, students attending Canadian schools, entertainers, athletes, seasonal workers, members of crews, persons entering Canada for treatment, persons passing through under guard and holders of special permits issued by the Minister may also be allowed to enter.<sup>2</sup>

However there are categories of persons who are excluded on specified medical, moral, and social grounds.<sup>3</sup> There are other less definite categories of persons excluded. Wide discretion is given to the Special Inquiry Officer<sup>4</sup> to exclude any person who in his opinion is likely to be come a public charge and anyone who is suspected on reasonable grounds of being likely to engage in drug peddling. Persons who promote or who are or were members of any organization with regard to which there are reasonable grounds for believing that it promotes . . . by force or other means the subversion of democratic government, institutions or processes, as they are understood in Canada, may be kept out unless they satisfy the Minister that they are no longer associated with the organization.<sup>5</sup> Adherents to unpopular political creeds may be easily excluded under pretext of non-compliance with this vaguely worded provision.

---

<sup>1</sup> *Immigration Act*, R.S.C. 1952, c. 325, s. 2(s) referring to s. 7(1),(2).

<sup>2</sup> *Ibid.*, s. 7.

<sup>3</sup> *Ibid.*, s. 5. The category includes morons, psychopaths, prostitutes, spies, vagrants, chronic alcoholics et al.

<sup>4</sup> The Special Inquiry Officer has powers under ss. 11(2), (3), 24, 25, 27-29.

<sup>5</sup> See Act, s. 5(h), (k), (l), (m).

Other members of the family accompanying a non-admissible person may not be admitted, unless in the opinion of the Special Inquiry Officer, no hardship would be involved by the separation of the family.<sup>6</sup> Persons who are not in the opinion of the officer bona fide immigrants or non-immigrants are excludible.<sup>7</sup>

Section 61 of the *Immigration Act* empowers the Governor-in-Council to pass regulations concerning other requirements with regard to the admission of persons to Canada. Regulations may be passed respecting literacy and medical tests.<sup>8</sup> Regulations may prohibit or limit the admission of persons by reason of (i) nationality, citizenship, ethnic group, occupation, class or geographical area of origin, (ii) peculiar customs, habits, modes of life or methods of holding property, (iii) unsuitability having regard to climate, economic, social, industrial, education, labour, health or other conditions or requirements existing, temporarily or otherwise in Canada or in the area or country from or through which such persons come to Canada, or (iv) probable inability to become readily assimilated or to assume the duties or responsibilities of Canadian citizenship within a reasonable time after their admission.<sup>9</sup> This section, it is submitted is the most abused and open to abuse of any in the Act.

Under regulations passed pursuant to these powers, every person seeking admission other than citizens of the U.S.A.<sup>10</sup> must have a passport of the country of which he is a subject.<sup>11</sup> The passport shall carry the visa of a Canadian Immigration Officer or Consular Officer<sup>12</sup> but British Subjects of the United Kingdom, Australia, New Zealand, Union of South Africa and French and American citizens need no visa.<sup>13</sup> A medical certificate is necessary to demonstrate that a person is not among the prohibited classes by reason of physical disability.<sup>14</sup>

## II: Immigrants

No person who would be excluded as a non-immigrant may land as immigrant.<sup>15</sup> Additional barriers, however, are placed in the way of the proposed immigrant, if he is dumb, blind or otherwise physically defective.<sup>16</sup> One would have thought that, after avoiding classification into any one of the above categories, the potential immigrant could land in Canada without further difficulty. This is

<sup>6</sup> *Ibid.*, s. 5(o).

<sup>7</sup> *Ibid.*, s. 5(p).

<sup>8</sup> *Ibid.*, s. 61(b).

<sup>9</sup> *Ibid.*, s. 61(g).

<sup>10</sup> P.C. 1956-1410.

<sup>11</sup> P.C. 1956-785; Reg. 18(1).

<sup>12</sup> P.C. 1956-785; Reg. 18(3).

<sup>13</sup> *Ibid.*, Reg. 18(6).

<sup>14</sup> *Ibid.*, Reg. 18(8) referring to *Immigration Act* s. 5(a), (b), (c), (s).

<sup>15</sup> An immigrant is a person who seeks admission to Canada for permanent residence: See Act s. 2(i). Notice that an immigrant "lands" in Canada rather than merely entering: See Act s. 2(n).

<sup>16</sup> See Act s. 5(c) *supra* footnote 1. Such a person will not be landed unless he can support himself or is a member of a family that can give security that he will not become a public charge.

not the case. Regulations 20 and 21<sup>17</sup> set out further hurdles for the prospective immigrant. Landing is prohibited except where the person falls within one of the following classes of persons provided that such person meets the general requirements of the Act and the regulations made thereunder:

(a) a British subject of the United Kingdom, New Zealand, Australia, Union of South Africa, Ireland or a citizen of France or the United States of America, if such person has sufficient means to maintain himself in Canada until he has secured employment.

(b) a citizen of Austria, Belgium, Denmark, Germany, Finland, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, or Switzerland. . . . if he undertakes to come to Canada for placement under the auspices of the department if the department has given its approval thereto for establishment in business, trade, profession or agriculture. No sponsor is necessary under this section. It must be noted that whole families are not included here, but merely the wage-earner who must later apply to sponsor his family's landing.

(c) a citizen of Egypt, Israel, Lebanon, Turkey or other European, North American, Central American, or South American country if he is the husband, wife, son, daughter, brother, sister, grandparent, or fiancé of a Canadian citizen or person legally admitted to Canada for permanent residence who is residing in Canada and who has applied for any such person and is in a position to receive and care for any such person.

(d) citizens of countries other than those mentioned above and including the above may be landed in similar circumstances except that relationship to a Canadian citizen is necessary, rather than to merely a landed immigrant. The degree of relationship is also narrowed to a husband, wife, natural-born child under 21 who is legitimate according to Canadian law, father over 65, and mother over 60 years of age.

(e) by an agreement made with the governments concerned, no more than 150 citizens of India, 100 from Pakistan, and 50 from Ceylon may be landed yearly. This number is in addition to those who can meet the stringent requirements of (d).

### *III: Effect of Our Admission Policies*

It is clearly discernible that racial and national prejudice is woven into the fabric of our immigration laws. Asians and Africans will find it nearly impossible to qualify as sponsored immigrants and are not allowed to enter under the auspices of the Department.<sup>18</sup> Middle-East inhabitants and Latin-Americans will find it slightly less

<sup>17</sup> P.C. 1956-785. These regulations were passed under the enabling s. 61(g).

<sup>18</sup> Of the 20 foreign immigration offices of Canada, only 2 are not in Europe—1 is in Hong Kong; 1 is in New Delhi.

difficult to qualify for sponsorship. On the other hand, certain Commonwealth citizens and most Europeans will more easily qualify for landing.

It is then alleged that there are also preferences for certain European nationalities expressed by means of "secret quotas". Even if persons qualify to be sponsored immigrants, only fixed numbers from each country may be admitted. Nowhere is there any statutory or regulatory guides on the method of fixing these quotas. In fact, immigration officials deny their existence. Although it is claimed that immigrants are selected according to occupational skills they possess, it is admitted that approximately 30,000 Italians are landed each year, apparently by coincidence. The provisions with regard to India, Pakistan and Ceylon, though odiously meagre, are laudable in their candour, at least.

Too much discretion is left to the officials in the Department. The Act gives the Minister power to make regulations. This mechanism allows the Department to direct the immigration policy as it wills. Many of the exclusionary groups are vaguely worded to allow subjective considerations to enter. Visas, in the last analysis, are issued only to those whom the officials wish to admit. There is no way to force the issuance of a visa by mandamus, nor is there any way of compelling a hearing on Canadian soil to determine whether a visa will be issued.<sup>19</sup>

The spirit of our immigration policy is well manifested in one of the early immigration cases, *Re Munshi Singh*.<sup>20</sup> Singh, a citizen of India had attempted to land in Canada, but was ordered deported. Mr. Justice McPhillips in the British Columbia Court of Appeal agreed in the Court's decision upholding the order and articulated what was probably the true basis of the decision as follows:

"... The Hindu race, as well as the Asiatic race in general, are in their conception of life and society, fundamentally different to the Anglo-Saxon and Celtic race and European races in general.

Further acquaintance with the subject shews that the *better classes* of the Asiatic races are not given to leave their own countries . . . and those who become immigrants are, without disparagement to them, *undesirables* in Canada, where a different civilization exists. The laws of this country are unsuited to them, and their ways and ideas may well be a *menace* to the well-being of the Canadian people.

<sup>19</sup> *Re Iantorono*, (1959), 123 C.C.C. 143.

<sup>20</sup> (1914), 20 B.C.R. 243, at 281, 290, 291, and 292; (1914) 6 W.W.R. 1347, 1379, 1380 and 1381. Singh arrived in Canada with \$20 and testified before the Board of Inquiry, that he had been a farmer in India, and intended to buy a farm in Canada. In those days the regulations excluded unskilled labourers and required that Asiatics have \$200 with them on landing. He stated that he had feared being looted on the way, but that he could have \$200 sent to him. The only evidence to the contrary was that of the Immigration Inspector, who said that he did not believe Singh, since one could not buy a farm for \$20 and since 90% of the East Indian immigrants were labourers. On these facts the B.C. Court of Appeal upheld the deportation order without a dissenting voice. McPhillips J.A. said at p. 281 that . . . "the facts *overwhelmingly* prove that the appellant is attempting to land in Canada in plain defiance of the law". (Italics mine).

. . . The Parliament of Canada—the nation's Parliament, may well be said to be safeguarding the people of Canada from an influx which . . . might annihilate the nation and change its whole potential complexity, introduce Oriental ways as against European ways, Eastern civilization for Western civilization and all the dire results that would naturally flow therefrom. . . .

In that our fellow British Subjects of the Asiatic race are of different racial instincts to those of the European race . . . *in their own interests* their proper place of residence is within the confines of their respective countries, not in Canada where their customs are not in vogue and their adhesion to them here only gives rise to disturbances destructive to the well-being of society. . . .

Better that peoples of non-assimilative—and by nature properly non-assimilative—races should not come to Canada, but rather, that they should remain of residence in their country of origin and there do their share, as they have in the past, in the preservation and development of the Empire”.

Thus Singh, who was obviously not one of “the better classes” of Indians, was deported for racial reasons in order to protect the purity of the Anglo-Saxon, Celtic and European strains in our national make-up.

## B: *EXPULSION OF ALIENS*

### I: *Who May be Deported*

If an alien is within one of the prohibited categories, or after admission becomes a member of such category, he may be deported. A person who has acquired a Canadian domicile may be deported only for subversion, espionage, sabotage and drug peddling.<sup>21</sup> The burden of proving he is not prohibited is on the person seeking admission.<sup>22</sup>

Every person who seeks to enter Canada is presumed to be an immigrant until he satisfies the Officer that he is not.<sup>23</sup>

### II: *Hearing*

Where the Immigration Officer is of the opinion that a person is within one of the prohibited classes of persons he shall report to the Special Inquiry Officer. He shall cause an inquiry to be held separate and apart from the public, but in the presence of the person concerned, wherever practicable. The person concerned may be represented by counsel at this hearing, at his own expense.<sup>24</sup>

### III: *Appeals*

In cases of medical disability and where a permit was granted and revoked, no appeal is allowed. In other cases there is an appeal to the Minister. He may direct that an Immigration Appeal Board hear the appeal, but the Minister may review any decision and supplant it by his own. The Minister's decision, and the Board's if not

<sup>21</sup> See Act s. 4, s. 5, s. 6.

<sup>22</sup> *Ibid.*, s. 27(4).

<sup>23</sup> *Ibid.*, s. 6.

<sup>24</sup> *Ibid.*, ss. 23, 24, 25, 27.

upset by the Minister, is final.<sup>25</sup> No appeal to the Court is provided for at any stage.

#### IV: General Board of Immigration Appeals

A General Board of Immigration Appeals has been set up to deal with appeals from deportation orders.<sup>26</sup> It is available only to those persons who have gained admission, and not to those who are turned away in the first instance. The Immigration Officer, when served with the Notice of Appeal, must send it to the Board if it is within the jurisdiction of the Board.<sup>27</sup> It is submitted that this question should be decided by the Board itself, and that these words should be deleted from the regulation to avoid misunderstanding. Provision is made for the appellant to appear with counsel and to submit oral or written representations.

A time and place for hearing is fixed by the Board and notice given to the appellant.<sup>28</sup> If at the time fixed written argument has not been received and the appellant is not present, the Board shall dispose of the appeal on the material before it and the appellant shall be deemed to waive all his rights to submit oral or written representations.<sup>29</sup>

The appellant who is in custody is required not only to supply transportation for himself but also for his escort.<sup>30</sup> The Board is not allowed to order costs against the Crown nor can it require Her Majesty to incur any expenses on behalf of the appellant.<sup>31</sup>

This provision could be very easily abused. In a vast country such as Canada the place of trial can be such that the appellant might require a great deal of money to be present at the hearing. It should be provided either that the hearing be held where the appellant resides or, in the alternative, that transportation be supplied the appellant to and from the hearing to prevent injustice. It is also unfair that, in the event of non-appearance at the specified time and place, all rights to argue are waived. There is no need for such a harsh penalty for absence.

The Board must give its decision in writing,<sup>32</sup> however, and this makes the *certiorari* remedy loom large in the deportee's arsenal since errors of law may be more readily visible on the face of the record.

---

<sup>25</sup> *Ibid.*, ss. 30, 31.

<sup>26</sup> S.O.R. 59-366, Canada Gazette Oct. 14, 1959 at 950.

<sup>27</sup> *Ibid.*, Reg. 6.

<sup>28</sup> *Ibid.*, Reg. 9.

<sup>29</sup> *Ibid.*, Reg. 10.

<sup>30</sup> *Ibid.*, Reg. 14.

<sup>31</sup> *Ibid.*, Reg. 13.

<sup>32</sup> *Ibid.*, Reg. 12.

### C: JUDICIAL REVIEW

Judicial review may be secured only through the prerogative writs of *certiorari*, prohibition, and *habeas corpus*, if the applicant is in custody.<sup>33</sup> On such an application the Court is unable to examine the sufficiency of the evidence. The Minister, on the other hand may do so in his review.<sup>34</sup>

It must also be noted that Parliament has enacted a privative clause<sup>35</sup> which purports to withdraw the power of the Court to review, quash, reverse, or restrain any decision of deportation. Why officials acting in excess of jurisdiction or contrary to natural justice or under manifest error of law should be protected is difficult to comprehend. It is pleasing to state that this clause is usually ignored by the Courts which have created a convenient fiction. Since the official or board is acting outside the jurisdiction given to him, he will not come under the aegis of the Act and thus will not be protected by the privative clause contained in the Act.<sup>36</sup>

There is a clash of judicial approach and temperament revealed in the cases. In *Masella v. Langlais*,<sup>37</sup> Mr. Justice Abbott indicated his views on the problem as follows:

"Immigration to Canada by persons other than Canadian citizens or those having Canadian domicile is a privilege determined by statute, regulation or otherwise and is not a matter of right. In the Immigration Act, Parliament has set up machinery for the control of immigration to this country and for the selection of prospective immigrants. To accomplish this purpose, very wide discretionary powers are given to the Governor-in-Council and to the Minister and perhaps it is necessary that this should be so. An example of these wide discretionary powers is found in S. 4 . . . in virtue of which the Minister is given in effect an absolute discretion to determine who is or who is not a suitable immigrant".

A person, who first enters Canada as a non-immigrant and later ceases to be one by forming an intention to permanently reside in Canada, must report these facts to the Immigration Officer and present himself for examination. He is then deemed to be a person seeking admission to Canada and thus subject to all the requirements of the Act. He has no higher rights than anyone seeking admission at a port of entry, and may be deported in the same way as one of the latter.<sup>38</sup>

<sup>33</sup> *Arvo Vaaro et al v. Rex*, [1933] S.C.R. 36 affirming S.C.N.S. in (1932), 5 M.P.R. 151. Persons who advocated overthrow of the government were ordered deported.

<sup>34</sup> *Ex parte Brent*, [1955] O.W.N. 419, O.R. 480; [1956] S.C.R. 318. See also *Masella v. Langlais*, [1955] S.C.R. 263; [1955] 4 D.L.R. 346.

<sup>35</sup> S. 39.

<sup>36</sup> *Attorney-General for Canada v. Brent*, [1956] S.C.R. 318; [1955] O.R. 480. See also generally *Toronto Newspaper Guild v. Globe Printing Co.*, [1953] 2 S.C.R. 18; 3 D.L.R. 561; affirming [1952] O.R. 345; 100 C.C.C. 318; [1952] 2 D.L.R. 302 (Ont. C.A.).

<sup>37</sup> [1955] S.C.R. 263 at 281; [1955] 4 D.L.R. 346 at 362—an Italian immigrant was ordered deported since his visa was improperly issued to him abroad, although he does not appear to have been at fault.

<sup>38</sup> S. 7(3); See *Re Mannira* (1959), 17 D.L.R. (2d) 482; [1959] O.W.N. 109 (Ont. C.A.)—non-immigrant who wished to remain in Canada was ordered deported since he lacked a visa and a medical certificate.

A fugitive criminal has been held unable to acquire a Canadian domicile and is therefore subject to deportation when found out. Anyone who enters illegally by means of fraud or false representations may be deported. The same is true for one who enters legally but later becomes one of the excluded individuals.<sup>39</sup>

Mere delay while awaiting a passport from the deportee's country of origin before deporting him thereto did not justify *certiorari*, even though the Act did require at that time that the person "shall be deported forthwith after the granting of the order".<sup>40</sup> The Act now provides for deportation "as soon as practicable".<sup>41</sup> A deportation order will not become invalid now on the ground of lapse of time between its making and execution.<sup>42</sup>

The rules of criminal law with regard to the requisite exactness of an indictment do not apply to complaints under the Act. The conduct objected to must be made known to the alien with reasonable certainty, although the date when and the place where the act was committed need not be stated.<sup>43</sup>

A deportation order is not necessarily invalidated if one reason given for expulsion is bad while another proper reason is given in the same order.<sup>44</sup>

In these cases, the conduct was held not flagrant enough to require judicial action. Yet, in other cases, Canadian judges have utilised *certiorari* to oversee Department action. In *Ex parte Manñira*,<sup>45</sup> Mr Justice Ferguson quashed a deportation order. He stated that the applicants were governed by the statute and not by the various opinions of the Officers. The applicant had lacked a visa when he tried to remain in Canada after being admitted as a non-immigrant. Ferguson J. rejected the argument that a visa had to be obtained outside of Canada and said:

"The inquiry . . . became a farce—in ordering the applicant deported because he didn't have that which he was applying so earnestly to get from the persons empowered to give it to him".<sup>46</sup>

In *Attorney-General for Canada v. Brent*,<sup>47</sup> *certiorari* was granted on the ground that the Governor-in-Council could not delegate all the power to make regulations delegated to him in section 61 to the Immigration Officer.

---

<sup>39</sup> *Degridakis v. Reginbald* (1917), 36 D.L.R. 367 (Que. Sup. Ct.).

<sup>40</sup> *Re Jamocžka* (1932), 40 Man. R. 494; [1932] 3 W.W.R. 29; [1933] 1 D.L.R. 123 (Man. C.A.).

<sup>41</sup> S. 33(1).

<sup>42</sup> S. 33(2).

<sup>43</sup> *Arvo Vaaro et al v. Rex*, *supra* footnote 33.

<sup>44</sup> *Ex parte Marigny*, [1948] S.C.R. 155 at 160.

<sup>45</sup> [1958] O.W.N. 461.

<sup>46</sup> *Ibid.* at 462.

<sup>47</sup> [1956] S.C.R. 318; affirming [1955] O.R. 480; 3 D.L.R. 587 (Ont. C.A.).

*Samejima v. The King*<sup>48</sup> was a case in which a Japanese citizen was landed on the basis that he would work as a domestic. His prospective employer, however, had failed in business and after a hearing Samejima was ordered deported. This order was quashed because of the vagueness of the complaint. The order was amended and he was again ordered deported but without allowing him the luxury of another hearing. The Supreme Court of Canada held that a quashed order was a nullity and could not be amended. A new complaint had to set out the allegations relied on and another hearing had to be held in the proper spirit of the Act. Mr. Justice Duff expressed his disgust at the manner in which the Department acted as follows:

(I am) . . . "horrified at the thought that the personal liberty of a British subject should be exposed to the *hugger-mugger* which, under the name of legal proceedings, is exemplified by some of the records that have incidentally been brought to our attention".<sup>49</sup>

#### D: CONCLUSIONS

The above outline it is suggested indicates that there are several areas where revision is long overdue if Canada wants her deeds to accord with her words.

Section 61(g) and regulations 20 and 21 must be cleansed for their patent and inexcusable racial and national prejudices. By virtue of these provisions Asians, Africans and others with coloured pigment in their skin find it almost impossible to immigrate to Canada. Racial and national prejudice should find no haven in Canadian statutes. A man can change his occupation, perhaps, but he cannot change his place of origin nor his skin pigmentation. Exclusion of immigrants for these reasons is a denial of the basic precepts of democratic philosophy. It is obvious hypocrisy to exclude Afro-Asians from Canada on one hand, and to claim that we adhere to the principle of equality of all human beings regardless of race, colour and national origin adopted in the Universal Declaration of Human Rights on the other hand.<sup>50</sup> It is hypocrisy to smugly sit in judgment on our U.S.A., South African and Australian brethren, at least until we have cleaned our own house.

The phantom quota system should be abolished. The decisions concerning the numbers of people from each country who will be allowed to land in Canada are made within the confines of the Department by means of secret directives. Despite denials by officials in the Department, the quota system flourishes. The real control of policy rests in the administrative branch and is exercised in secret. National prejudices have further fertile ground in which to thrive, out of view of most Canadians, but very much in the eye of pros-

<sup>48</sup> [1932] S.C.R. 640; [1932] 4 D.L.R. 246; See also *Ex parte Brent*, [1955] O.R. 480 affirmed in [1956] S.C.R. 318; The Court followed *Samejima*, and indicated that reasons for deportation must be given by the Officer.

<sup>49</sup> *Ibid.*, at p. 281 D.L.R.

<sup>50</sup> Resolution 217A (III) of the General Assembly of the United Nations, Dec. 10, 1948; G.A.O.R. III 1, resolutions A/810 Pp. 71-77.

pective immigrants and their countrymen. This method of discrimination is especially insidious in that it is latent and unseen except by the fore-warned observer. If we are to exclude immigrants because of their nationality there should be full disclosure to the Canadian people. These provisions, if found necessary, could be in statutory or published regulation form as is the practice in the U.S.A.<sup>51</sup>

The vast discretion given to administrative officials must be curtailed. Immigration policy should be governed by explicit law and not by, what appears to be, whim and caprice. Phrases such as "in the opinion of" and "upon reasonable grounds for believing" should not be used in any statute or regulation in an area as emotionally charged as this one.<sup>52</sup> It is almost impossible to attack judicially with present weapons an exercise of discretion pursuant to such a wide grant of authority. Subjective considerations are permitted to enter where objective rules alone should govern. Strict legislative guidance should be supplied to the officials. Frolics in "hugger-muggery" may thus be avoided. Abuses and injustices must be expected if Parliament refuses to delineate more definitively the ambit of administrative operations.

The appeal procedure must be revamped and extended. Although the General Board of Immigration Appeals is an improvement over its predecessor, it does not go far enough. It should be available as an appeal tribunal from all deportation orders. Its operation should be made convenient for prospective appellants. Appeal rights become illusory where transportation costs are prohibitive for people of modest means. The Minister should not be able to summarily vary or quash the decisions of the Board. A further appeal to the Courts should be provided as in the U.S.A.<sup>53</sup> Preferably, it should be a trial *de novo* to allow the Judge to decide the all-important credibility issue himself. The privative clause should be repealed. Nothing

---

<sup>51</sup> See the *Immigration and Nationality Act*, Chapter 12, U.S.C. S. 1151 (1958). The statute requires annual proclamations by the President setting out the quota for each country to be allowed into the U.S.A. the next year. These figures allow a minimum of 100 people from each of the countries or areas listed up to 1/6 of 1% of the inhabitants from each of the areas listed living in the U.S.A. in 1920, with a few exceptions. 87 areas are listed in the present list; See Proc. 3298 8 U.S.C. Supp. 1 (1959). It should be noted that any citizens of North, Central, or South America are allowed into the U.S.A. as non-quota immigrants, as are any children and spouses of U.S. citizens; see 8 U.S.C. S. 1101 (1958). This has not eliminated racial differentiation, but at least the quota information is available and bears some rational correlation to the U.S. population structure.

<sup>52</sup> These terms do not appear anywhere in the U.S. statute; see especially 8 U.S.C. Ss. 1182, 1251 (1958).

<sup>53</sup> See *Administrative Procedure Act*, Chapter 19, 5 U.S.C. S. 1009 (1958) where judicial review is provided for from final agency action. In order to be upheld the test laid down is that the decision must be "substantially supported by the record as a whole". See *Universal Camera Co. v. National Labour Relations Board*, 340 U.S. 474 (U.S. Sup. Ct., 1950) for a review of the test with special reference to the NLRB. See also 8 U.S.C. S. 1252(4) (1954): "No decision of deportability shall be valid unless it is based on reasonable, substantial, and probative evidence".

should stop the Court from scrutinizing officials through the expeditious prerogative writs, in addition to appeals on the merits.

The writer does not pretend to have supplied the Immigration authorities with an all-embracing panacea, but has offered only a few suggested amendments. Immigration policy is replete with social, political, emotional and economic problems that resist solution by a few strokes of the legislative pen. It is submitted, however, that by adoption of these proposals Canada's immigration policy may be made to embody the basic tenets of democracy to which we profess to adhere.

ALLEN M. LINDEN\*