

Revenge of the Majority

Immigration and Refugee Policy in the Fall Parliament

For the past three years, the immigration and refugee portfolio has enjoyed or endured a particularly high political profile under the Conservative government of Stephen Harper with Jason Kenney serving as Minister of Immigration, Citizenship and Multiculturalism. This forthcoming parliamentary session promises to be no different. Refugees comprise only thirteen per cent of the approximately two hundred and fifty thousand immigrants who come to Canada each year, but refugee policy, rather than immigration policy, will be the preoccupation of the government. It promises to be a stormy session and the theme may well be the Revenge of the Majority. Two prominent pieces of refugee legislation will once again be in the news.

Bill C-4, the Bill Preventing Human Smugglers from Abusing Canada's Immigration System Act, is a particularly controversial piece of legislation. It was originally introduced to parliament in October, 2010, but was withdrawn from the House order paper after all of the opposition parties publicly opposed it. The bill purports to crack down on human smugglers but its more punitive measures are actually directed against refugee claimants. The bill mandates that all persons within a designated group arrival, man, woman and child, *shall* be imprisoned for up to a year without any form of judicial review by a court. The bill has puzzled legal observers since it is a blatant violation of S.10 of the Charter of Rights. It is inconsistent with a recent Supreme Court ruling as well as the principle of habeas *corpus*, a corner stone of any democracy that allows a person to challenge their imprisonment before a judge.

It was assumed that the bill was primarily introduced for political purposes, to burnish the government's law and order image before the federal election. The Conservative's campaign messages appeared to confirm that view. With pictures of the Sun Sea in the background, the opposition parties were portrayed as soft on human smuggling. But now the bill is back with all of its most controversial provisions intact and now supported by the muscle of a Conservative majority in both the House of Commons and the Senate. It is expected that the bill will be quickly sent to a House committee. Let the fireworks begin.

Lurking in the parliamentary background is a second piece of legislation that most had assumed to be finished business. Bill C-11, the Balanced Refugee Reform Act, was passed in June, 2010 but the new refugee claim system was not to be implemented until December 1 of this year. Officials at the Immigration and Refugee Board have been working furiously to ensure the new system would be ready on December 1. Last week, Minister Kenney announced that implementation would be delayed until June 29, 2012, the latest possible date allowed under the law. On the face of it, the postponement is a surprise. In 2009, Prime Minister Harper publicly apologized to the president of Mexico, blaming Canada's refugee system for the necessity of

imposing a visa requirement on Mexican citizens and promising to fix the system. Delayed implementation means the Mexican visa requirement continues and the “broken” refugee system with its backlog of claims and delays in removal also continues.

However rumours abound that the government is not happy with the concessions it made in order to pass the law and is now pondering tougher amendments to its own law. Refugee advocates are already unhappy with government regulations that have seriously undercut the balance between speed and fairness in the new law. Additional changes will require new legislation and will pit human rights advocates against a government determined to impose its will on an out-numbered opposition.

This summer, Mr. Kenney conducted a half-hearted cross-Canada survey (there was a limited guest list) on the current levels of immigration but it is unlikely to result in significant changes to the Annual Report to Parliament on Immigration in October. The sluggish economy is more likely to prompt debate over immigration levels. A recent report from Queens University has proposed that immigration levels be reduced during bad economic times. Such debates predictably arise during economic downturns. For more than twenty years, Canadian governments of all political stripes have taken a broader view of immigration, recognizing demographic and cultural values that take immigration policy off the roller coaster of the economy.

If there is one certainty for the forthcoming parliament, it will be that Mr. Kenney’s controversial statements about refugees and our judicial institutions will prompt a confused and polarized public discourse. The Conservative government has employed an array of strategies - a specious rhetoric about good and bad refugees, most wanted lists for alleged war criminals, government snitch lines – that drive wedges between immigrants, refugees and the Canadian public. It is a dark and cynical strategy that distorts complicated legal issues and discounts genuine human suffering. It may be good short-term politics. It is not good law and, in the long run, not good for Canadians, whether immigrants, refugees or citizens.

Peter Showler is the Director of the Refugee Forum at Human Rights Research and Education Centre, University of Ottawa, and is the author of *Refugee Sandwich: stories of exile and asylum*.