

No one is above the law on refugees

Sean Rehaag, *The Toronto Star* (30 July 2004) A19.

On Monday, the Minister of Citizenship and Immigration, Judy Sgro, urged churches to cease providing sanctuary to failed refugee claimants threatened with deportation.

Sgro makes this request on the grounds that no one in Canada ought to be above the law.

The trouble with this deceptively simple argument is that it is not clear to which law she is referring.

Canada, as a signatory to the Geneva Convention on the Status of Refugees, is prohibited from returning anyone to a country where they have well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group or political opinion.

Canada is also a signatory to the Convention Against Torture, which proscribes deportation to face torture.

Canada is, furthermore, bound by customary international law preventing deportation in the face of a growing list of risks to life and freedom.

Finally, Canadian officials are bound by human rights norms dispersed throughout our civil and common law traditions.

This includes the norm codified in the Charter of Rights and Freedoms against depriving a person of life, liberty or security of the person except in accordance with the principles of fundamental justice — principles that incorporate all the above international laws into Canadian law.

When churches provide sanctuary to prevent the government from deporting refugee claimants who are able to demonstrate that their claims were denied in error, they are acting in accordance with each of the above laws.

Of course, it will always be controversial whether any particular claim has, in fact, been denied in error. It is clear, however, that the refugee determination process is rife with irregularities.

Witness recent news reports about corrupt Immigration and Refugee Board members demanding bribes in return for positive decisions.

Or consider the distressing variations in the acceptance rates of different board members — variations that appear particularly disturbing in light of the political nature of the appointment process of board members.

More troubling, though less well publicized, is the alarming extent of abuse suffered by many refugee claimants at the hands of unscrupulous immigration lawyers and consultants who take advantage of their desperation and unfamiliarity with local law. Such abuse often leads to claims being declared abandoned when the claimants' representative does not take timely action.

Moreover, even without these irregularities, refugee adjudication is an inherently difficult task. It confronts language barriers, cultural miscommunications, and the challenge of sorting out events that took place in a distant and often chaotic locale.

Currently, Canada does not provide refugee claimants with access to an appeal process enabling them to correct substantive errors that result from either these irregularities or the inherent difficulties of refugee adjudication.

Though failed claimants may appeal to the Federal Court, the Court may not inquire into the merits of their cases, and can only look into whether certain procedural rules were followed. As a result, errors cannot be addressed and legitimate refugees are being deported in contravention of all the laws noted above.

It is to prevent these illegal deportations that churches have stepped in to provide sanctuary. They do so only where the error is glaring and where the allegations of the person requesting sanctuary stand up to scrutiny.

In fact, some churches have gone so far as to develop sophisticated legal procedures to be followed in the event of a request for sanctuary.

These procedures have proven sufficiently strict that only a minuscule number of failed refugee claimants are provided with sanctuary. About a half-dozen individuals are currently taking sanctuary across the country.

These unofficial appeal mechanisms are designed to give effect to international and domestic laws against deporting legitimate refugees in the absence of an effective appeal in the official system.

Sgro calls these mechanisms "illegal," implying that the churches are engaged in civil disobedience, a tradition of resisting immoral laws involving heroes such as Mohandas Gandhi, Nelson Mandela, Henry Thoreau and Rosa Parks.

However, it is important to keep in mind that, in part because of the courageous acts of civil disobedience in the past, today we live in a world in which the law is not simply whatever the government says it is. Today, law is more complex and sophisticated — especially in human rights settings where official government decision-making interacts with legal norms flowing from multiple international and constitutional sources.

That is why Sgro is right when she says that no one is above the law.

All of us in Canada should thank the churches that offer sanctuary to legitimate refugees in danger of being deported for reminding us that neither is she.

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