

# Visitor Visas: The Stamp of Inequality

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- On 1 June 1993 Canadian Press reported that for six months Canada Immigration had refused to let Amale Al-Chaer into Canada to visit the mother she had not seen in 22 years. It took the death of her mother before officials finally relented, granting the Lebanese woman a visitor's visa to attend the funeral in Ottawa.
- On 16 June 1995 Canadian Press reported that a critically ill Iranian mother's hope of seeing her youngest son for the first time in six years was being blocked by Canadian officials. Robabeh Yazdi's youngest son had applied for a 30-day visitor's visa from Iran to visit his mother but was turned down.
- On 10 October 1991 Canadian Press reported that Ottawa had refused to grant a visitor's visa to an Indian woman whose blind and disfigured son was awaiting surgery at the Hospital for Sick Children. Vinay Dophe's husband Ramesh Dophe, who had been granted a visitor's visa without delay, declared that the 11-year-old's mother was "continually crying in the house to see him."
- On 1 June 1992 the Committee for Equality for Immigrants and New Canadians<sup>1</sup> reported that an ill Canadian father originally from the Punjab had died without seeing his son who could not get a visitor's visa.<sup>2</sup>
- On 26 February 1994 the C.E.I.N. reported that two Canadian citizens by birth had been repeatedly told that they would not be able to enjoy the visit of their daughter's Jordanian husband. Despite the fact that their daughter's husband had visited Canada uneventfully before marrying her and that they both were well employed in Dubai, the Canadian couple had been told that "[n]o Jordanian married to a Canadian can get a visitor's visa to Canada."<sup>3</sup>

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<sup>1</sup> The Committee for Equality for Immigrants and New Canadians [hereinafter the Committee or C.E.I.N.] is a watchdog, lobby, education, and advocacy group for immigrants and new Canadians. The Vancouver based volunteer organisation has been in operation since 1987 and can be reached at 4184 Brant St., Vancouver, B.C., V5N 5B4; Fax: 604.872.6776; Phone: 604.879.3246.

<sup>2</sup> C.E.I.N. report (1 June 1992).

<sup>3</sup> C.E.I.N. report (26 February 1994).

## I. INTRODUCTION

TODAY CANADIAN CITIZENS and residents originating in visa countries<sup>4</sup> can no longer expect the visitation by friends and relatives from abroad. The loss of this right, which affects thousands of Canadians, stems from a pseudo-legitimate administrative system which operates in violation of the objectives of the *Immigration Act*,<sup>5</sup> the *Canadian Human Rights Act*,<sup>6</sup> the *Charter*<sup>7</sup> and rights internationally recognised by Canada.<sup>8</sup> The task of making this injustice known to all Canadians still remains, and so does the legal challenge to effect a change in law and procedure.

The country of origin alone is a factor which significantly increases or decreases the chances of a Canadian being able to receive the visit of a loved one from abroad. No explanation is offered as to why a country is or is not on the "visa required" list. While a Canadian with roots in France or the United States does not have to worry about her friends or relatives being allowed into Canada as visitors, a Canadian with roots in China or Iran must agonise over the prospect of having her relatives rejected. Nor is an explanation offered as to why acceptance rates vary so widely. Governments seem to treat these things simply as a matter of their prerogative.

## II. VISITOR VISA REQUIREMENTS AND THE RECEPTION OF APPLICANTS AT CANADA'S EMBASSIES

### A. Ramifications of Visitor Visa Legislation

The figures on general visitor visa acceptance below were obtained in March 1993 by Mr. John Westwood, Executive Director of the B.C. Civil Liberties Association, under the *Access to Information Act*.<sup>9</sup> In looking at these figures, one must keep in mind that absent from the list of countries are the western European

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<sup>4</sup> The term "originating in visa countries" means having been born in a country for which a visa is required to visit Canada.

<sup>5</sup> *Immigration Act*, R.S.C. 1985, c. I-2 [hereinafter the *Immigration Act* or the *Act*].

<sup>6</sup> *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 [hereinafter *Canadian Human Rights Act*].

<sup>7</sup> The *Canadian Charter of Rights and Freedoms* is Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter the *Charter*].

<sup>8</sup> References will be made specifically to the *Conference on Security and Cooperation in Europe: Final Act [the Helsinki Accord]*, 1 August 1975, as reproduced in *Human Rights, International Law and the Helsinki Accord*, Buergerthal & Hall, eds. (New York: LandMark Studies, 1977).

<sup>9</sup> *Access to Information Act*, R.S.C. 1985, c. A-1 Canada Immigration Management Services forwarded the visitor visa processing information included in the "monthly operational reports" for the years 1989 through 1991.

countries, the United States, Japan, Israel, and a number of Commonwealth countries—the citizens of which do not need a visa to travel to Canada.<sup>10</sup>

Canada's foreign offices do not make statistical distinction between visitor visas granted to relatives or friends of Canadian citizens or residents and visitor visas granted to people with no personal ties to Canada. Also, for many countries, the acceptance percentage would be skewed upwards by business travellers. Still, the general visitor visa records are telling.

TABLE 1  
Acceptance of Visitor Visa Applications: 1991

Consulate	Total Applications	Applications Accepted	Applications Rejected	Acceptance Percentage
Tehran	6 673	4 177	2 496	62.6
Santiago	5 226	4 974	252	95.2
Rabat	4 928	2 898	2,030	58.8
Pretoria	996	972	24	97.6
New Delhi	30 490	18 567	11 923	60.9
Manila	14 509	9 577	4 932	66.0
Lima	16 963	14 033	2 930	82.7
Lagos	3 467	1 954	1 513	56.3
Islamabad	7 596	3 902	3 694	51.4
Guatemala	3 058	2 036	1 022	66.6
Dominican Republic	2 843	1 001	1 842	35.2
Dhaka	1 417	463	954	32.7
Colombo	1 415	740	675	52.3
Cairo	5 283	4 041	1 242	76.5
Buenos Aires	14 256	13 337	919	93.6
Budapest	8 464	8 127	337	96.0
Belgrade	12 612	10 852	1 760	86.0
Beijing	10 505	9 842	663	93.7

In 1981, the visitor visa requirement was imposed on Sri Lanka, Bangladesh, and India.<sup>11</sup> In 1982, it was imposed on Pakistan.<sup>12</sup> In 1984, it was imposed on Guyana, Jamaica, Peru, and Guatemala.<sup>13</sup>

Since 1984 the list of visa-exempt countries has continued to shrink, and the trend is towards an increased rate of visitor visa rejection by visa offices in non-

<sup>10</sup> For a complete list of visa-exempted countries, see Schedule II of the *Immigration Regulations*, SOR/78-172.

<sup>11</sup> F. Hawkins, *Critical Years in Immigration: Canada and Australia Compared*, 2d. (Montreal: McGill-Queen's University Press, 1991).

<sup>12</sup> *Naqvi v. Canada (Employment and Immigration Commission)* (1993), C.H.R.R. D/139 [hereinafter *Naqvi*].

<sup>13</sup> Hawkins, *supra* note 11.

white, poorer, or more repressive countries. The increased rate of rejections are indicated by the New Delhi figures: 1989 (72.5 percent accepted), 1990 (65.6 percent accepted), and 1991 (60.9 percent accepted).<sup>14</sup>

## B. Inconsistent Treatment of Visitor Visa Applicants

In addition to the risk of rejection, the friends and relatives of Canadians originating in certain countries are often required to endure humiliating treatment in order to obtain a visitor visa. In a series of letters to the government,<sup>15</sup> the Committee for Equality for Immigrants and New Canadians reported what it had learned in a series of public forums conducted to examine the effects of Canada's visitor visa legislation.

In China, stated the Committee, prospective tourists are made to wait a long time just to see embassy personnel about their visas. For example, an old couple from Beijing who requested permission to visit their 34-year-old daughter in January 1992, were told that their interview would take place in August of the following year.<sup>16</sup>

Further, the Committee complained that in India, people applying for tourist visas must line up very early in the day (usually 5 a.m.) to talk to an immigration clerk. Such persons must then wait in line all day without access to a bathroom.<sup>17</sup>

A professor at a well-known university in India, who was invited to visit Canada by a Canadian citizen, was subjected to humiliating treatment before being granted the visa. "She was not offered a chair, and had to stand while being asked numerous insulting questions by a young visa officer," reported the Committee.<sup>18</sup>

The most recent complaints of ill-treatment received by the C.E.I.N. originate in Iran and come from Canadians themselves.<sup>19</sup> These Canadians report that al-

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<sup>14</sup> *Supra* note 9.

<sup>15</sup> Letter from the Committee for Equality for Immigrants and New Canadians to the Hon. Barbara McDougall, Minister of External Affairs and the Hon. Bernard Valcourt, Minister of Employment and Immigration (1 June 1992); letter from the Committee for Equality for Immigrants and New Canadians to the Hon. Sergio Marchi, Minister of Employment and Immigration (26 February 1994).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Among these cases is that of Canadian citizen Banu Foroutan who 18 years ago acquired her permanent residency under the entrepreneurial category. Ms Foroutan has had her cousin in Iran make at least three attempts (between 1994 and 1996) to get a visa to visit her in Canada. Ms. Foroutan has been unsuccessful despite having attempted to post a bond with Canada Immigration for an amount equivalent to the selling price of her house to guarantee that her cousin will not stay, and despite the fact that her cousin would be leaving husband and two children in Iran. The last time her cousin attempted to get a visa she had contracted cancer and Ms Foroutan had requested that she be allowed to visit for humanitarian reasons. The visa officer interrogated the potential visitor and instructed her

though Canadian embassies generally do not charge fees to applicants for processing visitor visa applications, processing fees are being charged by our Canadian embassy in Iran.

### III. THE IMMIGRATION ACT

#### A. The Loss of Visitation Privileges

Approximately fifteen years ago, visitor visas—routinely granted to Canadians' friends and relatives—began to be refused. The change happened silently; it was simply felt by an ever growing number of individuals. Most interestingly, the change happened without a corresponding change in the law.

How could such a mutation, substantially affecting the lives of many Canadians, occur without consultation or debate? What in our legal framework made this possible? The answer lies primarily in the peculiar character of our *Immigration Act* and its regulations.

As the Act's visitor visa provisions show, Canadian immigration legislation guarantees immigrants (the term "immigrants" here has the popular meaning of "legal residents of Canada who have settled in Canada from abroad") few rights and is written in non-specific, permissive language capable of legitimising almost any shift in our immigration policy.

Constitutionally, admission to Canada is explicitly recognised as a right only of citizens.<sup>20</sup> The right to admission to everyone else, residents included, has been treated as dependent on the will of Parliament,<sup>21</sup> and the will of Parliament has not operated consistently to defend the rights of immigrants.

The Act's objectives, listed in s. 3, show regard for our principles of justice and the needs of Canada's immigrants. The same cannot be said of other provisions of the Act. These provisions, designed to produce practical results, may vary widely

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to get proof of her illness. When, not without difficulty, she obtained the requested "proof" and went back to the Canadian Embassy, she was told: "[y]ou can't go to Canada. You are sick and you would be a nuisance." C.E.I.N. report.

<sup>20</sup> This is done under s. 6(1) of the *Charter*, which provides that: "[e]very citizen of Canada has the right to enter, remain in and leave Canada." Note that the word "citizen" is nowhere defined in the Constitution or *Charter*.

<sup>21</sup> Parliament has had almost total legislative power over immigrants from the beginning of confederation. As stated in *Mannan v. Canada (Minister of Employment and Immigration)* (1991), 16 Imm. L.R. (2d) 73 (F.C.T.D.):

[A]t Confederation, s. 95 of the *Constitution Act, 1867* provided that each province can make laws in relation to immigration into the province and that the Parliament of Canada may from time to time make laws in relation to immigration into all or any of the provinces and that any provincial law in relation to immigration has effect only so long as it is not repugnant to a law of the Parliament of Canada in relation to immigration. [Emphasis added.]

from year to year or even from month to month as dictated by the shifting requirements and expectations of the government.

### **B. Provisions Violating the *Immigration Act's* Objectives**

Our visitor visa legislation violates several of the objectives of the *Immigration Act* to the extent that it does not facilitate the reunion of Canadian citizens and residents with their loved ones from abroad. The objectives of the *Act* are paraphrased as follows:

- s. 3(c) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad; that it does not facilitate the entry of bona-fide visitors into Canada;
- s. 3(e) to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities, and international understanding; that it does not ensure the non-discriminatory treatment of all visitor visa applicants;
- s. 3(f) to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate in a manner inconsistent with the Canadian *Charter of Rights and Freedoms*; that it does not ensure the emotional well being of all Canadians; and
- s. 3(i) to maintain and protect the health, safety, and good order of Canadian society.

Under the *Act*, the question of whether foreigners and immigrants are permitted to enter Canada is left solely to the discretion of individual public servants: Canada's immigration officers. These officers have the power to decide—often on the basis of unwritten policy and personal feelings—questions that are fundamental not only to the lives of the foreigners wishing to visit Canada but also to the lives of Canada's immigrants.

### **C. The Excessive Use of Discretion**

The *Act's* visitor visa provisions do not provide visa officers with objective guidelines and do not hold them accountable for their decisions. The entry of visitors, including those who are friends or relatives of Canadian immigrants, depends on how an individual visa officer interprets s. 5(3) of the *Act*:

A visitor may be granted entry and allowed to remain in Canada during the period for which he was granted entry or for which he is otherwise authorized to remain in Canada if he meets the requirements of this Act and the regulations.<sup>22</sup>

There is no implied right of entry. With the onus on the applicant, the visa officer has a broad discretion to grant or refuse entry. If the applicant is found to meet "the requirements of this Act and the regulations," the officer "may" (*i.e.*,

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<sup>22</sup> Similarly, s. 9(4) of the *Act* requires that the visa officer be "satisfied that it would not be contrary to the Act or the regulations" to grant the applicant entry.

does not have to) issue the applicant a visa. There is, as Grey concludes, evidence that the officer has no *duty* to do so.<sup>23</sup>

Further examination demonstrates that s. 5(3)'s accompanying provisions work against any assumption that s. 5(3) might *guarantee* entry to anyone meeting the requirements. Section 9(2.1) indicates that the visa officer need not be objective. The officer need not prove that the applicant did not meet the requirements, but simply determine whether the applicant or applicants "*appear* to be persons who may be granted entry." [Emphasis added.] Nothing in the *Act* requires the officer to substantiate her decisions, inform the applicant of the reasons for them, or record her reasons anywhere.

#### D. Much to Prove and No Way to Prove It

The *Act* mandates placing all visitor visa applicants under suspicion. Sections 9(1.2) and 8(1) legislate a presumption against the visitor visa applicant: it is the applicant who must satisfy the visa officer that she does not intend to seek permanent residence in Canada.<sup>24</sup> It is the applicant who must prove to the officer that her admission would not somehow be a violation of the *Act*.<sup>25</sup>

Obtaining a visitor visa necessitates rebutting the presumption, but how the applicant can achieve this is not clear. Neither the *Act* nor its regulations provide for determinative criteria.<sup>26</sup> For example, while in some cases owning property, having a well paying job, or leaving one's dependants in the country of origin has been taken as enough to rebut the presumption, in other situations it has not been sufficient.

With respect to visa applications made by would-be guests of Canadian citizens or residents, the identity and character of the Canadian invitor are moot<sup>27</sup>: the status of the Canadian invitor, how long she has lived in Canada, the absence of a criminal record, the fact that the invitor may have received guests from abroad in the past and that these guests returned uneventfully, are factors gener-

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<sup>23</sup> J.H. Grey, *Immigration Law in Canada* (Toronto: Butterworths, 1984) at 42.

<sup>24</sup> Section 9(1.2).

<sup>25</sup> Section 8(1).

<sup>26</sup> While the *Act* is not specific as to when entry should be granted, it is quite specific as to who should *not* be allowed in. Under s. 11(2), no applicant who is "likely to be" a danger to public health or safety, or where her admission "might reasonably be expected to cause" excessive demands on health or social services is to be allowed into Canada.

Under s. 19 the *Act* prohibits the entry of anyone who may be classified as a member of an "inadmissible" class. The application of s. 19 to visitors is made plain by paragraph s. 27(2) (a), and by s. 27(2.01).

<sup>27</sup> Although it is common practise to refuse visitor visas to anyone who is being sponsored as a landed immigrant. The belief seems to be that if such a person applies for a visitor visa, her or his intention is likely to be to stay in Canada illegally.

ally considered irrelevant.<sup>28</sup> The reasons a Canadian invitor may have for wishing to receive a relative or a friend in Canada are also considered inconsequent. This is so even in situations where the visit is required due to serious illness of the Canadian resident or situations of family tragedy.

## E. Ramifications of the Act

### 1. Decisions Which are Discriminatory

The combination of (i) the *Immigration Act's* vague wording, (ii) immigration policy permitting rejection of applicants on the basis of country of origin, and (iii) the biases of individual officers have led to various racial, gender, cultural, and political prejudices passing for official Canadian policy overseas.

The Pakistani visitor visa applicant in *Naqvi v. Canada*,<sup>29</sup> for example, was refused a visa because she was "27 or 28 years old, unmarried and had no employment in Pakistan."<sup>30</sup> The views of the *Naqvi* visa officer on Pakistan and Pakistani culture became apparent during the course of submissions before the Human Rights Tribunal. The visa officer declared that during his appointment to Islamabad, Pakistan, from 1979 to 1981,

[H]e routinely issued visas to single females, ... where the woman was clearly employed or came from a community where it would be quite acceptable for a woman to travel. It was his perception that the number of single women seen at the embassy in Islamabad was quite small and that they did not see a large number of single women travelling on their own.<sup>31</sup>

While the sweeping refusal of visas to single and unemployed Pakistani women was aimed at minimising illegal immigration to Canada, the refusal of visas to women because they came from communities where women were not supposed to travel alone was exclusively the result of the visa officer's conservative beliefs about Pakistani women.

The *Naqvi* visa officer's conservatism also led him to tell the applicant's Canadian relatives that the only way in which the applicant could enter Canada was

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<sup>28</sup> For example, the fact Permanent Resident Shekoofeh Ghazanfary's mother had visited her uneventfully in Canada in 1996 did not prevent the Canadian visa officer in Iran from refusing her a visitor visa in September of 1997. Ms. Ghazanfary who, like her brother, came to Canada as a refugee in October 1995, states that the visa refusal was extremely hard on her mother. "She is alone in Iran," explains Shekoofeh, "and visiting me for a month or so really makes a difference to both of us." Ms. Ghazanfary's mother was told: "[c]ome back next year—you can meet your children in a country other than Canada." C.E.I.N. report.

<sup>29</sup> *Navqui*, *supra* note 12. The visitor's visa was applied for at the Canadian Embassy in Chicago in August 1982.

<sup>30</sup> *Ibid.* at D/158.

<sup>31</sup> *Ibid.* at D/154.



to "go back to Pakistan, get married and have a few children"—a disturbingly inappropriate and insulting statement.

## 2. *Discrimination Against Canadians of Certain Origins*

For refugees, human rights activists, and others who cannot travel to their countries of origin because of threats or fear of reprisal, visa refusals take away their only means to see friends and relatives from abroad. Most others are afforded the possibility of travelling to their country of origin, providing there are no health constraints. However, in all cases, unfair visitor visa refusals leave affected Canadians with a sense of lesser worth.

Initially singled out by country of origin and then subjected to other kinds of stereotyping, Canadians who are refused visits of their friends or relatives are left with a feeling of anxiety, frustration, and helplessness stemming from the knowledge that there is nothing they can do to change the verdict. Such scenarios are commonplace.

The son (a Canadian citizen) of 77-year-old Marie Majdalany, who had to die before her daughter was allowed to visit her, for example, told the press: "I feel like a person that's been hanged very slowly, pulled down by the neck, suffocated ..."<sup>32</sup> Critically ill Robabeh Yazdi's older son, Hamid Gharagozlou, a Canadian, told the press: "I feel as if a human right is being denied."<sup>33</sup> In *Naqvi*, the Pakistani-Canadian citizen who had been prevented from receiving the visit of her sister testified before the Tribunal that she had felt very hurt, upset, and insulted when advised that her sister was not going to be allowed into Canada. Subsequent to 1982, she had invited her brother-in-law to visit in Canada and, because Mrs. Jaffery (her sister) had been refused entry into Canada, he had declined her invitation.<sup>34</sup>

Refusals can also lessen the stature of affected Canadian inviters both in the eyes of their relatives and in the eyes of other Canadians because they are identified as members of a group unworthy to receive visitors from abroad.

The Human Rights Tribunal in *Naqvi* explained the cultural affront implicit in the visa refusal:

In addition to losing face with her family, it was personally offensive culturally to Mrs. Naqvi to have her sister refused entry to Canada on a basis which she perceived to be suggesting that Pakistani women were likely to enter into marriages of convenience.<sup>35</sup>

And regarding the degree to which a person may be affronted, the Tribunal added,

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<sup>32</sup> C.E.I.N. report.

<sup>33</sup> C.E.I.N. report.

<sup>34</sup> *Naqvi*, *supra* note 12 at D/170.

<sup>35</sup> *Ibid.*

The affront to the dignity of the complainants must be regarded as more severe where many of the personal characteristics which comprise the grounds of the discriminatory practice are shared by the complainants—*i.e.*, race, national and ethnic origin and gender.<sup>36</sup>

#### IV. LITTLE RECOURSE OVER VISITOR VISA REFUSALS

THE IMMIGRATION ACT does not provide a way to monitor or scrutinise visitor visa decisions. Consequently, a practise that entails an almost automatic rejection at various Canada visa offices of visitor visa applications of persons belonging to particular social, gender, or racial groups,<sup>37</sup> is presented as legitimate.

##### A. A Minimal Role for the Canadian Invitor

Affected Canadians cannot adequately make a case for their visitors either before the decision is made or after. The fact that the rejection of a potential visitor takes place in a foreign land prevents the inviting Canadian citizen or resident from presenting her case to the visa officer. This leaves the visa officer free from questioning and examination by legal counsel in Canada.

Visitor visa officers frequently say “No” to the potential visitor without giving reason to either the applicant or the invitor. Even when the affected Canadian invitor requests those reasons in writing to the Minister of Immigration, the reasons are generally still not forthcoming.<sup>38</sup> Further, the Canadian sponsoring the visit is not allowed to offer the visa office any new elements of judgment. Members of Parliament are usually unsuccessful in their efforts to change a visa officer’s decision on the basis of what they know about the affected person, *i.e.*, their constituent.

##### B. No Right of Appeal

Moreover, decisions to refuse visitor visas abroad are not subject to any form of appeal under the provisions of the Act.<sup>39</sup> The only avenue of redress is an applica-

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<sup>36</sup> *Navqui*, *supra* note 12 at D/170.

<sup>37</sup> Generalisations about applicants originating in a particular country seem to either begin with, or be legitimised by, Canada’s decision to impose the visitor visa requirement on a country. Once it is believed that the citizens of a particular country are “more likely” than others to remain in Canada illegally, other generalisations follow.

<sup>38</sup> The Canadian invitor is required to obtain the failed visitor visa applicant’s permission for the reasons to be released to the invitor. A two-line letter is then issued saying that the visa was refused because the officer did not feel that the person in question would be a genuine visitor. What led the officer to such a “feeling” is not explained.

<sup>39</sup> Only someone who is refused admission at the border—despite being the holder of a visa—as per ss. 12(1), 13(1), 20(1) or 12(3) of the Act has the right to appeal to the Immigration Appeal Board (s. 70(2)) not only on a question of law but also on a question of fact, or a question of mixed law and fact or on compassionate or humanitarian consid-

tion for judicial review in the Federal Court of Canada, Trial Division. This review can be done on a question of law,<sup>40</sup> but not a question of fact.

### C. Doubtful Prospects Under Judicial Review

The process of judicial review is costly to visitor visa applicant,<sup>41</sup> and the success rate of such a course is very low.<sup>42</sup> In the pre-*Charter* period, courts unhesitatingly affirmed that they would generally not interfere with the exercise of discretion even if they disagreed with the result,<sup>43</sup> although a major change in the administrative law field came with *Nicholson*.<sup>44</sup> In that case, the Supreme Court of Canada declared the judicial/quasi-judicial versus administrative function classification out of date, and extended the duty to act judicially to tribunals of an administrative nature.<sup>45</sup>

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erations (s. 70(3)). This right to appeal, however, is not absolute; ss. 40.1(1), (3), (4), and (5); and 70(3.1), (5), and (6) describe those cases where no appeal may be made.

<sup>40</sup> It is expected that the courts will intervene to hold that any applicant for a visa is entitled to a fair consideration on proper principles. For instance, they would be expected to intervene where there is a breach of fairness (as when a rejection is made on racial grounds), or where the officer has been totally unwilling to consider relevant considerations or where the officer has acted outside her legal authority. Once the "fair consideration" is granted, however, the result is very difficult to reverse. Only a flagrant error of law, the use of totally irrelevant or illegal criteria, or bad faith would lead to the review of a decision to refuse a visa: Grey, *supra* note 23 at 42.

<sup>41</sup> Visitor visa appeals are not covered by the legal aid tariff.

<sup>42</sup> Only three visitor visa case reports were obtained after a search for visitor visa cases taken before the Federal Court Trial Division between January 1980 and October 1996. None of them received a favourable ruling. These are: *De La Cruz v. Canada (Minister of Employment and Immigration)* (1989), 26 F.T.R. 285, where the plaintiff had been refused a visitor visa on the basis of his pending application for permanent residence; *Grewal v. Canada (Minister of Employment and Immigration)* (1988), 24 F.T.R. 126, where the visa was refused on the basis of a child's statements that he wanted to stay in Canada and where no opportunity had been given to the child or his uncle in Canada to address the visa officer's doubts before refusal; and *Toussaint Djossou v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. 27 (F.C.T.D.). Very few of those affected by our visitor visa policy take the judicial review route.

<sup>43</sup> Walsh J. specifically applied this rule to granting of visas, in *Bhadauria v. Minister of man-power and Immigration*, [1978] 1 F.C. 229 (F.C.T.D.).

<sup>44</sup> *Nicholson v. Haldimand-Norfolk Regional Board of Police Commissioners*, [1979] 1 S.C.R. 311 [hereinafter *Nicholson*]. The case involved a probationary constable in Ontario who was dismissable "at pleasure." Laskin C.J.C. found for the majority that the consequences to Nicholson were serious in respect of his wish to continue in a public office, and that he had to have been told why his services were no longer required and given an opportunity to respond.

<sup>45</sup> *Nicholson, ibid.*, placed not only the tribunals but the entire administration system, including its lowest levels, under the duty of fairness. The duty of fairness was imposed even though the claimant could not claim he had a "right" under the statute.

The advent of the *Charter* was immediately followed by some groundbreaking court decisions in the field of procedural fairness. In the noted *Singh v. Canada (Minister of Employment and Immigration)*<sup>46</sup> decision, issued shortly after the institution of the *Charter*, Wilson J. concluded that the procedures for determination of refugee status claims of the *Immigration Act* did not afford refugee claimants fundamental justice in the adjudication of those claims and were thus incompatible with s. 7 of the *Charter*.<sup>47</sup>

The majority's position in *Nicholson*,<sup>48</sup> articulated by Laskin C.J.C., was expanded by L'Heureux-Dubé J. in *Knight*<sup>49</sup> where the Supreme Court of Canada majority established a presumption that there is a right to procedural fairness. L'Heureux-Dubé J. ruled that whenever the statute does not accord a right to procedural fairness, the court ought to determine whether there exists a general right to procedural fairness.<sup>50</sup>

Following *Singh*, the Federal Court handed down some of the most inspiring judgments of the early-*Charter* era by adopting a purposeful approach to the interpretation of certain sections of the *Immigration Act* in an effort to read some procedural fairness into them. A few of these notable decisions follow.

In *Muliadi*,<sup>51</sup> the Federal Court of Appeal found that the visa officer had breached the duty of fairness by not giving the applicant a fair opportunity of correcting or contradicting the concerns expressed by the provincial authorities.<sup>52</sup>

In *Karim*,<sup>53</sup> Rouleau J., in dealing with the application of the guidelines for the Foreign Domestic Program, indicated that the terms and spirit of the stated policy are to be respected.<sup>54</sup>

<sup>46</sup> *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177 [hereinafter *Singh*].

<sup>47</sup> *Ibid.* Wilson J. states expressly, however, that the decision refers only to refugee claimants, and leaves other kinds of interests for subsequent cases.

<sup>48</sup> *Nicholson*, *supra* note 44.

<sup>49</sup> *Knight v. Indian Head School Division 19*, [1990] 1 S.C.R. 653 [hereinafter *Knight*].

<sup>50</sup> *Ibid.* at 669 *per* L'Heureux-Dube J.:

In making this determination, the court ought to consider: (i) the nature of the decision, (ii) the relationship between the administrative body and the person affected, and (iii) the effect of the decision on the individual's rights. If a general right to procedural fairness exists, the court must see if the statute either modifies it or excludes it. The content of the duty to act fairly must then be established and a determination of whether or not the duty was complied with must be made.

<sup>51</sup> *Muliadi v. Canada (Minister of Employment and Immigration)*, [1986] 2 F.C. 205 (F.C.A.) [hereinafter *Muliadi*].

<sup>52</sup> In *Muliadi*, *ibid.*, the visa officer had interviewed the immigrant applicant and had later rejected his application for permanent residence in Canada on the basis of advice given by provincial authorities.

In *Ho*,<sup>55</sup> Jerome J.A. ruled against a negative interpretation of the Act's language pointing out that discretion must be used to assess every case fairly and thoroughly:

Parliament's intention in enacting the *Immigration Act* is to define Canada's immigration policy both to Canadians and to those who wish to come here from abroad. Such a policy ... should always be interpreted in positive terms. *The purpose of the statute is to permit immigration, not prevent it, and it is the corresponding obligation of immigration officers to provide a thorough and fair assessment in compliance with the terms and spirit of the legislation.* [Emphasis added.]

In *Fong*,<sup>56</sup> the Court held that visa officers should apprise the applicant of their impressions in a way that may afford the applicant an opportunity of disabusing them of their negative impressions.<sup>57</sup>

*Yhap*<sup>58</sup> concerned the proper use of discretionary powers.<sup>59</sup> Jerome J.A. ruled that these should be used to effectively evaluate the merits of individual cases in a

<sup>53</sup> *Karim v. Canada (Minister of Employment and Immigration)* (1988), 6 Imm. L.R. (2d) 32 at 36 (F.C.T.D.) [hereinafter *Karim*].

<sup>54</sup> *Ibid.* at 36 per Rouleau J.:

[T]he Minister and his servants must follow the policy and the guidelines of the F.D.M. program in order to be fair. I acknowledge that the decision of whether to grant permanent resident status to an applicant or not must be ultimately made by the Minister and his servants, but it is open to this Court to review the manner in which the decision is made and to ensure that the terms and the spirit of the stated policy are respected.

<sup>55</sup> *Ho v. Canada* (1989), 8 Imm. L.R. (2d) 38 (F.C.T.D.) [hereinafter *Ho*].

<sup>56</sup> *Fong v. Canada (Minister of Employment and Immigration)* (1990), 11 Imm. L.R. (2d) 205 (F.C.T.D.) [hereinafter *Fong*].

<sup>57</sup> Following the decision of *Martineau v. Matsqui Institution Disciplinary Board (No.1)*, [1978] 1 S.C.R. 118 regarding the availability of *certiorari* as a general remedy for failure by administrative decision-makers to exercise the duty of fairness, McNair J. held in *Fong*, *ibid.* at 210 that

[T]here was a further breach of the duty of fairness in the failure of the visa officer to apprise the appropriate questions of his immediate impression regarding the deficiency of proof intended and related employment and the likely consequences thereof, in order to afford the applicant some opportunity of disabusing the former's mind of the crucial impression.

<sup>58</sup> *Yhap v. Canada (Minister of Employment and Immigration)* (1990), 9 Imm. L.R. (2d) 243 at 259 (F.C.T.D.) [hereinafter *Yhap*].

<sup>59</sup> In *Yhap*, *ibid.*, per Jerome J. citing J.M. Evans, *de Smith's Judicial Review of Administrative Action*, 4th ed. (London: Stevens & Sons, 1989) at 312:

[A] factor that may properly be taken into account in exercising a discretion may become an unlawful fetter upon discretion if it is elevated to the status of a

way that prevents a blind implementation of policy. He continued by stating that the principles of administrative law do not condemn the existence of guidelines. Policy guidelines are not improper and indeed are even desirable in order to ensure consistency. This point of view was also held in *Vidal*.<sup>60</sup>

Unfortunately, by the mid-nineties, Federal Court judgments no longer revealed an active commitment to procedural fairness. For example, in *Shah*,<sup>61</sup> Hugessen J. held that the duty of fairness has a minimal content<sup>62</sup> with cases determined "wholly [by] a matter of judgment and discretion." Hugessen J. contrasted such scenarios with those "by a visa officer dealing with a sponsored application for landing, where the law establishes criteria which, if met, give rise to certain rights," and noted that any dicta to the contrary in *Re H.K. (An Infant)*,<sup>63</sup> *Kaur*,<sup>64</sup> and *Ramoutar*<sup>65</sup> should be read in light of *Shah*.<sup>66</sup>

general rule that results in the pursuit of consistency at the expense of the merits of individual cases.

Jerome J. also cited D.P. Jones & A.S. de Villars, *Principles of Administrative Law* (Toronto: Carswell, 1985) at 137 regarding the difference between "general" and "inflexible" policy:

[T]he existence of discretion implies the absence of a rule dictating the result in each case; the essence of discretion is that it can be exercised differently in different cases. Each case must be looked at individually, on its own merits.

<sup>60</sup> *Vidal v. Canada (Minister of Employment and Immigration)* (1991), 13 Imm. L.R. (2d) 123 (F.C.T.D.) [hereinafter *Vidal*].

<sup>61</sup> *Shah v. Canada (Minister of Employment and Immigration)* (1993), 170 N.R. 238 (F.C.A.) [hereinafter *Shah*]. In his application for landed immigrant status, the appellant sought to be exempted from the requirements of s. 9(1) of the *Immigration Act* on humanitarian and compassionate grounds.

<sup>62</sup> *Ibid.* at 239 per Hugessen J.:

The applicant does not have a "case to meet" of which he must be given notice; rather it is for him to persuade the decision-maker that he should be given exceptional treatment and exempted from the general requirements of the law. No hearing need be held and no reasons need be given. The officer is not required to put before the applicant any tentative conclusions she may be drawing from the material before her, not even as to apparent contradictions that concern her.

<sup>63</sup> *Re H.K. (An Infant)*, [1967] 2 Q.B. 617.

<sup>64</sup> *Kaur v. Canada (Minister of Employment and Immigration)* (1987), 5 Imm. L.R. (2d) 148 [hereinafter *Kaur*].

<sup>65</sup> *Ramoutar v. Canada (Minister of Employment and Immigration)*, [1993] 3 F.C. 370 (F.C.T.D.) [hereinafter *Ramoutar*].

<sup>66</sup> *Shah*, *supra* note 61.

Only recently, with *Wong*,<sup>67</sup> has the state of the law improved for visitor visa applicants. In that case Gibson J. disagreed with *Yu*<sup>68</sup> and decided that the visa officer erred in refusing a student visa on the grounds that the applicant expressed a long term goal to study in Canada. In holding so, Gibson J. made no reference to the existence of any student visa criteria under the Act. Instead, he focused on the sole fact that the visa officer's decision was unsupported by the evidence.<sup>69</sup>

## V. VISITOR VISAS AND THE CANADIAN HUMAN RIGHTS ACT

LOGGING A COMPLAINT before the Canadian Human Rights Commission is possible and can result in some relief for those Canadians affected by our visitor visa legislation, but only in the form of emotional redress.<sup>70</sup>

The Federal Court of Appeal in *Singh v. Canada (Department of External Affairs)*<sup>71</sup> recognised the jurisdiction of the Canadian Human Rights Commission to enquire into allegations of discrimination by Canada Immigration. In doing so, the Court ruled that human rights legislation "is to receive a large, liberal and

<sup>67</sup> *Wong v. Canada (Minister of Citizenship and Immigration)* (1997), 134 F.T.R. 288 (F.C.T.D.) [hereinafter *Wong*]

<sup>68</sup> *Yu v. Canada (Minister of Employment and Immigration)* (1993), 21 Imm. L.R. (2d) 1 (F.C.T.D.). On facts very similar to *Chun Hin Wong*, *supra* note 62, McKeown J. concluded that a visa officer made no reviewable error in reaching the same decision that the visa officer reached in *Chun Hin Wong*.

<sup>69</sup> *Wong*, *supra* note 67 at 292 *per* Gibson J.:

The minor applicant's mother's aspirations or hopes and dreams for her son's educational career were, on the 12th of August, 1996, nothing more than that. At some time in the minor applicant's educational career it might become evident that those aspirations were in course of being realized and that the minor applicant's major attachment had become to Canada, rather than to Hong Kong. But to take into account those aspirations or hopes and dreams on the 12th of August, 1996 was, I conclude, to take into account an irrelevant consideration in relation to the application that was before the visa officer.

<sup>70</sup> The Human Rights Tribunal does not have jurisdiction to override a decision of a visa officer made outside Canada. Section 40(5)(c) of the *Canadian Human Rights Act* cannot be used as a basis for jurisdiction in that it does not give the tribunal authority over determinations as to the admissibility to Canada of foreign nationals.

<sup>71</sup> *Singh v. Canada (Department of External Affairs)* (1988), 51 D.L.R. (4<sup>th</sup>) 673 (F.C.A.) [not to be confused with *Singh v. Canada (Minister of Employment and Immigration)*, *supra* note 46]. The Human Rights Commission put before the Federal Court of Appeal ten references regarding the investigation of complaints made pursuant to s. 32 of the *Canadian Human Rights Act* where the complainants (all Canadian citizens or permanent residents of Canada) claimed some to have suffered discrimination on prohibited grounds in the refusal by government of visitors' visas to close family relatives and others to have suffered discrimination on prohibited grounds in refusal by government to recognise their right to sponsor a close relative as a member of the family class.

purposive interpretation," and decided that the preferable course is to leave the Tribunal free to carry out its inquiries and not to prohibit, save in a case where it is clear and beyond doubt that the Tribunal is without jurisdiction to deal with the matter before it.<sup>72</sup>

The Court in *Singh v. Canada (Department of External Affairs)* rejected the government's contention that,

- (i) complaints lodged by the Canadian relative(s) of an applicant did not relate to discriminatory practises "in the provision of services customarily available to the general public"<sup>73</sup>; and
- (ii) the applicant's Canadian relative(s) could not be described as victims of the alleged discriminatory practises.

In the Court's view, it was by no means clear that the services rendered, both in Canada and abroad, by the officers charged with the administration of the *Immigration Act* are not services customarily available to the general public.

As for who could be described as a "victim" of the discriminatory practises, the Court decided that both the applicant and her relatives could be victimised. In considering the "effect" of the discriminatory practise, the Court in *Singh* followed *Re Ontario Human Rights Commission and Simpsons-Sears Ltd.*<sup>74</sup> to determine that "effect" is not limited to the alleged "target" of the discrimination, and that

[I]t is entirely conceivable that a discriminatory practice may have consequences which are sufficiently direct and immediate to justify qualifying as a "victim" thereof persons who were never within the contemplation or intent of its author.<sup>75</sup>

Accordingly, the Court ruled that

[I]t is by no means impossible that the complainants in Canada who were seeking to be visited by relatives from abroad should themselves be victims of discriminatory practices directed against such relatives.<sup>76</sup>

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<sup>72</sup> The Court followed the reasoning used in *Cumming v. Canada (Attorney General)* (1979), 103 D.L.R. (3d) 151 at 158-9 (F.C.T.D.) [hereinafter *Cumming*].

<sup>73</sup> According to s. 5 of the *Canadian Human Rights Act*, a Human Rights Tribunal has no jurisdiction over a discriminatory act if the latter does not take place during the delivering of services that are "customarily available to the general public."

<sup>74</sup> *Re Ontario Human Rights Commission and Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 [hereinafter *Re Ontario Human Rights Commission*].

<sup>75</sup> *Singh v. Canada (Department of External Affairs)*, *supra* note 71 at 680.

<sup>76</sup> *Ibid.* at 683. The Canadian Human Rights Tribunal later ruled similarly, that not only the applicants but also the visitor visa applicant's relatives are victims of any discriminatory practise by Canada Immigration because they are adversely affected by the consequences of the discrimination against their friends or relatives from abroad.



Further, the Federal Court stated that this reasoning need not only apply to life-threatening situations, considering that: (i) one of the objectives of the *Immigration Act* is to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad<sup>77</sup> and (ii) the principle of the *Canadian Human Rights Act* (per s. 2) is “every individual should have an equal opportunity with other individuals to make for himself or herself the life that she is able and wishes to have.”

### A. Naqvi

Its jurisdiction confirmed in *Singh v. Canada (Department of External Affairs)*,<sup>78</sup> the Canadian Human Rights Tribunal ruled in *Naqvi*<sup>79</sup> that immigration officials whether posted in Canada or abroad are bound by the duty to act in accordance with the *Canadian Human Rights Act*. Immigration officials must exercise their discretion to grant or refuse entry to Canada in accordance with the *Canadian Human Rights Act* whether they are doing so within Canada or abroad.

In ruling against Canada Immigration in *Naqvi*, the Human Rights Tribunal emphasised that the legislation must be administered in a non-discriminatory manner:

Canadian immigration policy, as set out in Part I of the *Immigration Act, 1976* (the legislation in effect at the time) recognized in s. 3, that the rules and regulations made under the Act were to be designed and administered recognizing the need ... (f) to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex.<sup>80</sup>

The Tribunal held that the applicant had been wrongly refused a visa because of a presumption that a single young Pakistani woman was unlikely to travel alone for legitimate purposes, and that there was a risk she might enter Canada and get married, making her eligible for immigrant status. It ruled that not granting a visitor's visa to an applicant because of her sex, marital status and race, colour, and national or ethnic origin, was contrary to ss. 5(a) and (b) of the *Canadian Human Rights Act*. In addition, it ruled that the visitor visa applicant's relatives<sup>81</sup> had been discriminated against by Canada Immigration.

The Tribunal concluded that it could not order Immigration Canada to admit the visitor visa applicant as a visitor, but that under s. 40(5), remedies can be pro-

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<sup>77</sup> Per s. 3 of the Act.

<sup>78</sup> *Singh v. Canada (Department of External Affairs)*, *supra* note 71.

<sup>79</sup> *Naqvi*, *supra* note 12.

<sup>80</sup> *Ibid.* at D/145.

<sup>81</sup> The complainants in the case were Hameed and Massarat Naqvi, Canadian citizens who were born in India and moved to Pakistan after partition. The visitor visa applicant was Massarat Naqvi's sister, Naj Jaffery.

vided to persons in Canada affected by discriminatory acts of Canadian officials abroad. Consequently, the Tribunal required Canada Immigration to apologise to the complainants, the visa applicant's relatives.

## VI. VISITOR VISAS AND INTERNATIONAL CONSIDERATIONS

### A. Visitor Visas and Internationally Recognised Rights

The Act's restrictions on the ability of Canadians originating in visa countries to see their relatives are at odds with Canada's international recognition of the importance of freedom of movement from one state to another.

In 1975 Canada joined 34 nations in writing and signing the *Helsinki Accord*.<sup>82</sup> In an effort to solve human rights problems facing the states participating in the Conference,<sup>83</sup> the signatory countries made the commitment to act in recognition of the importance of being able to visit and be visited:

In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.<sup>84</sup>

In implementing measures to promote contacts on the basis of family ties, the *Helsinki Accord* signatories pledged not to make distinctions on the basis of the persons' countries of origin:

Applications for temporary visits to meet members of their families will be dealt with without distinction as to the country of origin or destination: existing requirements for travel documents and visas will be applied in this spirit.<sup>85</sup>

The signatory countries also pledged to facilitate the process of admission for persons facing personal difficulties:

The preparation and issue of such documents and visas will be effected within reasonable time limits: cases of urgent necessity—such as serious illness or death—will be given priority treatment. They will take such steps as may be necessary to ensure that the fees for official travel documents and visas are acceptable.<sup>86</sup>

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<sup>82</sup> The *Helsinki Accord* consists of three principal parts: Part I titled "Questions Relating to Security in Europe," Part II on policies relating to cooperation in the fields of economics, science, technology and environment, and Part III entitled "Cooperation in Humanitarian and Other Fields," Buerghenthal & Hall, *supra* note 8 at 3–4.

<sup>83</sup> S. Bastid, "The Special Significance of the *Helsinki Final Act*," *ibid.* at 11.

<sup>84</sup> Under the subtitle "Contacts and Regular Meetings on the Basis of Family Ties," in the section entitled "Cooperation in Humanitarian and other Fields," *ibid.* at 172.

<sup>85</sup> Under the subtitle "Contacts and Regular Meetings on the Basis of Family Ties," in the section entitled "Cooperation in Humanitarian and other Fields," *ibid.* at 172.

<sup>86</sup> Under the subtitle "Contacts and Regular Meetings on the Basis of Family Ties," in the section entitled "Cooperation in Humanitarian and other Fields," *ibid.* at 172.

## B. The Australian Standard

Australia gives special consideration to visitor visa applicants with relatives in Australia, both in relation to guidelines for the issuing of visas and the appeal procedure. Australia has nine classes of visitor visas. Among them are two classes describing visitors sponsored by a close relative living in Australia: class 676 for short stays and class 683 for long stays. Visitors sponsored by a close relative living in Australia are identified in order to facilitate their entry into Australia. In 1995, for example, express policy directions were issued by the Immigration Minister to facilitate entry to Australia of such visitors.<sup>87</sup> In addition, all visitor visa decisions can be appealed through a two-level process.

First, visitor visa denials can be appealed to the Migration Internal Review Office (M.I.R.O.). If turned down by M.I.R.O., an appeal can be lodged before the Immigration Review Tribunal (I.R.T.), part of the Australian court system, where the decision is made on a merits basis. In close-family visitor cases, appeals to the I.R.T. are filed by the Australian sponsor. The Minister of Immigration can override a decision by M.I.R.O. or the I.R.T. but only to give a decision more favourable to the applicant.<sup>88</sup>

The vast number of favourable I.R.T. decisions show that the Australian visitor visa system, unlike Canada's, is a system designed to apply the country's rules while paying significant attention to individual circumstances. Out of 30 I.R.T. close-family visitor visa decisions made from January 1996 through July 1996, 23 were resolved favourably for the applicant.<sup>89</sup>

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<sup>87</sup> *Re Reza Ghodratzadeh*, [1996] I.R.T. Ref. No. N95/01833 No. 6305 (Q.L.).

<sup>88</sup> D.G. Thomas & M.J. Flynn, "Australia," in *International Immigration and Nationality Law*, D. Campbell & J. Fisher, eds. (The Hague: Martinus Nijhoff Publishers, 1995).

<sup>89</sup> The following three cases are typical of those which go before the I.R.T.:

In *Re Reza Ghodratzadeh*, *supra* note 87, the applicant had been turned down on the basis that he had an unstable job and the brother, an Australian citizen, appealed. M.I.R.O. agreed with the visa officer's decision, but the I.R.T. ruled in favour of the applicant.

In *Re Salma Abou Dib*, [1996] I.R.T. Ref. No. N95/02631 No. 6106 (Q.L.), the applicant had first been turned down because of age and unmarried status. M.I.R.O. supported the negative decision on the grounds that she had only been working in her present job for nine months and that there had not been regular contact between her and her sister. The I.R.T., however, gave a favourable decision to the applicant.

In *Re Santosh Mahendroo*, [1996] I.R.T. Ref. No. S93/01591 No. 4612 (Q.L.), the applicant had been turned down on the basis that because of her severe heart condition she did not meet health criteria. M.I.R.O. agreed, but the I.R.T. ruled in favour of the applicant.

## VII. VISITOR VISAS AND THE CHARTER

### A. The Need to Eliminate Inequality

Courts could<sup>90</sup> take a consistently vigilant role, scrutinising every decision brought before them to ensure it has been made based on the proper procedural fairness standard.<sup>91</sup> Such a practise would reiterate the message that immigration officers must not indulge in the kind of prejudicial or arbitrary treatment found procedurally unacceptable by the courts. However, only parliamentary action or successful constitutional challenge could imprint the rights of immigrants in the wording of the Act.

In the area of visitor visas, Parliament, the courts, or both must change the Act to recognise that Canadians deprived of visits by relatives and friends from abroad do not enjoy the same respect and dignity as other Canadians—and that they cannot feel as free, as secure, or as equal to other Canadians. Further, the Act must be modified to recognise that the existence of foreign born Canadian citizens and permanent residents necessitates a special class of visitor—one who is not simply a tourist but rather enters Canada in response to a Canadian's needs.

### B. The Possibilities of a Charter Challenge

Is a *Charter* challenge possible? And if so, on what grounds could it be made and what kind of political context would increase its odds of success?

Were the visitor visa problem to be viewed as directly concerning only strangers, a successful *Charter* challenge would be unlikely. As Professor Galloway suggests, our immigration system is attuned more to defining the directions most beneficial to the Canadian economy than to raising questions about the political and moral obligations owed to individuals who seek entry or have gained entry as

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<sup>90</sup> After all, the Supreme Court of Canada has said that it is no longer acceptable to justify arbitrary or unfair treatment of immigrants and even foreigners on the grounds that "immigration is a privilege and not a right" as stated by Wilson J. in *Singh*, *supra* note 46 at 209:

The creation of a dichotomy between privileges and rights played a significant role in narrowing the scope of the application of the *Canadian Bill of Rights* ... I do not think this kind of analysis is acceptable in relation to the *Charter*. It seems to me rather that the recent adoption of the *Charter* by Parliament and nine of the ten provinces as part of the Canadian constitutional framework has sent a clear message to the courts that the restrictive attitude which at times characterized their approach to the *Canadian Bill of Rights* ought to be re-examined.

<sup>91</sup> That is, were the courts to consistently and thoroughly apply the test for procedural fairness that L'Heureux-Dube J. expounded in *Knight*, *supra* note 49.

visitors or residents,<sup>92</sup> and within that system, the state's obligations to strangers remain virtually unexamined.<sup>93</sup>

Section 3(f) of the *Immigration Act* refers to *Charter* values by generally prohibiting discrimination "in a manner that is inconsistent" with the *Charter*:

[T]o ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate in a manner inconsistent with the *Canadian Charter of Rights and Freedoms*.

Yet the section does not specify whether with strangers (persons seeking admission) the need to avoid discrimination is a form of legal necessity.<sup>94</sup> Fortunately, however, since there is authority<sup>95</sup> in support of the claim that the visitor visa legislation adversely affects not only the strangers who are turned down but also their Canadian inviters, the latter can try to assert their rights under the *Charter*.

Once (that is, if) the Court entitles affected Canadians to launch a *Charter* challenge, arguments can be made to show that the visitor visa legislation and its administration violate the rights of affected Canadian citizens and residents, under ss. 15 and 7, and that our interpretation of these sections is strengthened by s. 27 and 28.

Casting doubt on the court's receptiveness, however, are a series of relatively recent Supreme Court of Canada decisions which provide a level of protection much weaker than that provided by the Court in the early years of the *Charter*.<sup>96</sup>

<sup>92</sup> D. Galloway, "Strangers and Members: Equality in an Immigration Setting" (1994) 7 Can. J. L. & Jur. 149.

<sup>93</sup> Galloway, *ibid.* at 154.

<sup>94</sup> One of the unique aspects of *Singh* was Wilson J.'s finding that s. 7 protection applies not only to refugee applicants who are physically present in Canada but also to persons seeking to enter Canada to claim Convention refugee status.

<sup>95</sup> Both *Singh* at common law and the Canadian Human Rights Tribunal ruling in *Naqvi*, *supra* note 12 classify the Canadian relatives and friends of rejected visitor visa applicants as potential victims of the refusal.

<sup>96</sup> We have come a long way down since *R. v. Oakes*, [1986] 1 S.C.R. 103 [hereinafter *Oakes*], where *Charter* principles were first set out. In *Oakes*, the Supreme Court ruled that *Charter* rights have to be read as *broadly* as possible. The Court placed the s. 1 limit on *Charter* rights under check through a complex test which requires the government to prove on a high degree of probability that the deprivation of the right is a necessary one. Successive Supreme Court decisions in general have not been as protective of *Charter* rights. We reach one of the worst situations in *Egan v. Canada*, [1995] 2 S.C.R. 513 [hereinafter *Egan*]. In that case, the majority of the Court's respect for "parliamentary choice" and for what they perceive as what our society "from time immemorial" has seen as "natural," prevents it from recognising the deprivation of a minority (persons living in a homosexual relationship) of a right. It is the triumph of deference and societal conservative values. The Supreme Court in *Egan* simply refused to act to protect the rights of the homosexual minority in order to support the heterosexual family. It could be said that in *Egan* the s. 1 test was abandoned if not ignored.

The impact of these decisions is exacerbated by years of anti-immigrant policies and anti-immigrant press.<sup>97</sup>

### 1. Section 15

At a minimum, visitor visa legislation violates s. 15<sup>98</sup> through its unequal administration.<sup>99</sup> Our visitor visa legislation has created numerous inequalities to the extent that some Canadians are more “equal” than others. Canadians originating in India or Bangladesh, for example, are much worse off than those originating in Argentina.<sup>100</sup> The fact that within the large group of Canadians affected by visitor visa legislation, some are more affected than others shows that—fair or unfair—the legislation is being applied unequally. The visitor visa legislation’s violation of Canadians’ right to equality, however, goes further than that.

If s. 15 of the *Charter* is to include the right to formal equality,<sup>101</sup> then s. 15 must prohibit legislation which, through its effects,<sup>102</sup> disadvantages<sup>103</sup> some Ca-

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<sup>97</sup> We are witnessing the gradual erosion of the rights of permanent residents, for example. The activation of s. 27 of the *Immigration Act* in the nineties has meant the deportation of permanent residents to their countries of origin for even minor offences. Amidst the powerful press campaign designed to present rich immigrant drug dealers as the prototype of recent immigrants, not even the deportation of people who have lived in Canada since their childhood has attracted popular condemnation.

<sup>98</sup> Section 15(1) of the *Charter* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

<sup>99</sup> Administrative equality is the minimal guarantee. It protects equality in the *application* of the law. Once law makers have defined the group that gets the benefit or the burden from the legislation in question, that legislation must be administered in an equal way. The question has always been how much more is protected by the *Charter*.

<sup>100</sup> While in Buenos Aires visa applicants do not have to stand in line and the rate of acceptance is 93.6 percent, in New Delhi visa applicants must stand outside visa offices from very early hours in the morning and the rate of acceptance is 60.9 percent. The acceptance rate in Dhaka is 32.7 percent.

<sup>101</sup> It is the kind of equality that got Blacks and women the vote. In simple terms, there is inequality if in distributing a benefit or granting a right, distinctions are made on the basis of characteristics which are irrelevant to whether or not the person should be granted the right or allowed the benefit.

<sup>102</sup> According to McIntyre J.’s definition of “discrimination” in *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 [hereinafter *Andrews*], effect is what is important:

A distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed

nadians by depriving them of benefits or rights enjoyed by others, on the basis of characteristics which are irrelevant to the granting of the right or the distribution of the benefit, *i.e.*, on discriminatory grounds. My contention is that discriminatory treatment is indeed taking place against individuals and against entire Canadian ethnic groups. There is no doubt that our visitor visa legislation and its administration entails the making of distinctions based on personal characteristics (in this case, enumerated grounds)<sup>104</sup> attributed to individuals solely on the basis of association with particular groups. There is also no doubt that depriving some Canadians of receiving the visit of their loved ones places them at a disadvantage: the deprivation is a blow to their self-esteem, and it can be emotionally harmful. In addition, as previously argued, visa refusals have an adverse impact on the dignity of entire groups of Canadians originating in countries at the receiving end of substandard treatment.<sup>105</sup> We are dealing with treatment which is as damaging to individuals and ethnic groups as it is unnecessary. The government has not justified the need for the uneven administration of the visitor visa legislation or its unequal treatment of Canadians.<sup>106</sup>

## 2. Section 7

The case can be made that, in addition to the s. 15 violation, our visitor visa legislation and its administration violate s. 7 of the *Charter*.<sup>107</sup> If by "security of the person" we mean at least<sup>108</sup> "an active protection of one's physical and mental

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upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

<sup>103</sup> The Court in *Andrews, ibid.*, decided that to be "discriminatory" the legislation must be "disadvantaging."

<sup>104</sup> That is, they are explicitly recognised as discriminatory grounds per s. 15(1) of the *Charter*: race, national or ethnic origin, colour, sex, age, or mental or physical disability.

<sup>105</sup> Within the Supreme Court, it is mostly L'Heureux-Dube J. who has developed the argument that s. 15 should be used to stop the exacerbation of disadvantage or marginalisation of groups. Cory J. appears to agree with part of her argument. See, for example, *Egan, supra* note 96.

<sup>106</sup> The government must justify the need for the challenged law or show that it cannot reasonably accommodate the individual or the minority, if the inequalities are to be allowed: *Central Alberta Dairy Pool v. Alberta (Attorney General)*, [1990] 2 S.C.R. 489.

<sup>107</sup> Section 7 of the *Charter* states: [e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

In *B.C. Motor Vehicle Reference*, [1985] 2 S.C.R. 486, a unanimous court decided that there are three rights in s. 7 (life, liberty, and security); that deprivation of any one of them constitutes a violation of the section.

<sup>108</sup> The interpretation of s. 7 should be "a generous rather than a legalistic one": *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 344. Meaning should be given to each of the ele-

integrity,"<sup>109</sup> the legislation ought to be found to violate s. 7 by failing to even consider Canadian citizen's and resident's emotional, and to some extent physical needs.

Similarly, a legislation and a practise which have the potential to, and which in fact cause, great emotional distress would have to be found to be in violation of s. 7 if, as Sopinka J. held in *Rodriguez*,<sup>110</sup> "security of the person" alludes to the "sanctity of life" and the interest the state has in protecting life is a response to the value our society places on human life.

It is true that at the "right" stage of the *Charter* challenge of the visa legislation under s. 7, one would be faced with the problem that in the family class context federal courts have tended to uniformly refuse to accept the position of family class immigrants, including spouses, as giving rise to liberty or personal security interests that engage the protections of s. 7 of the *Charter*.<sup>111</sup> It is also true

ments, life, liberty and security of the person, which make up the right contained in s. 7, and those three concepts are capable of a broad range of meaning: *Singh*, *supra* note 46.

Wilson J. gave the right to "liberty" under s. 7 a broad meaning, stating: "[t]he *Charter* and the right to individual liberty guaranteed under it are inextricably tied to the concept of human dignity": *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at 164. Wilson J. continued by citing Professor MacCormick who describes liberty as:

[A] condition of human self-respect and of that contentment which resides in the ability to pursue one's own conception of a full and rewarding life ... . To be able to decide what to do and how to do it, to carry out one's own decisions and accept their consequences, seems to me essential to one's self-respect as a human being, and essential to the possibility of that contentment.

In *R. v. Rodriguez*, [1993] 3 S.C.R. 519 [hereinafter *Rodriguez*] part of McLachlin J.'s approach is based on the argument that "security of the person" includes also the right to autonomy as in the right to make decisions concerning one's own body and basic economic rights.

<sup>109</sup> One of the concepts of "security of the person" used in *Rodriguez*, *ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> See P.L. Bryden, "Fundamental Justice and Family Class Immigration: The Example of *Pangli v. Canada (Minister of Employment and Immigration)*" (1991) 41 U.T.L.J. 484 at 501. In Professor Bryden's opinion, the courts' refusal to grant family class immigrants protection under s. 7 is,

[A]t a deeper level ... a reflection of the courts' discomfort with the overt nature of their role in defining the interests that are to be given protection under s. 7—a role that is played much more subtly in an entitlements oriented scheme.

Furthermore, Professor Bryden points out, in the area of immigration the need to uphold what are perceived as national interests and objectives frequently works against our moral obligation to consider the rights of all:

[I]mmigration decisions involve a fundamental contradiction between universal and particularized legal norms. We want to be able to treat people on an undiffer-



that the line of reasoning that is used to exclude family class immigration also applies to visitors with family ties to Canadians. In both cases the same sort of emotional and security interests are at stake.

However, the Supreme Court of Canada has not yet determined whether people such as family class immigrants are protected by s. 7.<sup>112</sup> Furthermore, the *Children's Aid Society of Metropolitan Toronto*<sup>113</sup> case makes the conservative view of the lower courts, relying expressly on Lamer J.'s view, at least suspect. In *Children's Aid Society*,<sup>114</sup> Lamer J.'s view that the right only applies to the criminal law context was disavowed by four justices.<sup>115</sup>

Regarding the principles of fundamental justice,<sup>116</sup> the legislation is arguably incompatible with them since the deprivation of the right under s. 7 of Canadians affected by the visitor visa policy "does little or nothing to enhance the state's interest,"<sup>117</sup> and is "manifestly unfair."<sup>118</sup> The breach of the principles of funda-

entiated basis in accordance with broadly accepted principles of fair treatment in important areas of life, yet we want to be able to assert sovereign control over Canada's borders and the ability to define ourselves as a nation.

<sup>112</sup> The Supreme Court of Canada has, in fact, tended to avoid expressing an opinion as to the scope of the rights protected under s. 7. In *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711 [hereinafter *Chiarelli*], for example, Sopinka J. decided on the substance of the *Immigration Act* provisions at issue by going straight to the question of whether or not they violated the "principles of fundamental justice." Having found that the provisions didn't, the Court did not go on to decide whether permanent residents being deported enjoyed the protection of the section.

<sup>113</sup> *R.B. v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 [hereinafter *Children's Aid Society*].

<sup>114</sup> *Ibid.*

<sup>115</sup> In *Children's Aid Society*, *ibid.* at 363, La Forest J., writing for the majority stated:

*Charter* rights should always be interpreted broadly. Apart from the fact that this brings in the full contextual picture in balancing them with other rights under s. 1, a narrower interpretation has the effect of forever narrowing the ambit of judicial review, and so limiting the scope of judicial intervention for the protection of the individual rights guaranteed under the *Charter*. This approach forms the basis of my disagreement with the Chief Justice's approach to s. 7 ... .

<sup>116</sup> In addition to deciding that there are three rights in s. 7, the court in *B.C. Motor Vehicle Reference*, *supra* note 107, decided that s. 7 included an internal qualifier: "the principles of fundamental justice." This leads to a two-step test in deciding whether there is a violation of the s. 7. First, the court must determine whether there is a deprivation of life or liberty or of security of the person. If there is, then the court must determine whether the deprivation violates the "principles of fundamental justice."

<sup>117</sup> That is, individuals have been deprived of their rights for no valid purpose. See Sopinka J.'s test in *Rodriguez*, *supra* note 108 to determine whether or not the deprivation of the right constitutes a breach of fundamental justice

mental justice can also be demonstrated by pointing out that the legislation and its administration deprive affected Canadians not only of their right to security under s. 7 but also of another right—their right to equality under s. 15.<sup>119</sup>

There are also problems at the “principles of fundamental justice” stage of a visitor visa *Charter* challenge. After *Singh*<sup>120</sup> the Supreme Court of Canada has rarely found a regulatory scheme in the administrative law area to be “fundamentally unjust” under s. 7. Furthermore, in *Chiarelli*,<sup>121</sup> the Supreme Court departed from *Singh*,<sup>122</sup> holding that depriving a permanent resident facing deportation of his right to appeal on all of the circumstances of the case does not violate the principles of fundamental justice.<sup>123</sup> While in *Singh*<sup>124</sup> the Court was willing to deal with the issues on principled grounds despite the negative administrative consequences, in *Chiarelli* the Court lost sight of the interests of individuals in Mr. Chiarelli’s position<sup>125</sup> and gave priority to administrative, social, and political concerns.

According to the Court in *Chiarelli* the “principles of fundamental justice” have to be viewed *in context*, and constitutional standards developed in the criminal context did not apply to regulatory offences.<sup>126</sup> The Court found that the

<sup>118</sup> Wilson J. stated in *Morgentaler*, *supra* note 108, that a legislative or regulatory scheme may be so manifestly unfair, having regard to the decisions which must be made under it, as to violate the principles of fundamental justice.

<sup>119</sup> Reference is being made to Wilson J.’s test in *Morgentaler*, *supra* note 108. If there is deprivation of life, liberty or security of the person and the deprivation of another *Charter* right, then the principles of fundamental justice have been violated because s. 7 must include all the other rights.

<sup>120</sup> *Singh*, *supra* note 46.

<sup>121</sup> *Chiarelli*, *supra* note 112 *per Sopinka J.*

<sup>122</sup> *Singh*, *supra* note 46.

<sup>123</sup> All the law requires is a reasonable suspicion and part of the review process is secret. It is the Governor in Council, who has not heard from the permanent resident in question nor provided him with an opportunity to respond, who makes the decision to refuse him the opportunity to appeal on all the circumstances of his case. The Governor in Council makes this decision on the sole basis of a report made available to her/him by the investigative body, the Canadian Security Intelligence Service (C.S.I.S.). The Court in *Chiarelli*, *supra* note 112, declares that individual circumstances are irrelevant.

<sup>124</sup> *Singh*, *supra* note 46.

<sup>125</sup> Despite the seriousness of the consequences for the permanent resident, the Court in *Chiarelli*, *supra* note 112, decided that, once it is determined that there was “a deliberate violation of the condition imposed” it is not necessary to look at other aggravating or mitigating circumstances.

<sup>126</sup> The “principles of fundamental justice” are to be interpreted in light of the *context* in which the claim arises. The “context” is relevant to the meaning and scope of *Charter* rights and to the balance to be struck between individual rights and the interests of society. In *Chiarelli* the “context” was determined to be the *Immigration Act*.

statutory provisions are justified because it is Parliament's decision that they are in the public interest. Further, the evolution of the *Immigration Act* demonstrates that the right of appeal on compassionate and humanitarian grounds has never been granted to permanent residents under order of deportation.

It can be argued, however, that while the government's treatment of people in Mr. Chiarelli's situation is based on some kind of statutory and legal process, the government's treatment of Canadians with roots in visa countries is not. Unlike visitor visa provisions, the Act's provisions governing people in Mr. Chiarelli's situation, whether we consider them excessive or not, make clear what a permanent resident must avoid doing to remain outside their reach. Further, while there is some degree of rational connection between the governmental objective<sup>127</sup> and the immigration scheme in *Chiarelli*, this is missing in the visitor visa case.

In light of these points, several questions arise: how is it in the government's interest to include no determinative criteria in the provisions which affect Canadians with relatives or friends in visa countries? How exactly does the lack of specific criteria in the visitor visa provisions help the government achieve its goal of preventing people from staying in Canada illegally? Why is ignoring the real concerns of Canadians originating in visa countries, a necessary aspect of our visitor visa regulations? What is the government's justification for an administrative system that is discriminatory and often humiliating for some of its citizens?

The costs to the state to modify our visitor visa legislation and practises for family and friends of Canadians are modest—particularly in comparison to the costs arising from changing the Act to benefit family class applicants. The latter could lead to the permanent inclusion as residents of a large number of people who likely would otherwise not be allowed to live in Canada. Meeting the need of Canadians originating in visa countries to be able to bring their friends and relatives over for a visit, however, would translate into the temporary and controlled stay, not inclusion, of people with ties to Canadians—a stay which is on the whole likely to enhance Canada's tourism industry and impose little or no economic obligations on the Canadian state.

### 3. Sections 27 and 28

The interpretation that the legislation violates ss. 15 and 7 is strengthened by the interpretative *Charter* provisions s. 27<sup>128</sup> and s. 28.<sup>129</sup> Section 27 requires that the *Charter* be interpreted in keeping with the multicultural heritage of Canadians; s. 28 requires that the rights and freedoms referred to in the *Charter* be implemented without discrimination between the sexes.

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<sup>127</sup> The objective being that Canada not become "a haven for organized criminals."

<sup>128</sup> Section 27 of the *Charter* states: [t]his *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

<sup>129</sup> Section 28 of the *Charter* states: [n]otwithstanding anything in this *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

#### 4. Section 1

As for s. 1 of the *Charter*,<sup>130</sup> a court faced with having to rule on the constitutionality of the visitor visa legislation and its administration, would have to ask: can the deprivations to visitor visa applicants caused by the *Immigration Act* be justified in a free and democratic society? The answer will depend on how firmly the court keeps in mind that the rights and freedoms set out in the *Charter* are fundamental to the political structure of Canada and how closely it abides by its commitment to uphold these rights and freedoms, guaranteed by the *Charter* as part of the supreme law of our nation.<sup>131</sup>

The government may be required to answer the following questions, for example:

- (i) does the policy advance the legislation's stated objective;
- (ii) what percentage of potential visitors refused entry to Canada were legitimate illegal immigrant threats;
- (iii) how many refused visitor visa applicants were friends or relatives of Canadian citizens or permanent residents; and
- (iv) are there alternatives to present immigration legislation and policy that would achieve the same goals while being more sensitive to the issues facing visitor visa applicants?

### C. Creating the Conditions and Advancing Alternatives

The decision of whether and when to launch a *Charter* challenge must of course be made carefully. But there is nothing to stop Canadians from asking the difficult questions publicly and doing so now. Canadians need to understand the degree to that the deprivation arising from our visitor visa legislation affects Canadians with friends or relatives in visa countries. Concrete alternatives must be put forward.

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<sup>130</sup> Section 1 grants the courts the authority to determine whether or not the deprivation of a *Charter* right should be allowed; that is, whether or not the goal of the public policy being challenged is pressing and important and rational and whether or not there is no less intrusive way of achieving that goal: *Oakes*, *supra* note 96.

Section 1 of the *Charter* states: The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

<sup>131</sup> These are factors that Wilson J. in *Singh*, *supra* note 46 at 167 recommended a court should bear in mind, particularly when utilitarian considerations are brought forward to justify a limitation on the rights set out in the *Charter*. She warned, "[t]he guarantees of the *Charter* would be illusory if they could be ignored because it was administratively convenient to do so."

- (i) At a minimum, Canadian citizens and residents with relatives or friends in visa countries should be permitted to attempt to discharge the onus of proof that the *Immigration Act* places on potential visitors.
- (ii) Canadians originating in visa countries should be allowed to build a visitor visa record which may be consulted by future visa officers. Such a record would remove much of the subjective nature of the visitor visas application and would facilitate the achievement of the *Immigration Act's* objectives. The existence of a visitor visa would mean that in the absence of major impediments—such as a pending criminal charge or sentence—every Canadian citizen and every resident originating in a visa country would have at least one chance to show that she is capable and willing to abide by visitor visa legislation.
- (iii) Instead of punishing all visitor visa applicants for the wrongdoings of some, violators alone should be subjected to penalties (be it visitors, inviters, or both). For example, inviters could be fined if their visitor violates the *Act*. Such an invitor wishing to have future visitors would be required to post visitor visa bonds to ensure compliance with the *Act*.
- (iv) A separate record of visa officer determinations of Canadian sponsored visitor visa applications should be kept.<sup>132</sup>
- (v) An impartial ombudsperson should be appointed to receive and respond quickly to complaints on the actions and administrative decisions of visa and immigration officials
- (vi) In cases of entry refusal, a clear explanation of the grounds on which the visa was refused should automatically be made available to the potential visitor and the Canadian invitor. In addition, both the refusal and the reasons for it should be kept on record.
- (vii) Visitor visa refusals should be appealable on their merit to an impartial body.
- (viii) All visitor visa applications of persons who have relatives or friends in Canada should be processed in Canada.

## VIII. CONCLUSION

CANADA'S VISITOR VISA LEGISLATION is at odds with the *Canadian Human Rights Act* and violates *Charter* rights such as equality and security of the person. Further, the implementation of our visitor visa legislation has caused unjust and of-

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<sup>132</sup> Letter from the Committee for Equality for Immigrants and New Canadians to the Hon. S. Marchi, Minister of Employment and Immigration (26 February 1996).

ten cruel treatment of Canadian citizens and residents of particular origins. If the present legislation, policy, and procedure remains unchanged and continues to negatively impact Canadian's lives, it is a telling indicator of the status of our political and legal systems. If Canada's legal safeguards against human rights violations are to be more than words, if Canada's international commitments to the respect of the human person are to be realised, and if the fundamental principles of law and of justice are to be honoured, Canada's visitor visa legislation and the style of its administration must change.