

**Advancing Protection and Fostering Belonging in a Global Era
of the Criminalization of Migration**

**8th Annual Conference of the
Canadian Association for Refugee and Forced Migration Studies (CARFMS)**

**Hosted by Department of Criminology, Ryerson University
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**Keynote Addresses & Special Plenary Sessions
Summaries 2015**

Ryerson University

Sara Eggleton

**8TH ANNUAL CONFERENCE OF THE
CANADIAN ASSOCIATION FOR REFUGEE AND FORCED MIGRATION STUDIES
(CARFMS)**

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Wednesday May 13, 2015

Keynote Address:

Olivia Chow, Distinguished Visiting Professor, Ryerson University, and Former Member of Parliament and Toronto City Councilor

Throughout history, Canada has had many different immigration policies. According to Chow, these policies have been governed either by fear, or by hope – and unfortunately, they are currently governed by fear. This fear has resulted in Canada turning away boats of individuals fleeing persecution, jailing innocent people, and detaining child refugees such as those who arrived on the MV Sun Sea in 2010. From 1905-1915, Canada welcomed on average about 250,000 immigrants per year – this number has yet to change even though the amount of people seeking protection is growing. Due to the current Syrian crisis, there are now 3 million displaced persons looking for a home while Canada refuses to accept the majority of them. For those who are accepted, they face cuts in health care, social services, and difficulties in family reunification. However, as Chow notes, Canada has not always been this way – we were once governed by hope. In 1847, Canada welcomed 40,000 Irish refugees, and from 1971-1981, 200,000 Indo-Chinese refugees arrived in open arms. We can aspire to something much greater than denying people protection due to fear. We must tell their stories, give them the voice they do not have and engage people’s emotions in order to persuade the Canadian government to accept refugees. Chow believes we need to go back to a country that was once generous, opened its doors, and didn’t criminalize refugees – a country governed by hope.

Special Plenary Session on “The State of International Refugee in the World Today”:

Justice Russel Zinn, Federal Court of Canada

Justice Russel Zinn described the role the Federal Court of Canada has in the immigration and refugee processes along with the recent changes to Canada’s immigration and refugee policies. The judges of the Federal Court of Canada are not first level decision makers; they do not decide if individuals are in need of protection. They review decisions made by others and whether they adhere to the rule of law. If there are cases with serious problems, they are sent back to the Refugee Appeal Division for decision. The Government of Canada became concerned that a number of these claimants were inauthentic as they were coming from countries which are recognized to respect human rights. This allowed the Minister to change immigration policy and designate countries as “designated countries of origin” (DCO), defined as countries that do not normally produce refugees, respect human rights and offer state protection. This places the refugee claimant into a different stream of refugees where applications are processed more quickly (40-45 days as opposed to 65 days) leaving them less prepared and dismissing any

right to appeal. While judicial review applications have lessened and fewer decisions are being rendered by the Federal Court, the litigation challenges have not dropped. The designated country origin legislation is currently under attack and is awaiting a decision on its constitutionality. Justice Zinn concluded that the section 97 definition of a Convention Refugee has not changed, but clearly, access to it has.

Lori Scialabba, Deputy Director, US Citizenship and Immigration Services and Vice-President of the IARLJ

Lori Scialabba discussed the refugee claims currently being reviewed by U.S. Citizenship and Immigration Services (USCIS). In 2014, a large number of people arrived at the southern border with unprecedented amounts of children, families and single adults from Central American countries claiming to be of a particular social group under the 'fear provision'. To constitute a particular social group, these individuals must share a common characteristic, be socially distinct in the society in question, and be defined with a particularity. These individuals claimed asylum under what the USCIS consider new types of social groups such as being involved in law enforcement assistance, being a witness in a proceeding case of a gang, reporting crimes to law enforcement, and even female heads of households. There are questions of what constitutes a particular social group, but according to reasonable fear determinations, it will get referred to an immigration judge for decision based on the conditions of the country in question. The USCIS looks to whether these individuals *could* establish a claim for asylum, not whether they *have* established it, and according to Scialabba, it is a low standard to meet as almost 85% of those interviewed for credible fear get accepted. These individuals have four chances to claim asylum in the United States; before the USCIS, USDOJ, Executive Office for Immigration Review (EOIR), Immigration Judges, the Board of Immigration Appeals (BIA), the Federal District Courts, and the Supreme Court of the United States.

Judge Judith Gleeson, Senior Immigration Judge, Upper Tribunal, UK Immigration Asylum Chambers, Field House, London

As stated by Judge Judith Gleeson, the UK came late to the party on human rights. The senior courts got carried away, had a system with an enormous backlog, and people refused to go home as they had built a connection to the country. Over the past few years, the UK system has been repeatedly reformed. Individuals who made a personal claim for asylum would participate in an interview and eventually receive a letter of acceptance or denial. Now, there is a right to appeal to the Tribunal for review, however, 40% of these individuals do not have the advantage of representation or access to legal aid. There are approximately 700 judges who process an enormous number of claims, many of which are subject to appeal in the other tribunal. As judges are continuously swamped with challenges and spend vast amounts of time reviewing documents, they can now determine if individuals from particular countries are at risk or not. First tier judges are guided by these determinations and if there are no such differences in the individual's claim the guidance system must be followed. In 2014, the UK Government incorporated human rights provisions that had only existed in European law, into their statutes. These provisions state that immigration control is in the public's interest; immigrants must speak

English and be financially independent as to not be a burden on taxpayers; little weight should be given to private life if the immigrant is in the Kingdom unlawfully; and the deportation of foreign criminals is in the public interest.

Martin Treadwell, Deputy Chairperson, New Zealand Immigration and Protection Tribunal

Martin Treadwell's mission was to discuss the state of the nation in terms of international refugee law in Australasia. New Zealand has a well-established refugee protection system, appeal bodies, rights of judicial review, and rights of appeal. It has been described as the closest to 'pure players' of international law in the world. If an individual is recognized as a refugee, they can apply for protection which can then transform into citizenship. However, Australia is vastly different. Their policy involves denying admission to refugees who come irregularly by boat or by land. They are shipped to countries on the coast such as Manus and Nauru Island rather than being processed on Australian soil, and if recognized as a refugee, that is where they will remain. In contrast, claimants who arrive by air go through normal processing and the refugee tribunal. However, in June 2015, the government intends to eliminate Australia's unfair processing, and will soon lose its visible presence. New Zealand has been working quietly with decision makers in a number of countries such as South Korea, Japan, Hong Kong, and the Philippines – all of which are making a serious contribution to refugees in their region and are quickly developing respect for human rights.

Furio De Angelis, UNHCR Representative for Canada

Furio De Angelis provided a global overview of major challenges and gaps of international refugee law from the perspective of the UNHCR. These challenges include multiple and large crises that are often the result of armed conflict – leaving people to flee from violence and human rights abuses as opposed to persecution by oppressive governments. The UNHCR is trying to respond and provide access to asylum, territory and procedure. However, the principles of non-refoulement, access to territory and asylum are being threatened. Access to territory is being prevented by visa controls, carrier sanctions, creation of international zones for immigration control, interception at sea, and closure of borders, including the stretching of borders and physical barriers to prevent access to territory. Furthermore, asylum seekers are being extradited in the absence of final decisions of their claim, and the use of criminal charges or national security concerns are implemented as barriers to access efficient asylum protection. There are also important challenges concerning eligibility for refugee protection. The most relevant being the requirement for asylum seekers to be discrete about their beliefs, religion, sexual orientation, etc. in order to avoid being persecuted or have their claims discredited. These are just some of the many gaps and challenges in international assistance the UNHCR is trying to promote in order stay in line with international standards and obligations.

Ahmed Essa Arbee, Head of the IARLJ Africa Chapter and former Chairperson of the South Africa Refugee Appeal Board

Although Africa did not comply with the 1951 Refugee Convention, African solidarity unified people through song and dance, welcoming everyone. During the colonial era, Africans

were commended for giving their lives to liberate neighboring colonial rule. However, during the post-colonial era, these patterns changed and the dark chapters of Africa predicated. Gross human rights violations caused African countries to stand out as monuments of shame. Refugee flows from the Mediterranean also impacted the international security equation. While countries like Kenya provide refuge to millions, the African government passed a security law restricting asylum seekers to 150,000, sending the rest of the claimants back to Somalia where the AI claims that Al-Shabab terrorists were believed to be harvested. Opposition parties challenged the law and a panel of 5 judges declared it to be unreasonable and in violation of both the Constitution and the principle of non-refoulement. Africa is now trying to introduce a harmonized policy and practice. However, the challenge for South Africa is determination – there is a backlog of 110,000 appeals, while only 5 members sit on the board. Arbee concluded by stating that these challenges may be great, but the spirit of international solidarity and burden sharing is greater.

Thursday May 14, 2015

Keynote Address:

Mario Dion, Chairperson/Président, Immigration and Refugee Board of Canada (IRB)/
Commission de l'Immigration et du Statut de Réfugié du Canada (CISR)

Mario Dion discussed the priorities of the Immigration and Refugee Board (IRB) – the biggest administrative tribunal in Canada. There are up to 200 members who are appointed to make decisions as part of the IRB, all of whom recognize the profound impact of their actions in each and every case they deal with, including the lives of those involved, the security of Canada and the integrity of the immigration system. The priority is to make decisions in one of two ways – to ensure they are made timely, appropriately and to the highest quality, and the necessity to be adaptive and flexible. They are continuing to imagine and implement new methods to reduce average processing time, such as collaborating with other agencies like the CBSA and CIC. There are 700 interpreters at the IRB all of whom are called upon on a daily basis to interpret 214 different languages. There are employees that prepare knowledge on various countries, shedding light on human rights conditions, and legal experts working in the dynamic environment of jurisprudence. These efforts have ensured that 90% of asylum seekers and refugees are represented by lawyers and legal counsel, and have reduced their application processing time from 24 months to an average of 4 months. Forty percent of the 11,000 cases they hear a year are free within 48 hours, and the backlog of 30,000 cases has been reduced to 24,000 in a matter of 2 years. It has not been easy, but the IRB will keep working to increase promptness and speed, and ensure fair decisions are made.

Special Plenary on “Canadian Panel on Canadian Policy and Law”:

Peter Goodspeed, Award Winning Journalist, *The National Post*, 2014 Atkinson Fellow in Public Policy, *The Toronto Star*

Peter Goodspeed spoke of the development behind Canada’s asylum determination process. In 1979, Canada opened its doors and hearts to 60,000 Vietnam refugees; offering jobs

food and a new home. However, when 599 desperate Chinese migrants arrived at the coast of British Columbia in 1999, much had changed. These individuals were perceived as criminals who put Canadian society at risk, and thus were handcuffed, imprisoned and urged to return to China. In the process of identifying economic migrants from refugees, compounded with the fear of terrorism, border control quickly became focused on security over human rights. This largely shifted rhetoric, politics and public attitude, presenting economic resettlement as charity rather than a moral obligation. Goodspeed expressed concern about Canada's response to the current Syrian crisis, and asked why we are not taking similar actions as we did for the initial Vietnam boat people in 1979. Over the last two decades, Canada has sheltered and resettled its lowest numbers, illustrated by only meeting its 2013 settlement commitment to Syrian refugees this past year. Refugee reforms have reduced these individuals' rights, and trying to save the government money has trumped the necessity of a fair and fast refugee system. Goodspeed believes Canadians have become less tolerant, are framing concepts of "us vs. them" due to fear, and have left people living in isolation. We need to reconsider our past and reshape our future; Syrians' present pain is an opportunity for Canada to reassert itself and decide how we want to present ourselves as a nation.

Sharryn Aiken, Associate Professor, Faculty of Law, Queen's University

Sharryn Aiken focused her presentation on human smuggling and Canadian refugee law: a case study of "crimmigration". "Crimmigration", coined by Juliet Stumpf in 2006, refers to the rising overlap between criminal and immigration law; including the erosion of robust administrative law, procedural rights and the steady creep of criminal law sanctions and penalties within the immigration process. "Crimmigration" can be illustrated by Canada's response to human smuggling. Canada's *Immigration and Refugee Protection Act* (IRPA) deems a refugee inadmissible if involved in smuggling and subjects them to criminal sanctions such as a fine of not more than \$1 million and life imprisonment if the act engaged more than 10 persons. By using the case study of MV Sun Sea (2010), Aiken demonstrated how Canada treated the refugee claimants as illegal immigrants. Due to fear of terrorist connections and suspicion of human smuggling, passengers, including children, were detained while others were deported. Bill C-31 was then introduced to help stop foreign criminals, human smugglers and those with unfounded refugee claims from abusing Canada's services. The legislation created a new category of designated foreign nationals – these individuals lost appeal rights, permanent residency and were separated from their family for 5-7 years even if their claim was successful. Since 2010, Canada has continually lowered its refugee protection efforts. Aiken argues that enforced closure does not work nor do Canada's policies as they violate the letter and spirit of the 1951 Refugee Convention. As a solution, we need to radically overhaul our approach, dramatically increase resettlement opportunities for refugees, and expand opportunities for reintegration.

Lorne Waldman, Barrister and Solicitor, President of Canadian Association of Refugee Lawyers (CARL)

As a lawyer who has represented a significant number of people from the MV Sun Sea (2010), Lorne Waldman argued that the government is using migration as a political tool; using concerns over security to instill fear over foreigners and refugees, and using legislative reform to criminalize asylum seekers at the expense of human rights. As the most dramatic example, the

MV Sun Sea led an anti-immigration sentiment, appealing to the ‘tough on crime’ and anti-terrorism agenda. The government used their power to bring legislation before Parliament, with various bills appearing to be a response to a specific perceived problem. This resulted in a provision denying designated foreign nationals the right to appeal, permanent residence and family reunification. The passengers of MV Sun Sea were detained for many months and subjected to aggressive interrogations, making the process very traumatic and adversarial. This resulted in many of the individuals being denied refuge. If accused of human smuggling, or even assisting in the boat’s arrival to save their lives, they too were denied refuge. Several people were found inadmissible under this broad definition of human smuggling, and were deported back to Sri Lanka. As many as 10 cases have been set aside as a breach of national justice because CBSA officials failed to disclose entire records to ensure that these people were not accepted as legitimate refugees. Although the government did not achieve this objective in the end, this case is a tribute to the rule of law in our country.

Friday May 15, 2015

Keynote Address:

Justice Anne Mactavish, *Federal Court of Canada*

Justice Anne Mactavish discussed the role of the Federal Court in the Canadian refugee determination process. A refugee claim can be made inside or outside of Canada. If located outside of Canada, a permanent residence visa may be issued by a Canadian visa post to those who satisfy the refugee or asylum class. If they are denied, they have the right to seek judicial review in the Federal Court. The vast majority of the cases brought before the Federal Court are by unsuccessful refugee claimants. If an individual wants a judicial review of a refugee decision, they do not have automatic right to be heard. First, they must be granted leave from a judge of the Federal Court. The test used by the judges is whether the individual has shown a fairly arguable case. Failed claimants also have the right to judicial review for a negative refugee application. They do not have to wait to hear the judicial review application before they are removed from Canada, however, they can come to the court and seek stay of the removal for as long as it takes for their application to be heard. The job of the Federal Court is to review the decisions of the Immigration Refugee Board (IRB) and decide whether it was reasonable. The Federal Court can only intervene if there are issues of fairness. If such issues arise, the matter is sent back to the Refugee Appeal Division (RAD) or the Refugee Protection Division (PPD) for a fresh hearing. As a signatory of the 1951 Refugee Convention and its 1967 Protocol, Canada has recognized its obligation to the displaced. It is a monumental task, and Justice Mactavish along with her colleagues, will always be aware of the magnitude their decisions bare.

Special Plenary Session on “Fostering the Belonging of Migrants in Canada”:

Carla Valle Painter, PhD, NHQ – Research and Evaluation, AC – Recherche et évaluation, Citizenship and Immigration Canada, Citoyenneté et Immigration Canada: “Sense of Belonging to Canada and the Local Community of Immigrants: What can be Learned from Recent Results of the General Social Survey?”

Carla Valle Painter discussed the Research and Evaluation Branch at Citizenship and Immigration Canada (CIC). According to Painter, ‘a sense of belonging’ is a comprehensive indicator of a person’s inclusion in our society. It depends on the attributes of the individual, but especially on engagement, recognition and acceptance within a surrounding society. Within the CIC, ‘a sense of belonging’ is of interest to policy areas such as citizenship awareness, immigration settlement, and refugee settlement. If these individuals feel like they belong, they will want to stay and make a contribution to society. A study of approximately 10,000 immigrants released in December 2014 revealed that neighborhood support is important to develop a sense of belonging to the local community, and economic and social engagement is key to sense of belonging in Canada. Immigrants’ positive sentiments towards Canadian society are a window of opportunity for interventions that support building up and consolidating their social ties and engagement.

Nicholas Keung, Journalist, *The Toronto Star*

As an immigrant himself, Nicholas Keung is very interested in immigration and settlement, focusing on what it means to have ‘a sense of belonging’. By using this term, we focus on the perspectives and voices of immigrants as it comes from their internal feelings, rather than someone else analyzing and deciding whether they feel as if they belong. Keung described a sense of belonging as a two way street – it depends on an immigrant’s own perspective on the new living environment, but it also depends on how welcoming the host community is. When we talk about fostering a sense of belonging, we have to recognize that there are different types of immigrants who come here for different reasons; some are forced but others choose. Every type of immigrant has a different expectation and feeling to whether they belong to Canada. However, the same definition applies to all – it is a place where you feel is your home. Government policies play an important role in fostering a sense of belonging, but so does the personality of the immigrant. Some may like adventures and trying something new, whereas others may be struggling to put food on the table. These individuals may not have time to feel as though they belong, and are simply happy to have survived. A sense of belonging means something different for different individuals, and as Keung noted, he is not sure if it is something that can be measured.

Harald Bauder, Professor, Department of Geography, and Director, Ryerson Centre for Immigration and Settlement (RCIS)

Harald Bauder discussed the implementation of Sanctuary Cities across Canada. Sanctuary City is an idea that began in the United States and Europe, and is now utilized in the Canadian cities of Toronto and Hamilton. The city administration provides service, health care, education, etc. to people who do not have legal status in Canada. Unfortunately, the national level does not want irregular immigrants in our country, even though the municipal level regards these individuals as their citizens. By using the term “illegal” the government has developed an image that these individuals have done something wrong to the public when they have not. If one does not have status, it makes it very difficult to develop a sense of belonging. An irregular immigrant cannot formally participate in any form of government, they find it difficult to socially integrate since they are denied various services, and they may never have a sense of

cultural belonging if they continue to feel as if their community does not want them. By pursuing and implementing ideas like Sanctuary City, it proves provinces like Ontario are doing their share. Bauder argues that the Federal Government of Canada needs to do their share as well.

Debbie Douglas, Executive Director, Ontario Council of Agencies Serving Immigrants (OCASI)

Debbie Douglas discussed the issue of ‘othering’ and certain residents being less desired to become citizens due to their race, language, or refugee status. Migration is a fluid process and while there are systemic barriers, the experience of settling is individual, life-long and some may never feel as if they belong. While an immigrant or a refugee may have secured housing, that housing may not be stable. Even if it is stable, they have an increased possibility of job loss, and eventually homelessness. Furthermore, a recent study found that immigrants from the Caribbean, Bermuda and South East Asia have 1.5 times the risk of psychological disorders compared to the general population. This suggests that psychosocial factors associated with migration to Canada might contribute to the risk of psychotic disorders. As such, this should be a national priority; we need to have accessible and affordable health care as a way to facilitate belonging. Canada’s immigration program has always been about economic workers, family reunification and meeting humanitarian international obligations. While family reunification is central to creating a sense of belonging, it is highly unfortunate and problematic that we have drifted so far from fulfilling this obligation. While certain immigrants are welcome in Canada, it is clear others are not and that this country prioritizes labour over belonging. It is up to us to reverse these trends of anti-immigrant sentiments and uphold political leaders accountable, to build a country based on fairness and equity, and to fulfill our promise of opportunity.

Loly Rico, President, Canadian Council for Refugees (CCR) and Co-Director, FCJ Refugee Centre, Toronto

Many people have walked this land, including the Indigenous People. To start the conversation of having a sense of belonging, we need to recognize that everyone in this country are migrants and/or refugees. From the perspective of a refugee, there is a sentiment that they never belong anywhere because the way they left their country was so fast and dramatic. As a refugee herself, Rico argues that we should welcome and open our doors to refugees, believing that is the reason why she is so successful today. Unfortunately, integration and a sense of belonging is now low. It is a trend in immigrant policies – from permanency to temporary residence. As a refugee, the thing they want most is to become a citizen as it was lost in their country of origin. Unfortunately, to be a citizen in Canada, you need to be wealthy. Apart from citizenship, a sense of belonging means family. While the government views family to be a value of great weight, refugees have the most delayed process for family reunification, proving economic immigrants to be of more importance. We need to welcome these immigrants and not accuse them of bogus claims and punish them with service cuts. As illustrated by the idea of Sanctuary City, the solution is us; our local community in welcoming not just immigrants, but everyone. Canada is the only country that has received a medal (UNHCR Nansen Medal) for their protection of refugees. Rico believes we need to go back to that, and then we can talk about refugees having a sense of belonging.