

# THE CARL QUARTERLY



**Canadian Association of Refugee Lawyers**  
 Association canadienne des avocats et avocates en droit des réfugiés

VOLUME 2 ISSUE 1  
 APRIL 2014

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## Sixth Annual Conference

CARL's 6th national Conference takes place on Friday, April 11, 2014, joining together CARL members by video-conferencing between Montreal, Ottawa, Toronto and Vancouver. Local workshops will take place in Ottawa and Toronto from 9:00-10:30 EDT . Please visit our website for the most up-to-date agenda: <http://carl-acaadr.ca/conferences>.

See page 10 for Conference Teasers from the presenters.

## FEATURE:

### A View from the Front Lines: Impacts of the IFHP Cuts

**Dr. Doug Gruner reviews the new system and its impact on Canadian refugee law.**

*See pages 8-9 for details.*

## From Counsel's Perspective:

*Lobat Sadrehashemi discusses the urgent need for CBSA oversight*

At the end of January, the Canadian public was made aware of the December 2013 suicide of Lucia Vega Jiménez, a Mexican woman held in custody by the Canada Border Services Agency (CBSA) at the Vancouver International Airport. Deeply concerned by the lack of transparency and potential wrongdoing on the part of the CBSA in this incident, CARL, the CCR, and BCCLA joined together to call for oversight of CBSA operations. Lobat Sadrehashemi, a BC refugee lawyer and one of CARL's leaders on this file, joins us for a Q&A about the pressing need for CBSA oversight.

*See page 5 for the whole story.*

If you have a question about something in this newsletter or would like to get involved with our team, write to [info@carl-acaadr.ca](mailto:info@carl-acaadr.ca) with "Newsletter" in the subject line.

**Editor:** Stephanie MacIntosh

# Student Corner: Updates from CARL's Student Chapters

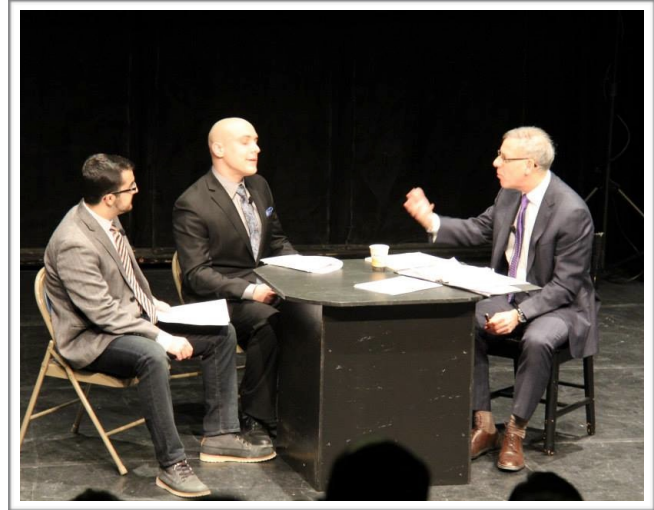
## Third Annual Refugee Night at UofO Tracks Refugee Journeys

By *Joanna Berry and Emily Bates*

On Friday February 28th, 2014, the University of Ottawa Chapter of the Canadian Association of Refugee Lawyers (CARL uOttawa) hosted the third annual Refugee Night event. Refugee Night, in the past has addressed key issues of international forced migration and considered pressing issues of the Canadian refugee protection system. This year, we were happy to see over 150 members of the local refugee support community, refugee lawyers, academics, and students come out to learn about refugee issues and celebrate the many positive contributions that refugees have made to Canadian society. Further, we are very grateful for the many generous donations at Refugee Night, totalling over \$450 to contribute to CARL's litigation fund and future awards and events at uOttawa.

This year's event, entitled Refugee Journeys: Navigating the Road to Safety, involved a live dramatization of the stories of three refugee claimants: Stefan, a Roma man fleeing threats of violence from non-state agents in Hungary; Sara, a young Tamil woman seeking to escape government persecution in Sri Lanka; and Taher, a homosexual Iranian man fleeing both state and non-state threats at home. The claimant stories were fictional, but were squarely based in the various lived realities of the people they represent. The narratives conveyed first-hand perspectives on the process of seeking asylum in Canada, and highlighted the impediments often encountered along the way.

Informational presentations highlighting some of the most pressing issues in the refugee sector punctuated these claimant narratives. Emily Bates, Director of the University of Ottawa Refugee Assistance Project and this year's host, began with an interactive introduction to the



*From the left: Hossein Moghtaderi, Simon Walker, and Michael Bossin performing at Refugee Night.*

refugee definition and an overview of refugee populations and policies in Canada and around the world. Next, Professor Jamie Liew drew on the smuggling experience of one of the featured claimants in her presentation about human smuggling and Canada's new Designated Foreign Nationals regime. Dr. Doug Gruner of Canadian Doctors for Refugee Care then provided a detailed look at the 2012 cuts to the Interim Federal Health Program for refugees and the devastating impacts that these cuts have had for refugee claimants and the healthcare sector. Finally, Hossein Moghtaderi, a third-year law student and board member of the Iranian Railroad for Queer Refugees (IRQR), spoke about the particular challenges encountered by LGBTQ refugees at every stage of the asylum process, and the situation for LGBTQ people in Iran in particular.

Finally, in keeping with tradition, a member of the Ottawa community was presented with the Roberto Miranda Award. The award, named in honour of Roberto Miranda, a Guatemalan refugee who made tremendous contributions to Canadian society as a teacher, activist, and organizer for social justice, honours a local refugee who has made a valuable contribution toward social justice and human rights. This year's recipient was Mohamed Dalmar Adburahman who, through his tireless

# Student Corner (Continued)

work at various immigration and settlement agencies and particularly through his work with Somali communities, has strived to ensure that all refugees be treated fairly and with respect.

*Refugee Night* was co-sponsored this year by CARL uOttawa, the Human Rights Research and Education Centre and the University of Ottawa's Refugee Hub. It

was co-ordinated by CARL uOttawa Events Committee Chairs Kas Pavanantharajah and Mary Kapron, CARL uOttawa Chair Joanna Berry, and Refugee Hub Co-ordinator Andrew Reinholdt. Co-sponsors and co-ordinators wish to thank all who made this event a great success. A very special thank-you is reserved for Peter Showler, who wrote compelling, original scripts for the event.

## CALL FOR APPLICATIONS: CARL National Student Coordinators

**Roles:** Two National Student Coordinators (NSC) located in two different cities.

**Mandate:** The NSCs promote active student engagement in CARL. Their three primary objectives are:

- 1) Serving as a link between CARL Student Chapters and CARL National** (Executive and Committees) by communicating student views, ideas, and needs to CARL National and its members in each city, and communicating CARL National projects, opportunities, and requests for action to the Student Chapters.
- 2) Promoting the establishment and growth of CARL Student Chapters** at universities across Canada by providing information and support.
- 3) Facilitating CARL Student Chapter communications and coordination**, for example via periodic conference calls between chapter leaders.

CARL is seeking two student CARL members to serve as National Student Coordinators for 2014-2015. These individuals should have experience working with a CARL Student Chapter and a strong knowledge foundation in CARL's area of work. Other assets for this position include:

- Substantive experience in refugee law, whether through research, advocacy, education, or another channel;
- Experience in a coordinating or management role, with ability to motivate and encourage collaboration toward shared goals;
- Strong organizational and time management skills;
- Strong written and oral communication skills;
- Strong interpersonal skills giving the candidate the ability to work effectively with various groups, including students, lawyers, and various sector experts;
- Proven ability to work independently and take initiative in carrying out complex projects from conception to completion; and
- Proficiency in French is an asset.

The NSCs have primary responsibility for fulfilling the mandate above. In doing so, duties will include (but are not limited to):

- Serving as a conduit liaison between CARL National and Student Chapters in order to relay information, coordinate project distribution, and proactively plan for student engagement;
- Attending monthly CARL National Executive teleconferences;
- Organizing and carrying out conference calls and other coordinating activities between student representatives from CARL Student Chapters across Canada;
- Providing support for new student chapters, for example through updating and distributing the existing Student Chapter Start-up Guide and by developing other resources as necessary ; and
- Reporting on student activities at bi-annual CARL National Conferences.

**Please note that these are volunteer positions. To be considered for one of these positions, please send an expression of interest addressing how your skills would meet this role to [membership@carl-acaadr.ca](mailto:membership@carl-acaadr.ca) by Monday, May 5, 2014.**

# CARL in the Courts

## Supreme Court hears *Febles* case on exclusion under Article 1F(b)

By Michelle Carlesimo

*Background: Mr. Febles is a Cuban citizen who was granted refugee status in the United States due to his fear of persecution as a political dissident. While in the U.S., he was twice convicted of assault with a deadly weapon. As a result of those convictions, he was subject to removal from the U.S. after having served his sentences. Shortly after his release from prison, Mr. Febles entered Canada in 2008 and claimed refugee status.. He completed his prison sentences. The RPD determined he was excluded from protection by Art 1F (b).*

The Supreme Court of Canada heard oral arguments on Tuesday March 25, 2014 in its most recent refugee exclusion case, *Febles v Canada (Minister of Immigration and Citizenship)*. The heart of the issue in the case is the interpretation of Article 1F(b) of the United Nations Refugee Convention. Article 1F(b) allows exclusion from refugee protection where there are “serious reasons for considering” that a claimant has committed a “serious non-political crime” in another country prior to their arrival in Canada. CARL appeared as an intervener and was represented by Aviva Basman, Alyssa Manning and Barb Jackman, with Aviva Basman presenting the oral arguments.

Article 1F(b) is limited to acts that are both “serious” and “non-political”. As one of five interveners, CARL focused their submissions on the legal definition of “serious”. CARL argued that the current definition of serious is overbroad, arbitrarily applied, and unjustifiably severe, resulting in many refugees wrongly denied protection. CARL argued for a more principled approach to the interpretation of serious in the 1F(b) context.

The current approach arose from the 2008 Federal Court of Appeal decision, *Jayasekara*, which imposes unjustifiable limits on the factors relevant to an assessment of exclusion, including rehabilitation and the passage of time. Further,

the current test imposes a presumption of seriousness in cases where the crime could warrant a maximum of at least 10 years in Canada.. Demonstrating the arbitrary outcomes that can stem from this presumption, CARL gave the example that the crime of assault causing bodily harm is presumed to be equally serious regardless of whether the claimant bruised another person’s limb or severed it. The presumption operates to remove the focus of the inquiry from whether the crime, or alleged crime, was serious enough to justify a human rights exclusion from refugee protection, to whether or not the person can overcome the presumption.

CARL argued that the interpretation of “serious” should restrict the application to circumstances where recognition of status would conflict with the underlying purpose of Art 1F(b). Specifically, CARL proposed a two step test to determine whether the crime reaches a threshold of seriousness that might justify exclusion. First, the decision maker should ask: has the claimant committed a grave offence for which an appreciable number of years of incarceration would likely be imposed? And second: is excluding this claimant for having committed a serious non-political crime consistent with the underlying purpose of Article 1F(b)?



*From the left: Alyssa Manning and Aviva Basman at Supreme Court proceedings in *Febles v Canada (Minister of Immigration and Citizenship)**

# CARL in the Courts

The four other Interveners in this case – Amnesty International, UNHCR, CCR, and CCLA – addressed the scope of 1F(b)'s application, its purposes, the role of expiation, and the important relevance of rehabilitation in determining the application of Art 1F(b).

Throughout submissions the Justices showed varying interest in the role of dangerousness, the scope of

seriousness, and the breadth of application. It is impossible to predict how the seven justices will rule in this case. CARL hopes the Supreme Court of Canada will take this opportunity to further clarify the parameters of refugee exclusion while assuring the widest possible exercise of fundamental rights and freedoms for refugees in Canada.

## ***From Counsel's Perspective:*** *Lobat Sadrehashemi discusses the urgent need for CBSA oversight*

### *Interview by the CARL newsletter team*

- 1. The death of anyone in custody is a tragedy. What were the circumstances surrounding Lucia Vega Jiménez's death that made this incident such an impetus for renewed action on the part of human rights advocates?***

In December of 2013 Ms. Vega Jiménez attempted to hang herself while she was at an immigration holding facility at Vancouver International Airport; she later died in hospital. When deaths occur in the custody of other police agencies, the public is usually informed quickly and in provinces like BC and Ontario, an independent civilian investigation agency immediately investigates the case. The CBSA did not make any public statement about Ms. Vega Jiménez's death in their custody. We only learned of her tragic death when the media broke the story nearly a month after her death. There were also reports that the CBSA required the family of the deceased sign some sort of agreement in releasing the body to the family. Ms. Vega Jiménez's tragic death underlined the fact that there is no independent oversight of CBSA; it brought to light what many advocates and those who had dealings with CBSA already knew – despite having the broad and expansive powers to arrest and detain, the agency lacks transparency and accountability.

- 2. What exactly are CARL, CCR, and BCCLA calling for?***

Once the story broke of Ms. Vega Jiménez's death CARL, CCR and the BCCLA called for two immediate actions to be

taken. First, that the BC Coroners Service hold an inquest in the death of Ms. Vega Jiménez. Second, that the Government of Canada appoint an independent public inquiry into her death with a view to determining whether it could have been prevented; whether any officials failed in their obligations; why CBSA did not immediately publicly disclose the death in their custody; what measures need to be taken to ensure another tragedy does not occur; and what form of public independent oversight over the CBSA ought to be introduced to ensure that the CBSA is held accountable for all of its actions Canada-wide.

Outside of the particular case of Ms. Vega Jiménez, CARL, CCR and BCCLA are calling for an oversight agency or combination of oversight agencies for CBSA that must at a minimum:

- Be able to receive and deal with public complaints about CBSA conduct, including third-party complaints from public interest organizations
- Be able to initiate its own reviews and investigations of CBSA conduct even where there is no complaint. The CBSA deals with many vulnerable people who may be making refugee claims in Canada, or whose status in Canada is otherwise uncertain. These people in many cases, are either unaware of how to file complaints or tend to be reluctant to file complaints because they are making a claim to the Canadian government and fear that complaining may result in less favourable treatment. Other potential complainants have been deported from Canada

# CARL in the Courts

## *From Counsel's Perspective (continued):*

### *Lobat Sadrehashemi discusses the urgent need for CBSA oversight*

and may be unable to access a complaints mechanism in Canada. In addition, because many of the national security activities of CBSA take place in secret, an oversight process that is driven solely by complaints is inadequate as few people will ever learn about some of these activities.

- Include independent civilian investigation of critical incidents involving CBSA officers and individuals in CBSA custody.

3. ***Currently, what mechanisms exist for the oversight of CBSA or for detainees or their advocates to bring forward concerns about CBSA conduct?***

Currently the complaint and redress mechanism for complaints about CBSA conduct is internal to CBSA. There is no independent investigation of complaints. The CBSA's Recourse Directorate, while it handles complaints about CBSA decisions and assigns different officers to deal with complaints other than the officers involved, is not an independent complaints agency. It reports to the CBSA's president. It has no authority to launch independent reviews of CBSA actions in the absence of a complaint.

4. ***Why is the oversight scheme for CBSA so different from that of organizations with similar powers of arrest or detention (e.g. The RCMP, Corrections Canada)?***

This is a good question. We don't think that it should be. We recognize that the RCMP and other police forces in Canada require an independent, civilian body in place to review complaints and the conduct of police agencies. The CBSA should be no different. Police forces should not investigate the actions of one another.

The O'Connor Inquiry (the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar) specifically considered the need for an oversight over CBSA's national security activities. Seven years later no action has been taken on Justice O'Connor's recommendation that the national security activities of CBSA be subject to an independent complaint and review

body. CARL, CCR and BCCLA are asking for an independent body that would have responsibility for review of not only CBSA's national security activities but also of all of its enforcement and border control activities.

5. ***In what ways has a dearth of CBSA oversight or accountability put at risk the rights of refugees and others seeking protection in Canada?***

CBSA deals with incredibly vulnerable individuals, including refugee claimants. Many report fearing imprisonment or deportation if they complain about a particular CBSA officer's abusive interrogations. Others fear that their personal information is being shared putting their families at risk. For example, in one case involving an Afghan refugee claimant, the CBSA officer asked for copies of the claimant's passport, to verify her identity. The claimant, however, did not have her passport so she asked for access to a computer so that she could retrieve a scanned image of the passport from her email. CBSA said they could not give her access to a computer, and directed her to give her email address and password. The claimant, who has stated she felt intimidated by the Officer's aggressive manner, complied. The claimant later learned that CBSA had opened emails in her account and contacted her former employer in Afghanistan. The breach of privacy only came to light when the employer emailed the claimant to say that a representative of the Canadian government had asked for information about her. The claimant remains terrified that CBSA's leak of information placed her family members in Afghanistan at risk.

6. ***Since the initial call for oversight, who else has joined in supporting this cause? (e.g. opposition parties, general petitioners, etc.?)***

Over 7000 individuals signed the petition calling for an independent civilian inquiry & investigation into the death of Ms. Vega Jimenez, which was delivered at CBSA's office in Vancouver on February 5<sup>th</sup>, 2014. The official opposition raised the issue of CBSA's lack of accountability in the House of Commons in February. Other parties may also be

# CARL in the Courts

## ***From Counsel's Perspective (continued):***

### ***Lobat Sadrehashemi discusses the urgent need for CBSA oversight***

concerned but we are not yet aware of their position. Beyond CARL, CCR and BCCLA, numerous community and civil society groups have also spoken out on the death of Ms. Vega Jimenez, including No One Is Illegal collective, Pivot Legal Society, Battered Women's Support Services, the Latin American Committee for Refugees and Migrant Justice. The CCLA in Toronto has also called for oversight of CBSA.

**7. *What action has been taken by government agencies (federal or provincial) to address this incident and the wider need for oversight?***

On February 25<sup>th</sup>, 2014 the BC Coroners Service announced that they would be conducting an inquest into the death of Ms. Vega Jimenez in September of 2014. While we of course welcome this news and feel that an inquest into her death is necessary, an inquest

does not address a number of the other concerns we had related to the death of Ms. Vega Jimenez's death and CBSA accountability in general. No action has been taken by the Federal government in addressing our call for a public inquiry into this case or our calls for the development of an independent civilian oversight body over CBSA actions. The RCMP investigated her death and did not recommend any criminal charges.

**8. *What's next for CARL, CCR, and BCCLA in their campaign to establish CBSA oversight?***

We hope that the public won't need to wait much longer. There is ongoing advocacy to the federal government and Parliamentarians on this issue. We will also continue to bring allegations of CBSA misconduct to public attention, so that people understand the need for change.

## Case to Watch: *Huruglica*

***By Audrey Macklin, Co-Counsel for the Intervener***

The Canadian Association of Refugee Lawyers (CARL) and the Canadian Council of Refugees (CCR) jointly intervened in *Huruglica v MCI*. The main issue in the judicial review is the appropriate stance of the Refugee Appeal Division (RAD) toward first level decisions made by the Refugee Protection Division (RPD). So far, the RAD has adopted the deferential posture of reasonableness, borrowing from the standard of review analysis applicable to courts judicially reviewing tribunals. CARL and CCR argued that this constrained approach is inappropriate, and that IRPA directs the RAD to engage in a full and complete appeal on the merits.

The applicant was superbly represented by Cheryl Robinson, and Audrey Macklin and Tony Navaneelan represented the intervener. CARL's position was developed in collaboration with Lobat Sadrehashemi, and benefited from the wisdom of many members. This is one of the first occasions that CARL has intervened at the federal court level and is one of the very rare occasions upon which the Federal Court has granted intervener status in a judicial review. At the end of the hearing, Justice Phelan invited the parties and the intervener to propose questions for certification, suggesting that this case is unlikely to end with the Federal Court. Stay tuned.

## FEATURE ARTICLE

## A View from the Front Lines: Impacts of the IFHP Cuts

By: Dr. Doug Gruner, CDRC

In 1957 the Interim Federal Health Program was established to provide temporary coverage for refugees until their provincial or territorial coverage kicked in. It provided access to doctor visits diagnostic testing like x-rays and blood tests as well as medications and some other therapies. It was quite inexpensive – approximately 85 million per year (2011) – and highly effective until of course this conservative government began to make their cuts.

In April 2012, the federal government announced drastic cuts to the health benefits provided to refugees by the government. There was no consultation or advance notice to either the provinces or health and immigration stakeholders prior to this announcement and the federal government has absolutely refused to engage in meaningful dialogue in the almost 2 years since the cuts were implemented.

In effect, these cuts have caused confusion and chaos on the front lines of our health care system. Many clinics now refuse to see and treat refugees despite the fact that many have a valid IFH card. Many refugees fearing that there will be a costly bill for service (which is often the case) are now choosing to delay care leading to exacerbation of their illness. Even if they see a doctor they are not able to follow through on a treatment plan since their medication is no longer covered. In cases of refugees coming from so called 'safe countries' like Mexico, they will receive no healthcare at all under the government plan – including those having a heart attack or children having an asthma attack or diabetic coma.

The response by the health care community to these cuts has been unprecedented. There are over 20 national health care organizations that have come out against these cuts including the Canadian Medical Association (CMA), the Canadian Nurses Association (CNA), Canadian Pharmacists Association and Canadian

Dental Association. Canadian Doctors for Refugee Care (CDRC) are documenting the effects of these cuts, lobbying federal and provincial governments, liaising with the media, writing in medical and other scientific journals and engaging in direct action including the National Day of Action which has occurred each year since the cuts were first announced.

The government justifies these cuts by telling Canadians that they will save money.

So let's look at the real cost of this policy change:

There is the obvious and real human cost to this poorly thought out policy which will lead to human suffering.

There is a moral cost to us as a nation as we fail to meet our international commitments under the Geneva Convention which clearly stipulate that any child living within our borders has a right to access healthcare regardless of their nationality.

As for the financial cost, the sad reality is that there will be an increase in net cost to the taxpayer as a result of these cuts; contrary to what the Minister is telling Canadians, there are no savings here. In essence, all that is happening is a downloading of costs from the federal government to the provincial governments. Before the cuts were implemented refugees were able to access primary care relatively efficiently; now that option has been removed in many cases.

The policy forces refugees away from primary and preventative care, and into the ER at ten times the cost. And of course it is the taxpayer who picks up this extra cost. Ironically, the Minister continues to spin the truth and tell Canadians they can look forward to saving 20 million per year for 5 years – a sum which works out to 59 cents per Canadian over the five-year period. The



*Dr. Doug Gruner speaks to an audience at the University of Ottawa for Refugee Night*



## FEATURE ARTICLE (CONTINUED)

reality is that after factoring in the provincial costs of this downloading, the taxpayer will end up paying dearly for these cuts.

The real reason for the cuts in our opinion is to deter refugees from coming here in the first place. On this front they have been highly effective as we are seeing a plummeting of the refugee claimant numbers from 20-25,000 per year now down to 10,000 or a drop of 50%. Meanwhile most other industrialized countries saw an increase of refugee claimants to their countries in the order of 28% in 2013. We believe it is wrong to deny health care from vulnerable refugees already within our

country as a weapon to dissuade others from coming here.

Finally as citizens in the 21<sup>st</sup> century we expect evidence to guide our policy. When Dr. Grondin, the Director General of the Health Branch at CIC, was asked what evidence was used to create this policy, she had no response. There was no evidence used to create the policy and now almost 2 years later they continue to be uninterested in any evidence as to the effects of their policy. This is simply unacceptable.

These cuts are quite simply medically irrational and fiscally irresponsible. The right thing to do is reverse these cuts now.

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### IFHP Update - Decision Pending

The Interim Federal Health Program (IFHP) cuts challenge was heard at the Federal Court of Canada in Toronto from December 17-18, 2013 and on January 30, 2014. CARL and the Canadian Doctors for Refugee Care were present during the three days of hearings that challenged the legality of the cuts to healthcare for refugees. The arguments covered whether the Order in Council was *ultra vires*, whether the OIC contravened sections 7, 12 and 15 of the *Charter* and whether the OIC violated Canada's international obligations. The hearings culminated more than a year of work by a countless number of students and lawyers who donated their time pro bono to work on this important challenge. Special recognition should be given to Pia Zambelli, Maureen Silcoff and Audrey Macklin who led the team that put together the legal arguments and evidentiary record. Justice Mactavish reserved but made it clear that she was taking the challenges very seriously. This experience demonstrated once again how when we work together collectively we can bring effective and cogent legal challenges to the anti refugee measures taken by this government.

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## **IFHP Cuts - 3rd National Day of Action June 16th, 2014**

Canadian refugee lawyers join doctor and health care providers across Canada to stand up for refugee health. Join us again this year on June 16, 2014 to show your continued opposition to the federal government's cuts to refugee health care. Events are being organized across the country. Please visit the following website for details: <http://www.doctorsforrefugeecare.ca/>

# Conference Teasers

**Presenters at CARL's upcoming conference join us for a preview on what is to come:**

**Overseeing CBSA - 13:50 - 14:00 EDT / 10:15 - 11:00 PDT**

*Presenter: Josh Paterson*

While CBSA has sweeping police powers, it is unlike most other police forces in Canada because there is no independent oversight body to review its actions and to ensure respect for the human rights of refugees, migrants, and Canadians who deal with the agency. Municipal and provincial police across Canada, as well as the RCMP, have various forms of complaint agencies and independent investigation agencies to supervise their conduct.

The BC Civil Liberties Association is a leader on issues of police accountability and has worked for more just and democratic policing in Canada for decades. Along with CARL and others, BCCLA has been vocal in renewing the call for CBSA accountability. BCCLA will join in CARL's conference to talk about the joint efforts to ensure oversight for the last major bastion of un-overseen policing in the country-the CBSA.

**Towards a Fragile Citizenship? Bill C-24: What you need to know about the Minister's new powers to restrict and revoke citizenship - 14:10 - 14:50 EDT / 11:10 - 11:50 PDT**

*Presenters: Audrey Macklin and Geraldine Sadoway*

Exile Makes a Comeback! Bill C-24 introduces banishment and second class citizenship into Canadian law. Canadian citizens convicted of certain offences face not only imprisonment, but denationalization and expulsion. But this punishment is reserved for dual citizens. Other Canadian citizens are vulnerable to citizenship revocation if they choose to reside outside Canada for some unspecified period of time. But this condition is reserved for naturalized citizens. Audrey Macklin will explain the citizenship revocation provisions at the CARL conference.

On the hundredth anniversary of the entrenchment of "white Canada" policies as evidenced by the Komagata Maru "incident", the changes to our citizenship laws will take us back to a time of exclusion of many permanent residents from citizenship and from full civic participation in Canadian society. The changes will result in denial of the franchise to many members of racialized groups. Permanent residents without citizenship are vulnerable to deportation and deportation is on the rise. Citizenship is harder to get and easier to lose. Geri Sadoway will show how refugees are being increasingly excluded from citizenship even though they are stateless: they are good enough to live here and work here but not quite good enough to vote. Canada is turning from a policy of nation building to one of a guest-worker state.

**Cessation and Vacation - 15:45 - 16:45 EDT / 12:45 - 13:45 PDT**

*Presenters: Erica Olmstead & Doug Cannon*

The 2012 PCISA brought amendments to the IRPA. These amendments include the creation of harsh consequences for persons subject to cessation applications, consequences that were previously reserved only for those subject to vacation proceedings. A cessation application will now have the following effects on refugees:

- strip a refugee of their protected status and their permanent residency,
- render them inadmissible to Canada and subject to a removal order, and
- bar them from applying for PRRA for one-year.

An internal CBSA Operational Bulletin from September 19th 2013 reveals that CBSA has "committed to referring a minimum of 875 vacation or cessation cases per year" to the Refugee Protection Division.

CBSA has begun to bring these applications in the Western Region against both in-land and resettled refugees, without any regard for the humanitarian and compassionate circumstances of a case or for the compelling explanations of travel to ones country of origin. CBSA has sought to improperly put citizenship proceedings on hold to bring these applications. They have also argued that the RPD ought to apply an overly strict interpretation of the law, which would disregard the person's ongoing risk, their subjective intention not to re-avail or re-establish, the involuntariness of their actions unless coerced, and the ongoing inability of the state to effectively protect. We will share the experiences of how these claims have initially been brought by CBSA and how counsel in the Western region have begun to respond.

# Conference Teasers

**Perils of Practice: ethical issues facing practitioners - 14:50 - 15:20 EDT / 11:50 - 12:20 PDT**

*Presenter: Lorne Waldman*

What should you do when your client tells you a vital piece of information minutes before the hearing is to proceed? Do you :

- (a) tell you client to keep quiet and ignore him or her?
- (b) tell him to pretend to get sick and ask for an adjournment?
- (c) pretend to get sick yourself and ask for an adjournment?
- (d) all of the above
- (e) none of the above

Come to the CARL conference so that we can have a serious discussion of ethical issues that confront refugee lawyers.

## CARL in the Media

*Compiled by Yan Zawisza*

### Opposing Bill C-24: Reforms to the Canadian Citizenship Act

*Proposed citizenship reforms raise concerns* [[The Canadian Jewish News, February 21, 2014](#)]

*Citizenship reforms a serious threat to rights of all Canadians* [[Lorne Waldman and Audrey Macklin, Toronto Star \(Commentary\), February 10, 2014](#)]

*Citizenship changes will mean longer wait to become Canadian* [[Toronto Star, February 6, 2014](#)]

*CARL Press Release: Canadian Association Of Refugee Lawyers Reacts To Proposed Government Citizenship Bill* [[February 5, 2014](#)]

### Calling for Oversight of the Canadian Border Services Agency

*Calls for independent oversight of border police renewed* [[Toronto Star, March 5, 2014](#)]

*Civil Liberties Association renews calls for Border Services oversight* [[The Globe and Mail, March 5, 2014](#)]

*Border agency needs oversight: advocates* [[Global News, March 5, 2014](#)]

*Public inquest to be held into in-custody death of Mexican woman at Vancouver airport* [[The Vancouver Sun, February 25, 2014](#)]

*Border police in dire need of independent oversight* [[Josh Paterson and Lesley Stalker, Toronto Star \(Commentary\), February 5, 2014](#)]

*Mexican woman's death prompts calls for civilian oversight of border agency* [[Toronto Star, January 30, 2014](#)]

*CARL Press Release: Border Services Death In Custody – Organizations Demand Accountability* [[January 30, 2014 \(version française\)](#)]

### Interim Federal Health Program Cuts

*Refugee health care cuts challenged in federal court* [[Toronto Star, January 30, 2014](#)]

*Correcting the record on refugee health care* [[Audrey Macklin, Toronto Star \(Commentary\), January 30, 2014](#)]

*Court hears legal challenge to Ottawa's health-care cuts for refugees* [[Global News, January 30, 2014](#)]

*Challenge of Ottawa's health-care cuts for refugees gets day in court* [[CTV News, January 30, 2014](#)]

*Refugee health-care cuts by Ottawa before the courts* [[CBC News, January 30, 2014](#)]

*Court hears challenge to federal government's refugee health-care cuts* [[iPolitics, January 30, 2014](#)]

# CARL in the Media

Court hears legal challenge to Ottawa's health-care cuts for refugees [[Huffington Post Canada, January 30, 2014](#)]

Ottawa 'could have repealed' all refugee care, federal lawyer tells court [[Toronto Star, December 18, 2013](#)]

Canada's Federal Court urged to declare refugee health cuts illegal [[Toronto Star, December 17, 2013](#)]

Doctors' court challenge charges refugee health-care cuts are invalid [[CTV News, December 17, 2013](#)]

Doctors challenge refugee health-care cuts [[iPolitics, December 17, 2013](#)]

Doctors' court challenge argues refugee health-care cuts are invalid [[Huffington Post Canada, December 17, 2013](#)]

Joint Press Release (CARL, AQAADI & RLA): Canadian Lawyers Say New Refugee System Deeply Flawed [[December 15, 2013 \(version française\)](#)]

## Legal Reforms' Impact on Immigrant Women

How Canada keeps some immigrant women in their place [[Lorne Waldman and Audrey Macklin, Toronto Star \(Commentary\), March 7, 2014](#)]

## Intervening in Kazemi at the SCC

Son of photojournalist to ask Supreme Court for right to sue Iran over her death [[The Globe and Mail, March 17, 2014](#)]

## DCO List

Canada's Sri Lanka Case and The Trouble With "Whitelists" [[Huffington Post Canada, December 24, 2013](#)]

## *The Conservative war on refugees* Pia Zambelli, Embassy Magazine, March 5, 2014

On Tuesday March 17, the Supreme Court of Canada heard arguments in *Estate of the Late Zahra (Ziba) Kazemi v. Islamic Republic of Iran*. In 2003, Ms. Kazemi was arrested and detained in Iran while covering protests there for a Canadian publication. It is alleged the 54-year-old Canadian Citizen was tortured and sexually assaulted by State authorities, suffered a brain hemorrhage, and fell into a coma before succumbing to her injuries. To this day, no one has been convicted or held accountable in Iran for what happened to Ms. Kazemi.

When Ms. Kazemi's estate sought a remedy through the Quebec Superior Court, Iran brought a motion to dismiss the action by invoking the *State Immunity Act* [SIA], which provides for foreign states' immunity before Canadian courts. Ms. Kazemi's estate appealed to the Supreme Court on the grounds that the immunity provided by the SIA is inconsistent with the *Canadian Bill of Rights* and the *Charter* insofar as it would deprive it of the right to an effective remedy.

A number of organizations were granted leave to intervene in this case, including the Canadian Lawyers for International Human Rights, the Canadian Civil Liberties Association, the Canadian Centre for International Justice, Amnistie internationale (section francophone), and the Canadian Association of Refugee Lawyers. As the Supreme Court considered the SIA's constitutionality, CARL counsel Daniel Sheppard and Tamara Morgenthau sought to supplement the Court's understanding of Canada's obligations under international law to provide the right to an effective remedy. CARL emphasized that for victims of gross human rights violations – particularly refugees – adequate and effective alternative remedies are elusive. CARL argued that states have a duty to ensure the realization and protection of the right to an alternative remedy to all persons within their jurisdiction, regardless of the identity of the perpetrator of the violation. Where immunities conflict with access to an effective remedy, international law requires such immunities be set aside and for complaints to be considered on their merits.

The Supreme Court will consider these and other arguments put to it during the *Kazemi* hearing over the coming months. For more on CARL's position in this case, readers may consult its factum submitted to the Supreme Court: [http://www.scc-csc.gc.ca/factums-memoires/35034/FM100\\_Intervener\\_Canadian-Association-of-Refugee-Lawyers.pdf](http://www.scc-csc.gc.ca/factums-memoires/35034/FM100_Intervener_Canadian-Association-of-Refugee-Lawyers.pdf)

# Announcements

## Calling CARL Student Members

Looking for a chance to connect with a Canadian refugee lawyer?

The CARL Quarterly is looking for volunteers to spearhead a new section in our newsletter featuring interviews with CARL members. Send an email to the editor at [macintosh.stephanie@gmail.com](mailto:macintosh.stephanie@gmail.com) if you are interested.

## Get involved with CARL - New Working Groups

Committees are the driving force of CARL, and we need your help to make their work as good as it can be! If you're interested in being a part of CARL's work, please consider joining a committee or volunteering on a project. As a young organization, we are especially interested in people who can help us grow and establish our presence. Get in touch with us to let us know how you'd like to contribute! Most recently, CARL's Litigation Committee has formed two new Working Groups focusing on:

- ❖ *the Faster Removal of Foreign Criminals Act*, examining the tightened immigration controls around security and inadmissibility; and
- ❖ the proposed citizenship changes in Bill C-24 from a human rights perspective.

If you want to get involved and contribute to CARL's work, please email [membership@carl-acaadr.ca](mailto:membership@carl-acaadr.ca) with an expression of interest.

## Thank you to our donors!

CARL is extremely grateful to the many generous donors who have helped to support our organization and specifically our Federal Court challenge to the Interim Federal Health Program cuts. We would like to thank all CARL Members who have contributed funds. We would also like to thank our corporate donors who have made generous donations to our litigation reserve fund, set up to guard against the negative impacts of a potential costs award against CARL.

If you'd like to support CARL by making a donation, please visit [www.carl-acaadr.ca/donate](http://www.carl-acaadr.ca/donate).

## Thank you, CARL volunteers!

All of CARL's activities are achieved by volunteers who donate their time and expertise to our young organization. Our litigation efforts, bi-annual conferences, advocacy efforts, and a range of student activities would not be possible without these valuable contributions. CARL would like to extend our sincere thanks to the wonderful team of volunteers who have driven our growth. We look forward to continuing our work together!

### Don't miss a beat!

Keep up with CARL's activities by following us online! You can find us via our twitter handle, [@carladvocates](https://twitter.com/carladvocates), or visit and 'like' [our Facebook page](#).



## Is your Membership up to date?

CARL is now using GiftTool software to manage our membership database. If you haven't already done so, please remember to renew your CARL membership! As a CARL member, you enjoy reduced rates for our conferences, first notice of CARL activities, and many opportunities to get involved with CARL's varied and exciting work. Please visit [www.carl-acaadr.ca/membership](http://www.carl-acaadr.ca/membership) to register as a CARL Member.

If you're not sure whether your membership is up to date, contact [membership@carl-acaadr.ca](mailto:membership@carl-acaadr.ca) to inquire.