



Evangelical Lutheran Church in Canada

Guidelines for Congregations Considering Offering Sanctuary

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- 1. Introduction**
- 2. What is Sanctuary?**
- 3. A glimpse at contemporary history of sanctuary**
- 4. The United Nations Convention relating to the Status of Refugees**
- 5. Refugees in Canada**
- 6. The basics of Canada's refugee determination system**
- 7. Recourses available to a Failed Refugee Claimant**
- 8. The legal & financial implications of offering sanctuary**
- 9. Conclusion**

1. Introduction

This document is a resource for Lutheran congregations in Canada who consider offering sanctuary for refugees facing deportation. The decision to offer sanctuary rests with a congregation. This paper outlines the basic issues involved in sanctuary beginning from the refugee claim process, the legal steps that could be taken after a claim for a refugee status has been rejected and finally the legal and financial implications of offering sanctuary.

2. What is sanctuary?

The word sanctuary is derived from the Latin word *sanctus* which means holy. Sanctuary means a consecrated or sacred area of a church around its altar. In medieval law, a sanctuary was a place of religious right of asylum. The contemporary use of sanctuary is usually meant to mean a place of safety.

Customarily, a refugee who is in sanctuary in a church is considered to be in a safe place. After a refugee claim has been unsuccessful and all existing legal recourses have been exhausted, the refugee then faces deportation. A refugee who has been offered sanctuary in a church circumvents deportation by virtue of the fact that he/she is in a church ground which enjoys immunity. Any attempt to remove the refugee from the church would be considered a violation of one of the cardinal principles of respecting the immunity of the church.

3. A glimpse at contemporary history of sanctuary

Beginning the early 1980's, when the influx of migrants fleeing El Salvador, Honduras and Guatemala started, the sanctuary movement became popular in the United States. By 1987, in different parts of the United States, there were 440 sites which had been declared "sanctuaries" open to migrants from Central and Latin America. In the beginning the sanctuaries were universities and cities. From 1980s and through the year 2000, churches became main places of sanctuary for short periods to migrants facing deportation to Germany, France, Belgium, the Netherlands, Norway, Switzerland, Australia and Canada. As regards sanctuary cases in Canada, from 1983 to 2003 there were 36 cases of refugees in sanctuaries in Canadian Churches. During the time this resource material is being prepared, a refugee is living in a sanctuary in a Lutheran church in Ontario.

Before we examine the reason why refugees facing deportation seek sanctuary in churches, it is necessary to have an understanding of the concept of 'refugees' and be familiar with the Canadian refugee determination process.

4. The United Nations Convention relating to the status of Refugees

The United Nations Convention relating to the status of refugees was signed in July 1951. This convention and the 1967 Protocol were landmarks in the setting of standards for the treatment of refugees. The Convention defines a refugee as a person who:

"Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, unwilling to return to it."

These criteria incorporate the foundation concepts of refugee protection regime which are relevant, although not adequate, in the contemporary context of refugee influxes as they were in 1951. These include the following:

- 1) That refugees should not be returned to face persecution or the threat of persecution (the principle of non-refoulement enshrined in Article 33 of the Convention);
- 2) That protection should be extended to all refugees without discrimination;
- 3) That the problem of refugees is social and humanitarian in nature and, therefore should not become a cause of tension between states;
- 4) That since the granting of asylum may place unduly heavy burdens on certain countries; a satisfactory solution of the problem of refugees can only be achieved through international cooperation;
- 5) That persons escaping persecution cannot be expected to leave and enter another country always in a regular manner and, accordingly, should not be

penalized for having entered into or for being illegally in the country where they seek asylum; and

6) That given the very serious consequences that the expulsion of refugees may have, this should only be resorted to in exceptional circumstances to protect national security or public order;

In 2006, the United Nations High Commissioner for Refugees (UNHCR) estimated there were 8,661,994 refugees and 772, 592 asylum seekers in the world. The vast majority of refugees seek refuge in neighboring countries. In addition, there are more than 6,616,791 internally displaced persons in the world. One should note that these IDPs are only those who are being assisted by UNHCR in 2006. Since it is the case that only when the internally displaced arrive in the big cities can they be enumerated, it is obvious that the number of IDPs is much bigger than the figure obtained by the UNHCR. After all, how many are displaced to less noticeable zones? How many perish on their way due to hunger, thirst, or diseases? How many become too weak to continue their displacement and end up in the wilderness where nobody notices them? How many become caught in the crossfire of conflicts and become victims? Therefore, in fairness to IDPs, the figure provided by UNHCR does not represent the accurate number of IDPs around the world.

5. Refugees in Canada

Canada ratified the United Nations Convention Relating to the Status of Refugees on June 2, 1965 and the Convention came into force in Canada on September 2 of the same year. When one looks at Canada's refugee determination process, it is obvious that it recognizes persecution by state and non-state actors.

The current Canadian legislation, the *Immigration and Refugee Protection Act (IRPA)* became law in 2002 and is intended to fulfill the government's obligation towards refugees under this Convention.

As a signatory to the 1951 Refugee Convention and its Protocol, the Canadian government has an obligation to provide asylum to refugees who show up on Canadian soil. Apart from the fact that people who flee persecution can also claim refugee status after arriving in Canada, it is important to note here that refugees can also come to Canada through overseas sponsorships. These refugees are sponsored from abroad by Sponsorship Agreement Holders (SAH), such as CLWR, as well as by the government.

As the purpose of this resource is to establish guidelines for the Lutheran churches while considering a request for sanctuary, the particular refugee category that is of interest to us is the asylum seekers category. Asylum seekers are those who arrive in Canada either legally or illegally and claim refugee protection. They are referred to as Inland Claimants.

In 2004, 25,750 claims for a refugee status have been made in Canada. Because of backlog with claims made before 2004, there were 40,000 cases which were finalized during the same year. 40% of these were accepted; 47% were rejected because they did

not meet the criteria under the Refugee definition, and 13% were abandoned or withdrawn.

6. Canadian Refugee Determination System

The *Immigration and Refugee Protection Act (IRPA)* which came into force in June 2002 grants the Immigration and Refugee Board (IRB) jurisdiction with respect to claims to refugee protection. It is an independent tribunal which is separate from Citizenship and Immigration Canada. The IRB makes its determinations on the basis of the 1951 Refugee Convention and the 1967 Protocol. The Refugee Protection Division (RPD) of the IRB assesses claims for refugee protection at first instance and the Refugee Appeal Division (RAD), which is non-existent at the time that this paper is being written, would have provided the right to appeal based on the merits of the decision. The lack of an appeal process is quite crucial in that it does not comply with Article 33 of the 1951 Convention which states that signatories to the convention are obligated to respect the principle of non-refoulement (not returning an individual to a country where she/he will be persecuted).

Claims for protection may be based on three grounds referred to as “consolidated grounds”.

1. Well-founded fear of persecution for a *Refugee Convention* ground
2. Danger of torture
3. Risk to life or risk of cruel and unusual treatment and punishment

Section 96 of IRPA allows a claimant to be determined a “Convention refugee” on the basis of the 1951 definition.

Section 97 (1)(a) allows a claimant to be determined a “person in need of protection” on the basis of the danger of torture ground.

And finally, section 97(1)(b) allows a claimant to be determined a “person in need of protection” on the basis risk to life and risk of cruel and unusual treatment or punishment ground. Although the 1951 definition of a refugee remains unaltered to this day, one can say that the consolidated grounds are positive criteria that could be seen as a means of expanding the narrow scope of the 1951 Convention.

7. Recourses available to a failed refugee claimant-

When an asylum seeker is deemed not to fulfill the criteria to be recognized as a refugee, there are three legal options available before a deportation order becomes implemented. Unfortunately, the Refugee Appeal Division (RAD) is not one of them. This is despite the fact that the Immigration and Refugee Protection Act (IRPA) contains provisions which include the Refugee Appeal Division (RAD) for refugees whose claim has failed. In fact, the decision to have a RAD was a result of a “trade-off” when the number of panel members of the IRB was reduced from two to one. However, in April 2002, the Minister

of Citizenship and Immigration announced that IRPA would be implemented without the RAD, which was supposed to be an integral part of the new refugee determination process approved by parliament. The fact that RAD became a dashed hope does have an impact on the reasons for giving sanctuary to deserving cases. In essence, because the government is not living up to its obligations, the sanctuary issue has been used as a means to fill the gap. The crucial point here is that asylum seekers who have not exhausted all the legal rights to which they are entitled could very well be vulnerable and possibly face persecution if they are deported.

At the moment, the following options are available before a deportation order comes into effect.

- A) Federal Court of Appeal
- B) Pre-Removal Risk Assessment (PRRA)
- C) Humanitarian & Compassionate Review

a) The Federal Court of Appeal can be used when the Refugee Board rejects the claim made by an asylum seeker. This is an application for leave for a judicial review. After a negative decision has been rendered, the claimant has 15 days to make a submission. If leave is granted, then, the claimant may argue before the court that there was an error of law. The Federal Court of Appeal does not consider the merits of the decision. It is a judicial review. It reviews if all legal procedures were properly followed. If the Federal Court's ruling is in favour of the claimant, then the case will be returned to the Immigration and Refugee Board for a rehearing.

b) The Pre-Removal Risk Assessment (PRRA) is done by Canada Border Services Agency (CBSA). Like the IRB, their jurisdiction is to decide whether a person deserves the status of a protected person. The PRRA process starts after a removal order has been issued. It is important to note that PRRA is not an appeal process. It is intended to allow a failed refugee claimant to submit new information or evidence that has become available since the IRB decision. If the risk assessment is positive, the claimant becomes a "protected person" and can apply for permanent residence. If the decision is negative, the failed claimant must comply with the removal order.

c) When the claim for protection by a refugee is rejected, an application for a Humanitarian & Compassionate Review, commonly known as H&R application, can be made. There must be compelling reasons for a successful H & C Review. For instance, do they have family members in Canada? Long-term stay or commitment or other compassionate considerations are also key while submitting an application for H&C Review application. A processing fee of \$500.00 per adult and \$150.00 under the age of 22 must be paid.

An H&C application takes years for a decision to come by and therefore simply submitting an application cannot stay a removal order. Nevertheless, CIC can exercise its discretion to allow the refugee to stay in Canada until a decision has been made. As well,

it is important to know that the success rate of an H&C application is quite low, barely over 2%.

8. The implications of offering a sanctuary.

Receiving sanctuary in a church is the last resort taken by a refugee before a deportation order comes into effect. At this stage, all the legal options which are mentioned above have already been exhausted.

When a church receives a request for sanctuary from a refugee who is under a deportation order, the following considerations must be taken into account before a decision is made.

- a) The first step is to have a meeting with the refugee in order to have a thorough knowledge of the case. It is very important for the church to have an adequate knowledge of the history of the case. If the refugee has a lawyer, it is advisable to speak with the lawyer as well. The refugee has to be open, truthful and transparent with the congregation.
- b) Although, according to customary law, a church compound enjoys immunity from any enforcement actions, one has to realize that it is also illegal, according to IRPA, to knowingly induce, aid, abet or counsel anyone to contravene the provisions of IRPA and the criminal code. The penalty if convicted of aiding, abetting or counseling an individual not to comply with a removal order is up to two years imprisonment, a fine of up to \$50,000 or both. Between 1983 and 2003, there were 36 cases of sanctuary in Canada. In 2006 and 2007 there are 5 cases of active sanctuary cases in Roman Catholic churches and in an Evangelical Lutheran Church in Canada. However, one finds comfort with the fact that offering a sanctuary has never been a legal issue. No charges have been laid now or in the past, against a church, or a church official under IRPA or the Criminal Code for providing sanctuary.
- c) There are moral and ethical reasons that justify a decision to offer a sanctuary to a refugee facing deportation. Essentially, it is done in order to avoid the further persecution (arrest and /or murder) of the refugee if and when the deportation order is implemented. In that regard, it is important for the church to have a good knowledge of the human rights situation of the country of origin of the refugee. If possible, an independent verification must be done to prove that the persecution is possible. There are organizations, like Amnesty International, Human Rights Watch, UNHCR , etc., who provide information on human rights situations in various countries.
- d) It is important to understand that a sanctuary situation for a refugee could take an indefinite period of time. Is the refugee ready to be in a situation of voluntary confinement indefinitely? In addition, offering sanctuary has financial implications for an unlimited time. There are expenses for food,

unforeseen medical costs, phone calls, legal costs, etc. The church will have to make financial plans for these costs.

- e) Does the church building have amenities such as shower? Will a renovation be necessary?
- f) If children are also involved in the family for whom a sanctuary is given, there will be additional exigencies. It is important to envisage an educational program and extra-curricular activities for them. Are these facilities available?

9. Conclusion

A sanctuary situation is a complex issue which involves a thorough assessment of the particular refugee's history and the merit of the request. It involves an analysis of whether the refugee has been given a fair decision and finally an investigation of whether further persecution is possible for the refugee if deported. Last but not least, our faith and our compassion must be a key factor while considering a request for a sanctuary.

Given the complex nature of a sanctuary situation and the legal and financial implications, and, given the fact that a request for sanctuary usually comes in an urgent manner, it is recommended that Lutheran churches use this resource during their procedure before arriving at a decision. Usually, because a request for a sanctuary requires a quick response, it is recommended that church council deliberate on a request. If the church council approves the request, it is advisable to inform the entire congregation and obtain congregational approval.

Note: This document was passed by the NCC not as a policy of the ELCIC but as a guide to help congregations in the process of discerning whether they would offer sanctuary to people seeking refugee status in Canada.

The sources that have been used to produce this document include the Immigration & Refugee Protection Act of Canada (IRPA), documents from the UNHCR, sanctuary guidelines of the United Church of Canada as well as sanctuary guidelines of Presbyterian Church of Canada. This was developed for the ELCIC by Canada Lutheran World Relief.