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Refugee Reform: Expediency at the Cost of Fairness

“Protecting Refugees”: Expediency and Efficiency the New By Words in Immigration

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Jason Kenney is the most prolific Minister of Immigration this country has seen. Love him or hate him, he has fundamentally transformed his Department. Euphemistic legislative titles like the “Balanced Refugee Reform Act” and “Protecting Canada’s Immigration System Act” have but one object and purpose - to elevate expediency and efficiency as the paramount considerations in immigration and refugee policy.

It is true that reforms are necessary. Canada should not be receiving more refugee claims from Europe than from Africa; given the constraints imposed by the Supreme Court, everyone that claims refugee protection is granted a hearing. However, in his zeal to crack down on “bogus” refugee claimants, Mr. Kenney may inadvertently harm legitimate claims. The new time constraints imposed on every refugee claimant make it very unlikely that the most vulnerable - those suffering from PTSD or other severe mental or sexual trauma - will have a full and fair hearing before the re-constituted Refugee Protection Division. The new legislation aims to have refugee claims heard within 60 days. Individuals suffering from serious trauma will undoubtedly be prejudiced with such short time frames.

Those that suffer PTSD have flawed memory of the traumatic events in question. For an untrained adjudicator, it is extraordinarily difficult to distinguish between fraud, malingering, embellishment and accurate remembrance. Recent studies with veterans from Operation Desert Storm in Iraq that suffer from trauma indicate that fully 80% changed their stated memories on tests. Authors of the study indicate that with PTSD, trauma memories are neither “fixed nor indelible”.

There is likely a biological explanation for this. In a study of known trauma victims, compromises were found in brain structures responsible for storing memory and emotional input. The memory for the traumatic event is affected; the individuals appear to gloss over details (presumably as a self-protective mechanism).

In terms of sexual trauma, victims of sexual trauma do not readily convey their story. In fact, many will not do so if they believe that a less personal story is

adequate. Cultural reasons may also forestall a victim of sexual violence from full disclosure, especially if the victim is female and the refugee adjudicator male. In our experience, sexual atrocities are not disclosed immediately and take weeks or months after trust and rapport is built with legal counsel.

Due to some high profile sports injuries, Canadians are more aware of the continuing residual effects of head injuries. Some refugees will describe their reasons for seeking protection without knowing that they suffer from head injuries that will result in permanent loss of cognitive function. More importantly, they will not (until they are evaluated carefully) even know that they may suffer from closed- head injuries. Instead, they will report that they were tortured in detention. In the course of evaluation it may become apparent that they are not logical, they speak tangentially and vaguely, and they are inconsistent in providing a detailed chronology. After a lawyer has struggled to understand inconsistencies and lapses he or she may refer the person to a psychologist for evaluation. This may reveal that the person was struck with sufficient force in a manner to cause brain injury. Neuropsychological assessment will then explain the cognitive processing challenges and assist in a determination of whether the person is credible.

Unfortunately for the refugee claimant, the more extreme a trauma exposure is, the more likely it is that the vividness and detail of the refugee's autobiographical report will be lost and that the trauma memories will be highly disorganized.

The reality is that these individuals deserve a careful probing by the RPD, the individual's lawyer, a doctor, and a psychologist, when the effects of trauma will be less acute, sometimes when the effects of medications have had the time to who therapeutic effect (minimally, 2-4 months). If constrained by a 60-day time-frame, there will almost certainly be a less reliable and less accurate conveyance of critical events. Short of this, those refugees with a compelling narrative may be those with the most flawed conclusions.

The net effect and major implication of the empirical evidence is easily apparent: the most vulnerable refugees from a psychological perspective will be those who have been most traumatized. In these individuals, a quick evaluation conducted by a civil servant with little background in psychology within 60-days of landing, is unlikely to reveal an accurate memory of an atrocious and compelling history. As a result, we will deny protection to those that deserve it most. Fairness should not be sacrificed on the altar of efficiency, expediency and cost.

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