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New functions will require continuing education of UNHCR staff. New training programmes should be established for protection officers on human rights and humanitarian law and institutions. In this regard, there should be collaboration among other UN agencies and sections, including the Department of Peacekeeping Operations, the Department of Humanitarian Affairs and the Centre for Human Rights. Specialized agencies such as the United Nations Relief and Works Administration, and non-governmental organizations such as the International Committee of the Red Cross, and others, should also be involved. Conflict resolution, negotiation, and conciliation techniques should be covered in such training programmes in order to assist protection officers in discharging their new responsibilities. Protection must be professionalised and fully integrated into the on-going work of the office.

In sum, UNHCR's metamorphosis into the humanitarian branch of the UN must be supported by clear and workable principles derived from law and international politics. In a fundamental sense, this will require reinventing both refugee protection and the Division of International Protection. Law and experience must be synthesized in an on-going process to achieve ordered principles for action. This will be UNHCR's principal protection challenge for the 90s.

The Credibility and Authoritativeness of Documentary Information in Determining Refugee Status: The Canadian Experience

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Abstract

This article reviews the origins of the Documentation, Information and Research Branch (the 'Documentation Centre') of Canada's Immigration and Refugee Board (IRB), established in 1988 as part of a major revision of the procedure for determination of refugee status. The Documentation Centre conducts research to produce documents describing conditions in refugee-producing countries, and also disseminates information from outside. The information is available to decision-makers, IRB staff, counsel and claimants. Given the importance of decisions on refugee status, the article looks at the credibility and the authoritativeness of the information, by analyzing the structure, mandate and methodology of the Centre, with particular attention to the sources of information used. It recalls the different types of information 'package' produced, such as country profiles and the Question and Answer Series, the Weekly Media Review, the 'Perspectives' series, Responses to Information Requests and Country files, and considers the trend towards standardization across the country. The research process is reviewed, as are the hiring criteria for researchers, the composition of the 'collection', how acquisitions are made, and the development of databases, particularly on country of origin (human rights material) and legal information, which are accessible on-line. The author examines how documentary information can be used by decision-makers to draw conclusions as to whether the claim has a credible basis or the claimant has a well-founded fear of persecution. Relevant caselaw is considered, emphasizing the importance of determining which sources of evidence are available to assess and weigh the claim. The experience of Amnesty International in similar work is cited for comparative purposes. A number of 'safeguards' are mentioned, which contribute to the goal of impartiality in research, or which otherwise enhance the credibility of the information, and the author suggests that guidelines might be drafted to explain and assist in the realization of these aims. Greater resources

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might also enable the Centre to undertake the task of 'certifying' the authoritativeness of sources. The author concludes that, as a new institution in Canadian administrative law, the Documentation Centre opens interesting avenues for the future. Because it ensures an acceptable degree of impartiality of its research and the documents it produces, it may be a useful model for other tribunals adjudicating in fields where evidence is either difficult to gather, or is otherwise complex.

Introduction

The first formal refugee determination process in Canada, established under the *Immigration Act, 1976-77*,¹ entailed a number of major evidentiary problems. Briefly, the Minister or Minister's Delegate made determinations on the basis of advice tendered by the Refugee Status Advisory Committee, which in turn based itself on the transcript of an examination of the claimant under oath conducted before a Senior Immigration Officer, together with such other information regarding conditions in the claimant's country of origin as might be put before it or to which it might otherwise have access.² Significantly, the Committee found it difficult to evaluate the credibility of the claimant, who never appeared before it, while the claimant was not advised of other information before the Committee.

Not surprisingly, this scheme was partly invalidated in *Singh v. M.E.I.*,³ in which the Supreme Court of Canada held that the process violated either section 7 of the *Canadian Charter of Rights and Freedoms*⁴ or section 2(e) of the *Canadian Bill of Rights*,⁵ because it did not provide for a fair opportunity to claimants to meet the case. Partly because of *Singh*,⁶ a new process was established in 1989.⁷ The Immigration Appeal Board was reconstituted as the Immigration and Refugee Board, and a Documentation, Information and Research Branch⁸ was established in 1988, six months before the coming into force of the new refugee determination process on 1 January 1989.

The Documentation Centre has its origins in the report of Rabbi Gunther Plaut, a Special Policy Advisor appointed by the Minister to report on the refugee determination process. He underlined the need for the,

¹ R.S.C. 1985, c. I-2. The renumbering of the *Immigration Act, 1976-77* in the revised statutes is used throughout this article.

² Plaut, W.G., *Refugee Determination in Canada*, (1985) at 39-40 (hereafter the *Plaut Report*).

³ [1985] 1 SCR 177.

⁴ *Canada Act 1982*, Schedule B, 1982 (U.K.), c. 11.

⁵ *Canadian Bill of Rights*, R.S.C. 1985, App. III.

⁶ But also because of the *Plaut Report*, above note 2, and an increased flow of claimants.

⁷ *Immigration Act*, R.S.C. 1985 (4th supp.), c. 28. On the new process, see Fairweather, R.G.L., 'Canada's New Refugee Determination System,' (1989) 27 *Can. Y.I.L.* 295.

⁸ Hereafter the 'Documentation Centre'.

... establishment of a Documentation division ... based on the belief that a maximum of knowledge - both of the claimants's country of origin and of pertinent law - will greatly facilitate reaching fair decisions.⁹

It was also recommended that the Centre have the same independence as the Board, and that it be integrated into its structure, rather than into the Immigration Department.¹⁰

The Documentation Centre conducts research to produce documents describing conditions in refugee-producing countries, and also provides information produced outside the Centre. All this information can be used by Members, Board staff, counsel and claimants (as well as Immigration Department staff) in the determination of refugee claims. The Documentation Centre has become important in the decision-making process.¹¹ In the first year of operation, the new Board consulted the information available at the Documentation Centre in more than 50% of the claims adjudicated or heard.¹² This way of publicly and openly generating evidence for Members, Board staff, counsel and claimants through a Documentation Centre is unique in Canadian administrative law.

The Centre is not merely a library. It seeks to provide credible documentary information on conditions in refugee-producing countries which can be used to grant or refuse a claim for refugee status. The Centre also hopes that, over time, this documentary information will become authoritative. Given the importance of the decision on the life of a person claiming refugee status, the issue discussed in this article is the credibility and the authoritativeness of the information available at the Centre. This involves an analysis of the structure, mandate and methodology of the Centre, with particular attention to the sources of information used to produce information on refugee-producing countries.

1. The Documentation, Information and Research Branch of the Immigration and Refugee Board

The Documentation Centre fulfils two main tasks: meeting the information needs of Members of the Convention Refugee Determination Division and its staff, Immigration Department staff, claimants

⁹ *Plaut Report*, above note 2 at 135.

¹⁰ *Ibid.* at 83.

¹¹ For example, the Regional Documentation Centre in Montréal received 1,023 requests for information in May 1991 alone, while at the time an average of 3,000 claims for refugee status were received in Canada per month. Information provided during telephone interview with Serge Vallée, Chief, Regional Documentation Centre, June 1991.

¹² See Annex below giving statistics on 200 cases to 31 Mar. 1990.

and their counsel; and producing information.¹³ In addition to the head office in Ottawa, there are six Documentation Centres across the country.¹⁴ The head of the Centre is the Director General, Documentation, Information and Research.

The legal authority of the Immigration and Refugee Board to establish the Documentation Centre is not clearly stated, and no provisions in the *Immigration Act* or any regulation explicitly mandate such a Centre. However, under subsection 58(3), the Chairperson, the chief executive officer of the Board, has supervision over and direction of the work and staff of the Board. Therefore, the Chairperson has the authority to spend money within the operating budget of the Board to ensure its proper functioning.¹⁵

The Centre is divided into three directorates: Research, Public Affairs, and Access to Information and Privacy, the first of which only is the subject of this paper.

1.1 The Research Directorate

The Research Directorate is the largest component of the Documentation Centre, comprising some thirty-five staff members divided into five units:¹⁶ Products and Research Analysis,¹⁷ the Resource Centre,¹⁸

¹³ The Documentation Centre also provides information to the Immigration Appeal Division of the Immigration and Refugee Board and, since Bill C-86 was adopted in late 1992, to Immigration Adjudicators. On the mandate of the Documentation Centre, see Rusu, S., 'The Development of Canada's Immigration and Refugee Board Documentation Centre,' 3 *IJRL* 319, 323 (1989). Sharon Rusu was Director of Research at the Documentation Centre until Sept. 1992.

¹⁴ Montréal, Calgary and Vancouver. There are two offices in Toronto. Toronto 1 is open to Board members and their staff, counsel, claimants and the public in general. Toronto 2 is open to Board members and their staff only. The Winnipeg Centre was closed because of a consistently low demand. However, when there is a need for information from the Documentation Centre, Board Members and their staff, counsel, claimants and the public in general have access to a collect call telephone service from Calgary. There is a possibility that two smaller resource centres will open in Halifax and St. John's in the future (1992-1993). Information provided by Reid Rossi, Senior Analyst, Summer 1991; reviewed and confirmed on 4 Sept. 1992.

¹⁵ The Documentation Centre, based in Ottawa, has an operating budget of approximately \$3 million per annum. In 1991, the budget was cut by 18%, although the same number of staff was retained. Information provided by Reid Rossi, Senior Analyst, Summer 1991; confirmed Sept. 1992.

¹⁶ It is headed by the Director of Research. The co-ordinators of the units and the Senior Analyst report to the Director of Research. Information on the structure of the Documentation Centre provided by Reid Rossi, Senior Analyst, Summer 1991; reviewed and confirmed, Sept. 1992.

¹⁷ The staff comprises a coordinator and eight research officers.

¹⁸ The staff comprises a coordinator, a bibliographic archivist, an acquisitions assistant officer, a cataloguing assistant and a library clerk.

Databases,¹⁹ Information Services,²⁰ and the office of the Senior Analyst.²¹

Research Directorate staff undertake research and analysis to produce objective and reliable documentation relating to the refugee determination process. The Centre provides information on human rights conditions, including law and practice, in countries of origin of persons making refugee claims. The documentation initially produced consisted of Country Profiles, Information Packages, Overviews, Question and Answer Series, the 'Perspectives' Series, and three services: Country-of-origin files, Responses to Information Requests and Weekly Media Review.

Information on human rights in countries of origin is assessed and evaluated and forms the basis of the Country Profiles. These are the Centre's primary documentation provided to Members of the Refugee Division and their staff, claimants, and counsel for claimants. They document the geographic, historic, political and social dimensions of the country of origin of refugee claimants. They report on the human rights situation as recorded by monitors and observers, both domestic and international. Contents of Country Profiles include the following sections: maps,²² general information and introduction,²³ human rights issues,²⁴ issues in brief,²⁵ exit and return,²⁶ political parties and movements,²⁷ a chronology of major events,²⁸ and, finally, an annotated

¹⁹ The staff comprises a coordinator, three research services officers, and four technical support clerks.

²⁰ The staff comprises a coordinator, seven research officers and a clerk.

²¹ The Senior Analyst (Reid Rossi) works with two officers, a clerk and an administrative assistant.

²² Outlining 'traditional exit and migration routes, refugee camps, resettlement areas, areas of insurgent and counterinsurgent activities, detention centres and areas of civil or ethnic strife.' Canada, Immigration and Refugee Board, *IRB Documentation Centre, What it is and how it Works* (1990) at 6.

²³ Which place 'the country in its general regional and geopolitical context with emphasis upon those factors unique to the country and relating to the exodus of people from it.' *Ibid.*

²⁴ Which 'compares individual and collective rights guaranteed in the country's constitution with what occurs in practice.' It places 'special emphasis upon freedom of association and expression, disappearances and extra-judicial killings, legal rights, torture, freedom of religion, indigenous people and ethnic groups, other vulnerable groups, and economic rights.' *Ibid.* at 7.

²⁵ Which summarizes 'the major human rights issues with special emphasis on the current situation and, where possible, an assessment of what the future might bring.' *Ibid.*

²⁶ Which focuses 'on the right of individuals to leave and to return to their country, including penalties for illegal departure or the return of persons who have claimed refugee status abroad.' *Ibid.*

²⁷ Which provides 'information on the structure, mandate, ideology and strengths of the various political parties as well as the relationships between political parties, including legal restrictions on the formation of parties.' *Ibid.*

²⁸ Which outlines 'the relevant sequence of events leading to the current situation in the country.' *Ibid.*

bibliography and notes.²⁹ Country profiles are updated, on average, every two years.

Information Packages contained a short report 'providing general statistical information about a country's institutions, organizations, and peoples'.³⁰ Excerpts from major reports produced by human rights monitors are often appended. Overviews 'provid[ed] general information about institutions, organizations, and peoples, as well as a brief examination of the major human rights related issues in the country'.³¹ Information Packages and Overviews, however, are no longer produced,³² since their content is now incorporated in Country Profiles, although some are still circulating.

The other products of the Research Directorate include the Question and Answer Series (formerly known as Issue papers), the Weekly Media Review, the 'Perspectives' series, Responses to Information Requests and Country files. The Question and Answer series provides updated information on situations and policy changes in claimant-producing countries, and it series complements and updates the Country Profiles.³³ Updating depends on developments in these countries. Newspaper clippings are gathered on a weekly basis to form the Weekly Media Review, a service which reports on situations in countries considered of immediate concern to the Refugee Division and on those identified as potential future sources of refugee claimants.³⁴ The 'Perspectives' series is co-ordinated and video-taped by the Centre and provides up-to-date information to decision-makers and to the community at large on country-specific situations.³⁵ Responses to information requests represent research undertaken by staff upon specific request by the Members and Refugee Hearings Officers (RHOs) of the Refugee Division,³⁶ and are produced on a daily basis. Staff allocated to providing responses to information requests form a distinct unit (Information Service), to which more attention is paid below.

Country-of-origin files are available in Regional Documentation Centres and contain information on countries such as newspaper clippings and information requests. They are provided to Members of the Division, RHOs, counsel and claimants across the country. At first,

²⁹ Which provides 'an abstract of the major sources used in the compilation of the country profile.' Ibid.

³⁰ See Canada, Immigration and Refugee Board Documentation Centre, *Guidelines* (1990) at 13 (hereafter *Guidelines*).

³¹ Ibid.

³² Ibid.

³³ See Rusu, above note 13 at 325.

³⁴ Ibid.

³⁵ Participating speakers include refugees, human rights workers, academics and specialist on refugee issues. Ibid.

³⁶ *Guidelines*, above note 30 at 8.

the content of the Country files was not standardized for each region, and it was possible to find different information in Vancouver and Toronto on a given country. However, a joint project of the Documentation Centre and the Co-ordinator of Hearings Process has largely remedied this situation.

1.1.1 Products and Research Analysis

The conduct of research is a two-step process: the research itself and analysis of the information gathered. Research Officers initiate the research by collecting documents to develop a bibliography.³⁷ This bibliography is verified by the unit co-ordinator who discusses it with the Research Officer. Then, an initial paper is produced. This first draft is edited for content with a focus on human rights, as well as for verification of the source and the content of endnotes. The second draft incorporates the changes from the first draft and the third draft is the final review. The Director of Research is involved in the verification of the first and the final draft. Research Analysts are in fact editors who scrutinize for errors or omissions in substance, style, grammar and factual information.

Once the final draft is ready, it is translated into the other official language and both versions are simultaneously distributed to Members of the Refugee Division, RHOs, NGOs and the other partners in the information exchange network of the Documentation Centre.³⁸

Because the Documentation Centre is committed to the use of credible and trustworthy information, standards have been developed for the treatment of raw data in an even-handed and impartial manner.³⁹ Many sources reflect a particular bias, perspective, or interest. This is not viewed as incompatible with correctness, but, to ensure accuracy researchers are required to refer to a further variety of other sources to confirm or negate the initial statement. Indeed, *all* information is generally required to be supported by three publicly-available and identifiable sources in order to be considered objective.⁴⁰ A disclaimer also appears on each and every document produced by the Documentation Centre, stating that the document does not pretend to be either exhaustive or conclusive:

³⁷ To orient their research, researchers can use reference books, personal information forms, information requests, vertical files on a country and on-line searches. See *Guidelines*, at 8-9.

³⁸ Such as the Netherlands and Denmark.

³⁹ 'To the greatest extent possible, the Documentation Centre endeavours to eliminate the possibility of personal bias and conjecture from its works. . .' See *Guidelines*, at 3.

⁴⁰ 'The IRBDC has an obligation to produce objective Profiles which rely on reputable publicly available sources.' *Guidelines*, at 19. The following notice appears on every document produced by the Documentation Centre: 'All the sources of information contained in this document are identified and are publicly available.'

This background paper has been prepared by the Immigration and Refugee Board Documentation Centre (IRBDC) on the basis of publicly available information, analyses and comment. All sources are cited. This paper cannot be, and does not purport to be either exhaustive in regard to the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. Updates to this paper may be obtained from the IRBDC, Ottawa.

Researchers are required to pay close attention to the weight of the evidence. For this purpose, evaluation is collegial and is made by contrasting and comparing the sources. The parameters for such an evaluation are the breadth of the refugee concept and the limits of the refugee definition. Documents are produced under a corporate authorship. This is important, since the documents produced by the Research Branch seek to become authoritative, but not to be read as expert opinion. Indeed, Documentation Centre staff do not provide expert opinion at refugee determination hearings.

Finally, in order to avoid duplication, conflicting perspectives and to be able to respond more quickly to rapidly-changing developments (such as in Yugoslavia), a six-month pilot project was undertaken in July 1992, when the Research Directorate established five Geographical Bureaus (Europe, Americas, Near East, Asia, Africa). Their purpose is to enable all the units of the Research Directorate collectively to share information sources and seek out new and additional information for use in research planning. Groups meet every week and report every three weeks to the unit coordinator of Information Services and Products and Research Analysis.

1.1.2 Hiring Criteria For Researchers

Staff are employees of the Immigration and Refugee Board. The Public Service Commission, the government agency responsible for all staffing within the Federal government, sends resumés of potential candidates from the national inventory to the Director of Research at the Documentation Centre.

To be hired for the Research Branch, an applicant generally needs a liberal arts degree from a recognized university. Currently, there are staff with undergraduate and graduate degrees in political science, journalism, international affairs or international relations, economics, geography and history. The Branch will also consider relevant experience combined with a community college degree in community development, cross-cultural counselling, applied social work, or journalism. Candidates should have knowledge of world events, human rights issues, third world development, international socio-political systems, international conventions and instruments relating to refugees and domestic legislation pertaining to refugee determination, as well as

knowledge of research methodologies and techniques including the collection of data and its evaluation. They also need one year of relevant experience in the area of refugee or human rights research. Based on these requirements, researchers should have the skills necessary to conduct basic research.

Staff are provided with ongoing training, including country of origin information sessions, seminars on the understanding and application of the 1951 United Nations Convention Definition, and classes on the use and application of automated systems in a research environment.⁴¹ The personnel policy of the Research Directorate requires that all staff be able to work on all areas of the world. However, as a matter of efficiency, researchers will be assigned work on the areas of the world they know best.

1.1.3 The Resource Centre

The information used in the Country Profiles and Question and Answer Series is found mainly in the Resource Centre and in IRBDC databases.⁴² The Resource Centre is the main repository of information related to refugees in Canada. As the mandate states, and in view of the wealth of material and research now available, the Resource Centre focuses on bibliographic information rather than on physical holdings. It concentrates on knowing what is available, and where it may be found. The information services of the Resource Centre include searches, retrievals and consultations. Its holdings are available for public reference.⁴³ However, the Centre is designed primarily for the needs of those involved in the refugee determination process. The Centre is also interested in receiving information from individuals or groups who have country of origin material that would be of relevance in the refugee determination process.⁴⁴

1.1.4 The Composition of the Collection

All the material already described and produced by the Documentation Centre is available to the public for reference in all Regional and the Ottawa Documentation Centres. Apart from general information obtained in encyclopedias, the holdings of the Resource Centre

⁴¹ Training is year-round and includes participation in human rights and information exchange conferences around the world sponsored by governments, independent human rights monitoring groups and other non-governmental agencies. Guest speakers, academics, and professional specialists are called upon to provide analysis and commentary on current events in refugee-producing countries.

⁴² Information on the Resource Centre provided by Maria Léal, Acting Coordinator of the Resource Centre, Summer 1991; reviewed and confirmed by Reid Rossi, Senior Analyst, Sept. 1992.

⁴³ In all Documentation Centres across the country with the exception of Toronto 2. See above note 14.

⁴⁴ See *What it is and how it Works*, above note 22 at 8.

located in Ottawa are composed of information about countries compiled on a monthly, weekly and daily basis and reported from various agencies: US State Department assessments; reports of United Nations organs; regional human rights rapporteurs; and analyses by non-governmental organizations, such as the International Commission of Jurists, the Minority Rights Groups, the Netherlands Institute for Human Rights, the Danish Centre of Human Rights, Documentation Réfugiés, the Norwegian Institute of Human Rights, and the Lawyer's Committee for Human Rights, Amnesty International Reports, and Human Rights Watch, among others.

The Bibliographic Documentalist⁴⁵ of the Resource Centre is responsible for maintaining the basic reference tools for each region and all material including newspapers, periodicals and other refugee related publications for the national headquarters. In Ottawa, the coordinator of Information Services⁴⁶ suggested that the collection is as complete as it could possibly be. However, he said that there are some countries for which information is difficult to obtain (for example, Haiti, El Salvador, Argentina, the Commonwealth of Independent States and Eastern Europe), while some others, such as those in Asia, are generally well-documented.

1.1.5 The Acquisition Process

Acquisitions are made by a Committee headed by the Resource Centre Co-ordinator, and the Bibliographic Documentalist. Anywhere from one to several co-ordinators and research officers may be involved, depending on the material proposed for acquisition. The Committee meets actively to review regional and national acquisitions.

Material for acquisition is selected on the basis of regional specialty and overall abilities in the development of a refugee material collection. Financial resources are an important consideration. Documentalists rely on the expertise of staff members to request a publication and their knowledge of its trustworthiness. However, human rights monitoring groups' publications are viewed as basic material which should be available. Foreign governmental publications are also seen as an important, in order to ensure balance in the collection. The acquisition of publications by individuals depends on the needs of the various regions as well as of Ottawa. The general guidelines are: their general worth, the type of publication, their tenor, the evidence of political

⁴⁵ 'Bibliographic Documentalist' is the title used at the Documentation Centre to describe a position with similar functions to those of a librarian. The title of librarian cannot be used unless a person has a Master's degree in Library Science.

⁴⁶ Information obtained from Dennis Cole, Co-ordinator of Information Service at the Documentation Centre, Summer 1991. Reviewed and confirmed by Reid Rossi, Senior Analyst, Sept. 1992.

bias, if there are enough claimants coming from the particular area, and the reputation of the author.

The acquisition budget is part of the National Documentation Centre budget and is allocated as follows: Ottawa, 50%; Montréal and Toronto (1), 15% each;⁴⁷ Vancouver and Calgary, 10% each; Toronto (2) 5%. Acquisitions for Regional Centres depend on past regional spending, frequency of the traffic, client use of material, and the number of claims. Regional offices are financed through the budget of the National Documentation Centre. Ottawa maintains and controls the budget for the regions. Therefore, the Regional Chiefs have to file a request to Ottawa where all acquisitions processing is done.

1.2 Databases

At the Resource Centre, three databases, developed by the Resource Centre staff and the Database Unit, are also available. The Centre's automated system can supply information in two broad categories: country of origin (human rights material), and legal information.⁴⁸ These databases are REFBIB, which contains bibliographic entries and abstracts of the Centre's holdings; REFDEC, which includes the full text in both official languages of a selection of decisions made by the Immigration and Refugee Board; and REFINFO, which contains the full text of responses to Information Requests.⁴⁹ The REFINFO and REFDEC databases are available on-line, through QL Systems Quick-Law Service.⁵⁰

Researchers have access to the National Library of Canada 'Dobus' system and to commercial databases, such as Infoglobe, Lexis/Nexis and Quistel, which provide information contained in newspapers worldwide.

Since January 1991, the Documentation Centre has had access to the Human Rights Internet database located at the Human Rights Centre in Ottawa. This comprises a bibliography of selected publications from

⁴⁷ One of the complaints of the Regional Centres is that documentation is very sparse. Maria Léal, who was Acting Co-ordinator of the Resource Centre, agreed that the regional collections could be more complete.

⁴⁸ It has adopted international standards on terminology and formatting enabling the exchange of information with external databases. Information on the databases provided by Maria Léal, Acting Co-ordinator of the Resource Centre, Summer 1991; reviewed and confirmed by Reid Rossi, Senior Analyst, Sept. 1992.

⁴⁹ A fourth database to be developed will focus on information concerning law and practice in the countries of origin of refugee claimants, as well as countries of asylum and transit. This data will help researchers to obtain information on a particular country's laws, and how these laws and regulations are applied in practice, particularly on questions of admission, transit, residence, departure and return. The full text and relevant commentaries on treaties and covenants specific to human rights and refugees will be collected, as well as significant examples of foreign application of the 1951 Convention relating to the Status of Refugees. This database is to be named 'REFLAP'. See IRB Documentation Centre, *What it is and how it Works*, above note 22 at 5.

⁵⁰ Quick Law is a computerized legal database service available across Canada.

some two thousand NGOs, including the most important, such as Amnesty International and Human Rights Watch. Its other component is a list of international and regional organizations on human rights. The Human Rights Centre in Ottawa and the National Documentation Centre work in collaboration to exchange information on violations of Human Rights.⁵¹

1.3 Information Services

The Centre produces answers to daily requests for information, which can include advice on Canadian law, comparative law and international law.⁵² Since 6 August 1990, as a result of limited financial resources, the Ottawa information request service has been limited to Members of the Refugee Division and RHOs. As a consequence, information requests by claimants (or counsel for claimants) which cannot be answered with the resources available in the Regional Centre will not go any further, leaving a claimant to conduct his or her own research and analysis; if relevant, he or she can consult earlier responses to information requests.⁵³ Counsel and claimants can access available documentation and earlier information requests through their Regional Documentation Centre.

The procedure for filing an information request is as follows: The RHO or the Member of the Refugee Division files a request with the Centre in their region. Staff of Regional Centres provide the list of documents related to the subject matter and, when they are available, the documents themselves. When a Regional Centre cannot provide

⁵¹ Information provided by Lucie Bernier, Documentalist at the Human Rights Centre, 14 Jan. 1992. An informal immigration lawyers' network in Ottawa exchanges the information which they obtain from their clients on the situation prevailing in their clients' country before they left. It mostly includes newspaper clippings from the country in question, and is thus quite current information. This informal network was created for two reasons: first, because the information provided by clients is usually not accessible through the Documentation Centre; and, secondly, it saves research time for lawyers practising immigration law. Telephone interview with Warren Creates, president of the local immigration section of the local Bar Association - The County of Carleton Association, 14 Jan. 1992.

⁵² All the information thereafter provided on the Information Request Unit was obtained from Dennis Cole, Co-ordinator of the Information Request Unit of the Documentation Centre, Summer 1991; reviewed and confirmed by Reid Rossi, Senior Analyst, Sept. 1992.

⁵³ Because the same services are not given to both claimants and Board Members, this may be seen as a defect of the process. As shown below in section two, however, any adverse information found by the Documentation Centre and intended to be used by Board Members in their decision must be disclosed to claimants and an opportunity to respond must be given to them. In order to respond to adverse information, claimants have access to all documents and databases available at the Documentation Centre, and regional staff have the skills to help claimants to conduct their research. In addition, since some staff of Regional Centres have been recruited from NGOs, they have accumulated their own experience on world affairs which they share orally with claimants, RHOs and Board Members. Finally, if the information comes from an oral source and if the person has agreed to be on the public record, the possibility exists for challenging the credibility of the information provided by that person.

the information, requests from RHOs and Members of the Refugee Division are sent to Ottawa.

Once the request is received in Ottawa, researchers have seven working days to produce an answer. If that is not possible, the researcher will advise the Member that it may be necessary to extend the deadline. When complete, the answer is returned to the Regional Centre which then forwards the response to the Member of the Division or the RHO. The entire process may take two to three weeks. Information Requests which require analysis are undertaken by researchers, amongst whom there are no lawyers. With the exception of nationality questions, which are received on a regular basis, other legal questions are rarely asked.

Questions of nationality are in the realm of private international law which researchers acknowledge they do not have the necessary skills to answer. Because of the often complex legal issues involved, Documentation Centre policy is for researchers to refrain from giving expert opinions. They will do their best to try to find the relevant legislation of the particular country. If that is not possible, they communicate with embassies and send the answer they receive to RHOs and Members of the Refugee Division, stating the source. Researchers are cautious about information coming from embassies. They try to corroborate it from other sources and they inform Members of its origin. Thereafter, it is for the decision-maker to decide if the source is sufficiently credible to use as a basis for a decision.

The resources at the Resource Centre play a small part in answering information requests, since very specific questions are asked, most of which require on-line research and the use of oral sources. A network of resource persons outside the Centre has been developed to supplement the Centre's data with oral information or written material. Each researcher has his or her own network of contacts, which has led to recognition of the need for a 'contacts' database, so that when a researcher leaves the Centre, valuable sources are not lost. Such a project has now begun on an internal basis, and it is too early to say whether such a database will be made accessible to the entire Board, counsel, and claimants. As all sources used must be publicly available, a researcher who wishes to include information coming from a person must seek his or her permission to be cited and this agreement has to be on the public record.

1.4 Senior Analyst

The Senior Analyst is responsible for the maintenance and operation of a national programme of service delivery of standardized resources, references, and refugee-related materials to Regional Centres across Canada. The purpose of the service is to ensure that Board Members,

their staff, counsel and claimants will have access to the same information across Canada. The Senior Analyst plans research in advance, taking account of monthly regional and quarterly national statistics. This allows the Centre to produce or distribute its publications based on hearings scheduled by region. The Senior Analyst is thus the functional authority (as opposed to the administrative authority) over Regional Chiefs in each regional centre of the Documentation Centre and is also responsible for training activities and orientation sessions for the Members, the staff of the Board, and persons and groups involved in refugee matters.

2. The Credibility of the Documentary Information

Using documentary information for evidentiary purposes has the ultimate aim of enabling decision-makers to draw conclusions as to whether the claim has a credible basis or the claimant has a well-founded fear of persecution. Drawing conclusions, of course, is partly a matter of opinion or judgment. In a refugee determination process, however, Board Members cannot draw inferences on the basis of their own understanding of a foreign situation as analyzed from their (Canadian) perspective.⁵⁴ For example, in *Re Inzunza v. M.E.I.*,⁵⁵ the Federal Court of Appeal said that the critical test in deciding whether there are some objective grounds upon which the fear of persecution of the claimant,

should not be whether the Board considers that the applicant engaged in political activities, but whether the ruling government of the country from which he claims to be a refugee considers his conduct to have been styled as political activity.⁵⁶

Indeed, since conditions inside foreign countries are important in forming an opinion on the objective fear of persecution, to evaluate these conditions in light of the Canadian experience may result in bias, or may simply reveal a lack of understanding of the situation. In order to make the fairest decision, Board Members owe a duty to claimants to use reliable and current information in determining refugee claims. Through the Documentation Centre, decision-makers are given access to information about world affairs so that they will be able to form the most accurate picture possible of what is happening in a country. The Centre has the mandate and the responsibility to provide credible and accurate information to Board Members on conditions inside countries so that correct decisions can be made. For this reason, the Centre must

⁵⁴ See also *Astudillo v. M.E.I.* (1979), 31 N.R. 121 (F.C.A.); *Hilo v. M.E.I.* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); *Ansong v. M.E.I.* (1989), 9 Imm. L.R. (2d) 94 (F.C.A.).

⁵⁵ (1979), 103 D.L.R. (3d) 105 (F.C.A.).

⁵⁶ *Ibid.* at 109.

ensure that the documents that it acquires and produces are indeed credible so that decision-makers can rely confidently on them in granting or refusing refugee status to a claimant.

2.1 The Role of Documentary Information in the Determination of Claims by the Convention Refugee Determination Division

Canada's *Immigration Act*, 1976-77 has adopted the international definition of a Convention refugee as someone outside their own country and unable or unwilling to return there owing to a well-founded fear of being persecuted⁵⁷ for reasons of race, religion, nationality, membership in a particular social group or political opinion. In *Rajudeen v. M.E.I.*⁵⁸ the notion of persecution was defined as follows:

To harass or afflict with repeated acts of cruelty or annoyance; to afflict persistently; to afflict or punish because of particular opinions or adherence to a particular creed or mode of worship. . . . a particular course or period of systematic infliction of punishment directed against those holding a particular (religious belief); persistent injury or annoyance from any source.⁵⁹

In *Salibian v. M.E.I.*,⁶⁰ the applicant, a citizen of Lebanon, had been the subject of various incidents connected with the fact of his being both an Armenian and a Christian. He claimed refugee status on the ground that he had reason to fear persecution on the basis of his religion, social group, political opinions, and nationality. The Refugee Division rejected his claim, finding that it had no credible basis on the ground that nothing in his testimony showed that he personally was a target of various groups. The Members also said that:

... [H]e was the victim of reprehensible actions but these cannot be regarded as having been directed against him in particular. At the present time there is in Lebanon a conflict - we would even say conflicts - which disrupt the lives of all Lebanese citizens. The plaintiff is a victim just as are all other Lebanese citizens.⁶¹

The Federal Court of Appeal overturned the decision, finding error of law in the Board's finding that the plaintiff was 'a victim in the same way as all other Lebanese citizens',⁶² and also that it was an 'erroneous conclusion of fact (. . .) drawn without taking into account the factual evidence available to the Division.'⁶³ This factual evidence consisted of

⁵⁷ *Immigration Act*, above note 7, s. 2. The international definition incorporated in Canadian law is that provided in the 1951 Convention, as modified by the 1967 Protocol.

⁵⁸ (1984), 55 N.R. 129 (F.C.A.).

⁵⁹ *Ibid.* at 133-134.

⁶⁰ (1990), 11 Imm. L.R. (2d) 165.

⁶¹ *Ibid.* at 172-173 (*italics in text*).

⁶² *Ibid.* at 173.

⁶³ *Ibid.*

the testimony of the claimant and documentary evidence.⁶⁴ The Court concluded, *inter alia*, that:

... the applicant does not have to show that he had himself been persecuted in the past or would himself be persecuted in the future.⁶⁵

As a result of this case, it has become even more important to determine which sources of evidence are available to assess and weigh whether the claimant's fear of persecution is based on objective grounds. The major legislative changes introduced in 1989 answer this question to the limited extent that they provide that any information can be used in reaching a decision as long as it is credible. When documentary information is used to test credibility, both specific and general data can be used, so that all the documents produced by the Documentation Centre - Country Profiles, the Question and Answer Series, and Information Requests and Weekly Media Review - can be helpful.⁶⁶

2.2 The Credibility of the Documentary Information

The use of documentary evidence at the Refugee Division can be justified on the basis of the concept of 'expedited fairness' of section 68(2),⁶⁷ as elaborated in subsections 68(3) and (4):

(3) The Refugee Division is not bound by any legal or technical rules of evidence and, in any proceedings before it, it may receive and base a decision on evidence adduced in the proceedings and considered credible or trustworthy in the circumstances of the case.

(4) The Refugee Division may, in any proceedings before it, take notice of any facts that may be judicially noticed and, subject to subsection (5), of any other generally recognized facts and any information or opinion that is within its specialized knowledge.

Although not expressly stated under subsection 68(4), the evidence must also be credible as under subsection 68(3). Indeed, it would be quite unfair if, depending on which section decision-makers chose to rely on, the credibility of information would not need to be established.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* at 173.; see also *Re Kanagathiurai* (1990), 12 Imm. L.R. (2d) 217; *Contra: Zhou v. M.E.I.* (1989), 9 Imm.L.R. (2d) 216 at 221 (I.R.B., Refugee Division), where it was held that a well-founded fear of persecution is prospective.

⁶⁶ Of course, documentary evidence is not the only tool with which to assess the credibility of a witness. The general attitude of a claimant and the fact he or she is answering in a straightforward manner can also be indices, although cultural differences can distort the process and need to be addressed in training for Board Members, adjudicators, RHOs and interpreters.

⁶⁷ Ss. 68(2) states: "The Refugee Division shall deal with all proceedings before it as informally and expeditiously as the circumstances and the considerations of fairness permit."

Since the Centre's mandate is to supply credible information, it must first ensure that the information itself is indeed credible. The criteria for determining what makes a source credible are not defined, however, and this question is addressed below.

The Annual Reports of Amnesty International, for example, are a source of documentation which has been commented upon in caselaw. In *Noor v. M.E.I.*,⁶⁸ Greenberg J. stated that these reports are a credible source of evidence for the purpose of an inquiry to determine the credible basis of a claim.⁶⁹ The claimant was denied refugee status at the inquiry level for not having a credible basis for his claim. He sought review of the decision of the panel on the basis that the decision-maker had made an error of law. During the inquiry, the presiding member had refused to allow reports of Amnesty International to be adduced as evidence by counsel for the claimant, on the ground that the facts documented in those reports were not contested by the case presenting officer, acting for the other side. Greenberg J. found that it was an error of law to not permit the introduction of this evidence since Amnesty reports are evidence which is permitted by section 46.01(6).

Even though the Adjudicator has the right to be wrong in the exercising of his jurisdiction, with respect, this Court cannot but conclude that he did not have the right to exclude that evidence which clearly went to the criterion set out in ... the Act...⁷⁰

Greenberg J. said of the Amnesty reports that they were produced by 'a highly respected organization in the field of monitoring and investigating into human rights abuses worldwide, recently the recipient of the Nobel Peace Prize.'⁷¹

Amnesty International is indeed respected for its production of reliable information, and the characteristics which make it so are worth considering. It is independent from any governmental or political influence, and is funded exclusively by its membership donations, and local fund-raising drives. Rules about accepting donations are strict and ensure that any funds received by any part of the organization do not affect its integrity. Donations from governments are never accepted. In addition, Amnesty is globally, not nationally based, which provides some measure of protection against government interference or attempts to influence Amnesty's work. To ensure it

⁶⁸ *Noor v. M.E.I.*, [1989] 4 R.J.Q. 967. Reversed on other grounds in [1990] 3 R.J.Q. 668 (C.A. Qué.).

⁶⁹ Before the December 1992 reforms, the refugee determination process was divided into: 'credible basis' hearing, intended to sift out clearly unfounded and otherwise inadmissible claims and a full hearing before the Convention Refugee Determination Division. The first level has now been abolished.

⁷⁰ *Ibid.* at 976.

⁷¹ *Ibid.* at 975.

impartiality, Amnesty International functions openly.⁷² Amnesty reports on countries with their knowledge and requests permission from countries before sending fact-finding missions. Its mandate is very clearly stated and limited to specific issues; Amnesty does not report on events outside its scope.

Research by Amnesty is centralized in London, England. To enhance objectivity, researchers do not conduct research or participate in fact-finding missions on their countries of origin. To ensure accuracy, Amnesty corroborates its sources of information, without which it does not report a fact or claim. The 'amount' of corroboration necessary to satisfy Amnesty depends on the reliability of the source documenting the fact, and the decision whether the source is reliable depends entirely on the expertise and experience that Amnesty has accumulated in the thirty years of its existence. This has permitted the development of a network of reliable contacts to report on events and the accumulation of a large amount of documents available at the Resource Centre in London, England.

Amnesty International attaches great importance to impartial and accurate reporting of facts. Its Research Department collects and analyses information from a wide variety of sources. These include hundreds of newspapers and journals, government bulletins, transcriptions of radio broadcasts, reports from lawyers and humanitarian organizations, as well as letters from prisoners and their families. Amnesty International also sends fact-finding missions for on-the-spot investigations and to observe trials, meet prisoners and interview government officials.⁷³

Amnesty is a credible organization because it is independent and impartial; its reports are reliable because it has developed a research expertise in the area of its mandate; and its reports are accurate because the information is corroborated.

Amnesty's annual reports take at least a year to produce, however, and before release they are thus already one year behind in the evolution of a country's conditions.⁷⁴ As a consequence, the reports are reliable, but not necessarily current. In addition, because the mandate of Amnesty is narrow, reports are incomplete in terms of all the violations of human rights which can take place in a country. Just because Amnesty does not report an event, does not mean that it did not happen. Therefore, accuracy does not necessarily imply complete

⁷² Amnesty is also a democratic movement. Its supreme governing body is an International Council of elected delegates from its sections around the world. See Amnesty International, 'Is there a case for Amnesty International?'. Available at Amnesty International national sections.

⁷³ Information provided by Roger Clark, Secretary General of Amnesty International, Canadian Section (English speaking).

⁷⁴ This is not necessarily true for other information produced by Amnesty. Mission reports, for example, are usually produced with celerity.

information, as Amnesty cannot report on violations of human rights which are outside the scope of its mandate.

The above criteria and Amnesty's experience provide a useful basis upon which to evaluate the Documentation Centre itself. On the question of independence and impartiality, the Centre's funding comes from the total budget of the IRB. The Chairperson of the IRB decides how to spend money within the operating budget allocated by the government to the IRB. The Centre does not depend directly on the will of the government for its funding, but on a decision of the Chairperson. Therefore, the Centre appears sufficiently protected against political interference by the government. The Centre is also independent from Board Members, since its work is not directed by the Refugee Division. The Centre establishes its own agenda with respect to the countries to report on, and their own methodology of reporting and producing information.

The mandate of the Documentation Centre is clearly stated to be that of providing current and reliable information essential to the effective functioning of Canada's refugee determination process. The information relates to conditions prevailing inside countries, and as provided by the Centre, is limited to that needed in the determination of claims. Therefore, the Centre stays within the boundaries of its research mandate.

Impartiality in research is ensured by an open process relying only on public sources. In addition, work is collaborative and the documents produced are under corporate authorship. The research on country conditions is centralized in Ottawa, and the content of Country Profiles and Questions and Answers is standardized for all countries. To ensure accuracy, the research is conducted by skilled researchers who have to corroborate their sources. Corroboration is an appropriate guideline, although requiring three sources for each fact is perhaps not necessary and often almost impossible to achieve.⁷⁵ Amnesty International's policy on corroboration is much less rigid.

As with Amnesty, the Centre must ensure that it provides credible documentation, but this does not necessarily mean that documents have to be the most current and complete. The Documentation Centre's policy of updating documents depends upon whether there have been significant changes so as to justify revision. This is a reasonable criterion, and effective updating also depends on the

⁷⁵ This result is rarely achieved in practice. For example, 10% to 20% of all the sources cited in Country Profiles are corroborated by other sources. An examination of the endnotes showed that the Country Profile on El Salvador contains 140 sources, of which 15% are corroborated by other sources; that for Somalia, 20%; Trinidad, Guatemala, Haiti, China, and Ghana, 10%; Poland, 25%; and Iran, 15%.

availability of current written material on countries producing refugees. Indeed, the structure and organization of the Centre mean that it is often not possible to provide the most current Country Profiles and the Question and Answer Series. It requires time for research and to translate and distribute documents.⁷⁶

Any gaps in the evidence can be filled through the Information Requests. These will often make use of oral sources, generally indicating the name, title and organization of the person supplying the information. However, there is usually nothing to indicate whether the resource person has any expertise in the matter.⁷⁷ This could usefully be made public, in order to enhance the credibility of the information, and to allow it to be properly evaluated.

In conclusion, one can see that the Centre has the potential to produce credible information, since it is free from interference by the government and the Members of the Refugee Division, and aims to produce impartial documents, even if not necessarily current or complete, in reliance on appropriate guidelines.

3. The Authoritativeness of the Documentary Information

Documentary evidence can be used by the Refugee Division in the determination of claims as long as it is credible. Because the Documentation Centre necessarily claims that its information is credible, it creates a confusion with respect to its weight in the refugee determination process. Documentary information and the testimony of the claimant are two sources that are potentially credible for the purposes of subsections 68(3)(4) and (5), described above. However, Board Members must weight them, deciding which one should prevail where both sources contradict each other. Two subjects are dealt with below: First, the caselaw with respect to the weighing of testimony and documentary information at the Refugee Division; second, the question whether the Documentation Centre has achieved its objective of supplying information that has become authoritative over time.

3.1 The Weight of Documentary Information in the Determination of Claims at the Refugee Division

The Refugee Division must determine whether the claimant is a credible witness and, if so, whether the evidence establishes reasonable

⁷⁶ The Documentation Centre's Weekly Media Review serves the purpose of updating. It consists of newspaper clippings which is a documentary source that has the greatest potential to give access to the most current public information.

⁷⁷ The Research Officers know, however, and they are careful with respect to the qualifications of their sources.

grounds for a fear of persecution.⁷⁸ In *Mileva v. M.E.I.*, Pratte J.A. of the Federal Court of Appeal said:

What the Refugee Division is asked to do is to determine whether, on the evidence, the claimant is a Convention refugee. The Refugee Division must accordingly take note of evidence relating to past or present facts affecting the claimant, his family and country of origin. Such evidence must be weighed by the Refugee Division in the same way as any other tribunal would do, taking into account its credibility and evidentiary force, and deciding what facts are established by that evidence. The Refugee Division must then decide whether the facts so proven are such that it can conclude that the claimant really runs the risk of being persecuted for reasons mentioned in the Convention if he returns to his country. As it is impossible to predict the future, the Refugee Division in making such a judgment of course is only expressing an opinion.⁷⁹

To determine whether the testimony of the claimant is credible, certain rules were laid down for the former Immigration Appeal Board by the Federal Court of Appeal. These rules remain the same for the Refugee Division. The testimony of a claimant consists of accounts of events that happened to them personally, or to their family, friends or other members of the same group.⁸⁰ It is on this basis that the fear of persecution is evaluated. Since claimants often have a personal experience of persecution in their country, Members of the Refugee Division cannot disbelieve claimants unless they have good reasons. In *Villaroel v. M.M.I.*,⁸⁰ Pratte J. said in a footnote:

The Board would act arbitrarily, in my view, if it chose, without valid reasons, to doubt the credibility of a witness. If an applicant swears to the truth of certain allegations, that, in my view, creates a presumption that those allegations are true unless there be reasons to doubt their truthfulness.⁸¹

To have good reasons to reject the credibility of testimony means that, based on important contradictions as opposed to minor ones, the overall testimony cannot be believed. As stated in *Armson v. M.E.I.*⁸² (in which *Attakora v. M.E.I.*⁸³ was cited with approval):

I have mentioned the Board's zeal to find instances of contradiction in the applicant's testimony. While the Board's task is a difficult one, it should not be over-vigilant in its microscopic examination of the evidence of examination of

⁷⁸ *Adjei v. M.E.I.* (1989), 7 Imm. L.R. 179 at 173 (F.C.A.).

⁷⁹ *Mileva v. M.E.I.* (1991), 50 Admin. L.R. 269 at 272 (F.C.A.).

⁸⁰ *Ibid.*

⁸¹ (1979), 31 N.R. 50 (F.C.A.).

⁸² *Ibid.* at 55. This footnote played an important role in the development of the law, later being used in *Maldonado v. M.E.I.* (1979), 31 N.R. 34 at 36 as the *ratio* with which to review a decision of the Board. See also *Galindo v. M.E.I.*, [1981] 2 F.C. 781 (F.C.A.); *Verman v. M.E.I.* (27 October 1983) A-481-83 (F.C.A.); *Sathanandan v. M.E.I.* (1991), 15 Imm. L.R. (2d) 310.

⁸³ (1989), 9 Imm. L.R. (2d) 150 at 152.

⁸⁴ (1989), 99 N.R. 168 (F.C.A.).

the evidence of persons who, like the present applicant, testify through an interpreter and tell tales of horror in whose objective reality there is reason to believe.⁸⁵

The overall testimony has to be believed when it is consistent, uncontradicted, and not inherently suspect or improbable.⁸⁶ When documentary information is used to demonstrate that a claimant is not telling the truth (that is, when it is established that the version of facts stated by the claimant and that contained in a document are contradictory), a decision must be taken as to which account should prevail. However, before taking this decision, Members must give an opportunity to the claimant to explain the contradictions.⁸⁷ This testimony is critical in that, if a claimant provides a reasonable basis for the rejection of what is stated in the document, his or her version should be preferred. Moreover, even if the testimony is exaggerated, the Refugee Division has to ask itself whether, assuming some exaggerations, the testimony can be believed.⁸⁸ Therefore, documents, or rather the evidence they contain, can only serve as a rebuttable presumption in a refugee determination process.⁸⁹ If Members of the Refugee Division find that the claimant is not telling the truth and therefore dismiss the claim, they have a duty to give reasons for that conclusion in clear and unmistakable terms.⁹⁰ If the Federal Court of Appeal finds that the

⁸⁵ See also *Rajaratnam v. M.E.I.* (5 Dec. 1991) A-824-90 (F.C.A.)

⁸⁶ *Armson*, above note 83 at 157; see also *Kumar v. M.E.I.* (February 12, 1991) A-576-89 (F.C.A.), where the Board refused the claim without making any adverse findings with respect to the claimant's testimony.

⁸⁷ For example in *Graciolome v. M.E.I.* (1989), 9 Imm. L.R. (2d) 237 at 239 (F.C.A.), the Federal Court of Appeal set aside a decision in which the Board has rejected the testimony because there were contradictions. However, because the applicant had to be confronted with them at some point during the proceedings and was not given an opportunity to explain them, the Court reviewed the decision. Another example is in *Owusu-Ansah v. M.E.I.* (1989), 8 Imm. L.R. (2d) 106 where the Federal Court of Appeal said that adverse findings of credibility based on inconsistencies in the record which often go unnoted during the hearing and unremarked on by counsel in argument will result in decisions which can be attacked on appeal. In those circumstances, the Federal Court of Appeal justified its decision to review the facts found by the Board on the basis that because inconsistencies were found in reading the transcripts, the Board was held to be in no better position to weigh the contradictions than the Federal Court itself. See also *Kassa v. M.E.I.* (1989), 105 N.R. 33 at 34 (F.C.A.).

⁸⁸ In *Yalimiz v. M.E.I.* (1988), 7 Imm. L.R. (2d) 163, the applicant's claim for refugee status was denied by the Board on the basis that, in the Board's opinion, the evidence of the applicant was not credible. This opinion was not based on discrepancies or contradictions in the applicant's testimony, but merely on the feeling that there were obvious exaggerations in what he was recounting. The decision of the Board was set aside. The Board's apparently complete rejection of the applicant's statements was not justified. The Court said: '[T]he Board should have asked itself whether, even assuming some exaggerations, the applicant had not shown that he had been undoubtedly the victim of harassment of a variety of forms amounting to persecution, making his fear to go back to his former home not only genuine but objectively founded.' *Ibid.* at 164. See also *Mahathmasseelan v. M.E.I.* (1991), 15 Imm. L.R. 29.

⁸⁹ Cf. Hathaway, J., *The Law of Refugee Status*, (1991), at 83.

⁹⁰ *Immigration Act*, above note 7, section 69.3(7); *Armson*, above note 83 at 157-8; *Rajaratnam*, above note 85.

Refugee Division ignored evidence,⁹¹ or misunderstood it,⁹² it may set aside the decision.

3.2 Drafting Guidelines to Improve the Authoritativeness of the Documentary Information

Although a claimant must be given an effective opportunity to refute adverse information, it nevertheless appears that documentary information is seen as authoritative unless the claimant can provide more complete or current information, or show that the Documentation Centre made a mistake in reporting an event. This is not an easy task. Evidence of what is happening hundreds of kilometres from Canada and of which the Centre is not aware, may simply be unavailable otherwise than by the claimant's testimony. But if there is already a doubt in the mind of both Board Members as to the truthfulness of the claimant's testimony, will he or she be able to convince them by more testimonial evidence?

Board Members still often fail to weigh all the evidence in front of them or chose to ignore some of the testimony. In recent cases, Board Members have decided to give greater probative value to documentary evidence than the claimant's testimony. They were of the view that authors of the documentary evidence have no vested interest in the claimant's case when preparing the documents as opposed to the claimant who has such an interest when giving his or her testimony.⁹³ Of course, such decisions may be overturned by the Federal Court, but not everybody has access to higher courts and a fair percentage of cases will simply not be heard, for a variety of reasons. This is an important concern when refugee status is denied, and may show that the discretion of Board Members needs to be better circumscribed in order to reduce the possibility of unfair use of documentary information. In fact, if one starts with the assumption that Board Members do not know more about the situation prevailing in countries than the staff of the Documentation Centre; that it is the role of the Centre to provide credible information on conditions inside countries; and that the Centre is independent of the influence of Board Members, the Centre is arguably in a better position to provide credible information and to

⁹¹ See also *Li v. M.E.I.* (13 Mar. 1991) A-862-90 (F.C.A.); *Padilla v. M.E.I.* (1991), 13 Imm. L.R. (2d) 1; *Tung v. M.E.I.* (1991), 124 N.R. 388 (F.C.A.)

⁹² In *Legerme v. M.E.I.* (23 Nov. 1989) A-1181-28 (F.C.A.), the Court set aside the decision on the ground that the IAB did not assess all the evidence and misunderstood the testimony of a witness. See *Deol v. M.E.I.* (15 Nov. 1990) A-130-90 (F.C.A.), where it was found that the Board did not understand the evidence since there were about forty discrepancies between the reasons and the transcripts. Also *Abarajitham v. M.E.I.* (28 Jan. 28, 1992) A-805-90 (F.C.A.)

⁹³ See CRDD T92-02882, Maziarz, Brown, August 19, 1992 and CRDD T92-02007, Davis, Sagoo, August 18, 1992.

assess the authoritativeness of its sources than are Board Members, RHOs, or other participants in the process.

The Documentation Centre might usefully take some steps to enable those involved in the refugee determination process to contest more effectively the authoritativeness of the documentary information. For example, the Centre could gather more information on the sources available at the Resource Centre, and make this information publicly available. This would help to support the weight that it is already given in the refugee determination process. It is important to ensure that the process is as open as possible because this can be a life or death issue for a claimant.⁹⁴ Being open will also make the process more fair. Indeed, the inappropriate use (or ignorance) of documents by Board Members in the refugee determination process could be reduced if the discretion of Members in using documentary information were more narrowly circumscribed.

If, for every documentary source, the mandate, the funding and the methodology of groups, governments or persons were public information, a more authoritative determination as to the reliability of the sources used to produce documents could be made. Once this is done, guidelines should be drafted which define precisely when a source of information can be considered credible. For example, corroboration of information emanating from selected human rights groups (such as Amnesty International and other groups with similar characteristics) and UNHCR documents need not be required.⁹⁵ Documents emanating from foreign governments, on the other hand, would need corroboration by selected human rights sources to ensure absence of bias in pursuit of that country's political agenda. Information from human rights groups not having the same characteristics as Amnesty International would need similar corroboration, as would documents produced by individuals. Guidelines could further state that, if corroboration is not possible, the information could nonetheless appear in Documentation Centre products, accompanied by a statement or a footnote to the effect that it had not been possible to secure corroboration. This will better indicate to Members of the Refugee Division that the authoritativeness of the source is not established.

⁹⁴ This is an important distinction to be drawn with Amnesty International since this organization does not provide information for judicial or quasi-judicial uses, but mainly for political use. For this reason, Amnesty International cannot go public on most of its sources. Indeed, since the information is often derived from oral sources located in the country in which Amnesty reports a violation of human rights, it may impair the safety of these contact persons.

⁹⁵ Especially in the case of material emanating from the United Nations High Commissioner for Refugees and more precisely of its *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1979. This document is regularly used by immigration lawyers before the Refugee Division and in the Federal Court of Appeal. Over time, it has acquired a persuasive value similar to the authority given by common law Courts to legal text books or periodicals.

Once drafted, the Guidelines should be circulated among informed circles for comment before being adopted to ensure a public process. Of course, guidelines have to be used as a guide and not as a manual of instruction or book of rules for Research Officers, Members, Board staff, counsel and claimants. Guidelines are a flexible tool which can be revised if they prove to be unworkable. Indeed, the question is not to make a 'yes' or 'no' type evaluation of a source, but to make the knowledge and experience of Research Officers in evaluating a source available to all those involved in the refugee determination process. This knowledge should be shared, for it would make an excellent tool with which to educate Members, Board staff, counsel and claimant on how to use information fairly.

4. Conclusion

This article has attempted to determine whether the Documentation, Information and Research Branch of Canada's Immigration and Refugee Board provides credible and authoritative information to decision-makers who must either grant or reject a claim for refugee status. First-hand analysis and evaluation confirm that the material available at the Documentation Centre and used to produce its documents is credible; however, it is probably premature to state that it is authoritative.

Because no criteria (other than those generally used by a regular library) have ever been laid down for the acquisition of material by the Resource Centre, little is known about the sources used in its production. This is problematic because the Documentation Centre is not merely a Resource Centre. It also provides information to Board Members upon which important decisions can be based. The Resource Centre must therefore ensure that it provides not only a balanced collection of material, but also that it provides information on the authority of that material.

If more resources were injected into the Documentation, Information and Research Branch, for example, to create a special unit with the task of 'certifying' the authoritativeness of the sources and making this information publicly available, it would undoubtedly improve both the openness and the fairness of the whole process.

The availability of documentary information about world affairs makes the present process fairer than it was and for this reason alone the Documentation Centre must remain an essential component of the refugee determination process. It is unfortunate that the legal authority to establish the Centre is not clearly established. Future legislation should clarify this matter, for example, by clearly stating that the Immigration and Refugee Board also comprises the Documentation

Information and Research Branch. In addition, the undeniable usefulness of documentary information on country conditions in the refugee determination process should be statutorily recognized; Parliament should make it mandatory for decision-makers to take the information of the Documentation Centre into consideration in determining claims.⁹⁶ Both these legislative opportunities were missed in Bill C-86, which amended other aspects of the determination procedure in late 1992, although the Chairperson is now empowered to 'issue guidelines to assist the Members of the Refugee Division . . . in carrying out their duties' under the Act. Such guidelines might well be used to establish a preferred list or hierarchy of information sources.⁹⁷

Finally, the Documentation Centre, as a new institution in Canadian administrative law, opens interesting avenues for the future. Indeed, because it ensures an acceptable degree of impartiality of its research and the documents it produces, it could be very useful for other tribunals adjudicating in fields where evidence is either difficult to gather, as in the refugee determination process, or is otherwise complex. For example, a Documentation Centre would be particularly useful to gather evidence where an interdisciplinary approach is needed to circumscribe a problem, as in the field of discrimination.

Annex

Statistics relating to the Use of Documentary information

Table 1
Number and Percentage of Decisions per Category

<i>Description</i>	<i>No Documents Used in Decisions</i>	<i>Documents Used in Decisions</i>	<i>Particular Cases</i>	<i>Total</i>
Number	103	94	3	200
%	51.50	47.00	1.50	100.00

⁹⁶ This was the case with respect to the credible hearing process, where s. 46.01(6) provided that evidence with respect to human rights be taken into account to determine the credible basis. In *Orelin v. M.E.I.* (1991), 15 Imm. L.R. (2d) 1 (F.C.A.), Mahoney J.A. held that this subsection expressly requires decision-makers to consider the information listed in the subsection.

⁹⁷ Section 65(3), as amended by Bill C-86. The first guidelines to be issued related to women claimants; see Mawani, N., 'Introduction to Immigration and Refugee Board of Canada Guidelines on Gender-Related Persecution,' 5 *IJRL* 240 (1993); the text of the Guidelines appears at 5 *IJRL* 278 (English), 298 (français).

Table 2
**Category 'No Documents' per
 Claims Granted and Refused**

<i>Description</i>	<i>Granted</i>	<i>Refused</i>	<i>Total</i>
Number	52	51	103
%/103	50.49	29.51	100.00
%/200	26.00	25.50	51.50

Table 3
**Description of Category
 'No Documents'**

<i>Description</i>	<i>No Document Cited*</i>	<i>Listing of Documents Filed</i>	<i>Total</i>
Number	79	24	103
%/103	76.70	23.30	100.00
%/200	39.50	12.00	51.50

Table 4
**Category 'Documents' per Claims
 Granted and Refused**

<i>Description</i>	<i>No Document Cited*</i>	<i>Listing of Documents Filed</i>	<i>Total</i>
Number	53	41	94
%/94	56.38	43.62	100.00
%/200	26.50	20.50	47.00

In Tables 3 and 4, the Category 'No Document Cited' includes, (1) No document cited; (2) Decisions in which the Refugee Division said it examined all testimonial and documentary evidence, but did not indicate precisely which documents were examined; and (3) Cases and doctrine used to determine the law applicable.

Table 5
**Category 'Documents used and not used'
 per Claims Granted and Refused**

<i>Description</i>	<i>Documents Used</i>	<i>Documents Not Used</i>
Granted	53	52
Refused	41	51
Total	94	103

Table 6
**Different Uses of Documents
 per Category**

<i>Description</i>	<i>Number</i>	<i>%/94</i>	<i>%/200</i>
Category 1	23	24.47	11.50
Category 2	13	13.83	6.50
Category 3	5	5.32	2.50
Category 4	27	28.72	13.50
Category 5	26	27.66	13.00
Total	94	100.00	47.00

In Table, the following categories are represented:

- Category 1: Facts in documents are used against the testimony of the claimant.
- Category 2: From the documents, the Refugee Division recognized the existence of a factual situation and that it constitutes persecution.
- Category 3: From the documents, the Refugee Division recognizes the existence of a factual situation, but not that this situation constitutes persecution.
- Category 4: Documents provide the objective basis for the claim.
- Category 5: Documents corroborate the testimony of the claimant.