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**Everybody Acts Independently: A Study of the Refugee Determination
Process in British Columbia, Canada**

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Views expressed in this manuscript are those of the author(s) alone. For more information contact the Co-Directors of the Centre, Dr. Don DeVoretz, Department of Economics, SFU (e-mail: devoretz@sfu.ca) or Dr. David Ley, Department of Geography, UBC (e-mail: davidley@unixg.ubc.ca).

**Everybody Acts Independently:
A Study of the Refugee Determination Process
in British Columbia, Canada**

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Introduction

In the summer of 1999, four ships carrying 599 Chinese people, most of them Fujianese, appeared off the coast of British Columbia, Canada. About eighteen months later, a striking title in the local newspaper announced that "...the cost for 600 boat people rises to 42 million, and the bill could top 60 million." According to this source, on average, each boat person cost Canadian taxpayers \$100,000 (Canadian dollars) over two years. What is the meaning of this figure? Does it imply that each boat person spent in one year more than most Canadians' personal yearly income?¹ Meanwhile, various other media raised the spectre of new illegal arrivals and forecast the associated costs. Since most illegal arrivals claim Convention refugee status soon after their arrival, often it is impossible to clearly divide the total number of undocumented arrivals into illegal entrants and bone fide refugee seekers. In 1999, it should be noted that in contrast to the arrival of 599 boat people, the total amount of refugee seekers to Canada was nearly 30 thousand.

Complicating matters is the fact that Canada has a well-known social welfare system, which is sustained by high taxes. Reports now highlight that the boat people, as unwelcome "invaders," whether boat people, illegals or refugee seekers, have become large beneficiaries of Canadian taxpayers' contributions, thus increasing the Canadian public's anger and negative response toward boat people and illegals. The potential fear among Canadians is that the arrival of more illegals will damage their peaceful and wealthy society. It should be noted that among others, Chinese Canadians have been among the boat people's harshest critics.

How did the boat people become such an expense? What has happened after their arrival? Or, to put it differently, who should take the responsibility for budget overruns, if there is such an abuse? The answer involves an examination of the particular Canadians involved in Canada's "refugee affairs." As I will argue below, the motives and actions of Canadian players in refugee affairs lead us to substantial paradoxes.

The first group directly involved in refugee affairs is the State represented by Canada Customs and Immigration (CIC), or border guards, RCMP and other local police. The primary goal of all this effort is to stop illegals before they enter Canada and, if necessary, to detain or simply repatriate the illegals if entry is accomplished. Theoretically, a claim as a Convention

¹ Another report points out that the cost for 599 boat people is 35 million in total. It is lower than the first figure, but is still a sizeable amount.

refugee can be made by notifying an immigration officer of CIC at any port of entry into Canada or, if the person is already in Canada, at a Canada Immigration Centre. Therefore, intercepted illegal entrants found at the Canadian make a claim as a Convention refugee. At this point they cannot simply be repatriated to their original country. Being refugee claimants, they have the right to stay in Canada and go through the complete refugee application procedure. As a result, the greater the investment made by the relevant authorities to strengthen the State interdiction force, the more Canada spends on the detention and refugee application process.

The second Canadian interest group involved in the refugee process is the detention centre. When the undocumented arrivals were originally discovered, most were detained. For instance, all of the 599 boat people were detained after their arrival. Among these 599 about 400 were sent to the detention centre in Prince George, British Columbia. Prince George is a small inland city with a population of about 100,000 people. The sudden arrival of hundreds of boat people became a matter of importance in the city. According to the mayor of Prince George, during the first year of the boat people's detention, the city received in excess of one million dollars (Canadian) per month. "It's great," said the mayor.

The presence of the boat people promoted the economic development of the city. At that time, many lawyers, journalists, officers and visitors rushed to the city. All the hotels were full. The detention centre was enlarged and some alterations had been made; for instance, the kitchen was rebuilt. More guards, interpreters, administrators and officers were employed. It created many new jobs for the city. When I asked the Mayor of Prince George whether the city would like to receive detainees in the future, the mayor answered without any hesitation: "Yes. Of course. It's an opportunity for the city. Also, I believe the Chinese boat people were treated very well in our city." According to an informant who works for refugee affairs, the minimum cost for a detainee per day is between \$200 and \$300. It must be remembered that the original purpose of imprisonment was to punish or repatriate the undocumented arrivals. As noted, this continuous detention was expensive and raised sharp criticism. However, for one local government, it was seen as a growth industry. Isn't this a paradox?

All refugee applicants in turn must seek a determination by the Immigration and Refugee Board (IRB). This is the third group that is directly involved in the refugee process. Created by an Act of the Canadian Parliament in 1989, the IRB is an independent administrative tribunal performing quasi-judicial functions. The IRB's mission on behalf of Canadians is "to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law." The Convention refugee determination process is depicted in detail in Chart I.

According to the relevant rules, either in a detention hearing or in a refugee hearing, at least five professionals have to appear in every individual case. They are: one adjudicator (in some important cases two adjudicators are needed), one interpreter (sometimes two interpreters work in turn), one representative of CIC, one lawyer/counsel, one police officer and sometimes social workers are present. During the hearings I visited, the largest hearing involved about fifteen professionals. If a positive determination is made, the claimant can apply to become a permanent resident. If the claim is judged negatively, the claimant may apply for permission to begin an application for judicial review. If permission is denied or the review rejected, the claimant can still apply for a so-called "risk-of-return review." Therefore, it can take three to four years before a final decision is made and the false claimant removed from Canada. Although the whole process seems near perfect, many unexpected factors may affect the final determination.

According to one informant who is an immigration rights activist, 40 percent of Chinese refugee claimants abandon the application and disappear. Among the other 60 percent, about 30 percent of them win their case. Thus, in fact only about 18 percent of all applicants are accepted. Among those who re-appeal after the first or the second rejection, about 5 percent still have the opportunity to win the case. This informant concluded from his years of experience that "the same case may have a completely different result. It is just like a lottery. Nobody knows who will be the lucky one." One interpreter also gave me his similar impression: "There are too many uncertain factors. Anyone can be the lucky one."

It is obvious that the Convention refugee determination process is long and complicated. The Fujianese boat people are such a case. Originally Canada planned to conclude the Fujianese boat people case in less than three months; however, it had not yet been finished as of mid-2001. At that time, only twenty-four had been granted Convention refugee status. Two mass deportations and a series of smaller ones had sent home more than two hundred people. After being released from the detention centre, some disappeared but others are still waiting their final determination. It is worth pointing out that there were still about eleven of them in Canadian prisons as of April 2001.

The case of Fujianese boat people has been sharply criticized for too much State force being used and for simply deporting them in groups without enough opportunity given them to contact capable lawyers who might win their refugee hearing. In sum, the refugee application process is very costly, with a never-ending time limit. The issue is clear. The human rights of refugee claimants need to be protected. However, the national interests of Canadian citizens need to be stressed. The question is how to balance these claims.

The Ministry of Children and Family Development (CFD) is another important unit to be studied in the refugee determination process. After the arrival of the Fujianese boat people, it was found that there were 134 minors among them. In order to take care of these unaccompanied minors, CFD initiated a Migrant Services Program. Since then, all minors have been protected under the Program. Several reception centres have been set up to house the minors, one of which I visited. It is a pleasant house located in Richmond, British Columbia a suburb of Vancouver. About ten protected minors can enjoy free accommodations there. Two share one bedroom. In the sitting room, there is a colour TV and a Chinese language channel is available. From the very beginning, all minors have been persuaded to go to school, which is free of charge. Some can speak English quite well after staying in the centre for nearly two years. A supervisor and a social worker are taking care of their daily life. Normally, a supervisor prepares lunch for everyone but the dinner is ordered from a Chinese restaurant nearby. Once a month, every protected minor would receive a 25-dollar phone card to make long-distance phone calls to his or her family in China. Although the minors can receive some pocket money, they prefer to work. One supervisor told me: "They are young and willing to work. Often they work on a construction team, do yard work, or clean. It is easy for them to find work because they agree to work the night shift with lesser wages."

During my visit, there was a public transit strike in Vancouver. The supervisor drove the boys and girls to work and fetched them back after they finished their work. I was deeply impressed by the sympathy of all staff towards the minors. Just as one social worker told me: "They are not treated as illegals. They are just like our kids. All of us are just like a big and warm family." I was told that due to staff members' personal example and continuous verbal instruction, many minors have improved their moral character. While CFD's work is to be admired, criticism of their efforts arises from the Canadian public as well. Some Canadians put their angry poster on the Internet, which says "the Canadian government has forgotten the poor Canadians but is too busy falling over each other to feed the refugees."

I now turn to the question: How do majority refugee claimants make their living during their appeal and waiting periods? Adult claimants experience a different situation from that of the minors. Basically, after being accepted as refugee claimants, they receive a 510-dollar subsidy every month from the Canadian government, which is regarded as the minimal budget for individual survival. Normally, 300 or 350 dollars will be used for housing and the rest for food. However, many refugee claimants prefer to earn some wages. In fact, most male Fujianese claimants work in chicken and fish factories in Vancouver, which are often short of workers due

to the bad smell and dirty working conditions. Their wage is between ten and twelve dollars per hour and they often work ten hours a day and six days a week. Female claimants mostly work in garment factories. Some sew and a few clean. Sewing is paid as piecework. Two women I interviewed worked ten hours a day and earned between 1000 and 1200 dollars per month. My impression is that they are satisfied with their income. Their common reaction is: "Now I earn much more than what I earned in my hometown."

When asked about their future plans, both the adults and minors were worried about whether they would obtain refugee status. They regard it as the turning point of their whole life. With respect to their applications, they all mentioned that they completely rely on Canadian lawyers, counsels and advocates. Indeed, in the entire refugee determination process, lawyers and counsels play a very important role. Many Fujianese boat people are poorly educated and naïve. Except for knowing that Canada is a rich Western country, their knowledge about Canada prior to arrival was non-existent. Some did not even know the difference between Canada and the United States. While applying for refugee status, they were in fact "guided" by their lawyers. In 1999, it should be noted that amongst all 2,436 Chinese refugee claimants in Canada, 24 percent (592) were accepted. The positive rate among the Fujianese boat people is only 4 percent. There are various reasons leading to this differential acceptance rate. According to a report written by a volunteer association DAARE (see below), one important reason is due to the fact that boat people's ability to communicate with lawyers has been greatly restricted. However, no further proof can be found for the statement.

The lawyer's duty is to help their clients win the case, no matter whether the clients are innocent or not. It is instructive to note that during my research, one lawyer who had counselled dozens of Fujianese boat people asked me: "According to your research, what percentage of their stories are true?" It seems that even this lawyer himself does not believe the stories told by his clients; however, he has helped them to win their case.

Finally, the role of some NGO members must be considered in the refugee determination process. As was mentioned earlier, Chinese Canadians are among the harshest critics on boat people, although some of them were refugees a mere decade ago. In Vancouver, the mainstream Chinese associations openly expressed their hostility against Fujianese boat people and illegals. These associations included the United Chinese Community Enrichment Services Society (SUCCESS), the Chinese Benevolent Association of Vancouver (CBAV), Hong Kong Merchants' Association of Vancouver, the Chinese Cultural Centre of Vancouver, the Fujianese Association of Vancouver (FAV), etc. These organizations see the boat people as an

embarrassment. They worry that the boat people and other illegals will give a bad name to the Chinese who have legally settled down in Canada. Many argue that detaining or sending home the boat people and all illegals is for their own safety. The attitude of FAV is especially worth noting. Officially, FAV is an association for all Fujianese in Vancouver. It is noted that some board members of FAV are the bosses of immigration companies with their branches in Fujian province. They are very sensitive to the topic of Fujianese in Vancouver. When asked about their attitudes towards the Fujianese boat people, all of the leaders repeatedly stressed the wide gap between their association and “those illegals.” Also, they argued that they have done nothing to support any illegals, no matter whether they are Fujianese or not. “We are a legal association. We have no contacts with any illegal group,” said by a leader of FAV by phone.

In contrast, two small but influential Chinese associations have supported the Fujianese boat people. They are the Vancouver Association of Chinese Canadians (VACC) and the Direct Action Against Refugee Exploitation (DAARE) group. I have noted that the members of these associations are Canadian-born or locally educated Chinese Canadians. The leaders and members of these two associations have great sympathy for the Fujian group. According to them, the boat people survived a dangerous journey and these irregular immigrants who are vulnerable need special attention. The chairman of VACC is a well-known immigration rights activist in Vancouver who has been helping Chinese refugee claimants bid for political asylum. DAARE is a feminist association as well. It has focused its resources on working with the Fujianese women; however, they are also working towards a broader analysis to build a movement for the rights of all undocumented people. The members of DAARE visit Fujianese women in detention centres regularly. They speak out for them, help them find safe housing after their release and always offer their sisterly concern. While some Chinese associations loudly proclaim to send home all Chinese illegals, during my research period only these two associations publicly support the legalization of their stay. This view is in sharp contrast to the majority of Chinese Canadians and, consequently, these two associations have been under considerable pressure that come from their own ethnic group.

Given this detailed description of the refugee determination process in Canada, one conclusion is clear: each body acts independently. Moreover, often as a by-product of when one institution fulfills its duty, another body’s achievement is partially erased. The system is filled with paradoxes. While many Canadian taxpayers sharply blame the refugee determination process for using their money, they have either forgotten or not aware that a great part of the cost is returned to their own society. To put it differently, the refugee determination process creates jobs.

Some Canadians earn their living from the “refugee business” while some Canadian employers benefit from the cheap labour of refugee seekers.

This brief review has left me with more questions than I had before my research began. Among these questions include: How are real exchanges between and among the relevant institutions created? Can all institutions work together? Moreover, are there any national interests for Canadians as a whole? If so, what is the best institution or person to represent the national interests of Canadians as a whole? One thing is clear: any long-term solution comes from working together, not from scape-goating a certain group or acting independently from other institutions.

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