THE NEW IMMIGRATION LAW: A TECHNICAL ANALYSIS

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Few statutes have been as furiously litigated as the Immigration Act.[1] With the coming into effect of a new Act[2] only a few weeks ago,[3] we can be certain that, for a brief period at least, the litigation will intensify. Whether it will abate after this flurry or not is one of the most important tests of the new statute. The goal of this comment is to analyze the new Act with prospective litigation in view, to consider whether it creates more problems than it solves, and to suggest whether the changes will produce greater justice.

The first observation is that the new law is infinitely more detailed than the old. Even if one keeps in mind that it effects a consolidation of several laws,[4] the new Act nevertheless spells out far more than has hitherto been the case.

A. *Objectives of the Law*

In section 3, Parliament has taken the relatively unusual step of setting out its objectives. Although such declarations have only a limited value under the canons of statutory interpretation, they may clearly have significance in doubtful cases. It is virtually certain from section 3(a) that the Act intends to make immigration into Canada fairly difficult. However, certain "liberal" provisions in this section should not be overlooked.

Section 3(f) recognizes the need to ensure:

> [t]hat any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex.

The presence of this section illustrates the eternal dilemma of our immigration policy. On the one hand, it is a widely-held belief, enshrined in the present section 57(g) and the new section 115(1) that only immigrants who can "blend" well into Canadian society should be admitted. On the other hand, we must accommodate our abhorrence of racist laws and discrimination against ethnic or national groups. Section 3(f) could turn out to be a means of shifting the balance in favour of non-discrimination.

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[1] R.S.C. 1970, c. I-2, *as amended by* S.C. 1973-74 c. 27. It suffices to glance at IAB reports as well as at any issue of the Federal Court Reports to see this.

[2] Immigration Act, 1976, S.C. 1976-77 c. 52.

[3] In force April 10, 1978.

[4] *See* s. 128.

Until now, the courts have been reluctant to apply the Canadian Bill of Rights[5] to immigration cases.[6] Indeed, the Federal Court recently chose not to interpret restrictively the power of the Governor-General in Council under section 57 of the old Act and prohibit discrimination as to sex.[7] One possible effect of section 3(f) will be to encourage more judicial review of the power to make regulations, at least where discrimination is concerned, and, perhaps, more use of the Bill of Rights.[8] For instance, it may well be difficult to use section 115(1) for the purpose of establishing national or ethnic quotas, something which the present Act allows.[9]

Section 3(g) may be a useful starting point for argument in the case of claims to refugee status by prospective immigrants.

For all of these reasons it would be far too hasty to dismiss section 3 as a mere assortment of platitudes. It could prove to be both important and beneficial.

B. *Lacunae of the Old Act*

The 1952 Immigration Act was remarkable for its lacunae. The very comprehensiveness of the new Act has necessarily resulted in eliminating gaps in several important areas.

1. *Immigrants*

Perhaps the most extraordinary omission in the old Act was the entire topic of immigrants. Apart from the definition of "immigrant" and "landing" in section 2, the clear power to regulate in section 57(g), and the provision concerning loans to immigrants in section 65, this crucial aspect of immigration law was not mentioned. The new legislation is more explicit.

Section 9(1) provides that both immigrant and non-immigrant visas must be obtained outside the country.[10] Medical examinations and other technical details for admission to Canada apply also to immigrants.[11] More significantly, the Act mentions that terms and conditions may be

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[5] R.S.C. 1970, App. III.

[6] *See* Hucker, *Immigration, Natural Justice and the Bill of Rights*, 13 OSGOODE HALL L.J. 649. One wonders if this will change with the Canadian Human Rights Act, S.C. 1976-77 c. 33.

[7] Germain v. Malouin (F.C. Trial D. Oct. 31, 1977) (presently on appeal). The issue is that case, however, concerned the respective capacities of males and females to *sponsor* entry to Canada; it did not deal with discrimination against the immigrant himself.

[8] Although not so as to create any right to enter Canada. Such a right is understandably excluded in s. 5(1).

[9] S. 57(g).

[10] This provision incorporates into the Act the 1972 amendment to the Regulations (S.O.R./72-433 (106 Can. Gazette, Pt. II, 1991)) which made it impossible to obtain immigrant status from *inside* Canada. Since enormous numbers of visitors make enquiries about prospects for permanent residence, this prohibition is of great significance.

[11] *E.g.*, s. 11.

attached to landing authorization.[12] These terms and conditions must be of a "prescribed" nature; it is thus necessary to pay great attention to the relevant regulations. In order to avoid creating different classes of permanent residents (*i.e.*, those with full rights and those subject to conditions), the maximum duration of the conditions is restricted to six months.[13] The possibility of "restricted" immigrants would normally be fairly disturbing; however, these provisions probably represent a relaxation rather than a stiffening of the present law after the decision in *Re Jonas and Therrien.*[14] In that case, the court held that the words "limiting admission" in section 57(g) were broad enough to create a power to regulate so as to stipulate conditions of admission, the breach of which could entail loss of status and therefore deportation. The new law seems to put laudable limits on this type of discretion.

A more sinister provision is found in the sections dealing with loss of immigrant status.[15] Until now, this matter was not covered by statute. Under the new Act there will be a presumption that any immigrant who is away for more than 183 days in any twelve months loses his status.[16] This is obviously intended to match similar provisions in the Income Tax Act[17] and to make it impossible to be a permanent resident for immigration purposes and a non-resident for tax purposes. If such is the case, injustice will result. Tax loopholes should not be open to citizens more readily than to landed immigrants and such would be the consequence of the meshing of the two Acts.

Section 6 of the new Act enshrines in clear words both the power of the government to set standards for the selection of immigrants and the discretion of the individual officer in applying them. Neither of these is an innovation.[18]

2. *Refugee Status*

The second great lacuna in the 1952 Act was the failure to deal with refugee status. Refugee applications were processed by the Inter-Ministerial Advisory Committee without any strict basis in law.[19] If the

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[12] S. 14.

[13] S. 15(1).

[14] 15 N.R. 414, 75 D.L.R. (3d) 635 (F.C. App. D. 1977). Although that case dealt with a non-immigrant temporary worker, there is no reason for it not to apply to immigrants. It is likely, however, that "geographic" limitations (*e.g.*, not to settle in Quebec) may be imposed in the future notwithstanding article 115(4). *See* note 56, *infra.*

[15] Ss. 24 and 25.

[16] S. 24(2).

[17] S.C. 1970-71-72 c. 63, s. 250(1)(a). At present, loss of status is a question of fact: *see* Vincenti v. M.M.I., 17 N.R. 223 (F.C. App. D. 1977).

[18] Indeed, the thrust of s. 57(g) of the old Act is almost identical, although expressed in more convoluted language.

[19] *See* Sparrow v. M.M.I., [1977] 2 F.C. 403, 75 D.L.R. (3d) 158 (Trial D.) and U & Nam v. M.M.I. (F.C. Trial D. Nov. 1, 1977). These two cases together provide an excellent description of the process and show that it has no foundation in law and gives rise to no rights.

Committee recommended the granting of refugee status, an order-in-council was adopted. However, if the Committee refused the application and the claimant was for any reason ordered deported, he was given a right to appeal as a refugee under the Immigration Appeal Board Act.[20] It was, to say the least, a strange phenomenon that a ground which could not, in strict law, be invoked at a special inquiry suddenly became the legitimate basis of an appeal from that inquiry.

The new legislation compares favourably on this score. The term "Convention refugee" is defined in section 2(1). Sections 45 to 48 essentially preserve the present procedure for determining refugee status, but anchor it firmly in the text. For instance, the use of the word "shall" in section 45(1) makes the repetition of cases such as *Sparrow*[21] very unlikely in the future.

Sections 4(2), 47(1) and 47(2) create a strange innovation, allowing adjudication officers to order the departure of certain undesirable kinds of refugees, but only *after* their refugee status has been determined. It is difficult to see why a determination of refugee status should be made in circumstances where it will not affect the outcome. Furthermore, attempts to remove persons who have been found to be genuine refugees will lead to endless litigation followed by heated debate in the media.

Section 6(2) allows regulations to be made which could facilitate the entry into Canada of "displaced and persecuted persons" who are not "refugees" covered by section 4(2). This section could be invoked in such situations as the fall of Vietnam and the invasion of Czechoslovakia to provide relief for people who have no personal reason to fear for their safety but feel a repugnance towards the new authorities at home. Unfortunately, section 6 does not allow the granting of landed immigrant status to be made within Canada, even where a deportation order has been issued. This means that worthy cases will continue to be dealt with by order-in-council or by the undignified sham of one hour "deportations" to the United States followed by immediate re-admission as a landed immigrant.

If section 6 has extended the power to relieve individuals in distress, section 72 of the new Act works subtly in the opposite direction. Under section 15(1) of the present Immigration Appeal Board Act, any person who *claims* to be a refugee may be permitted to remain on humanitarian grounds notwithstanding his failure to prove refugee status.[22] In the new section 72(a), the Board's "equitable relief"[23] is limited to persons who have established that they are "Convention refugees" as defined in

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[20] R.S.C. 1970, c. I-3, s. 11, *as amended by* S.C. 1973n c. 27, s. 5.

[21] *Supra* note 19.

[22] *See* Mroczek v. M.M.I. (I.A.B. Feb. 17, 1977).

[23] *See* address by J.V. Scott, Chairman of the Immigration Appeal Board, to the Canadian Bar Association, Ontario Section, February 1971, for a detailed description (available at McGill University Law Library).

section 2(1). This will in practice eliminate a very significant avenue of appeal.

Another disappointing feature of the new Act is the presence of section 71(1), a virtual replica of the present section 11(3) of the Immigration Appeal Board Act. This section allows the Board to dismiss applications for refugee status without a hearing in the absence *in its opinion* of reasonable grounds to believe that a claim could be established. Perhaps this would not be an unjustifiable clause if phrased so as to put an end only to appeals which are manifestly unfounded. Unfortunately, the clause does not limit the Board's discretion in any way, and judicial interpretation of the section has rendered this discretion practically unreviewable.[24] There is little justification for leaving this draconian measure in the Act, and it constitutes a serious blemish.

It is therefore difficult to avoid having mixed feelings about the new Act's treatment of refugee status. On the one hand, one must praise the clarity of the new provisions; on the other, it is feared that many of the sections will in practice work injustices.

3. *Appeal*

One of the most serious deficits of the old Act—the absence of avenues of appeal[25]—is untouched by the new. Only "Convention refugees",[26] persons claiming to be refugees,[27] persons who are permanent residents,[28] persons with visas,[29] and sponsors[30] have the right to appeal. It is understandable that every tourist should not be in a position to gain time in Canada through lengthy appeals, but it is also true that many persons who presently possess no right of appeal have rights which are too important to be left to the whims of immigration officials. Students in the middle of their studies and people undergoing medical treatment are obvious examples of cases deserving some protection.

The absence of new and more appropriate forums of appeal will mean a continuation of hearings, before the Federal Court under section 28 of the Federal Court Act.[31] Considering the excellent quality of that court, this recourse is a very pleasant one for immigration lawyers. However, it is probably not in the public interest for such a court to spend its time on

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[24] *See* Adamusik v. M.M.I., 12 N.R. 262 (F.C. App. D. 1976); Lugano v. M.M.I., [1976] 2 F.C. 438 (App. D.); Maslej v. M.M.I., [1977] 1 F.C. 194, 13 N.R. 263 (App. D.). It is to be noted that the case of *Re* Lugano and M.M.I., 75 D.L.R. (3d) 625 (F.C. App. D. 1977) made it impossible to re-open an appeal determined under s. 11(3).

[25] A general right of appeal was provided for in the Immigration Appeal Board Act; but this was reduced by a 1973 amendment which limited the Board's jurisdiction to those groups which are now subject to it.

[26] S. 72(2).

[27] S. 70(1).

[28] S. 72(1).

[29] S. 72(2).

[30] S. 79(2).

[31] R.S.C. 1970, c. 10 (2nd Supp.).

relatively small and fairly routine matters. More important, the recourse is a stunted and artificial one, since the court can only review errors of law.[32] As a result, undeserving petitioners often win on technicalities, whereas deserving ones may lose because there is some evidence (however flimsy) which could place them in a prohibited category. It would therefore be preferable to open the Immigration Appeal Board to all persons under orders of removal and to permit appeals to the Federal Court (with or without leave) from decisions of the Board which are tainted by error of law.

4. *Removal Orders*

Another serious lacuna in the old Act was the absence of an intermediate measure between deportation from and admission to Canada. This has been adequately filled by the new Act.

Under the old Act, there was almost total absence of discretion in this area. Where a section 18 report[33] was received by a director, the latter had only the narrow discretion of deciding whether an inquiry was justified.[34] Once an inquiry had been started, a person *had* to be deported if it was found that he fitted one of the categories in section 18.[35] The sympathetic nature of his case was irrelevant, as were any other considerations which might have dictated a contrary result.

By contrast, the new Act is very subtle. Under section 20(1), an individual refused admission at a point of entry may (at the discretion of a senior immigration official) either be detained or permitted to leave forthwith. Where an individual is within Canada and is the subject of an inquiry, an adjudicator has three options[36] if he decides against admission: deportation,[37] exclusion,[38] or a departure notice.[39]

Deportation means the same as it did under the old Act. It effectively precludes the deportee's return to Canada at any time. An exclusion order is a very welcome "moderate" alternative. It serves to exclude an individual for 12 months but its effects end after that period.

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[32] *See* Alemao v. M.M.I., 12 N.R. 184 (F.C. App. D. 1975), for some of the principles governing s. 28 hearings. The case of Hardayal v. M.M.I., 15 N.R. 396 (S.C.C. 1977), is another illustration of "hard" decisions under s. 28. In that case, the Supreme Court declared that the Minister's powers to cancel entry permits was a purely administrative power, not subject to review under s. 28. One should note, however, that at the very end of the judgment Spence J. raised the possibility of s. 18 relief, a possibility which has occasionally been explored by applicants seeking prohibition or mandamus (*e.g.*, Okolakpa v. Lanthiern [1977] 1 F.C. 437 (Trial D. 1976)), but not for purposes of judicial review.

[33] S. 18 reports are made by immigration officers or other peace officers where they believe a person inside Canada is subject to deportation.

[34] S. 25.

[35] S. 20.

[36] Subject to certain technical limitations.

[37] S. 32(5)(a).

[38] S. 32(5)(b).

[39] S. 32(6).

A departure notice has no permanent effects and the person may reapply for admission immediately. It may be likened to a very severe warning, particularly applicable to Americans or persons holding American visas. The consequences for persons from overseas may prove financially crippling, however, since they will be obliged to leave Canada.

It is clear that in the domain of orders the new Act constitutes a great improvement. It is to be fervently hoped that when the new orders are used, they will be applied in accordance with the principles enunciated in section 3(f).

The choice of remedies is left partly to the discretion of the adjudicators.[40] Although this will please few lawyers familiar with immigration law, it is hard to see what else could have been done. One can, of course, anticipate that the exercise of this discretion will generate considerable litigation. A gross abuse would be subject to review even on the narrow standards enunciated in *Boulis v. M.M.I.*;[41] failure to consider the discretion at all may constitute a misdirection in law sufficient to quash.[42] Canadian legal tradition as exemplified by the *Boulis* decision suggests, however, that only the most extreme errors of discretion would be reviewed.

5. *Provisional Measures*

The new Act unfortunately repeats the mistake of the old in omitting to give the Federal Court the power to stay the execution of a deportation order which has been challenged under section 28. There is no reason why the Federal Court should lack a power which the Immigration Appeal Board possesses.[43]

6. *Special Powers for Hard Cases*

The Act fails to provide a special power to allow landing to be granted from inside Canada in deserving cases. Although one may agree with the policy of refusing to consider applications for permanent status from visitors on the ground that this would cause a veritable avalanche of applications, it is submitted that a blanket and irrefrangible prohibition is an absurdity. Where a visitor from a communist country which restricts exit permits marries a Canadian, it should be possible for the

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[40] S. 32.

[41] [1974] S.C.R. 875, 26 D.L.R. (3d) 216. In the new Immigration Act the discretion is very narrow.

[42] Padfield v. Minister of Agriculture, [1968] A.C. 997, [1968] 1 All E.R. 694 (H.L.).

[43] Consequently, the proper recourse may be an action in tort or delict against the adjudicator, the deporting officers and the Crown, once the order is quashed. Since an order quashed is probably an absolute nullity, it should not constitute a defence. However, it must be admitted that as a general rule deportation orders are not executed while under review.

person to obtain landed immigrant status without leaving Canada.[44] In addition, there should probably be an administrative power by which the Minister or Governor-General in Council could quash a deportation order;[45] the omission of such a power was almost certainly intended to avoid placing the Department in the invidious position of receiving and considering thousands of petitions.

C. *Procedural Changes*

The procedure for inquiries has been altered somewhat by the introduction of the adjudicator[46] who, unlike the present special inquiry officer, will be confined to judging and will no longer comprise the uncomfortable mixture of prosecutor and judge. However, the description of adjudicators under section 113 does not seem to be very innovative. The Department's explanatory notes published in November 1976 make the following comment about section 113:

> Other substantive provisions and relevant regulations to be promulgated make it clear, however, that adjudicators are not merely special inquiry officers by another name.[47]

If any great difference is contemplated it will be instituted by regulation —the Act itself has failed to create one.

The "procedural" section with the greatest promise is section 31(2), which obliges the adjudicator to inform any person against whom a removal order is made of the "basis upon which the order was made". It is arguable that, as every person must already be made aware of the statutory basis of a possible order at the outset of an inquiry,[48] the added requirement must be that of *motivation*. It would be a major change in immigration law if every person subject to removal had the right to a statement of reasons for a decision. This would make it infinitely easier to show to the Federal Court that an error of law was committed in the inquiry.[49] However, unless the new rules alter the situation or the Federal Court chooses to interpret section 31(2) liberally, it is highly unlikely that inquiries will depart substantially from the model we have come to know over the years.

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[44] This is an area currently dealt with by order-in-council or by one-day visits to the United States.

[45] A deportation order may be made administratively under s. 40(4). It is submitted that it should be quashed in a similar manner.

[46] S. 2(1).

[47] DEPARTMENT OF MANPOWER AND IMMIGRATION, THE IMMIGRATION BILL 59 (1976).

[48] A person must be informed of the nature of report against him. *See* s. 23(6) which requires a copy of the report to be made available to the person involved.

[49] If one assumes that adjudicators will be full-time, quasi-judicial officers trained in law, one should not have to fear an epidemic of errors of law.

D. *The Difficulties*

The new Act fills some lacunae and makes several changes in arguably positive directions, but it also creates several difficulties and, worse still, several serious injustices.

For instance, the Act attempts to close the gaps which the Federal Court or the Department opened in interpreting the old Act.

Under the 1952 Act, violating a condition of stay (*i.e.*, accepting employment without authorization) did not *necessarily* expose a visitor to loss of status and deportation.[50] Now section 26(1) implies that even the most trivial violation of a condition will be, in immigration terms, a capital offence.[51]

Visitors could not stay permanently in Canada after 1972; however many did stay indefinitely by acquiring student status. There is little doubt that student status became a loophole which was used by many as means of remaining in Canada in spite of having no legitimate business here.[52] This, however, does not justify the incredible restrictions placed on student status by the new Act.

Section 10 makes a student visa, like an immigrant one, available only outside Canada.[53] This could work great hardship for visitors whose country is very distant and who decide while in Canada to resume or continue their studies. Section 26(1) states that a person loses his visitor status if he attends any course without authorization. Since such authorizing visas will be available only outside Canada, a visitor inside the country will be effectively precluded from *any* course. This might prevent people from taking language lessons or a driving course. Worse, it might prevent a *bona fide* student from either changing the direction of the studies for which his visa was granted or from pursuing supplementary courses. These provisions could be interpreted to mean that a legitimate medical student risks removal from Canada if he decides to take piano lessons. This type of rule seems quite irrational and indeed it is hard to imagine how it came to be included in the Act. One can feel certain that the result will be a number of court battles.

An aspect of the Act that seems rather shocking is section 19(1)(f), which renders inadmissible to Canada persons "likely . . . to engage in or instigate the subversion by force of any government". This provision is strengthened by section 55(a) which removes genuine refugees who

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[50] S. 7(5). *And see, e.g.*, Narain v. M.M.I., [1974] 2 F.C. 747, 4 N.R. 425, 52 D.L.R. (3d) 270 (App. D.); Mussah v. M.M.I. (F.C. Sept. 21, 1977); Kwiatkowski v. M.M.I. (F.C. Oct. 20, 1977).

[51] S. 26(1) provides that a person "ceases to be a visitor" upon falling into one of five enumerated categories. If that were not sufficient, working illegally is specifically made a cause for removal in s. 27(2)(b).

[52] For this reason, s. 115(1)(g) allowing the Governor-General in Council to prescribe universities and courses by regulation cannot be faulted.

[53] This provision is subject to regulation.

happen to fall under section 19(1)(f) from the protection of the rule that refugees should not be sent back to places where they might be in danger. It is probable that these articles were written with international terrorists in mind. Nevertheless, their breadth is spectacular. Enemies of Idi Amin could be returned to his tender mercies. Refugees from various fascist and communist regimes could not feel secure if it was believed in Canada that they harboured any hopes of liberating their homelands or had any desire to contribute towards a liberation. Surely terrorists could be excluded by more subtle drafting!

These seem to be the principal difficulties which the new Act creates. They may be reduced or increased by the regulations.

E. *Other Provisions*

The new Act includes a number of fairly minor but nevertheless highly desirable improvements. Firstly, it summarily abolishes those parts of the old section 5 which excluded the mentally ill, epileptics, those suffering from contagious diseases, homosexuals, beggars and vagrants from entry or immigration.[54] The new section 19 prescribes more sensible rules about persons who are ill, either mentally or physically. One may express doubts about the power to examine medical records which section 11(3) appears to give medical officers, but generally the portions of the Act dealing with illness and "moral" inadmissibility are much improved.

Secondly, it is significant to note that the old section 5(k) dealing with use, possession or other handling of narcotics has no equivalent in the new Act; drug offences are treated as other crimes. This innovation may be reasonable in the case of occasional users of marijuana, but could prove too liberal for other drugs, given the seriousness of the drug problem in other countries and notably in the U.S.A.

Thirdly, the penalty section in the new Act is more elaborate. Section 97, for example, imposes criminal responsibility on the employer of an illegal worker as well as on the employee himself. This is more just than punishing simply the employee. It is also likely to prove more effective in deterring illegal employment.

The new Act does not attempt to tackle what is perhaps the most delicate question in immigration law: the constitutional division of power.[55] It is no secret that Quebec wishes to control immigration so as to implement more effectively its demographic and cultural policies. The new Act (wisely, it is submitted) takes for granted the federal powers, recognizes the "federal and bilingual character of Canada"[56]

[54] S. 19(1) of the new Act merely omits to mention these classes of persons. The old law also excluded prostitutes and pimps, and liberalization of this area is, in the opinion of the writer, more questionable.

[55] For a more detailed discussion of the constitutional problems, *see* J. BROSSARD, L'IMMIGRATION (1967).

[56] S. 3(b). One wonders whether this recognition of the "federal" nature of the subject-matter is not preparation for concessions to the provinces. The agreement reached

and introduces a curious provision through section 7. This section imposes on the Minister the duty to consult with the provinces concerning immigration quotas, but gives the provincial authorities themselves no special powers to control the number of immigrants entering each province. A similar provision is made for the "adaptation" of immigrants in section 109(1), with a parallel restriction on provincial powers.

F. *Conclusion*

In judging the merit of a new statute, a number of criteria must be kept in mind. One is its effectiveness in narrowing areas of litigation; by cutting out most of the artificial means of defence which have proved successful in the past, the new Immigration Act achieves this end and appears to improve immigration law. However, the Act is vague on the practical use of its lofty human rights principles and this might be the cause of new court battles.

A more important criterion is the underlying justice of its provisions. Few people would seriously argue that Canada may not exercise control over the identity of visitors and immigrants. But equally few would deny that the present law has at times worked great injustice, that it has been interpreted very severely,[57] and that greater procedural fairness would be desirable. The new Act makes no progress toward achieving this end. There are no new avenues of appeal, no wider protections against arbitrary officials, no last-ditch powers of "grace" by the Minister for hard cases. Instead, the legislator has brought in a draconian section on loss of visitor status[58] and an incredibly harsh regime for students.[59] In certain areas, relief established under the old Act has been restricted.[60] It may be possible for the Federal Court to minimize injustices by a very liberal reading of the Act and of sections 3 and 115(2) in particular; traditionally, however, immigration has been an area of "hard law" and this hope is merely speculative.[61]

Section 115(2), which if literally interpreted could certainly grant the executive vast powers of mercy, is unfortunately placed beside the broad regulatory power and, therefore, will likely be interpreted so as to moderate only the application of the regulations and not the Act itself. This is especially likely when we consider the restrictions placed on the issuance of ministerial permits in section 37(2).

Despite the new Act's clarity on hitherto obscure issues, the final reaction which it evokes is disappointment. A better Act could have been drafted.

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between Ottawa and Quebec on Feb. 20, 1978 would certainly be an indication of this: *see* Le Devoir (Montreal), Feb. 21, 1978, at 1. *See also* s. 109(2).

[57] *See, e.g.*, M.M.I. v. Brooks, [1974] S.C.R. 850, 36 D.L.R. (3d) 522; Adamusik v. M.M.I., *supra* note 24.

[58] S. 26.

[59] Ss. 10 and 26(1). *See also* discussion following note 52 *supra*.

[60] *See* s. 72 and discussion accompanying notes 22 and 23 *supra*.

[61] *See* notes 32 and 57 *supra*.