

C.I.H.S BULLETIN

Issue 33

ISSN 1485 - 8460

APRIL 1999

THE NEWSLETTER OF THE CANADIAN IMMIGRATION HISTORICAL SOCIETY

TREASURER'S REMINDER

A review of our records shows that ten members are in arrears since May 1, 1998. Our membership year runs from May 1 to April 30. I would ask that all annual members check their membership cards and if they note that the card expired on April 30/98 to please consider sending your cheque for \$20.00 to cover the period from May 1, 1998 to April 30, 2000. We would appreciate your attention to this matter as soon as possible.

J.A.Troy, Treasurer

COMING EVENTS

1) RECEPTION: The Society will hold a wine and cheese reception on the occasion of the reprinting of Bernard Brodie's book When Do I Get My Visa?

Date: **Wednesday, May 26, 1999, 5:30 to 7:00** in the Lobby Lounge of the Jean Edmonds Bldg., corner of Kent and Slater Streets.

2) ANNUAL DINNER: The annual dinner will be held at The Place Next Door, 320 Rideau St. on **Wednesday, June 23, 1999, at 6:00 P.M.**

WAR CRIMES

(The following is an edited version of a letter received from Roger St. Vincent.)

I should like to contribute an article about some unusual events that have taken place since September 1998. A number of oldtimers have been involved in these events such as Al Gunn, Roger Martineau, Andy Karsberg, Ron Dube, Jacques Lapierre and some members of the RCMP. All of us have been contacted to appear in federal courts all across Canada. The reason for our presence concerned testimony regarding the selection, interviews and issuance of visas to refugees/displaced persons in refugee camps from 1947 to as late as 1953. It turned out, in later years, that some of these "refugees/displaced persons" misrepresented or lied about their past when applying for emigration to Canada through the IRO. Hence, this gave rise to the activities of the Crimes Against Humanity and War Crimes Section with the Department of Justice. The legal proceedings

Inside This Issue

- | | |
|---|---------------|
| 1 | Coming Events |
| 2 | War Crimes |
| 3 | Amos Ellis |
| 4 | Brian Coleman |
| 5 | K.K.Jarth |

aim to prove misrepresentation and obtaining "LANDED STATUS" as well as Canadian citizenship based on false information.

I was contacted at my home in Slovenia in February, 1994 by Department of Justice officials. They wanted to meet with me and obtain information about my activities between 1948 and 1952 when I was attached to the Canadian Government Immigration Mission at Karlsruhe, Germany. It was fortunate that I could meet with them in Ottawa because I had received an invitation from Joyce Cavanaugh-Wood to come to Ottawa to attend a symposium called "Journey of Hope," jointly organized by the Ismaili Council for Canada and the C.I.H.S. The object was to commemorate the Exodus of Asians from Uganda in 1972.

Justice Department lawyers interviewed me for two hours, taping my answers and taking ample notes. My deposition became the basis for an affidavit that was to serve as the basis for my testimony in answering questions from the Crown and defense lawyers each time I appeared in court.

The interesting part is that the events, as far as some immigration officers were concerned, took place more than fifty years ago. As much as one would like to recall all the details, memory has its limits. Still, I believe that the contribution made by the "oldtimers" has had some positive results in some of the judgements rendered.

Since I reside in Ljubljana, Slovenia, I was surprised when asked in August 1997 to appear and testify in a case to be heard at the Toronto Federal Court. All my expenses were paid and I thought this would be my only appearance because of the costs involved. But it was not to be and I appeared in Toronto once again in February 1998 in another case. This was followed by appearances in Montreal in June and Toronto in July.

C.I.H.S BULLETIN

In August 1997 I flew to Ottawa and for the first walked into the Supreme Court of Canada. It has two smaller courts on each side that were used for such meetings. This was repeated again in October 1998. My final trip was in November 1998 when I testified in yet another case in Windsor.

This is a development I never anticipated in my "golden years." And, speaking with other officers who also testified, we all welcomed the opportunity to testify and derived great satisfaction from once again doing our duties.

WHERE IS AMOS ELLIS?

BC/Yukon Region is trying to locate Amos Ellis (Ames Ellis?) a former long time employee of the region. Anyone with information concerning his whereabouts should contact :

Chris Taylor
Director General,
Citizenship and Immigration
BC/Yukon Region
Suite 641-800 Burrard Street
Vancouver, B.C. V6Z 2V8

WHEN DO I GET MY VISA?

Copies of Bernard Brodie's book are once again available and will be on sale at the reception on May 26 for \$25.00. Copies can also be ordered from the Society for the same price plus postage.

TELEPHONE NUMBERS

The Society is in the process of updating its membership list and requests that all members provide their phone numbers to Peter Current at 613-841-8594 or by writing the Society at P.O.Box 9502, Station T, Ottawa, ON K1G 3V2. Members with e-mail addresses may wish to report those as well.

THE CANADIAN IMMIGRATION SERVICE TO 1949 (Part Five)

by Brian Coleman

Immigration and Employment (cont'd)

As early as 1908 the Department was counselling immigration officers that "discretion" should be used in applying the regulations. The Department wanted it to be clear that the policy of immigration was not one of exclusion of immigrants. Again in 1910 we find the Immigration Office in London, England, being advised to use "discretion" in choosing settlers who have different employment skills.

It was only in 1947, when in the aftermath of the Second World War the economy was requiring people of various skills, that an Order in Council formally ended the policy of landing only farmers, farm labourers, and houseworkers. At that time also, the selection of displaced persons was made under "bulk labour schemes". The Settlement Service of the Department began in 1948 with officers in Britain and the Canadian Provinces. Its goal was to link the selection of immigrants to employment opportunities in Canada.

While settlement of the West had always been the primary goals of turn-of-the-century Ministers such as Sifton, and of the early emigrant agents who worked for them, another consideration was the attraction into Canada of immigrants with capital. In this connection immigrants from the United States, a number of whom were originally from Canada, were particularly welcome as they brought with them both a common language and greater than usual capital.

Financial Aid to Immigrants

Emigrant agents assisted newly arrived immigrants in many practical ways, such as with advice on employment opportunities. However, financial help with transportation from the old country to Canada, or with settlement once in Canada, were uneven in both intent and practice. From the late eighteenth century on there were grants of land to retired officers and men of the British Army, and there was

C.I.H.S BULLETIN

the granting of land for homesteading throughout the nineteenth century.

In Britain, 1815 saw the defeat of Napoleon and with it a diminution in the manpower needed to defend Britain and maintain its security. In the aftermath of that came a policy aimed at deporting the poor, which created policies for free or assisted transportation and further land grants. In 1824, the prior practice of giving free grants of fifty acres was withdrawn, but in 1840 a homesteading plan had been devised. By 1872 the *Dominion Land Act* had increased free homesteading grants to one hundred and sixty acres. Indeed, land grants continued into the early twentieth century. The Report on Colonization of 1889 stated that, on political grounds, no financial assistance of any kind could thenceforth be granted to adult immigrants. Although Clifford Sifton was a great believer in developing the "last best West", he viewed direct financial assistance to settlers as weakening their self-reliance.

During the nineteenth and twentieth centuries, private organizations assisted British immigrants financially and in other ways, and the Federal and Provincial governments on occasion gave grants to some of these organizations. Similarly, transportation companies assisted immigrants through special immigrant fares. Into the late 1920s, transportation companies offered reduced fares to British immigrants who fulfilled certain requirements. In the case of the Canadian Pacific and Canadian National Railways, they had their own colonization departments and their own overseas correspondence courses on agriculture.

On occasion there was a clash of interests between emigrant societies and the railways on the one hand, and the Government on the other, on the issue of whether the societies and the railways had the right to select immigrants.

In 1923, any British subject in Canada could "nominate" relatives or friends in Britain who could work on the land. These immigrants were referred to as "nominated persons".

Preferred and Non-preferred Countries

In 1917, we find the earliest reference to "preferred" countries (those of Northern Europe), and "non-preferred countries" (those of Southern Europe). But practice preceded policy, and the practices

became most evident when anything appeared to threaten the mainly British character of the population.

As early as 1854, A.C. Buchanan, Jnr., had recommended the imposition of regulations to forbid non-British emigrants using British shipping or British ports. In some instances alarm at the arrival of certain immigrant groups was even less well-reasoned. In particular, the hysteria caused in British Columbia by the arrival of Chinese workers, and the acquiescence in this by the Ottawa authorities of the day, causes us from today's perspective to wonder if the authorities had lost all reason. Successive *Chinese Immigration Acts*, beginning in 1884, made it increasingly difficult for Chinese to enter Canada. Orders in Council, beginning in 1908, required Asians to come to Canada by a continuous journey, a condition that it was almost possible for Asians to fulfill. (This provision incidentally also affected some Arab people). Even when the *Chinese Immigration Act* was officially and formally repealed in 1947, there were still restrictions on Chinese immigration. Japanese immigration was also restricted, but the difference here was that it was restricted subsequent to an agreement with the Government of Japan. It is probable that those lawmakers and opinion-leaders who wanted to preserve the British character of Canada were expressing certain of their cherished values. However, the consequence of such actions was to influence public opinion against those who were not British, such as the Ukrainians, the Doukhobors, and most Asiatics. Clifford Sifton, despite his desire to colonize the West, discouraged Asians, Blacks, Jews, and Southern Europeans as farmers, but he favoured people from eastern Europe. In addition to favouring Ukrainians as farmers, he had a second agenda: a hope that such Eastern European immigrants would become faithful supporters of the Liberal Party !

By the mid twentieth century, in spite of continuing contradictions in both practice and policy, public opinion in Canada began to change. However, the failure of Canada's elected and appointed administrators to be more open to European Jews both before and during World War Two cut them off from one source of escape.

In 1947, Prime Minister Mackenzie King reaffirmed .."the fundamental (British) composition of the Canadian population", although he did make an exception for refugees. That same year, citizens of France were allowed entry to Canada on the same basis as that of British and United States citizens.

C.I.H.S BULLETIN

Towards the end of the 1940s, displaced persons from all countries were allowed entry, not just those displaced in Europe.

Deportation was sometimes an ancillary to discriminatory policies. A 1908 proposal to send South Asians in British Columbia to build railways in British Honduras fitted the anti-Asian sentiment of the time. The deportation of political radicals in 1919, after the social conflict of the Winnipeg General Strike, put East Europeans at risk. However, in 1927 the Minister of the day defended settlers from central and eastern European countries against charges of Bolshevik tendencies. Yet the sensitivity towards Communist tendencies became more routine as a basis for immigrant selection after World War Two. A Departmental report of 1946 makes one of the earliest references to "security screening". However, this was really nothing new: since Crown agents first checked the loyalty of immigrants from America during the Revolution War two hundred years ago, entry to Canada has often been restricted for reasons of national security.

Federal-Provincial Relations

The *British North America Act* of 1867 gave responsibility for immigration to both the Federal Government and the Provinces. From the eighteenth century, the Maritime Provinces and Lower and Upper Canada had enacted their own legislation concerning immigration. Nova Scotia had even appointed its own Agent General in London in 1762. During the first half of the nineteenth century, the Provinces had taken an active role in immigration matters. A Dominion-Provincial Conference in 1868 permitted Provincial Governments to appoint their own agents overseas. During the early 1870s, Ontario and Quebec sent representatives to certain European countries to further immigration. Quebec also sent a representative to Massachusetts. The presence of both Dominion and Provincial agencies led to rivalries between them, which was temporarily revolved through a Dominion-Provincial Conference of November 1874. It vested the promotion of immigration in Britain and the Continent in the Dominion Minister of Agriculture.

The *British North America Act* recognized what was already a reality. The newer Provinces followed this tradition. In 1889 Manitoba opened an immigration office in Toronto and in 1890 one in Liverpool. Ontario began their own Bureau of

Colonization in 1899. By the early 1900s each Province had its regulations on the employment of immigrant teachers and nurses. These early Provincial initiatives were not without friction in their relations with Ottawa. When in 1912 Canadian and Ontario immigration agents overlapped, the Federal and Ontario governments agreed that Ontario would be given control of all immigration work in Ontario. In 1908, in spite of Quebec's efforts to have immigrants from France go to Quebec, the immigration office in Paris directed them to the North West. Even in 1909, New Brunswick still had its own immigration office in the Province. The Provinces began to develop their own undertakings. Alberta, in 1913, had a school for recently arrived immigrants in Vegreville. On 31 October, 1922, the Federal and Provincial Governments agreed on areas of immigration policy, such as joint responsibility for the training of immigrant boys on farms. But shared responsibility did not resolve all areas of disputed interests. In 1925 British Columbia wanted a say in the issuance of immigrant permits. In 1929 Saskatchewan sought to have its own immigration policy. The Federal government responded with flexibility, and in 1930 the Federal government planned to share with the Provinces the control of immigration responsibility. But tensions remained. In 1947 Ontario circumvented the Federal government's ruling on the admission of badly needed skilled immigrants and transported them to Canada by air. In 1948 Ontario initiated the Ontario Provincial Immigration Scheme on air transportation. When Newfoundland entered confederation in 1949, legislation enacted that Canada's *Immigration Act* should apply there as well.

In the years since 1949, with the advent of mass air transportation, a greater diversity of people has altered the make-up of Canada's population and enlarge our cities, but the Canadian Immigration Service continues, with a tradition of service to Canada and to the newcomer that stretches back over centuries.

(This is the last of this series, and we would like to once again thank Brian Coleman for his generous permission to edit and use the fruits of his long research.)

C.I.H.S BULLETIN

AN EXPLANATION OF THE INDIAN FAMILY LAW

K.K.JARTH

(Editor's Note

In this issue we present the third and final installment of K.K. Jarth's description of Indian Family Law issues.)

As I mentioned at the outset of this series, this had been brought up to date with effect from about five years ago when Mr. Jarth last examined the manuscript.

However, it has been suggested to me that some of this material may now have been rendered obsolete due to decisions of Canadian courts in immigration matters. Would any member able to furnish updates or clarifications regarding these issues please do so via a Letter to the Editor, and every attempt will be made to set the record straight.

Part Three Adoption (cont'd)

"There are also restrictions on adopting daughters. Listen to this. "If the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter." So if a man has a son's daughter, he cannot adopt a daughter. So as I said, the welfare of the child is not the sole or main reason always for an adoption. It is for one's own self: for the satisfaction a person finds in the perpetuation of the male line, for the mere satisfaction of it, or for religious beliefs.

There are normally not many adoptions. Among my friends and relatives, I know of only two who adopted a child, and in both those cases the adoption was as soon as the child was born, and the child had been brought into the world for the specific purpose of that adoption. You're looking very puzzled - let me explain.

In one case, I had a friend whose older brother had been married for several years, but the couple had been unable to have a child. So the older brother said to my friend and his wife, "Would you please produce a child for me. I want to adopt one." So my friend and his wife produced a child for the older brother, and gave it to the older brother and his wife as soon as it was born.

I can see you're still having a problem with this concept. I assure you I have known of cases where this has

happened - where a woman has gone through the discomforts of pregnancy and the dangers of childbirth to produce a child for her brother-in-law. She would not be expected to do it: there would be absolutely no pressure on her. To some extent she might consider it her duty - family ties in India are enormously strong. She would produce the child, there would be a family ceremony - a giving and taking of the child - and she would give up the child. Completely. She gives up all her rights in that child. A child given up for adoption under Hindu law severs all his ties with the natural parents and is reborn in the family of his or her adoptive parents.

I recently interviewed a natural mother. She had a brother in Canada, and he and his wife had not been able to produce a child after many years of marriage. The couple had specifically requested this lady to produce a child for them, and she did so. The baby was still very young. The lady said to me, "Look, I want this child to go to Canada as soon as possible, because I have begun to feel affection for it, and if it takes too long I will love this child so much that I will not be able to give it up". We dealt with the case as quickly as possible.

To return to the documentation problem, remember that there is no documentation required for adoption. A court of law is not involved - it is just between the two parties. All the law requires is that certain rules have been prescribed, and once the adoption meets those requirements there is a giving and a taking of the child, and that's it. There is no requirement that this event be registered, though you may do so. Educated parents tend to execute a deed and say that the child was given by these people and taken by these people on a certain date, and so on. Similarly, better educated or more affluent people may tend to take photographs of the adoption, to establish that there was a giving and a taking.

Questions about the validity of an adoption may arise at a later date. The usual cause is property. As soon as the child is brought into the new family, there will be certain people whose hopes for and rights to property will be affected. So what happens if the validity of an adoption is contested twenty years later? The adoption has never been before a court of law. There was no requirement to register it. In the villages, it is unlikely that photographs were taken or a deed executed. So verification has to be done on the basis of the testimony of people - people who were there and can make affidavits or give personal testimony. The courts will also consider other evidence that a child was given. If I claimed to have adopted a child, and can produce school records showing him as my son and other records showing he lived at my address

from the age of one to the age of twenty, the Courts would take that as evidence he indeed was adopted, and the onus would be on the other side to disprove the adoption.

Verification Issues

Education records do get faked. We have evidence of this in the form of letters written to us by Administrative Officers and by Education Department authorities. Sometimes authorities have found out themselves that, unbeknownst to them, someone in their office had been issuing fraudulent verifications. This happens in other instances too, like Electoral Rolls. In some cases the State Governments just could not cope with our requests for verification - they were finding too many things wrong. Our requests for verification are an additional work burden to the State Governments who have neither the time nor the resources to do such verifications. More than that, they find that once they have detected fraud and misrepresentation, they have no option but to pursue these cases, and take action against the persons responsible, and of course that adds on to their work. For example, we can no longer have our voters list verified through the electoral authorities in the Punjab. They have just refused to do it for us - period. Not only do they not have the staff, they have perfectly legal grounds for refusal in that information in the electoral rolls is not evidence under the Indian Evidence Act. It's another reason we always try to give the benefit of the doubt. If someone is claiming he is sixteen, and can produce any document that says he is sixteen, we say, okay, you can go. We give every possible benefit of the doubt. But unfortunately, as I said, there are some unscrupulous persons, and the avenue of fraudulent documentation is open to them to exploit and explore. This is why we refuse applications where applicants have provided us with non bona fide documentation. But once a visa is issued, it's issued.

We do run into problems here with officials who cannot, or will not, co-operate with us in the verification of documents, in terms of time, resources, administrative problems, and the problem of pursuing cases of bogus records. Their offices are not modern, the technical resources like computer searching of records just aren't there. There is no system of social insurance in India which would supply every individual with a unique personal number. It's a vast country. And each State can set its own rules in no many areas.

Then there is the problem of the courts and of precedents. We try to read as many cases as we can. My colleague

and I both try to keep up. Unfortunately there is no Indian newspaper that contains descriptions of key law cases.

I'll give you an example. The Hindu Marriage Act, passed in 1955, provided at section 9 for the mandatory restoration of conjugal rights. In 1983 there was a judgment of the Andhra Pradesh High Court that held that this particular clause violated the rights of an individual and therefore was contrary to Article 21 of the Constitution. A 1984 Supreme Court decision, however, held that section 9 was not ultra vires the Constitution on the ground that it violated Article 21 of the Constitution. But we have to be aware of this - if we went by the Act, we would go wrong. So we try to keep up with the latest judicial pronouncements.

There are lists, as in Canada, of those areas where the central government has authority to make legislation, those where the state governments have authority, and those where both governments have authority. There are states and union territories. A union territory is an area which is administered by the central government, sometimes for political reasons, sometimes for historic reasons, like the territory of Delhi itself.

The Challenge of the Work

How do we stay on top of it all? Mostly by writing to state government officials. Suppose we have difficulty with a case from Uttar Pradesh involving a birth certificate. We will write to the authorities and say, look, this is the problem we're having, do you have relevant legislation, and if you do, could you send us a copy? And they usually do. So we are constantly updating our information from many and various jurisdictions.

I want to say one final word about our attitude to documentation. I've already said more than once that we give people the benefit of the doubt. If an applicant is making an affidavit today, in connection with an application, that his son was born in 1964, it is certainly in his interest to make such an averment because his application is being processed. But if he can give us an affidavit that he had executed eight years ago in connection with something entirely different, I'll still accept it as documentary evidence of identity. For example, if he had had to produce an affidavit, say in connection with a property dispute, that he had four sons, and they were born on such-and-such dates, and he still has that affidavit, we will accept it. We let the applicants give us anything that helps them in establishing their case.

People make genuine mistakes, and we take that into consideration when we look at applications. Some people are illiterate, or they do not know the rules and regulations: we take that into account too. Perhaps they are honest people, but the travel agent they are employing to assist with their application is not. Perhaps they are just naive or inexperienced. But the fact is that because of an inadequate system, there are dishonest people who try to take advantage of its shortcomings.

So what kind of applications do we refuse? Fraudulent documentation cases. People who very clearly do not meet the requirements of the law. Cases where sponsors make application and then vanish. People who refuse to take medical examinations, or those that take them and fail. That's the thrust of our refusals.

CONTRIBUTIONS

The editor is always in need of contributions for the newsletter. Shorter articles and letters are especially welcome. Please send these (on diskette if possible) to the editor Del Mckay at 41 Lynwood Ave., Ottawa, ON K1Y 2B5 Or e-mail at dmckay@istar.ca

CANADIAN IMMIGRATION HISTORICAL SOCIETY

***Form for Initial Membership, Membership
Renewal, & Change of Address.***

Please note that the Membership Year runs from May 1 to April 30.

1) Please enter / renew my membership in the C. I. H. S.

Fee Attached \$ _____ [Life Member (\$100) , Annual Member (\$10)]

Name: _____

2) Please fill out address etc. *only* if joining for the first time *or* if you wish to inform us of a change of address etc.

Address: _____

Phone: _____

Fax: _____

E-mail: _____

3) Please send this form with your cheque to:

**The Treasurer
The Canadian Immigration Historical Society
P.O. Box 9502, Station T
Ottawa, Ontario, K1G 3V2**