

## **Barriers to Attaining Citizenship, Geraldine Sadoway**

### **Sept 24, 2010**

For the past 13 years, I have been working as the **staff immigration lawyer** at PCLS, seeing clients in the Parkdale- Swansea neighbourhood of west Toronto. The focus of much of our work is regularizing status – helping people with no legal permanent status in Canada obtain such status, and also helping those who have uncertain status – in the process – to have access to basic entitlements as members of the community where they are living and working and raising their families.

Most of our work has focused on ensuring that people living here in Canada have access to basic services in the community, regardless of their immigration status:

- access to education for all children
- access to free health care
- access to protective services of the police when in danger

However in recent years we have begun to be aware of another hidden exclusion from full membership in the community – **permanent residents**, living and working and raising families in Canada, who **despite repeated attempts**, have been unable to acquire Canadian citizenship. The Citizenship page on the CIC website notes that in 2009, **170,000 permanent residents were granted citizenship** – but every year for the past 10 years or more we have had about **250,000 new immigrants to Canada**. – so apparently a large number of immigrants are not becoming citizens.

I will describe 3 types of cases we have seen at PCLS where we have decided to become involved in seeking an exemption from some of the requirements for citizenship and advocating on behalf of these excluded residents. Although this is very anecdotal, I expect that it may be something that is happening across Canada and is not easily recognized. After all, people would not feel particularly comfortable about even telling their friends that they haven't been able to get their citizenship.

#### **1. Refugees: Language and learning barrier for adult refugees:**

We all know that refugees are different than immigrants – they are accepted in Canada because they have been found to have a well-founded fear of persecution and they are in need of protection.

Yet refugees (**9.5% of our 252,175 immigrants in 2009**) are then lumped in with immigrants after they become permanent residents of Canada

In fact many family class immigrants **22.1% of the 252,000 in 2009**, would also be dependants of refugees, brought to Canada after their family member was accepted in Canada.

**[It would be a very interesting task to investigate what percentage of refugees subsequently become Canadian citizens, and how that compares to the rate of immigrants (who are not refugees) becoming Canadian citizens.]**

Ability to speak English or French, and at least a grade 12 education are specific **requirements for immigrants** to Canada under the point system. These are of course **NOT requirements for refugees**.

Yet refugees often need citizenship rights even **more** than immigrants, who might maintain a regular contact with their original country of origin and maintain dual citizenship.

**For example**, in the case of Somali or Tibetan refugees – the only citizenship that will be recognized is Canadian citizenship. So a refugee from Somalia – a “failed state” since the collapse of the Siad Barre regime in 1991, needs to have Canadian citizenship in order to have a passport, because there is no issuing authority recognized to give out a Somali passport.

Tibetans, living in exile in India or Nepal, do not acquire Indian or Nepalese citizenship. We recognize them as Convention refugees when they manage to reach Canada - they are accepted as permanent residents but then they might be unable to obtain Canadian citizenship due to inability to meet the requirements of English or French language, and knowledge of Canada.

If you review the **study guide for the citizenship test** – available on line about 70 pages with a summary of Canadian history, political and economic organization, famous important figures, general summary of judiciary, provincial and territorial make up – including the *BNA Act* and the *Constitution Act*, etc. – this material would **not be difficult** at all for the people who come to Canada in the **economic immigrant class** – they have already had to come through the point system – they speak English or French and they not only have a good education, they are probably **highly educated** with one or more post secondary degrees.

Not so the refugees – the **9.5 % of the (newcomer group)** and probably not so for the **22% of family class members** – the spouses, children and parents of permanent residents, many of whom may also be refugees.[The reason being that most immigrants in the economic class come with their families – some may marry outside of Canada and sponsor, but the majority would immigrate as a family or if single, would be just as like to marry in Canada. Many refugees travel alone and bring family after they have been granted protection. ]

So language is likely to be a significant barrier:

Learning a new language as an adult – is more difficult – refugees are usually adults.

Learning a new language as a person with little education in your own language – or even illiterate in your own language – which is a reality for many refugees – is even more difficult.

And then there is the issue of having experienced trauma – torture or war – being a person with PTSD – this is also the situation of many refugees –

[In fact, the Canadian Centre for Victims of Torture, CCVT has always maintained a special ESL program for refugees who are survivors of torture and trauma – because they just don't make it in the regular ESL programs for immigrants.]

But in addition to learning the language, the prospective citizens is required to study and have a general knowledge of the history of Canada and the structure of Canada's government, legal system, economy and the specifics of the various provinces and territories. Many refugees in their first years concentrate on struggling to survive in this country – to get a job, support their family, bring family members to Canada, so this course of study in addition to learning the language is actually quite daunting.

### **Case scenario # 1:**

SK: woman -DOB 1960 in Vietnam

DOE 1989 arrived in Canada as **stateless refugee from Vietnam . she was 29** years old and would have experienced the Vietnam war and the subsequent post war of 1975 to 1989-- the period of the boat people who were welcomed to Canada in large numbers.

She never attended school in Vietnam because she grew up in a rural area and her parents who were blind, needed her to assist them.

In Canada she **married and had 3 children**, but her spouse left her in 1996 so she raised them as a single mother. She had also been involved in a couple of care accidents and had suffered multiple injuries. She had chronic pain, bouts of depression and has been diagnosed with PTSD.

During the late 1990s Ms. SK began trying to get her Canadian citizenship. She tried to learn English and took ESL courses and citizenship courses in order to pass the citizenship test.

She **repeatedly failed, and tried again**. When she came to our attention in 2008, she had already applied **4 times for citizenship and failed every time**. There is also a fee of \$200 to apply for citizenship again so this was also a barrier.

For 10 years SK has been trying her best to get her citizenship. Her children now older teens, are citizens but she is not. She has no other citizenship as she was stateless refugee from Vietnam.

We began working on this case in 2008 – we requested medical reports about her disabilities and depression, and we wrote submissions requesting an exemption from

the language and test requirements. In May of 2009 our law student accompanied her to an interview with Citizenship judge.

She was rescheduled for another interview with an interpreter. She was given forms about her medical condition to complete, even though we had provided a report from her doctor about her on-going PTSD and her inability to learn.

The judge had not read the submissions and said that he never did this. He tested her orally in English – 3 weeks later same judge, tested her again on same questions. He explained that he did not like to grant exemptions but he told her she had passed the test. The judge also made derogatory remarks to the law student about Vietnamese people, implying laziness.

**After four failed applications and two tries, this time with counsel present, she passed:** but without assistance of counsel she would not have passed, or have been granted an exemption.

## **2. Accommodating persons with learning disabilities, other disabilities:**

### **Case scenario #2**

NS: DOB 1978 Jamaica: problems at home, never completed high schools. Came to Canada at age 18 sponsored by her father. Involved in relationship and has a Canadian child. She is a single parent.

Tried on two occasions to pass the citizenship test but failed. Her first language is English, but she is unable to read and write. This is not something she is proud of and in fact, as is the case with many people who are functionally illiterate in Canada, she does not readily admit it.

Having twice failed to pass the citizenship test, NS came to our office in 2007 – we recognized the literacy problem and made a request that she be provided with the materials to study for the test orally.

She was sent audio CD of the study materials **one day before the scheduled test** – but she could not figure out how to even listen to the audio version, much less prepare for the test. We requested postponement which was refused. She went to the test – did not pass the oral test and was failed again.

In this case we appealed to Federal Court. Since there had been **no accommodation of her disability** – the DOJ lawyer consented to the appeal and the case went back to the citizenship judge.

NS then had the opportunity to prepare for the test with the audio materials, For the next test, she was somewhat better prepared and she was accompanied by a law student for her test. She was given a very gentle test – which she passed. She now has citizenship after a period of at least five years trying for it.

### **Illiteracy is a serious disability, and may also be accompanied by a learning disability:**

[Currently we have two cases of refugees who are illiterate in their own language – one speaks English (Sierra Leone), the other only a dialect of Tibetan. We will be gathering evidence to establish disability and then making submissions on the law with regard to exemptions. The man from Sierra Leone may be able to learn the necessary information through the audio materials. The case of the Tibetan man is much more difficult as he may not be able to acquire English. Yet he is working and participating in society and needs citizenship as he is otherwise stateless.]

### **3: Accommodating or exempting persons who have experienced severe trauma: Case Scenario 3:**

SE: woman who was a sponsored spouse from Sudan who had experienced severe trauma in Darfur:

DOB 1979, sponsored to come to Canada in 2001 at age 22

Could not pass citizenship test – even though she could study and has learned English and had prepared very rigorously for the test. She sat for the test but felt afterwards that she had failed – so she came to see us and talked about her situation. We obtained a report from her psychiatrist about her particular difficulty passing tests, arguing that on humanitarian grounds she should be exempted from passing the test.

According to SE's psychiatrist, Dr. KG, SE suffers from Post Traumatic Stress Disorder (PTSD) which causes her to freeze under pressure or in situations which she perceives as threatening.

The Dr. stated that, in comfortable and familiar settings such as the doctor's office, SE is able to properly answer questions and has adequate knowledge and language capabilities to pass the citizenship test.

**However, when under the pressure of a test-taking setting, her psychological condition of PTSD causes her to freeze and prevents her from exhibiting her knowledge.**

The report further indicated that although those suffering from panic disorders are generally able to complete tests if provided with a private room, SE's psychological condition is more extreme such that even if she were to take the citizenship test in a private room, the PTSD would still prevent her from completing it successfully despite having adequate knowledge and language capabilities.

Dr. KG's report also explained SE's **difficult past and current situation.**

- SE comes from the war-torn Darfur region of Sudan.
- Her family had no income and she was constantly frightened and hungry.

- She witnessed people being killed and suffered from constant nightmares and panic attacks.
- Both her father and brother were killed on the street during the war.
- Her mother, still in Sudan, suffers from kidney disease and is on dialysis.
- In order to gain reprieve, SE married an older Sudanese man who sponsored her to move to Canada. Having become pregnant, he took her to have an abortion in Canada. He then took her back to Sudan, where he attempted to take away her Canadian immigration papers in order to bring another wife to Canada.
- SE is now in Canada alone. She is depressed and cannot sleep, causing her to be constantly tired and forgetful. She is anxious and suffers from panic attacks and nightmares.
- SE has few friends in Canada and contact with her family members in Sudan is infrequent. Although she shares an apartment with a friend, they have little communication and the friend is threatening to move out since SE often wakes up screaming from nightmares and this disturbs her friend's sleep.

We submitted that it would cause unnecessary hardship for SE not to be able to obtain citizenship due to her poor performance on the citizenship test.

We requested an exercise of ministerial discretion on compassionate grounds to exempt SE from the citizenship test requirements.

After we sent this material to the Citizenship judge, SE was called for an interview with the judge.

A law student accompanied her. In this case, **it was clear that the judge had read our submissions and the medical report.** He started off saying “well I have bad news and good news – the bad news its that you did fail your citizenship test “– (she was very upset to hear this) “But the good news is that I will test you again now orally” – he then proceeded to ask her all the questions in the test, and chatted to her as well – and in fact she was able to answer most of the questions.

It was very important that she had been accompanied to this test, and we had also advised her that if she failed, and no exemption was granted, we would appeal to Federal Court.

As it turned out -she passed. The judge made a point of telling the law student that they don't give exemptions in these situations.

So in 2010, having lived in Canada nine years, SE was granted citizenship. However without our involvement, and the very helpful medical report, it would not have been likely.

**These are actually the easier case – where if counsel get involved – we can get grants of citizenship or we can seek relief in the Federal Court:** (I have not addressed the situation of permanent residents with serious mental health disabilities –

in these cases, citizenship will be extremely difficult to obtain and this can also cause serious hardship and, if there is criminalization, result in deportation of the person who has lived in Canada for most of their life.)

**What is needed:**

The law allows for exemptions from the language or test requirement:

In accordance with subsection 15(1) of the *Citizenship Act*, an exercise of discretion is allowed to be made under subsection 5(3) and 5(4) of the *Act*. Subsection 5(3) of the *Act* gives discretion to the Minister to waive on compassionate grounds the language and knowledge requirements that one is required to meet to obtain citizenship. Subsection 5(4) of the *Act* empowers the Governor in Council to direct the Minister to grant citizenship to any person in cases of special and unusual hardship or to reward services of an exceptional value to Canada.

**But unless counsel do get involved, preparing a record that could result in a successful appeal to the Federal Court, the exemptions are not being granted:**

Some suggestions to remedy the situation:

1. Recognition (in the guidelines for citizenship judges) of these situations: recognition of the fact that refugees, some sponsored immigrants and persons with disabilities will have great difficulty with the current requirements for citizenship. Guidelines should be designed to assist the Citizenship judges in these cases.
2. We need to alert the ESL teachers and others who are involved in preparing people for citizenship tests, of the particular difficulties faced by refugees and persons who have suffered trauma and of the possibility of seeking exemptions in these cases.
3. Legal clinics, community groups and settlement agencies should learn how to recognize these cases and prepare a record to ensure that people are not denied citizenship due to a disability, that disabilities are accommodated and exemptions granted appropriately.

At PCLS we are now working on a kit of precedents to be used by other legal clinics to pursue these cases. Unfortunately the community legal clinics are so overwhelmed with work, that it is my understanding that few clinics do any work in this area. I am pleased to have had this opportunity to raise the issue publicly and we would be glad to share what we have learned with staff of other legal clinics and community centres across Canada.

*Synopsis:*

*At first glance it seems completely reasonable that newcomers who become permanent residents of Canada should be expected to obtain Canadian citizenship. To do so they must speak English or French and pass a test on their knowledge of Canada's history, government, geography, etc, and on their understanding of the rights and obligations of citizens. There is a study guide for this and opportunities to participate in classes to prepare. Yet there are some groups of permanent residents who are **repeatedly failing** the citizenship requirements despite long periods of living and working in Canada, and raising families here. After the age of 55 they are exempted from the test, but that means that for much of their working lives they are excluded from citizenship. I will be discussing barriers to citizenship for refugees and persons with disabilities in Canada and how we should be accommodating the particular issues facing newcomers in these groups who need to acquire citizenship.*