

Sanctuary:

A statement and guidelines for congregations



A report presented
To the 132nd General Assembly (2006) of
The Presbyterian Church in Canada



Overture No. 14, 2005 (A&P, 2005, pp. 20, 583)

Re: Preparing a statement and guidelines for churches providing sanctuary for those facing deportation.

Introduction

Sanctuary is derived from the Latin word *sanctus* or holy. Sanctuary means a consecrated place, a house consecrated to the worship of God, a sacred and inviolable asylum, a place of refuge and protection, a place of resort for those who seek relief.³

Sanctuary is a concept dating back to the Old Testament. In ancient Israel and in medieval Europe, the provision of sanctuary was provided for and governed by the law. But those protected by sanctuary were, by and large, a nation's own citizens and resident aliens. The international obligation to provide refuge to foreign nationals fleeing persecution did not exist until the creation of the 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention).

Hospitality to the Stranger

The concept of asylum and sanctuary must be distinguished from the concept of hospitality to strangers and fair dealing with resident aliens. There are a number of texts reminding us that God grants a particular protection to the resident alien and to offend the alien is to offend God.

Old Testament

You shall not wrong or oppress a resident alien, for you were aliens in the land of Egypt.
Exodus 22:21

When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God. Leviticus 19:33 – 34

...who executes justice for the orphan and the widow; and who loves the strangers, providing them food and clothing. You shall also love the stranger, for you were strangers in the land of Egypt. Deuteronomy 10:18-19

The Lord watches over the strangers; he upholds the orphan and the widow, but the way of the wicked he brings to ruin. Psalm 146:9

...if you do not oppress the alien, the orphan, and the widow, or shed innocent blood in this place, and if you do not go after other gods to your own hurt, then I will dwell with you in this place... Jeremiah 7:6

God expects Israel to welcome the alien. Even in the land of Israel, Israelites lived on the land by the mercy of God. The memory of her own oppression and liberation is to be the guiding principle of Israel as she dealt with those who were now oppressed.⁴

Defending the alien is a recurring theme throughout the Old Testament, not just to the alien in Israel but to the Israelites themselves as aliens.⁵

New Testament

Similarly, in the New Testament, offering hospitality to the stranger is presented as a Christian obligation.

In Matthew 25:31-41, Jesus calls his disciples to offer hospitality to the sojourner: I was a stranger and you welcomed me. (vs. 35) Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me. (vs. 40)

In Romans 12:13 Paul advises his readers to: Contribute to the needs of the saints; extend hospitality to strangers. In Hebrews 13: 2 we read... do not neglect to show hospitality to strangers for by doing that some have entertained angels without knowing it.

Practices of Exclusion

The injunctions in the law and the gospel to welcome aliens and strangers sit in uneasy relationship to attempts to preserve Jewish identity and purity of worship by separation from all that is foreign. A foreigner may live in Israel, but not be a citizen. Some of the rights of Israelites are not extended to resident aliens. Unlike fellow Israelites, a slave of foreign origin need not be freed after 7 years. A lender may charge interest on a loan to a foreigner, but not to a fellow Israelite. The people of Israel are not to ally themselves to aliens by marriage: Do not marry any of them, and do not let your children marry any of them, because then they would lead your children away to worship other gods. (Deuteronomy 7:3-4)

In *The Bible and the Outsider*, the late Rev. Dr. Charles Hay noted a climactic application of this law in the period of Ezra and Nehemiah, when all returning exiles were required to divorce their foreign wives and send them and their children away: All these men had foreign wives. They divorced them and sent them on their way. (Ezra 10:44)⁶

No doubt, this action was stimulated by the precarious position of Judah in the early post-exilic period, reinforced by the memory of how the foreign wives of the kings of Judah and Israel had introduced their gods and challenged the exclusivity of the worship of the Lord God of Israel according to the Covenant.

The strict separation of Jew from Gentile was well-entrenched in first-century Jewish culture, which prohibited entering the home of a Gentile or eating with Gentiles: [Peter] said to them, "You yourselves know that it is unlawful for a Jew to associate with or to visit a Gentile; but God has shown me that I should not call anyone profane or unclean. (Acts 10: 28). And for until certain people came from James, [Peter] used to eat with the Gentiles. But after they came, he drew back and kept himself separate for fear of the circumcision faction. (Gal. 2:12) This wall of separation was only gradually overcome in the early church.

A History of Sanctuary

Cities of refuge

In the Bible there are specific rules regarding places of asylum or sanctuary. The tradition of sanctuary and cities of refuge is found in Numbers 35:6-28; Deuteronomy 4:41-43, 19:4-13.⁷

The cities of refuge were provided for those who had killed someone without intention to murder. Here they could appeal for protection from the avenger of blood, the relative of the victim charged with avenging his death. It is clear that the purpose of the cities of refuge is not related to the status of being an alien. Most of those received in a city of refuge would be Israelites, though resident aliens could also avail themselves of this protection.

Post-Constantine Epoch

The other era in which sanctuary was recognized by law was medieval Europe. Christianity became the official religion of the Roman Empire under Constantine. There was tension over the issue of sanctuary. It had been customary in ancient Greece for fugitives to take refuge in holy places. This practice later expanded through most of the Roman Empire. While the right to asylum had no legal status in the first half of the 4th century, there are many examples of bishops and monks offering refuge to those unjustly persecuted by imperial authorities. Towards the end of the 4th century, Christian leaders began demanding

that the right of asylum be granted because of the vagaries of the imperial fiat. The exception was tax evaders.⁸ Soon other exceptions began to be made and in 398 AD, the law was rescinded completely. A year later, the Council of Bishops gathered in Carthage and called for the restoration of the right of asylum, a right that was not granted until 411 AD.

In the ensuing two centuries, the right of asylum was clarified through a series of laws. This clarification then and during the Middle Ages addressed two questions. First, steps were taken to minimize the potential for abuse and, second, common criminals were excluded.

The most widespread exercise of sanctuary privilege occurred in Medieval England where, for several centuries at any given time, “there were several thousand people under the protection of the church’s peace.”⁹

A corollary of English sanctuary law was provision for the “adjuration of the realm”. A person accused of a felony and admitted to the church (for up to forty days) might give up the right of all protection under the king’s law and be allowed limited time to travel to the nearest port and permanently leave the kingdom. It would only be possible to return with the king’s permission. The alternate option was to surrender to authorities.¹⁰

The Reformation

During the Reformation era, both Protestants and Catholics were given assistance in fleeing persecution by rulers upholding the opposite belief. Holland and Switzerland became places of refuge for Protestants fleeing persecution in Spain and France. Calvin assisted refugees who arrived in Geneva. Catholics facing persecution in Protestant nations sought protection under Catholic rulers.

Following the Reformation, secular states claimed more and more rights. The right of asylum was gradually eroded. In 1539, Francis I of France ordered his judges to violate the right of asylum. Other states followed suit. In England, Henry VII violated the right of asylum. John Calvin fled his native France for Geneva. Calvin respected the law but observed that not everything a government did was necessarily just. In commenting on Psalm 82:3, “Defend the rights of the poor and the orphans; be fair to the needy and the helpless”, Calvin declared that a just and well regulated government will be distinguished for maintaining the rights of the poor and afflicted.¹¹ By the end of the 17th century, the practice of sanctuary had been done away with in Europe.

The legal provision of sanctuary in the examples above was not related to a person’s citizenship. It was a protection from the unjust application of the law provided to both nationals and aliens.

Sanctuary as Civil Disobedience

At various times in history, Christians have engaged in providing refuge in defiance of the law. During periods of persecution under Roman emperors, Christians harbored and hid each other from those who sought them.¹²

As noted earlier, even before sanctuary was given legal status, bishops and monks in the post-Constantine epoch often provided sanctuary to fugitives from unjust authorities.

In 19th century United States, abolitionists offered places of refuge to runaway slaves. Sometimes, such protection took the form of hiding the fugitive. In other cases, it took the form of moving them outside the jurisdiction of the nation or government which posed the threat, as in the case of the underground railway, which brought many former slaves into Canada.¹³

Contemporary Examples of Sanctuary as Civil Disobedience

The Holocaust

The period of the Holocaust of European Jews is not one Christians remember proudly. A report to the 116th General Assembly (1990) on Christian-Jewish relations noted that only once during this time did a Presbytery bring the persecution of the Jews under the Nazis to the attention of General Assembly and call for the admission of Jewish refugees.¹⁴

While The Presbyterian Church in Canada did not remain entirely silent on the subject of the Holocaust and the “final solution”, it is concluded that individual voices who stood up and were counted did not receive widespread and visible support of the official church bodies, and there is little indication that the church attempted or was prepared to take action in this regard.¹⁵

Yet, individual voices did speak up, and, in Europe, there are also extraordinary examples of Christian individuals and communities in France, Holland and elsewhere providing sanctuary for Jews fleeing Nazi persecution.¹⁶

Central America

Throughout the 1980's, thousands of citizens from Central America, mostly from El Salvador and Guatemala, fled their countries because of repression and conflict. The U.S. Administration supported governments in Central America which carried out horrendous acts against their citizens and for this reason, the U.S. Administration did not recognize many of these asylum seekers as genuine refugees. Consequently, refugees from Central America crossed into the United States illegally. The modern sanctuary movement in the U.S. was born during this period. Thousands of Central Americans were granted sanctuary in churches and assisted by Christians through the modern underground railroad to Canada.¹⁷

The United Nations Convention Relating to the Status of Refugees

The United Nations Convention Relating to the Status of Refugees was signed in July 1951. This was the first document in history to provide foreign nationals a legal claim to protection by another government from unjust persecution by their own government. The Convention defines a refugee to whom the right of asylum must be extended as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁸ The 1967 Protocol Relating to the Status of Refugees extended protection beyond the five categories in the 1951 Convention.

Canada ratified the 1951 Convention Relating to the Status of Refugees on June 2, 1965 and the Convention came into force in Canada on September 2 of the same year. In its refugee determination process, Canada recognizes persecution by state and non-state actors. The current Canadian legislation, the Immigration and Refugee Protection Act (IRPA) became law in 2002 and is intended to fulfill the government's obligation under this Convention.

Refugees in the Canadian Context

In 2005, the United Nations High Commissioner for Refugees (UNHCR) estimated there were some twelve million refugees around the world. The vast majority of refugees seek refuge in neighbouring countries. In addition there are over 6.3 million internally displaced people. They are displaced within the borders of their own countries and are not included in the Refugee Convention.

As a signatory to the Refugee Convention, the Canadian government has an obligation to provide asylum to refugees who arrive in Canada on their own, request protection and who qualify. Refugees also come to Canada through overseas sponsorships by the government and by organizations (private sponsorship).

In 2004, 25,750 claims were made in Canada. The backlog of pre-2004 claims meant that 40,000 cases were finalized that year. Some 47% of claims for refugee status were rejected because they did not meet the criteria under the Refugee Convention; 40% were accepted and 13% were either abandoned or withdrawn.

Canadian Refugee Determination Process

Canada determines asylum seekers to be refugees according to its interpretation of the definition of the Refugee Convention (1951) and the 1967 Protocol. Asylum seekers may not be granted a hearing if they are found to be ineligible on the grounds of criminal activity, threat to national security, or if they committed human rights violations.

Claimants are inadmissible for protection if they have been recognized as a Convention Refugee by another country to which they can be returned, or if they have previously made a refugee claim in Canada which was rejected.

Under the Safe Third Country Agreement with the United States, refugees arriving in Canada by land from the U.S. will be returned to the U.S. to make their claim. Refugees arriving in the U.S. from Canada will be returned to Canada to make their claim. There are some exceptions. One exception is if the asylum seeker is from a country that Canada has designated as a moratorium country, (a country to which an asylum seeker will not be returned). In this case, the Safe Third Country Agreement does not apply. The Canadian government regularly reviews the countries on this list.

Once screened for eligibility, the individual then appears before a single adjudicator with the Immigration and Refugee Board. The single adjudicator hears and determines the claim. If the decision is positive, then the individual is determined to be a Convention Refugee or a person in need of protection. This latter category is unique to Canada and is a broader definition than the Refugee Convention. The individual is eligible to apply for permanent residence. If the individual's claim is rejected, there are several options available, but there is no provision for an appeal on the merits of the actual decision.

The Immigration and Refugee Protection Act (IRPA)

The absence of a merit based appeal has been recognized as a fundamental flaw in Canada's refugee determination system. In the late 1990's, the Inter-American Commission on Human Rights assessed Canada's treatment of asylum seekers in Canada's refugee determination system. In its report, the Commission recommended that there be an appeal process on the merits for rejecting the asylum seeker's claim for refugee status.

The Immigration and Refugee Protection Act (IRPA) came into force in June 2002 following an extensive review of Canada's immigration policy. The IRPA included a Refugee Appeal Division which provides the right to appeal based on the merits of the decision if the claim is rejected. This was important because under the IRPA, refugee claimants would now appear before one decision-maker (Immigration and Refugee Board official) instead of two as under the previous legislation. The government acknowledged the need for safeguards under the new system where one panel member was responsible for making decisions that would have a profound impact on an individual's life.

After the Act was passed, the Minister of Citizenship and Immigration at the time, The Hon. Denis Codère, postponed implementation of the appeal process. Successive ministers have stood by this decision. The right to appeal a decision on the merits of the case is a fundamental right in our legal system. This right is denied to refugee claimants. The implications for the lack of an appeal are serious if the individual believes that he/she will be persecuted if returned to his/her country. As a signatory to the Refugee Convention, Canada is obligated to respect the principle of non-refoulement (not returning an individual to a country where he/she will be persecuted). Should the Canadian government violate this principle and the individual is returned to his/her country and subjected to torture, the government would be in violation of the Charter of Rights and the Convention Against Torture (Article 3) to which Canada is a signatory.

Sanctuary for Refugee Claimants in Canada

In June 2004, then Minister of Immigration, The. Hon. Judy Sgro criticized the churches that were providing sanctuary. Church leaders held several meetings with the Minister and her staff in the summer and fall of 2004. The churches contended that there would be fewer refugees in sanctuary if the appeal process as provided for in the legislation was implemented. The Minister was not prepared to implement the appeal division, arguing that other legal recourses provided the necessary protection to ensure that a refugee claimant at risk would not be deported.

Churches Campaign for Appeal

During the fall of 2004 and winter 2005, KAIROS launched a petition campaign calling for the implementation of the Refugee Appeal Division. Over 25,000 Canadians signed the petition. The petitions were submitted in the House of Commons in April and June, 2005. The government's response was disappointing. The Hon. Joseph Volpe, Minister of Citizenship and Immigration stated that "the system, even without an appeal, effectively provides protection to those who need it".

Immigration and Refugee Board (IRB) officials are responsible for deciding if a claim for refugee status meets the criteria as outlined in the Refugee Convention. Some of these decisions must be difficult. Many wise and fair decisions will be made. Honest mistakes will be made. There will be poor decisions. An appeal process could help rectify honest mistakes and poor decisions.

Recourses Available to a Failed Claimant

If the Immigration and Refugee Board rejects the asylum seeker's claim for refugee status, there are several options that may be pursued.

a) Federal Court of Appeal

An individual whose claim has been rejected may make an application for leave for a judicial review to the Federal Court of Appeal. The unsuccessful claimant has fifteen days after the negative decision to file to the Federal Court of Appeal for a judicial review of the case. The claimant then has an additional 15 days to make his/her submission. Claimants can generally stay in Canada while awaiting a decision by the Court to grant leave. If leave is granted, then the claimant may argue before the Court that there was an error of law. The Federal Court of Appeal does not consider the merits of the decision, but reviews the process to ensure that all legal procedures were properly followed.

A majority of applications to the Federal Court for judicial review of refugee claim determinations are rejected. If the Federal Court rules in favour of the claimant, then the case is returned to the Immigration and Refugee Board for a re-hearing. Figures for positive decisions by the Federal Court of Appeal are difficult to come by because the Court does not disaggregate its decisions to identify those cases which concern refugee claimants.

b) Pre-Removal Risk Assessment

Prior to removal, the Canada Border Services Agency (CBSA) gives the failed claimant the opportunity to apply for a Pre-Removal Risk Assessment. The Pre-Removal Risk Assessment is intended to protect individuals should there be new evidence which has become available since the IRB decision. If the risk assessment is positive, the claimant is a "protected person" and can apply for permanent residence. If the decision is negative, the applicant must comply with his/her original removal order. The CBSA is responsible for making the removal arrangements.¹⁹

c) Humanitarian and Compassionate Review

Individuals whose claims have been rejected may apply to Citizenship and Immigration Canada for a Humanitarian and Compassionate Review (H & C) if there are compelling reasons to stay in Canada

(family circumstances, other compassionate considerations). There is a non-refundable fee of \$550 per adult and \$150 for those under twenty-two years. The fee deters some applicants from applying under the H & C Review. The limited interpretation of humanitarian and compassionate considerations deters others. The acceptance rate is very low. There is no stay of removal (deportation is not delayed) pending a decision. Decisions can take years. Citizenship and Immigration Canada in consultation with the Canadian Border Services Agency, has the discretionary powers to waive the deportation order until a decision has been made. Eligibility for Humanitarian and Compassionate Review includes people other than failed claimants.

Failed claimants may also apply for judicial reviews of decisions made under the Pre-Removal Risk Assessment and the Humanitarian and Compassionate Review.

d) Moratorium on Removals

There are countries to which failed refugee claimants will not be removed because of a generalized situation of violence, systematic violation of human rights or a humanitarian disaster that affects the entire country. Individuals who have a removal order to these countries may be allowed to stay in Canada until such time as the Canadian government judges that the situation in the country has improved. The claimant must then comply with the removal order.

As of February, 2006, there were moratoria (temporary suspension of removals) for the following countries: Afghanistan, Burundi, Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda, and Zimbabwe. The Canadian government reviews the list annually.

e) Political Intervention

If all legal options have been exhausted, a failed claimant or a congregation supporting the claimant may make an appeal directly to the Minister of Citizenship and Immigration. Under the Immigration and Refugee Protection Act, the Minister of Citizenship and Immigration in consultation with the Minister for Public Safety can exercise his/her discretion to permit an individual to stay in Canada. The local Member of Parliament may be willing to assist in submitting the appeal to the Minister. The documentation that is submitted to the Minister must offer compelling (and independently verified) evidence that the failed claimant is at risk of persecution if deported. If the Minister declines the appeal, the individual must comply with the removal order.

While each of these recourses offers protection for some refugees who are at risk if deported to their country of origin, they do not allow for the original decision to be challenged on its merits. This is the central flaw in Canada's refugee determination process.

Sanctuary: a Last Resort

The one remaining option, and it is a difficult decision, is to consider sanctuary. Sanctuary is an act of civil disobedience and carries penalties that are outlined in the next section.

The Legal Consequences

The individual(s) seeking sanctuary and the individual or organization providing sanctuary are violating the Immigration and Refugee Protection Act (IRPA) and the Criminal Code. It is illegal to knowingly induce, aid, abet or counsel anyone to contravene the provisions in the IRPA and the Criminal Code. The penalty if convicted of aiding, abetting, or counseling an individual(s) to refuse to comply with a removal order is up to two years imprisonment, a fine of up to \$50,000 or both.

Between 1983 and 2003, there were 36 cases of sanctuary involving 261 people. The following congregations or parishes provided sanctuary: The United Church of Canada congregations – 11; Roman Catholic parishes – 9; Anglican Church of Canada parishes - 5; Unitarian congregations – 3; Baptist

congregations – 2; Pentecostal congregations – 2; Independent congregation – 1; Seventh Day Adventist congregation – 1; Maronite Catholic parish – 1; Mennonite congregation – 1.²⁰

In 2006 there are some five or six sanctuary cases involving parishes in the following denominations: Anglican Church of Canada, Evangelical Lutheran Church in Canada, and Roman Catholic.

No church, church official or member of a congregation has been charged under the IRPA or the Criminal Code for providing sanctuary.

No Legal Defenses for Sanctuary

There are apparently, no effective defenses of sanctuary in case law or legal precedent. The present state of the law does not preclude legal challenges in defense of sanctuary, but offers little likelihood of success.

The Immigration and Refugee Protection Act (IRPA), article 2 (3), requires that: “This Act is to be construed and applied in a manner that...(f) complies with international human rights instruments to which Canada is a signatory”. This means that the IRPA must be interpreted in accordance with Canada’s international human rights obligations. It is unclear how the courts will treat this provision in the IRPA.²¹

What May Happen if a Claimant Is Deported?

Once all of the legal and political options have been attempted and have failed, it may be possible for the claimant to go to a third country or to comply with the deportation order.

If the individual is deported, s/he may wish to maintain regular contact with the congregation in the hope this will provide some protection. Establishing and maintaining regular contact requires a commitment in terms of time and finances. Should the individual be detained upon his/her return, then the Canadian Government, human rights organizations and media outlets should be notified.

Alternatively, the individual may decide that contact with Canadian organizations would only jeopardize their security or their family’s and decide not to have any contact at all. For some, the only recourse when they arrive in their country of origin is to go underground.

There is no verifiable data on the number of refugees whose claims have been rejected and who have been deported to their country and faced detention and persecution. No organization in Canada has the capacity to establish procedures to monitor the fate of every returned refugee at risk. The Canadian Government does not monitor returned refugees at risk.

One example concerns Mr. Haroun M’Barek whose refugee claim was rejected. He was deported to Tunisia and subsequently detained and stated that he was tortured.²² A Canadian lawyer was hired by several human rights organizations to observe Mr. M’Barek’s trial. The lawyer prepared a report on the trial and the treatment Mr. M’Barek received in detention.

A Matter of Conscience & Faith

It is not lightly that a church will choose civil disobedience, and the need to do so must be prayerfully considered. This section considers the guidance offered by the Declaration of Faith Concerning Church and Nation and Living Faith, subordinate standards of The Presbyterian Church in Canada and church polity as set out in The Book of Forms.

Sections 4 and 9 of the Declaration of Faith Concerning Church and Nation do not unequivocally allow for civil disobedience. These sections remind us that our ultimate loyalty is to Christ the Head of the Church and that a Christian is called to “work for the remedy of any unjust statute, or iniquitous assessment, or violation of conscience”.

4. The righteousness of God, which came to decisive triumph in the cross and resurrection of Christ, is the sole foundation of national justice, development, and destiny. Every organ of power in the Nation, whether cultural, political, or economic, is a stewardship under Christ, and can properly function only by obedience to His revealed word. Every abuse of power constitutes a breach of trust, destructive to the abuser and injurious to the glory of God among his creatures.

9. Christians must always do their utmost to honour the civil laws, and to fulfill all statutory obligations whether financial or personal, as unto Christ the Head. Nevertheless, no citizen is thereby relieved of his constant responsibility to work for the remedy of any unjust statute, or iniquitous assessment, or violation of conscience.²³

Withholding a refugee appeal division as provided for in the Immigration and Refugee Protection Act could arguably be considered as “a breach of trust” on the part of the government. As noted earlier, appealing a decision on the merits of the decision is a fundamental right, yet it is denied to refugee claimants despite being provided for in the relevant legislation.

Offering sanctuary to an asylum seeker who would be at risk of persecution if returned to his/her country of origin is an act of conscience and this may be a circumstance under the Declaration of Faith Concerning Church and Nation in which civil disobedience is warranted.

In Living Faith, we read

8.4.2 God’s justice is seen
when we deal fairly with each other
and strive to change customs and practices
that oppress and enslave others.

8.4.3 Justice involves protecting the rights of others.
It protests against everything that destroys human dignity.²⁴

Offering sanctuary can be a way of protecting the rights of the refugee claimant and striving to remedy an unjust custom and practice as called for in Section 8 of Living Faith. Failing to protect a vulnerable person from probable persecution is a violation of conscience. Neither the Declaration of Faith Concerning Church and Nation nor Living Faith specifically provide for civil disobedience. Both the Declaration of Faith Concerning Church and Nation and Living Faith call on the Christian to protect the vulnerable and to uphold human dignity.

Several sections of the Book of Forms were reviewed for their application to the question of sanctuary.

Section 109.2 The session is responsible for all policy and procedures with respect to the use of the church buildings and property subject to the provisions in sections 114.6

Section 114.6 The session is responsible to the presbytery for the use made of all church buildings, property and air rights above them controlled by the congregation.

Should a session recommend to the congregation that sanctuary be offered and the congregation approve the recommendation following a vote, a presbytery has the authority to disallow the decision under Section 114.6

Section 198.1 It belongs to the presbytery to regulate matters concerning the performance of public worship and the administration of the sacraments, within its bounds. It must take cognizance of practices inconsistent with the laws and settled usage

of the church. It should enjoin the discontinuance of novel practices calculated to cause division or strife in any congregation.

Presbytery may decide to disallow a decision to provide sanctuary when it is a cause of division and strife in the congregation.

Suggested Guidelines in Considering Sanctuary

a) Verifying the Refugee Claimant's Case

In this section, it is assumed that the congregation knows the individual whose claim for refugee status has been rejected. If an individual not known to the congregation requests sanctuary, it is advisable to decline this request.

The individual needs to be open and transparent with the congregation. Is there anything in the individual's history that would discredit the sanctuary campaign? Will publicity put family members at risk in the country of origin? Weighing the implications of sanctuary is matter for the individual and the congregation.

The implications of sanctuary should be carefully considered. Sanctuary cases generally last from six to eighteen months. Positive results are uncertain. Living conditions for the refugee may be uncomfortable. There will be long periods of loneliness. There is a high degree of psychological stress. The individual will be under intense scrutiny. Sanctuary is a public act and the refugee will need to function in this context. The refugee and the congregation must be prepared for intensive media coverage and possibly, hostility from the surrounding community.

The decision to offer sanctuary must be based on more than a personal relationship that may have been established between the refugee and the congregation. The legitimacy of sanctuary rests not on its legal foundations, but on moral ones. There must be verifiable evidence that the claimant is at risk of persecution if deported. Weak sanctuary cases diminish the moral case for sanctuary. If the evidence provided by the individual cannot be independently verified, sanctuary should not be offered.

Information on the refugee's case may be provided by the refugee himself or a lawyer acting on behalf of the refugee. This information should be independently verified. Documentation from the following organizations should be consulted.

Amnesty International will review individual cases, but does not, as a matter of policy, comment on sanctuary. Human Rights Watch publishes country profiles. Statements and reports from the United Nations Commission on Human Rights, United Nations High Commissioner for Refugees, Government of Canada statements, reports from other governments and human rights organizations may also be consulted. The purpose of consulting these organizations is to independently verify the evidence provided by the claimant.

The research may also include international media. Media sources in the individual's country may shed light on the individual's case. Verifying the information provided by the individual is not a straightforward matter, but independent verification is essential to demonstrate the risk of persecution if the individual is returned to his/her country.

If the evidence provided by the refugee (or the refugee's lawyer) cannot be verified, then it would be prudent not to consider sanctuary. The congregation may wish to consult Justice Ministries for advice on relevant research documentation.

b) The Congregation's Decision

Once the session has reviewed the evidence it has been able to gather, it must decide if there is enough evidence to bring a recommendation to the congregation to consider an offer of sanctuary. The decision by the congregation should be made openly and properly recorded. It is important that the decision to offer sanctuary is well supported by the congregation.

If the decision to offer sanctuary is approved by the congregation, then the presbytery must be informed as the decision has legal implications. As noted earlier, presbytery has the authority to disallow the decision to offer sanctuary.

c) Legal, Financial and Social Considerations

The congregation should seek advice from a lawyer on the legal implications of offering sanctuary.

There are legal, financial and social factors to consider. Offering sanctuary involves a financial commitment for an uncertain period of time. The expenses could include food, basic furniture, phone calls, translation services, legal and medical costs.

If an individual is going to be living in the church, will renovations be necessary? What will these renovations cost? Do local zoning by-laws have any prohibitions of someone living in the church? Does the living space meet local zoning by-laws?

Sanctuary is more complicated if children are involved. There will be additional demands and stresses for the family and the congregation. An educational program and extra-curricular activities need to be developed. How will the family cope in an enclosed space for an uncertain period of time?

The congregation should consider establishing a team to provide on-going pastoral and social support. The congregation should inquire if support can be provided by neighbouring congregations and by organizations in the community.

Providing sanctuary is intended to protect the individual who would be at risk of persecution if deported and to have the decision to deport the individual reversed by the Minister of Immigration.

Conclusion

As a public act of faith, sanctuary must be the last resort when all other options have been exhausted and there is probable evidence that an individual will face persecution if deported to his/her country. The decision to offer sanctuary will be a difficult decision. The duty to protect may take precedence over the law if the individual is at risk of persecution.

Recommendation No. 6 Amended and Adopted

Should a congregation of The Presbyterian Church in Canada desiring in obedience to God's word and its own conscience, offer sanctuary to an asylum seeker whose claim for refugee status has been rejected and who faces a risk of persecution if returned to his/her country of origin, it may consider the following as appropriate steps to follow: 1) have an independent review of the evidence provided by the asylum seeker (or the lawyer acting on behalf of the asylum seeker) that confirms the risk; 2) have exhausted all of the legal and political recourses as outlined in this statement; 3) have followed the decision-making procedures of The Presbyterian Church in Canada.

Recommendation No. 7 Adopted

That Justice Ministries be directed to prepare a resource on guidelines for a congregation to consider as it discerns the implications of offering sanctuary.

Recommendation No. 8 Adopted

That the above be the response to Overture No. 14 (2005).

Bibliography on Sanctuary

“Refugees: Common Myths About Refugees”, Amnesty International, www.amnesty.ca

Blais, Nathalie, *Summary of the Observation Mission in Tunisia of the Trial of Mr. Haroun M'Barek*, Rights & Democracy, Montreal, February 2001.

Burks, Paul, “This is Sanctuary: A Reformation in our Time”, in “Churches in Struggle”, *New York, Monthly Review*, 1986, pp 291-300.

“Migration: Seeking God’s Justice For People On the Move”, *Church & Society*, The Presbyterian Church (USA), Louisville, KY, July/August 2005

Clark, Tom, “The Duty to Protect: A Church’s Religious Right and a Citizen’s Obligation”, Undated Memorandum.

“Making a refugee claim”, Immigration & Refugee Fact Sheet, Community Legal Education Ontario www.cleo.on.ca

Cornacchia, Cheryl, “Blind Algerian seeks sanctuary”, *Montreal Gazette*, January 4, 2006.

Elliot, John Hall, “The Church as Counterculture: A Home for the Homeless and a Sanctuary for Refugees”, *Currents in Theology and Mission*, No. 25 June 1998, pp. 176-185.

Gonzalez, Justo L. “Sanctuary: Historical, Legal and Biblical Considerations”, *Engage/Social Action*, The United Methodist Church, 14, January 1986, pp. 12-20.

Hay, Charles, J, *The Bible and the Outsider*, Inter-Church Committee for Refugees, Toronto, Sept. 1996.

“Who are ‘Convention refugees’ and ‘persons in need of protection’?” Immigration & Refugee Board of Canada, Refugee Protection Division, www.irb-cisr.gc.ca

“Why do people turn to sanctuary?” Interfaith Sanctuary Coalition, October 9, 2003.

Jorstad, Eric, “A theological reflection on sanctuary: politics, social ministry, or basic mission?” *Christianity & Crisis*, No. 43, October 31, 1983, pp. 404-407.

Kellermann, Bill; “The Hospitality of God: Christian Sanctuary as Nonviolence”, *Rise of Christian Conscience*, Harper and Row, San Francisco 1987, pp. 214-220.

Lindner, Eileen W. “Toward a Sanctuary Movement”, *Church & Society*, No. 91, September-October, 2000, pp. 86-91, Presbyterian Church USA.

Lippert, Randy, *Sanctuary, Sovereignty, Sacrifice: Canadian Sanctuary Incidents, Power, and Law*, UBC Press, Vancouver, 2005.

Loder, Theodore, “More than a Place”, in *Engage/Social Action*, The United Methodist Church, 14, January 1986, pp 2-46.

MacDonald, Heather, *Sanctuary for Refugees? A Guide for Congregations*, The United Church of Canada, Toronto, 2004.

Maruskin, Joan M. “The Bible: The Ultimate Migration Handbook”, *Church & Society*, July/August, 2005, Presbyterian Church USA, pp 77-91.

Maruskin, Joan M, *The Bible as the Ultimate Immigration Handbook: Written By, For, and About Migrants, Immigrants, Refugees, and Asylum Seekers*, Church World Service, 2003.

“Declaration of Faith Concerning Church & Nation”, The Presbyterian Church in Canada, 1955.

“Living Faith: A Statement of Christian Belief”, The Presbyterian Church in Canada, Wood Lake Books, 1984.

Shepherd, MacKenzie Loraine, *Faith & Civil Disobedience*, Canadian Council for Refugees

Fall Consultation, November, 2003, Winnipeg.

The Supreme Court of Canada, Suresh v. Canada (Minister of Citizenship & Immigration), 2002.
www.lexum.umontreal.ca

United Nations High Commissioner for Refugees, www.unhcr.org

Wolterstorff Nicholas, "The Wounds of God: Calvin's Theology of Social Injustice", *The Reformed Journal*, June 1987, pp. 14-22.