

# U.S. IRAQ WAR RESISTERS IN CANADA

## Backgrounder

June 2015



War Resisters Support Campaign  
Campagne d'appui aux résistants à la guerre



## Table of Contents

U.S. War Resisters in Canada – Fact Sheet.....	1
Public Opinion .....	7
Parliamentary Action.....	10
Operational Bulletin 202 and Response.....	17
Recent Court Decision .....	20
Proposed Provision for U.S. War Resisters .....	22

## U.S. War Resisters in Canada – Fact Sheet

Since 2004, dozens of members of the U.S. military have sought refuge in Canada after deciding that they could not, in good conscience, continue to participate in the invasion and occupation of Iraq.

In 2003, U.S. President George Bush authorized Operation Iraqi Freedom invading Iraq with other members of the Coalition citing the existence of weapons of mass destruction. Prime Minister Jean Chrétien declared that Canada would not participate in the invasion of Iraq, as did a majority of NATO members.

The then Secretary General of the United Nations and most international authorities condemned the invasion as an illegal war.<sup>1</sup>

The conduct of the Iraq War has come under heavy criticism. The shelling of civilians, high civilian casualties, and the treatment of prisoners of war have all been subject to internal criticism and even condemnation in the United States itself.<sup>2</sup>

### **A Canadian Tradition**

- During the Vietnam War in the 1960s and 1970s, between 50,000 and 80,000 Americans – including draft resisters and deserters – were welcomed to our country.<sup>3</sup>
- Canada’s long history of providing sanctuary to people opposed to war for sincere conscientious reasons dates back to United Empire Loyalists.

### **A Canadian Sensibility**

- Allowing U.S. war resisters to stay would give effect to a particular Canadian sensibility to provide individuals who can demonstrate genuine conscientious objection to the Iraq War to be able to apply for permanent residency status.
- Two motions, on June 3, 2008, and on March 30, 2009, were adopted by the House of Commons calling for the government to accept U.S. Iraq war resisters and cease deportations.
- A 2008 Angus Reid poll showed that 64% of Canadians believe U.S. Iraq War resisters should be allowed to stay in Canada.<sup>4</sup>
- A majority of respondents in every province, ranging from 52% in Alberta to 70% in Quebec are in favour of letting Iraq War resisters stay.

### **An Illegal War**

- The US led invasion of Iraq was an illegal war since it was not sanctioned by the United Nations.
- Canada decided not to participate in the Iraq War in 2003. In a poll conducted in 2008, that decision was still supported by 82% of Canadians.<sup>5</sup> In the 2008 Federal Election debate, Prime Minister Stephen Harper himself admitted that the Iraq War was “absolutely an error”.

### **An International Principle**

- The right to freedom of conscience is established in Article 18 of the Universal Declaration of Human Rights (UDHR). It declares that: “Everyone has the right to freedom of thought, conscience, and

religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private...”<sup>6</sup>

- The 4<sup>th</sup> Nuremberg Principle developed in the wake of World War II states "the fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.”<sup>7</sup>
- The United Nations Human Rights Commission and UN Commission for Refugees have established the validity of a conscientious objection while serving in military service particularly when it concerns a military action either “intended to violate basic human rights, ventures in breach of the Geneva Convention standards for the conduct of war, (or) non-defensive incursions into foreign territory.”

### **Compulsion**

- Many U.S. soldiers who objected to the Iraq War were forced to return to service even after completing their contract under a practice called “stop-loss” that was being used to deal with personnel shortages in the U.S. military.<sup>8</sup>
- Tens of thousands of U.S. National Guard troops who enlisted for domestic service were sent overseas.<sup>9</sup>
- Access to conscientious objection and other forms of appeal was restricted at the height of the war.

### **A Humanitarian and Compassionate Consideration**

- At the height of the Iraq War, between 200 and 300 U.S. Iraq War resisters were believed to be in Canada. According to government documents obtained through an Access to Information and Privacy request, approximately 45 of these sought refugee protection in Canada.<sup>10</sup> These individuals have built new lives here and being forced to leave Canada would mean being uprooted, and separated from their loved ones.
- Those war resisters deported to the United States have faced court martial, significant prison terms in military jails, felony records, and heavy social penalties in their home communities.<sup>11</sup>

### **Unfair Harper Government Treatment**

- Former Immigration Minister Jason Kenney made negative public statements<sup>12</sup> about U.S. Iraq War resisters, poisoning their chances of fair hearings before government appointed officials. These comments gave the “strong appearance of political interference” and were “highly inappropriate”, according to third party assessments.<sup>13</sup>
- A directive sent to department officials in the summer of 2010 mischaracterized U.S. war resisters as criminals and created a political tracking of individual cases.<sup>14</sup>

### **The Need for a Provision**

- In order to re-establish a fair process for U.S. Iraq War resisters who sought refuge in Canada, we are asking your support for rescinding Operational Bulletin 202, ceasing deportation proceedings against U.S. war resisters, and implementing a provision that would allow them to apply for permanent resident status.

## Canadian Voices of Support for U.S. War Resisters in Canada



*The decision to desert is not made easily. It has nothing to do with being weak or cowardly and everything to do with being brave and strong. The decision to face probable imprisonment and a criminal record can only be reached when one feels that the burden of participating in an illegal and immoral war is greater. The fact that these young people have made it to Canada is a testament to their strength and mental fortitude. I say "Let Them Stay". They will make good citizens.*

**Dick Cotterill, Nova Scotia Business Owner, Canadian citizen since 1972 and U.S. war resister (voluntarily enlisted) serviceman of that era**



*...But the refugee review board refuses to hear arguments about the legality of the war, so the resisters here wait and wonder what's next. In my case, all I had to do was apply for immigration and get on with becoming and being the best Canadian I could. It's beyond my powers to measure my gratitude that all these years ago there was room at the inn called Canada, and how my thoughts today are with the young men who want to study war no more. Blessed are the peacemakers, we're told. I hope they might enjoy the blessings of a life in my home, if not my native, land.*

**Andy Barrie, Toronto broadcaster, Canadian Citizen of 38 years and U.S. war resister**

### References:

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# War resisters face uphill battle

## U.S. MILITARY

### Tories ramping up deportations, says ex-soldier



**Jessica Smith Cross**  
Metro | Toronto

Dean Walcott is waiting for a letter that will send him to jail. Walcott is one of about 20 U.S. Iraq war resisters — “deserters” or “contentious objectors,” depending on your point of view — who are living in Canada and fighting deportation.

The Conservatives are against letting the resisters stay but, with an election roughly seven months away, the bureaucratic process might just be slow enough to allow them a shot at staying in Canada.

“It means a lot to me. I’m hoping I’ll still be here for that election, but there’s no way of knowing,” Walcott told Metro.

Walcott went AWOL in 2005 after four tours in Iraq. He fled to Canada, settled in Peterborough, and, over the course of a decade, got married and had children. If he’s sent back, he’ll likely be convicted of desertion in a U.S. military court.

Since 2006-07, the number of resisters in Canada has shrunk to 20 from 200, according to the War Resisters Support Campaign, an activist group based in Toronto that has been assisting the resisters and lobbying politicians on their behalf. Forty-five have made legal claims for residency while the others have been deported, gone back to the U.S. voluntarily or sought refuge in another country, said organizer Michelle Robidoux.

Joshua Key, whose true story of fleeing the Iraq War was told in *The Deserter’s Tale*, written by Lawrence Hill, said he’s seen deportations pick up steam since the government decided to send jets to Iraq this fall.

“It seemed that things changed about that time,” said Key, who now lives in Winnipeg.

“They started making action on a lot of our cases, started the deportation process with many. I myself, to be quite honest, am just waiting on a letter to arrive. Then you do whatever they tell you to do.”

Public opinion polls show that a majority of Canadians support the resisters: In a 2008 Angus Reid survey, about two-thirds of Canadians said they wanted them to be allowed to stay. But those who are opposed tend to be vehemently so.

The Conservative government wants Walcott and the others sent back. The immigration minister issued an operational bul-



Dean Walcott stands holding his U.S. Marines sword in front of the Peterborough home he shares with his wife and three children. The back of his SUV reads “U.S. Marine Corps Retired,” a slogan he figures is as close as he’ll find for his situation. JOEL WIEBE/FOR METRO

### “It’s incredibly important ... that soldiers’ right to conscience be defended.”

Michelle Robidoux,  
War Resisters Support Campaign

letin in 2010 to immigration officers that stated desertion was to be treated as a crime that makes the resisters ineligible to get residency in Canada.

In a statement to Metro, a spokesperson for the Ministry of Citizenship and Immigration confirmed those who have deserted the military in their country of origin may be inadmissible to Canada under the Immigration and Refugee Protection Act. “Military deserters from the

United States are not genuine refugees under the internationally accepted meaning of the term. These unfounded claims clog up our system for genuine refugees who are actually fleeing persecution,” the statement said.

So far, the lowest sentence anyone has received in the U.S. has been eight months; the most, 24. Those who have spoken out against the war have been punished more harshly, said Robidoux.

Robidoux, who is Canadian, said she helps the war resisters because she believes they are the only people speaking out about the impact of the war on Iraqis.

“The war resisters speak the ground truth of the war in Iraq and it’s incredibly important that their voices be heard and that soldiers’ right to conscience be defended,” she said.

While Robidoux said the bulletin has been the biggest hurdle, rescinding it now may not be enough to change the course of each individual deportation process. She’s hoping the election brings a new government that will legislate Parliament’s will to let the resisters stay en masse.

That’s if there are any left by then.

## Nothing justifies Iraq war: Resister

Dean Walcott was serving in a military hospital in 2004 when an Iraqi tent city was set on fire by a mortar round and the hospital was flooded with burn victims, women and children, screaming and bloodied, he recalls.

Today, he has flashbacks of burned bodies and has been diagnosed with PTSD.

“In the military, you expect death... You know what collateral damage means, but it’s not the same thing when you see it up front in your face.”

Walcott’s not against all war, but everything he saw led him to believe the Iraq war was immoral.

“Dealing with people who came into the hospital, the question all the time was, ‘Why my son? Why my daughter? Why my dad?’ And there’s nothing that justifies it,” he said. “It would have been nice to look at those people and say, ‘We’re doing this for the sake of humanity, we’re doing this to help people.’ And honestly, we just weren’t helping people at all.”

What gets said a lot about war resisters is that they’re “cowards,” said Walcott. But he was working stateside when he decided to run. He’d survived four tours, had PTSD and knew he’d never be deployed again.

“My unit specifically does not allow me to deploy ever again. Where’s the cowardice? Where is it? I deployed four times; I was never going to deploy again. Where’s the cowardice in that?”

He left, he said, because his job required him to help send reservists overseas, and he could no longer handle sending them away to die.

Walcott said one ideological



“I never signed a contract to go kill innocent people.”

Joshua Key

divide often comes from families with a strong military tradition.

“There are families that have been in the military, fathers and grandfathers before them, and naturally they take a great deal of offence to what we’ve done,” said Walcott.

But those families can be proud of their First and Second World War legacies in a way Walcott said he can never be proud of what he did in Iraq.

“I don’t see any honour in attacking somebody who is defenceless. I don’t see any honour in hurting people that never hurt me, never hurt my family, never hurt my government, never came close to hurting my government,” he said.

As for Joshua Key, he said he’s often told that by deserting he’s broken a contract.

“Yes, I sure did,” he said, “but what I went through (in) Iraq, well, I never signed a contract to go kill innocent people. That’s an easy one.” JESSICA SMITH CROSS/METRO

## + BACKGROUND

### Where political parties stand

The Conservative government issued Operational Bulletin 202 in July 2010 ordering immigration officers to consider military deserters criminally inadmissible to Canada. In two separate votes before the legislature, all Conservatives voted against letting deserters stay.

The NDP has called on the government to rescind the operational bulletin and let resisters remain in Canada on humanitarian and compassionate grounds.

The NDP has consistently voted in favour of letting them stay.

A Liberal government would rescind the Conservatives’ operational bulletin and let each case proceed on its own merits, according to a spokesperson. Though former leader Michael Ignatieff led a walkout from a 2010 vote on a Liberal MP’s private member’s bill that would have allowed the war resisters to stay, current Leader Justin Trudeau stayed and voted yea.

It was under former Liberal prime minister Pierre Trudeau that the Vietnam War-era resisters were welcomed to apply for permanent resident status.

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Kimberly Rivera, the first female American Iraq war resister to come to Canada, holds her son Gabriel in her Toronto home on Aug. 30, 2012. She is scheduled for deportation on Sept. 20.

THE CANADIAN PRESS

## Don't deport war resister Kimberly Rivera

DESMOND TUTU

Published Monday, Sep. 17, 2012 02:00AM EDT

Last updated Friday, Sep. 14, 2012 11:33AM EDT

When the United States and Britain made the case in 2003 for the invasion of Iraq, it was on the basis of a lie. We were told that Iraq possessed weapons of mass destruction, and that these weapons posed an imminent threat to humanity.

For the millions around the world who took part in peaceful protests opposing the war, there was certainly profound skepticism about the deeply flawed evidence presented to support the illegal invasion.

But those who were called to fight this war believed what their leaders had told them. The reason we know this is because U.S. soldiers such as Kimberly Rivera, through her own

experience in Iraq, came to the conclusion that the invasion had nothing to do with weapons of mass destruction. Indeed, the presence of U.S. forces only created immense misery for civilians and soldiers alike.

Those leaders to whom soldiers such as Kimberly Rivera looked for answers failed a supreme moral test. More than 110,000 Iraqis have died in the conflict since 2003, millions have been displaced and nearly 4,500 American soldiers have been killed.

There are many people who, while they may have believed the original justification for the war, came to a different conclusion as the reality of the war became more evident. Prime Minister Stephen Harper himself came to the conclusion that the Iraq war was "absolutely an error."

It is large-hearted and courageous people who are not diminished by saying: "I made a mistake." Not least among these are Ms. Rivera and the other American war resisters who determined they could not in good conscience continue to be part of the Iraq war.

Ms. Rivera, who is from Texas, joined the U.S. Army when she was 24 and was stationed in Baghdad. She believed the U.S. efforts would make her country safer. Disillusioned by the reality of civilian casualties, she came to Canada in 2007 and applied for refugee status. She felt she could no longer participate in a war where she was contributing to causing harm and death to innocent people.

The Canadian government has notified Ms. Rivera that she is scheduled for deportation to the U.S. on Sept. 20. Her lawyer says she faces a prison sentence of two to five years on her return. Ms. Rivera lives in Toronto with her husband and four children (two of whom were born in Canada); these are people of courage and peace, and they should be granted asylum.

Canada has a long tradition of giving refuge to people of conscience. During the Vietnam War, more than 50,000 young Americans came to Canada. Many of them volunteered and, like Ms. Rivera, later developed moral objections to a war they could not ignore.

Public opinion polls have shown that most Canadians want their government to continue that tradition today. A 2008 Angus Reid poll showed that 64 per cent of Canadians want U.S. conscientious objectors to the Iraq war to remain in Canada. And Parliament has voted twice to allow American conscientious objectors to the Iraq war to stay.

The deportation order given to Ms. Rivera is unjust and must be challenged. It's in times when people are swept up in a frenzy of war that it's most important to listen to the quiet voices speaking the truth. Isn't it time we begin to redress the atrocity of this war by honouring those such as Ms. Rivera who had the courage to stand against it at such cost to themselves?

During the struggle against the apartheid regime in South Africa, we were sustained by the knowledge of the support we had in the international community. Ms. Rivera has my support and the support of all those who desperately want humanity to move along a path of peace.

Despite all of the ghastliness in the world, human beings are made for goodness. The ones who are held in high regard are not militarily powerful nor even economically prosperous. They have a commitment to try to make the world a better place. I truly believe that Kimberly Rivera is such a person, and that Canada can only benefit from allowing her to stay.

## U.S. MILITARY DESERTERS

# Most Canadians Would Grant Permanent Residence to U.S. Military Deserters

*Albertans, males, and those with a high school education or less are least likely to agree.*

[VANCOUVER – Jun. 27, 2008] – A majority of Canadians would agree with the decision to let American military deserters stay in Canada as permanent residents, a new Angus Reid Strategies survey reveals.

Earlier this month, the House of Commons recently passed a **non-binding** motion calling on the federal government to grant residence to all U.S. soldiers who fled to Canada after refusing to take part in the Iraq War.

In the online survey of a representative national sample, three-in-five Canadians (64%) say they would agree to give these U.S. soldiers the opportunity to remain in Canada as permanent residents.

Quebec (70%) houses the highest proportion of respondents who agree with the motion, while Alberta (52%) has the fewest supporters.

A gender breakdown reveals that while both males and females would agree to let U.S. military deserters remain in Canada, females are much more sympathetic (69% versus 57%).

An analysis of the different education groups shows that the discrepancy between respondents with a university degree (67%), those with a college or technical school diploma (64%), and those with a high school education or less (58%) is also quite significant.

### KEY FINDINGS

- **64% of Canadians would let U.S. military deserters stay in Canada**
- **More females (69%) than males (57%) want U.S. military deserters to be allowed to stay in Canada**
- **Highest support in Quebec (70%); lowest support in Alberta (52%)**
- **University graduates (67%) more likely to grant permanent residence than college graduates (64%) and those with a high school diploma or less (58%)**

Full topline results are at the end of this release.

*From June 6 to June 7, 2008 Angus Reid Strategies conducted an online survey among a randomly selected, representative sample of 1,001 adult Canadians. The margin of error for the total sample is +/- 3.1 %, 19 times out of 20. The results have been statistically weighted according to the most current education, age, gender and region Census data to ensure a sample representative of the entire adult population of Canada. Discrepancies in or between totals are due to rounding.*

Finally, the age and income brackets do not reveal many notable differences amongst the respondents. Respondents aged 35-54 seem most supportive of granting permanent residency to the U.S. military deserters (66%), while the 18-34 group follows closely behind with 64 per cent, and Canadians aged 55 and over with 61 per cent. Respondents in households earning less than \$50,000 a year (68%) are also more likely to agree with the decision to let the U.S. soldiers stay.

The U.S. Army's maximum penalty for desertion is five years in confinement, dishonourable discharge and loss of all pay and benefits. There are thought to be about 200 U.S. military deserters in Canada.

### Military Deserters

As you may now, the House of Commons recently passed a non-binding motion calling on the federal government to grant permanent residence to U.S. soldiers who fled to Canada after refusing to take part in the Iraq War. There are thought to be about 200 American military deserters in Canada. Do you agree or disagree with allowing these U.S. soldiers to become permanent residents of Canada?

	Region						
	National	BC	AB	MB/SK	ON	PQ	ATL
Agree	64%	64%	52%	63%	63%	70%	63%
Disagree	32%	34%	44%	33%	33%	26%	29%
Not sure	4%	1%	4%	4%	4%	4%	8%

### Military Deserters

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	Gender		Age			Income			Education		
	Male	Female	18-34	35-54	55+	<\$50K	\$50-99K	\$100K+	HS or less	College/ Tech school	Univ+
Agree	57%	69%	64%	66%	61%	68%	63%	63%	58%	64%	67%
Disagree	40%	26%	30%	30%	35%	28%	35%	34%	34%	32%	31%
Not sure	3%	5%	6%	3%	4%	4%	2%	2%	7%	3%	2%

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**HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
OTTAWA, CANADA**

39th Parliament, 2nd Session

39<sup>e</sup> Législature, 2<sup>e</sup> Session

The Standing Committee on Citizenship and Immigration  
has the honour to present its

Le Comité permanent de la citoyenneté et de l'immigration  
a l'honneur de présenter son

**THIRD REPORT**

**TROISIÈME RAPPORT**

In accordance with its mandate pursuant to Standing Order 108(2), your Committee has considered the issue of Iraq war resisters.

Conformément au mandat que lui confère l'article 108(2) du Règlement, votre Comité a examiné la question des opposants à la guerre en Irak.

The Committee recommends that the government immediately implement a program to allow conscientious objectors and their immediate family members (partners and dependents), who have refused or left military service related to a war not sanctioned by the United Nations and do not have a criminal record, to apply for permanent resident status and remain in Canada; and that the government should immediately cease any removal or deportation actions that may have already commenced against such individuals.

Le Comité recommande que le gouvernement crée immédiatement un programme permettant aux objecteurs de conscience qui refusent le service militaire ou qui ont quitté l'armée pour ne pas participer à une guerre non approuvée par les Nations Unies, et qui n'ont ni dossier criminel et à leur famille immédiate (conjoint et dépendants), de demander le statut de résident permanent et de demeurer au Canada, et que le gouvernement cesse immédiatement toute action de renvoi ou d'expulsion déjà entreprise contre ces objecteurs.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 6 and 7](#)) is tabled.

Un exemplaire des *Procès-verbaux* pertinents ([séances nos 6 et 7](#)) est déposé.

Respectfully submitted,

Respectueusement soumis,

*Le président,*

**NORMAN DOYLE**

*Chair*

**Dissenting Opinion of the Conservative Party of Canada**

Canada is in full compliance with its international commitments and obligations, by affording all foreign nationals, including American war resisters, the opportunity to make a refugee protection claim, and have it adjudicated by an independent tribunal. The creation of a special program is therefore not required and is at odds with our belief that each immigration applicant should be treated fairly and equally, where all are required to apply for permanent residence through normal immigration channels.

Submitted by:

Ed Komarnicki

David Batters

Nina Grewal

Bradley R. Trost

**Opinion dissidente du Parti conservateur du Canada**

Le Canada respecte entièrement ses obligations et ses engagements internationaux en offrant à tous les étrangers, y compris aux résistants à la guerre américains, la possibilité de demander l'asile et de voir leur demande tranchée par un tribunal indépendant. La création d'un programme spécial n'est donc pas requise et est contraire à notre croyance selon laquelle tous les demandeurs d'immigration devraient être traités de manière juste et équitable, et être tenus de présenter une demande de résidence permanente par les voies d'immigration normales

Présenté par :

Ed Komarnicki

David Batters

Nina Grewal

Bradley R. Trost



HOUSE OF COMMONS - CHAMBRE DES COMMUNES  
CANADA

The Honourable Jason Kenney, P.C., M.P.  
Minister of Citizenship, Immigration and Multiculturalism  
325 East Block  
House of Commons  
Ottawa, Ontario  
K1A 0A6

June 26, 2009

Dear Minister Kenney:

As Parliament rises for the summer break, we write to remind you of the House of Commons' direction to the Government of Canada regarding Iraq War resisters.

Twice now, on June 3, 2008 and March 30, 2009, Members of Parliament have voted to direct the government to immediately cease any removal or deportation actions that may be commenced against Iraq War resisters and their families and to establish a program to facilitate these war resisters' requests for permanent resident status in Canada. In our consideration of this important issue we highlighted that the element of compulsion and the stop-loss provision in the U.S. are inconsistent with our sound values of fairness, understanding, compassion, and justice.

Therefore, we urge the government to show compassion for those who have chosen not to participate in a war that was not sanctioned by the United Nations.

When the House of Commons resumes sitting in the fall, we ask that you act in good faith in accordance with this direction from the majority of Canadians' elected representatives.

Mindful that at other times there has been an apparent increase in deportation activity when the House is not sitting, we urge you not to use the Parliamentary recess to disregard the expressed will of the House of Commons with respect to the fair treatment of Iraq War resisters in Canada.

Yours sincerely,

Honourable Maurizio Bevilacqua  
Immigration Critic, Liberal Party of Canada

Olivia Chow  
Immigration Critic, New Democratic Party of Canada

Thierry St-Cyr  
Immigration Critic, Bloc Québécois

**C-440**

Second Session, Fortieth Parliament,  
57-58 Elizabeth II, 2009

**HOUSE OF COMMONS OF CANADA**

**BILL C-440**

An Act to amend the Immigration and Refugee Protection Act  
(war resisters)

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FIRST READING, SEPTEMBER 17, 2009

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MR. KENNEDY

402244

**C-440**

Deuxième session, quarantième législature,  
57-58 Elizabeth II, 2009

**CHAMBRE DES COMMUNES DU CANADA**

**PROJET DE LOI C-440**

Loi modifiant la Loi sur l'immigration et la protection des  
réfugiés (opposants à la guerre)

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PREMIÈRE LECTURE LE 17 SEPTEMBRE 2009

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M. KENNEDY

## SUMMARY

This enactment allows foreign nationals who, based on a moral, political or religious objection, left the armed forces of another country to avoid participating in an armed conflict not sanctioned by the United Nations or refused compulsory military service for that reason, and who are in Canada, to remain in this country through humanitarian and compassionate consideration.

## SOMMAIRE

Le texte vise à permettre aux étrangers qui, du fait de leurs convictions morales, politiques ou religieuses, quittent l'armée d'un pays pour éviter de participer à un conflit armé non approuvé par les Nations Unies ou refusent le service militaire obligatoire pour cette même raison, et qui se trouvent au Canada, de demeurer au pays en raison de circonstances d'ordre humanitaire.

Also available on the Parliament of Canada Web Site at the following address:  
<http://www.parl.gc.ca>

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :  
<http://www.parl.gc.ca>

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

## BILL C-440

## PROJET DE LOI C-440

An Act to amend the Immigration and Refugee Protection Act (war resisters)

Loi modifiant la Loi sur l'immigration et la protection des réfugiés (opposants à la guerre)

2001, c. 27

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

2001, ch. 27

**1. Section 25 of the *Immigration and Refugee Protection Act* is amended by adding the following after subsection (1):**

**1. L'article 25 de la *Loi sur l'immigration et la protection des réfugiés* est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

War resisters

(1.1) A foreign national in Canada shall be deemed to be in a situation in which humanitarian and compassionate considerations justify the granting of permanent resident status to that foreign national—and his or her immediate family—or shall be exempted by the Minister from any legal obligation applicable to that foreign national—or his or her immediate family—that would prevent them from being allowed to remain in Canada, if that foreign national

(a) left the armed forces of his or her former country of habitual residence or refused obligatory military service in that country because of a moral, political or religious objection to avoid participating in an armed conflict not sanctioned by the United Nations;

(b) is subject to stop-loss orders to report for active duty; or

(c) upon return to the former country of his or her habitual residence, could be compelled to return to service.

(1.1) Tout étranger se trouvant au Canada est réputé vivre une situation relevant de circonstances d'ordre humanitaire qui justifient l'octroi du statut de résident permanent à cet étranger et à sa famille immédiate, ou est soustrait par le ministre à toute obligation légale applicable à l'égard de ces personnes qui les empêcherait de demeurer au Canada, si l'étranger se trouve dans l'une ou l'autre des situations suivantes :

a) il a quitté l'armée de son ancien pays de résidence habituelle ou a refusé le service militaire obligatoire dans ce pays du fait de ses convictions morales, politiques ou religieuses pour éviter de participer à un conflit armé non approuvé par les Nations Unies;

b) il se fait imposer une prolongation de service militaire;

c) il risque d'être obligé de reprendre le service militaire dès son retour dans son ancien pays de résidence habituelle.

Opposants à la guerre

**2. Section 50 of the Act is amended by adding the following after paragraph (a):**

(a.1) until a decision is made on the permanent resident status of the foreign national referred to in subsection 25(1.1) and his or her immediate family;

**2. L'article 50 de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

a.1) tant qu'une décision relative au statut de résident permanent n'a pas été rendue à l'égard de l'étranger visé au paragraphe 25(1.1) et de sa famille immédiate;

Government  
of CanadaGouvernement  
du Canada

# Operational Bulletin 202 – July 22, 2010

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## Instruction to Immigration Officers in Canada on processing cases involving military deserters

### Issue

This operational bulletin provides immigration officers in Canada with instructions on processing cases involving military deserters.

### Background

Some individuals who may have deserted the military or who may have committed an offence equivalent to desertion of the military in their country of origin have sought refuge in Canada. Desertion is an offence in Canada under the *National Defence Act* (NDA (National Defence Act)). The maximum punishment for desertion under section 88 of the NDA is life imprisonment, if the person committed the offence on active service or under orders for active service. Consequently, persons who have deserted the military in their country of origin may be inadmissible to Canada under section 36(1)(b) or 36(1)(c) of the *Immigration and Refugee Protection Act*.

The current inventory of military deserter cases is comprised primarily of members of the United States armed forces who have claimed refugee protection in Canada. Desertion from the armed forces is described as an offence pursuant to section 85 of the *United States Uniform Code of Military Justice*.

Many of the persons in our current case inventory have had their refugee claims heard and have subsequently applied for permanent residence in Canada based on humanitarian and compassionate considerations. Some have also applied for permanent residence in Canada as members of the spouse or common-law partner in Canada class. Others have filed Pre-removal Risk Assessment (PRRA (Pre-removal Risk Assessment)) applications when faced with removal from Canada. These applications are at various stages of processing either in the regions or at CPC (Case Processing Centre)-Vegreville.

All cases which have come to the attention of the Case Management Branch (CMB (Case Management Branch)) have been identified in FOSS (Field Operations Support System) via a non-computer based entry.

## General guidelines

### Processing applications for permanent residence in Canada

Given the complexity of equating either a conviction for desertion or the commission of an act constituting an offence of desertion under a foreign law with an offence under an Act of Parliament (the *National Defence Act*), officers are instructed to contact their Regional Program Advisor (RPA (Regional Program Advisor)) for guidance when processing applications for permanent residence in Canada made by military deserters. Officers are also instructed to copy the Case Review Division of the CMB (Case Management Branch) on their initial communication with their RPA (Regional Program Advisor).

### Processing claims for refugee protection in Canada

Notification of all new claims for refugee protection by military deserters and any updates to these refugee claims including PRRA (Pre-removal Risk Assessment) applications must be provided to CMB (Case Management Branch) using the existing guidelines on processing high profile, contentious and sensitive cases (OP 1, section 15).

### CPC (Case Processing Centre)-Vegreville

In accordance with current instructions with respect to cases where a personal interview or an in-depth investigation may be required, CPC (Case Processing Centre)-Vegreville is asked to transfer applications filed by military deserters to the appropriate inland CIC (Citizenship and Immigration Canada) for processing.

#### Date Modified:

2010-07-23

## Withdraw US war resistor bulletin

On July 22 of this year, Citizenship and Immigration Canada sent a directive to all immigration officers in Canada that sets a basic principle of refugee law on its head. The directive, Operational Bulletin 202, concerns the processing of military deserters who claim refugee status in Canada.

The first paragraph of the directive sets out the following line of logic: Military deserters from other countries have sought refugee protection in Canada. Desertion from the Canadian military is a serious criminal offence. Therefore these deserters may also be serious criminals and therefore inadmissible to Canada.

Conscientious objection to military service, whether by draft resisters or deserters, is a widely recognized ground for granting refugee protection, both in Canada and internationally. Over the years, hundreds of conscientious objectors have been given protection, although not all deserters or draft resisters are accepted as refugees.

The facts of each individual case are considered, particularly: the motives and sincerity of the claimant, the legality or illegality of the military exercise they are seeking to avoid, and the possibility of excessive punishment or discriminatory prosecution.

These are all facts and issues of law to be decided by a member of the Immigration and Refugee Board after hearing the claimant's testimony and evidence.

It is fundamentally wrong-headed and a violation of the UN Refugee Convention to suggest that deserters are automatically inadmissible to Canada before hearing their

claim because desertion is an offence in their own country.

Although the bulletin cites a general principle of law, a closer reading identifies the real target of the directive, namely military deserters from one country, the United States. I presume then that military deserters from other, less friendly and more offensive regimes, such as Iran, Burma, Sudan, North Korea, possibly Syria and Kyrgyzstan, are still welcome to seek refugee protection in Canada and that their violation of state laws will not be a deterrent to making a refugee claim.

The bulletin implies that military deserters from the US should be treated differently than deserters from other countries. There is no basis in law for that proposition. At the risk of repeating myself, that is the job of the IRB and not something to be decided prematurely by a border official before the evidence is heard.

The bulletin then discloses that its precise target is even narrower, namely those US deserters who have already had their refugee claims denied and who have asked to remain in Canada for humanitarian reasons. Once again, the government appears to be circumventing the law and intruding on the independence of the immigration officers who are delegated to decide humanitarian applications based on the law and the evidence.

It is the immigration officer who has the discretion to decide whether a refused claimant, for example, someone who has married a Canadian and may now be the parent of Canadian children, whether that person should be permitted to remain in Canada for humanitarian reasons.

These are difficult decisions with complicated and often heart-rending facts that include the best interests of the children but

may also include the violation of US military laws. Regardless of the relevant factors, responsibility for the decision lies within the discretion of the immigration officer.

Does any Canadian reasonably think that an immigration officer is making an independent decision when he or she is instructed, for US deserter cases, to "seek guidance" from the regional program adviser and to copy their communications to very senior levels of their department?

The clear implication is that any deserter from the US should be denied permanent residence in Canada no matter how sincere their motive for deserting or how compelling their reasons for staying in Canada.

Operational Bulletin 202 misstates the law and seeks to intrude on the independence of both IRB members and Immigration Officers. Out of respect for due process of law, I urge Immigration Minister Jason Kenney to withdraw the bulletin.

**Peter Showler**  
**Director, The Refugee Forum**  
**Human Rights Research and Education Centre**  
**University of Ottawa**

## Drug legalization is not the answer

As a retired RCMP staff sergeant with over 34 years of experience working with drug issues, and as a volunteer working with the poor, the addicted and homeless of the inner city of Ottawa for over 12 years, I have strong insight with regards to drug issues both from an enforcement and a health perspective. (RE: "Vienna declaration: Reducing HIV," Aug. 4)

I have not come across one drug addict who is happy and desires to remain that way. The only way to protect the addict when they are caught up in the downward spiral of addiction is through abstinence-based treatment.

Enforcement is a tool to ensure that the dealers and importers of drugs are dealt with severely through the justice system. Prevention and education are tools that, if properly financed and taught, can prevent a person from using drugs in the first place.

As a society, we have to learn to work together for the betterment of that society, ensuring everyone has the same opportunities to succeed. We need a paradigm shift in our thinking that should be looking at ways to end poverty and how to improve the life of single parent families, which in the long run would also help in minimizing drug use.

To eliminate the prohibition against drugs as drug injection sites and needle exchange programs, recommended by the controversial Vienna Declaration written by supporters of harm-reduction ideology, only condemns addicts to a deeper addiction and to certain tragic and unnecessary deaths.

Legalizing drugs will not eliminate the health and enforcement cost. All we have to look at is alcohol and cigarettes.

It is far preferable and compassionate to help the addict return to a healthy lifestyle, rather than to condemn him/her to committing crimes to continue feeding his drug addiction, as well as to the inevitable violence on the streets.

**Andy Bigras**  
**Member,**  
**Drug Prevention Network Canada**  
**Toronto, Ont.**

## US Military Justice System on Trial: Federal Court overturns the decision of the Refugee Protection Division to Deny an American “Draft Dodger” refugee status in *Tindungan v Canada*, 2013 FC 115

March 11th, 2013 – by [Tessa Crosby](#)

Jules Guinling Tindungan joined the US army as a young man suffering from financial troubles. After a 15 month deployment in Afghanistan, he deserted his unit upon return to the US. Believing that the actions of the US military in Afghanistan were in violation of the Geneva Convention, he began researching online and came across the War Resisters Support Campaign, which assisted him in coming to Canada in June 2008. Once here, he claimed refugee protection and began speaking publicly to news outlets about his opinions on the US military.

In May 2012, the Refugee Protection Division (“RPD”) denied his application to be deemed either a Convention Refugee or a Person in Need of Protection under section 96 and 97 of the [Immigration and Refugee Protection Act](#), SC 2001 c 27. The RPD found that Tindungan had not rebutted the presumption of state protection which is afforded to democratic states, nor had he established on a balance of probabilities that he would be at risk of cruel and unusual punishment if he were returned to the US. While the applicant would suffer some negative consequences of returning to the US, these consequences would not rise to the level of “persecution”

The facts are remarkably similar to those in *Vassey v Canada (Minister of Citizenship and Immigration)*, [2011 FC 899](#) [*Vassey*]. Vassey was a member of the same unit as Tindungan and also deserted to Canada and was subsequently denied refugee status by the RPD.

In *Tindungan v Canada*, [2013 FC 115](#), the Federal Court overturned the decision of the RPD on the basis that its failure to analyze the evidence concerning the independence and impartiality of the US court-martial system was unreasonable.

Tindungan appealed the decision of the RPD to the Federal Court on the following grounds:

1. Did the RPD err by finding that a judicial system which fails to meet basic internationally recognized fairness and due process requirements can nonetheless provide adequate protections?
2. In regards to state protection, did the RPD err by ignoring evidence that directly contradicted its findings?
3. Did the RPD err in law when interpreting both section 171 of the *UNHCR Handbook* and foreign law related to raising a defence in the US court-martial system?
4. As regards differential punishment, did the RPD make unreasonable conclusions without regard to, and not supported by, the evidence?

After reviewing the evidence, the Federal Court rejected the decision of the RPD as unreasonable.

### The Impartiality and Independence of the US Military Justice System

Considerable evidence from expert witnesses on the US Military Justice system was presented on appeal. All the expert witnesses agreed that the US military justice system does not conform to Canadian standards as set by *R v Généreux*, [\[1992\] 1 SCR 259](#) [*Généreux*]. In that case, the Supreme Court of Canada found that the principle of judicial independence applies to military courts. This is similar to the requirements of military courts in the United Kingdom.

Expert witnesses for the applicant argued that, because it failed the *Généreux* test (notably because of the important role played by the military commander) the US military justice system is thus unfair. Countering them, Professor Hansen argued that while the US military justice system failed to meet the *Généreux* standard, this did not render it “unfair”. Professor Hansen did not identify against what standards he was measuring “fairness”. The RPD relied heavily on Professor Hansen’s evidence.

The Federal Court found that by preferring the evidence of Professor Hansen without clearly stating what standards it was using to assess fairness and procedural adequacy, the RPD committed a reviewable error. In reaching this determining the Court stated that it is an error in law to conclude that a system which fails to meet basic fairness standards that are internationally recognized to be fundamental to any tribunal system can, nevertheless, provide adequate state protection. It went on to find that decisions made under the *Immigration and Refugee Protection Act* must be consistent with the *Charter* and Canada’s international human rights obligations.

### **Contradictory Evidence**

Throughout its ruling, the Federal Court criticized the RPD for viewing the Applicant’s personal experiences as isolated incidents that were not condoned by the USA and were not systemic, despite the objective documentary evidence submitted confirming that the opposite was true. The RPD’s failure to analyze this contradiction was a reviewable error.

### **Section 171 of the *UNHCR Handbook***

On this point the Court considered whether the Tindungan would be able to put forward a defence under section 171 of the [UNHCR Handbook](#) to the charge of desertion. Section 171 provides as follows:

“Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.”

The RPD had found that the unavailability of a defence based on section 171 of the *UNHCR Handbook* did not affect state protection. The Federal Court found this was unreasonable, and noted that the RPD had failed to follow the precedent set by *Vassey*. *Vassey* had held that the availability of a defence based on section 171 “goes directly to the availability of state protection”.

### **Differential punishment**

The Court recognized that deserters who speak out publicly against the war in Iraq or Afghanistan are subject to differential punishment in the US. Specifically, while the majority of deserters are administratively discharged, those who speak publicly against the war are more frequently selected to be court-martialled and prosecuted for desertion.

The court found that the US military justice system has no mechanism to protect someone when prosecutorial discretion is exercised in a biased and inappropriate way because of their political opinions. Accordingly the RPD’s decision on this point was unreasonable.

## Proposed Provision for U.S. War Resisters

An overwhelming majority of opposition MPs supported the motions in Parliament – first in June 2008 and again in March 2009 – that would have allowed U.S. Iraq War resisters to stay in Canada.

A strong majority of opposition MPs supported Bill C-440, which would have given legal effect to those motions.

Prejudicial comments made by government officials (including immigration ministers), as well as the imposition of Operational Bulletin 202, have made it impossible for U.S. war resisters to have access to a fair process.

We call for the immediate repeal of Operational Bulletin 202.

Unfortunately, because of interference by the Conservative government, fairness has been compromised and simply rescinding Operational Bulletin 202 and allowing each case to proceed on its own merits will not undo the harm that has been done to these individuals' cases. What is needed is a provision that would put into effect the spirit of the parliamentary motions.

The War Resisters Support Campaign proposes the following provision which would allow those U.S. war resisters identified by Citizenship and Immigration as the “inventory” of Iraq War resisters to have a fair process:

***Issue an Operational Bulletin notifying immigration officers that humanitarian and compassionate reasons exist to justify a waiver under Section 25 of the IRPA for individuals who have left the Iraq War, and directing immigration officers to give these factors primacy when considering the cases of conscientious objectors.***