



October 25, 2007

The Honourable Rob Nicholson, P.C., M.P.
Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

The Honourable Diane Finley, P.C., M.P.
Minister of Citizenship and Immigration
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ministers:

Re: Janet Hinshaw-Thomas

I am writing on behalf of the Canadian Bar Association to express our concern about the charges laid against Janet Hinshaw-Thomas, a church-based refugee aid worker, for violation of s. 117 of the *Immigration and Refugee Protection Act* (IRPA). Section 117 deals with human smuggling and trafficking, making it an offence to “organize, induce, aid or abet” the entry into Canada of persons who do not have a visa or passport. Ms. Hinshaw-Thomas was charged because she was aiding Haitian asylum-seekers entering into Canada.

Ordinarily, when a person is charged, even inappropriately, the Canadian Bar Association would leave the matter to be dealt with through the normal court processes. However, the circumstances of this case lead us to call upon you to first, drop the charges against Ms. Hinshaw-Thomas, and second, to amend IRPA to ensure that s. 117 does not apply to individuals or organizations that assist refugee claimants for humanitarian purposes.

Ms. Hinshaw-Thomas is a director of Pennsylvania-based *PRIME – Ecumenical Commitment to Refugees*. There is no suggestion that she is engaged in human smuggling or trafficking, nor that she was assisting the Haitian asylum seekers for personal gain. Violations of human rights and the breakdown of law and order are so severe in Haiti that the Government of Canada has a policy of not returning persons subject to enforceable removal orders to Haiti. By helping refugee claimants from a country so severely troubled, Ms. Hinshaw-Thomas not only ensures that the individual claimants are protected, she promotes respect for human rights.

The scope of s. 117 was very much an issue before Parliament when it considered the passage of IRPA. Citizenship and Immigration Canada and Justice Canada officials were asked questions before the House of Commons Standing Committee on May 17, 2001. The officials testified that the offences on smuggling and trafficking were not intended to capture humanitarian work. They



assured the Members of Parliament that humanitarian workers were protected because the Attorney General would obviously consider humanitarian motives in deciding whether to consent to a prosecution. They pointed to the fact that the offences under the former *Immigration Act* had never been used in this manner.

These assurances were repeated by then-Minister of Citizenship and Immigration, the Honourable Elinor Caplan, before both the Senate Committee (October 4, 2001) and House Committee (October 25, 2001). The Minister drew a firm distinction between exploitive human trafficking for profit and humanitarian assistance to persons in need of protection from persecution abroad. She clearly indicated that s.117 was not intended to target those groups and individuals providing humanitarian assistance. The consent for the charges against Ms. Hinshaw-Thomas appears to be in direct conflict with those assurances.

Canada played a significant role in the creation of the *Declaration on Human Rights Defenders*, adopted by the United Nations General Assembly in 1998.¹ The Declaration states that everyone has the right to provide relevant assistance in defending human rights and fundamental freedoms. Charging a person with an offence when the activity forming the basis of the charge is assisting refugees to make asylum claims flouts this principle. It is a deterrent for those who selflessly wish to provide humanitarian assistance to those fleeing persecution, no matter what the outcome of the charge. Prosecuting a human rights worker for this humanitarian work is indefensible. It cannot be justified on the basis that the accused will eventually be acquitted.

Accordingly, we ask that the charge against Janet Hinshaw-Thomas be withdrawn immediately. We ask as well that you introduce legislation amending IRPA to ensure that legitimate humanitarian work is not the subject of criminal prosecution.

Yours truly,

(original signed by Bernard Amyot)

Bernard Amyot

cc. The Honourable Stockwell Day, P.C., M.P.
Minister of Public Safety

¹ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* [UN Document A/RES/53/144, 8 March 1999].