

# Offering sanctuary to failed refugee claimants in Canada

Kristin Marshall

The term sanctuary connotes the medieval practice where fugitives from justice could take refuge in a church to avoid prosecution. The abolition of this practice in the sixteenth century was largely celebrated as a sign of progress and a triumph of the rule of law. The resurgence of the practice of offering sanctuary in recent decades turns the original notion on its head; instead of fugitives from justice seeking shelter, fugitives from injustice within the refugee determination system seek protection from deportation within a church, with support from the congregation.

Immigration authorities in Canada still do not enter church property to apprehend individuals living in sanctuary (and in fact have written a policy directive to Canada Border Services Agency officers indicating that entering places of worship should be reserved only for cases involving security threats and serious criminality) but neither do they engage in negotiation about these cases. The result is increasingly lengthy stays in confinement – which serves as a means to discourage the practice of sanctuary.

Congregations undertake extensive scrutiny of failed refugee decisions before accepting someone into sanctuary, in essence acting as an informal merit review in order to safeguard against removal to torture, persecution and human rights abuses. Most churches justified their use of sanctuary on the basis that refused claimants had no right of appeal on the merits to challenge an incorrect decision, so they do the review. An appeal was recently implemented, but it is not available to all claimants.

It is precisely the fact that recent changes to refugee legislation stand in such stark contrast to Canada's international obligations that lends

support to the view that sanctuary providers are taking a civil initiative to uphold Canada's obligations, rather than acting in civil disobedience to flout Canadian law. Providing sanctuary is an effective mechanism to safeguard lives, yet at quite a cost to the individuals and communities involved due to the lengthy delays in close quarters and the uncertainty surrounding the outcome.

With little legal foundation to support the practice of sanctuary, one wonders what stops immigration authorities from entering churches to arrest such people. The answer is the negative publicity: clearly it looks bad to break down a church door, push past a pastor, and drag out refugees that the church claims ought to be protected. One thing for certain is that if a group of concerned individuals decided to shelter a failed refugee claimant slated for deportation, that person would not have the same protection from arrest and deportation that a person invited into the sanctity of a church (synagogue, mosque or temple) currently does. Escaping deportation by going "underground", rather than seeking sanctuary, is often not looked upon favourably by either the immigration authorities or the Federal Court, both of whom view such an act as disrespect for the law.

Sanctuary has been invaluable in the validation that congregations have provided to families and individuals as they pursue justice, confirming that they are cherished, believed and supported. It also serves to bring the congregation and wider community together, to find meaning and focus around what is right and just.

Kristin Marshall [kristinmarshall@sympatico.ca](mailto:kristinmarshall@sympatico.ca) is a lawyer and a member of the Canadian Sanctuary Network. [www.sanctuarycanada.ca](http://www.sanctuarycanada.ca)