

War Resisters Support Campaign

For Immediate Release

April 7, 2011

Federal Court rules in favour of Iraq War resister Dean Walcott

Canadians renew call for Iraq War resisters to stay

TORONTO—On Tuesday, the Federal Court of Canada released a decision reaffirming there is evidence that U.S. Iraq War resisters are targeted for punishment because of their political beliefs if returned to the United States. The judgment <http://www3.sympatico.ca/ken.marciniec/20110405-FederalCourt-WalcottVMinCitizneshipImmigration_IMM-5527-08.pdf> in the judicial review of Iraq War resister and veteran Dean Walcott's case also confirms that immigration officers must consider the war resisters' sincerely held moral, political and religious beliefs.

This is the ninth Federal Court or Federal Court of Appeal decision in favour of Iraq War resisters since 2008 and the seventh Federal Court decision to recognize that there is evidence that these war resisters are targeted for more severe punishment because they have expressed their objections to the Iraq War.

In his decision, The Honourable Yves de Montigny concurred with the Federal Court of Appeal's unanimous July 2010 decision that Iraq War resisters' sincerely held beliefs must be assessed and cannot be ignored by immigration decision-makers.

Justice de Montigny was critical of the immigration officer's cookie-cutter reasons for denying Walcott's Pre-Removal Risk Assessment (PRRA) application, calling them "disturbingly similar" to those that were provided in the case of the first female Iraq War resister, Kimberly Rivera. Each case is supposed to be decided on its own merits.

The decision means that Walcott, a former U.S. Marine, will get another chance to apply for a PRRA and for permanent residence processed from within Canada on humanitarian and compassionate grounds. Immigration officers must take into consideration whether he will face the risk of "differential and therefore persecutory punishment on the basis of political opinion" if deported, and whether humanitarian and compassionate values, including the freedom of thought, conscience and religion, warrant Walcott being able to stay in Canada.

"This decision will have a positive impact on all Iraq War resisters' cases," said Michelle Robidoux, spokesperson for the War Resisters Support Campaign. "The question now is, how many such decisions does Immigration Minister Jason Kenney need before he respects the will of the majority Canadians and allows Iraq War resisters to stay?"

"The immigration minister has intervened persistently and inappropriately, attempting to prevent war resisters from getting fair hearings," said Robidoux. "The next government must rescind CIC Operational Bulletin 202, and let Iraq War resisters stay in Canada."

Walcott came to Canada in December 2006 after serving two tours of duty in Iraq. His first-hand experiences led him to reject the war.

For further information:

Michelle Robidoux, Spokesperson, War Resisters Support Campaign, 416-856-5008;
Alyssa Manning, Legal counsel for Dean Walcott, amanning@vanlehrer.com, 416-963-8405
ext.236;

Ken Marciniac, Communications volunteer, War Resisters Support Campaign,
communications@resisters.ca, 416-803-6066

BACKGROUND**Excerpts from the April 5, 2011 Federal Court judgment**

<http://www3.sympatico.ca/ken.marciniac/20110405-FederalCourt-WalcottVMinCitizenshipImmigration_IMM-5527-08.pdf> in *Dean William Walcott v. The Minister of Citizenship and Immigration*

"The Officer fails to appreciate that the risk of differential and more severe punishment stems from the decision on whether or not to prosecute in the first place." [39] p.15

"This failure of the Officer to properly address the risk of differential punishment is therefore fatal to the Officer's determination that state protection would be available in his country." [41] p.15

"Having mischaracterized the risk alleged by the Applicant, the Officer could not properly assess it. For that reason alone, this application for judicial review ought to be granted." [44] p.17

"Indeed, there was evidence of several U.S. military personnel who were public about their objections to the war in Iraq while being absent without leave being sentenced to incarceration after returning from Canada. In the case of two of these individuals, the evidence before the Officer demonstrated that the fact that they had spoken out against the war in Iraq was argued by military prosecutors to be an aggravating factor in their offence of desertion at their court-martial proceedings." [46] p.18

"Why is a period of incarceration (potentially exceeding 15 months) received by those who voice their political opinions, as opposed to no judicial punishment and an administrative discharge received by those who do not voice their opinions, not differential punishment?" [48] p.19

"How, when speaking out about one's political opinion is seen as an aggravating factor by prosecutors in the offence of desertion requiring maximum punishment, does the evidence not support a finding of differential prosecution and therefore persecution on the basis of political opinion?" [48] p.19

Federal Court/Federal Court of Appeal decisions in favour of Iraq War resisters

Since 2008 there have been nine Federal Court or Federal Court of Appeal decisions in favour of war resisters:

1. Joshua Key - July 2008
2. Cory Glass - July 2008
3. Jeremy Hinzman - September 2008
4. Matthew Lowell - September 2008
5. Dean Walcott - January 2009

6. Kimberly Rivera - March 2009
7. Kimberly Rivera - August 2009
8. Jeremy Hinzman - July 2010 (Federal Court of Appeal)
9. Dean Walcott - April 2011

Key dates: Iraq War resisters in Canada

January 3, 2004: Jeremy Hinzman <<http://www.thestar.com/comment/article/641489>> , the first Iraq War resister to come to Canada, arrived along with his wife Nga Nguyen and their first child Liam.

June 3, 2008: The House of Commons passed a motion <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3204056&Language=E&Mode=1&Parl=39&Ses=2>> directing the Government of Canada to immediately stop deportation proceedings against all Iraq War resisters and facilitate their requests for permanent resident status.

June 27, 2008: An Angus Reid Strategies poll <http://www.visioncritical.com/wp-content/uploads/pdfs/2008.06.27_Soldiers.pdf> reveals that the majority of Canadians agree with the decision to let U.S. Iraq War resisters stay in Canada as permanent residents.

July 15, 2008: Robin Long <<http://www.canada.com/theprovince/news/story.html?id=83bfbe5f-018c-43f9-8f31-20d79f3d0148>> becomes the first U.S. Iraq War resister to be deported by the Harper government.

October 2, 2008: Prime Minister Stephen Harper reversed his previous support for the U.S.-led invasion and occupation of Iraq stating <<http://www.youtube.com/user/WarResistersCanada#p/c/C64942690C831C77/6/JYTTbmCL4RQ>> during the English-language leaders' election debate: "It was absolutely an error. It's obviously clear the evaluation of weapons of mass destruction proved not to be correct. That's absolutely true and that's why we're not sending anybody to Iraq."

January 9, 2009: Jason Kenney was criticized by Amnesty International Canada and the Canadian Council for Refugees for biasing all Iraq War resisters' cases with his public "bogus refugee claimants" comment <<http://www.cbc.ca/news/canada/story/2009/01/09/refugee-war.html>> .

February 4, 2009: Iraq War resister Cliff Cornell <<http://www2.canada.com/nanaimodailynews/news/story.html?id=c74e9d3c-3582-43e8-b34e-352f4e25d473>> was arrested when he crossed the border into the United States after exhausting all appeals to remain in Canada.

March 15, 2009: Members of Parliament Olivia Chow and Borys Wrzesnewskyj met with Iraq War resister Robin Long <http://www.winnipegfreepress.com/canada/breakingnews/MPs-visit-deserter-in-U_S-prison-urge-Ottawa-to-allow-resisters-refuge-in-Canada-41294872.html> in the Naval Consolidated Brig Miramar near San Diego. Long was court-martialed and sentenced to 15 months in prison after being deported from British Columbia by the Harper government.

March 30, 2009: The June 3, 2008 motion <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3681601&Language=E&Mode=1&Parl=40&Ses=2>> was passed by Parliament a second time.

April 28, 2009: Cliff Cornell <<http://www.straight.com/article-216523/cliff-cornell-sentenced>> was sentenced to 12 months in prison and a bad conduct discharge after publicly expressing his conscientious objection to the Iraq War while in Canada. Prosecutors used footage of a television news interview with Cornell as evidence against him.

September 18, 2009: Iraq War resister and veteran Rodney Watson <<http://www.thestar.com/comment/article/742512>> took sanctuary in the First United Church in Vancouver, BC, to avoid deportation by the Harper government. He remains there <<http://www.michaelmoore.com/words/latest-news/iraq-war-resister-marks-one-year-taking-sanctuary-vancouver-church>> today.

July 6, 2010: Federal Court of Appeal issued ruling <http://www3.sympatico.ca/ken.marciniac/20100706-FederalCourtOfAppeal-HinzmanVMinCitizenshipImmigration_A-276-09.pdf> in favour of Hinzman.

July 22, 2010: Citizenship and Immigration Canada, at the direction of Immigration Minister Jason Kenney, issued Operational Bulletin 202 <<http://www.cic.gc.ca/english/resources/manuals/bulletins/2010/ob202.asp>> which formalizes the bias against all U.S. Iraq War resisters in policy that immigration decision-makers must follow.

September 2010: Peter Showler <http://www.resisters.ca/2010.09.29-Embassy_WithdrawUSWarResisterBulletin.pdf> , former Chair of Canada's Immigration and Refugee Board, and Amnesty International Canada <http://www.resisters.ca/Amnesty_International_OB_202_sept_2010.pdf> call on Immigration Minister Jason Kenney to rescind CIC Operational Bulletin 202 because it, "misstates the law and seeks to intrude on the independence of both IRB members and Immigration Officers," and "implies that military deserters from the U.S. should be treated differently than deserters from other countries," despite there being, "no basis in law for that proposition."

April 5, 2011: Federal Court of Canada rules in favour of Iraq War resister and veteran Dean Walcott.
