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Chair

Mr. David Tilson

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• (0905)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): We're going to call this meeting to order, ladies and gentlemen.

This is the Standing Committee on Citizenship and Immigration, meeting number 28, Tuesday, October 20, 2009. Pursuant to the order of reference of Wednesday, April 22, 2009, we are considering Bill C-291, An Act to amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171).

We have before us this morning two witnesses: Mr. Francisco Rico, from the FCJ Refugee Centre; and Martin Collacott, a former Canadian ambassador in Asia and the Middle East.

Good morning to you, gentlemen.

We are going to give each of you 10 minutes to address the committee, and then we will have questions from members of the committee.

Mr. Rico, you're first on the list, so we'll let you go first.

Mr. Francisco Rico-Martinez (Co-Director, FCJ Refugee Centre): Thank you very much. Thank you, honourable members of the committee, for the invitation.

I'm going to submit to the committee a real case that is happening right now. The names of the claimants have been a little bit modified because they are still alive and they or their families back in Mexico could be at risk of their lives. If the committee wants to have the real names and everything, I have them here with me and can produce them for you.

Nohemi and her daughter Bebe came to Canada in August 2004. They were fleeing threats to their lives by Colombian narcotraffickers who were linked to an infamous gang called the La Familia Michoacana. The father of this girl—the husband of this woman—was killed in 2002. Due to financial constraints, the oldest daughter couldn't come with them, but she joined them later on. That happened in August 2004. In October 2005, the refugee protection division of the Immigration and Refugee Board denied the applicants their refugee claim. The reasons are very interesting because they said they don't have a subjective fear of persecution. One of the reasons they gave in the decision is that there is no credible claim because the oldest daughter, who came late, came with a return ticket to Mexico. When they were interviewed—she was interviewed at the airport—she didn't mention that she wanted to make a claim; she mentioned that she was going to visit Canada. They went to the IRB, and on the basis of that, the IRB member decided that this case is not

credible. There is no appeal division, so nobody can correct the findings of the IRB member because it's not an appeal on the merits of the case.

The applicant then applied for judicial review, but of course you know that because the judicial review doesn't go on the merits of the case before the Federal Court, it's meaningless to detect these kinds of problems. The applicant then applied for pre-removal risk assessment. In contradiction to the IRB, the PRA officer believed them. They said, no, I believe this happened to you. They do that because, technically, if the PRA officer decides there is credibility, he would have to call for an interview. In order to avoid interviews, in most of the PRA decisions they accept the claim, they say there's credibility, but they use technical reasons to basically reject the claim. In this case, even though there was plenty of proof that they had gone to the police and everything, the PRA officer decided there was enough protection in Mexico, and they declined the petition as well.

So the applicants were ordered to leave Canada in December 2006. However, they didn't leave because they were so scared to go back. In March 2008 the oldest daughter had to go back. Why? Because the grandma, the mother's mother, was sick, and she went to take care of the grandma. Grandma died five days after she arrived in Mexico. Since that moment, the oldest girl, who at that time was 22, tried to start coming back to Canada. But nobody informed them that there is a procedure for Immigration Canada where they have to present themselves and inform them they are leaving in order to have a record here. She left, and when she tried to come back she was not allowed to make a claim, even for PRA or anything, because the officer at the airport basically sent her back and said they didn't have a record that she was out of the country. She was sent back.

We don't have a mechanism to check at the airport how the officers act. We don't have a mechanism. We don't have an independent ombudsman who you can call to check up on procedures.

• (0910)

On the other hand, there is a procedure at the embassies where they can introduce evidence that a person has left the country undetected and gone back to their country on a certain day. But if you go to any embassy, they refuse to do that kind of procedure, and they have even said that there is no procedure like that. We have had to e-mail the copy of the procedure to the staff at the embassies to try to convince them to recognize that they can do that for a person outside of Canada. The embassies have the obligation to do that according to the Immigration and Refugee Protection Act, but they have ignored that obligation.

So what happened is she was then forced to leave Canada. She tried again a few weeks later because she was at risk. When she returned to Mexico she was attacked, raped, beaten, and threatened by the same people that they mentioned in the immigration and refugee protection division case. They are still insisting that they have a risk. After that rape she became pregnant and she tried to escape again. At that time the mother managed to contact my office—the mother was still here illegally—and we tried to stop the imminent removal of that young woman, but we couldn't. We went to the Federal Court and the Federal Court declined. They said there was not enough evidence that this woman was going to face a risk back home, and she was sent back. That happened in December 2008.

In February 2009 the mother and the youngest daughter of this woman were also removed from Canada. They met and started living together. In March the young pregnant woman had a medical condition and they went to visit a doctor. She was then kidnapped by the same people that they had been arguing about right from the beginning. She was kidnapped in front of her mother and her sister and a friend who was helping them. She ended up dead in June 2009. She was pregnant. The death certificate of this woman basically showed that she had had a caesarean, and this case—

The Chair: A point of order.

Mr. Rick Dykstra (St. Catharines, CPC): Mr. Rico, I apologize. I know you're stating an example and you are going into great detail on that example. But I'm wondering when you plan to speak to Mr. St-Cyr's bill in your presentation, what you like about it and what you don't like about it, and why it should be enacted.

I understand you have a personal issue that you want to get on the table, but our hope is that you're actually going to speak to the bill. That's why we did call you as a witness.

Mr. Francisco Rico-Martinez: Okay.

In that case, let me put the example that this case proved that the judicial review, the appeal division, is not there. That's why this case was not detected when there was a mistake in the original decision. When the person came back, I tried to make a claim to send back the proof. But we don't have any recourse where people can report problems with the authorities at the airports. When they tried to make a claim at the embassy to come back after this woman was killed...we don't have a procedure to bring Mexican people back—

• (0915)

The Chair: You have one minute, Mr. Rico.

Mr. Francisco Rico-Martinez: The other thing is that we submitted all of the evidence to the embassy after this woman was killed, proving that this family is still at risk. The application for a temporary resident permit was approved by the embassy in Mexico. The family, the only survivors, the mother and the daughter, are here and they are alive, which proves that the officers and the management team at CIC in Ottawa, and the person in the embassy in Mexico, were clear that there was a mistake in the whole situation. That's why they are here, and we are processing a humanitarian application. Why? Because we still don't have any remedies to protect these people in another way.

So that's an example of how we need the appeal division to protect these people and many other things.

The Chair: Thank you for that presentation, Mr. Rico. It was an example of the problem.

Mr. Collacott, thank you for coming. You have 10 minutes as well.

Mr. Martin Collacott (Former Canadian Ambassador in Asia and the Middle East, As an Individual): Thank you, Mr. Chairman, and thank you to the committee for inviting me here, because I think this issue is very important.

I'll present my points in two parts: the refugee advisory division proposal itself—I think the short form is RAD—and also other aspects of the refugee determination system. I think you have to look at the RAD in the whole context to get the full view.

First, I'd like to say there's widespread support in Canada for allowing a reasonable number of genuine refugees to resettle in our country. My own family includes boat people from Vietnam. My wife is from Vietnam. So I'm quite sympathetic to this position.

By the same token, many Canadians feel considerable unease about how well the system is working. An Ipsos Reid poll, for example, found that 71% of those surveyed thought we needed a major rethink, while only 29% thought the system was working well.

In 1997 the government-commissioned study “Not Just Numbers”, subtitled “Immigration Legislative Review”, noted that “... public confidence in the fairness, consistency and efficiency of our program—particularly with regard to the in-Canada determination of refugee status—is flagging badly.” That was written more than 10 years ago, but I think the same issues they identified are still there.

The main reason the RAD has not been implemented is quite clear, and it was fully reviewed in the committee's meeting of October 8. No one objects to having some provision for a review of the merits of the case of an asylum seeker whose case has been turned down by the refugee board. At the same time, it is quite clear that to create the RAD before cleaning up the existing series of virtually endless appeals and reviews would only make a bad situation worse.

As witnesses who appeared before this committee pointed out on October 8, the various appeals and reviews currently available to failed claimants can enable them to avoid removal from Canada for years and even decades. Until this situation has been rectified, it would make no sense to add yet another opportunity to delay departure.

There is another related point that was raised on October 8 that although there's no provision at the moment for review purely on the merits of the case, in fact almost all cases, for instance, taken to the Federal Court, which deals with legal points and process, do get into and can get into the merits of the case. It's hard to separate the two.

Creating the RAD at this juncture might be seen as a positive outcome by immigration lawyers bent on keeping their clients in the country as long as possible, but I think Canadians in general would regard a decision to do so as ill-advised.

It's no accident that all six ministers of immigration who have been in office since the current Immigration and Refugee Protection Act came into place in 2002—three Liberals and three Conservatives—have refused to implement the RAD for the reasons I have just described. And I think it's notable that none of the three former Liberal ministers—Denis Coderre, Judy Sgro, and Joe Volpe—supported the bill to implement the RAD when it was put to a vote in the House on April 21 of this year. I think Joe Volpe spoke out strongly against its implementation when it was reviewed by a Senate committee.

In the circumstances, efforts by refugee lawyers and activists to have the RAD created before the existing problems are dealt with should be firmly resisted. To implement it now would make the situation worse than it is already. What we need is a total overhaul of all parts of the appeal and review system.

I'll just comment quickly on a couple of other issues of the refugee determination system.

One of the major problems with the current system is the extent to which we've expanded the interpretation of what it is to be a refugee to the point where it goes well beyond the meaning intended in the UN convention on refugees. The Canadian representative to the UNHCR, in Geneva at a meeting on October 7, 1991, summarized the situation accurately when he stated that to expand—

● (0920)

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): I have a point of order, Mr. Chair.

The Chair: I have a point of order. Excuse me, Mr. Collacott. I'm sorry.

On a point of order, Mr. Karygiannis.

We'll stop the clock.

Hon. Jim Karygiannis: Thank you.

Mr. Chair, I was wondering if we could ask the witness to confine his remarks to Bill C-291 and not expand beyond that as to the determination of refugees. We're studying the appeal mechanism, and I think the committee... I certainly would like to hear more about the appeal mechanism versus how we determine what is a refugee and what is not a refugee.

The Chair: I think the witness is relevant—maybe a little off, but he's relevant.

Carry on, Mr. Collacott.

Mr. Martin Collacott: I must say there was a great deal of discussion on October 8 about these other issues.

The Chair: Mr. Collacott, please just go ahead.

Mr. Martin Collacott: Anyway, what the representative said was that to expand the convention would serve only to disadvantage those who are in most need by further diluting available funds. If the refugee division is drawn too broadly, we risk defining the problem into complete unmanageability. This issue comes up, for instance, in

the case of the Roma people who have made claims, who came from Czechoslovakia. The argument was made that persecution, which is the definition for a convention refugee claimant, can be defined simply as when people are being discriminated against and the government isn't able to prevent it. If you use that kind of definition, we should take a hundred million untouchables from India, among others. None of the other 27 members of the European Union accept claims from Czechoslovakia, Roma or otherwise.

What we should do is have a list of safe countries of origin, countries that have good human rights records or are democratic and don't persecute their nationals. If we are to say, as one member did on October 8, that there is no safe country in the world—this was a witness—surely Canada isn't a safe country. Are we more perfect than New Zealand or Ireland or the Netherlands? Surely many of our native peoples could claim refugee status in other countries. We could then have all of them go to Czechoslovakia and have all the Roma come here, if you accept that kind of definition.

Last year we accepted people making claims from countries like the Czech Republic, Guyana, Hungary, Israel, Jordan, Peru, the Philippines, the Republic of Korea, Thailand, and the United States. No other nation in the world would consider a claim from those countries. Mr. David Anderson, who is the former Liberal minister—

The Chair: Mr. Collacott, I'm sorry to interrupt you, but returning to Mr. Karygiannis' point, the committee is interested as to whether—and you are obviously qualified to speak on this—you favour this bill or not, and your reasons. Your comments are very interesting and relevant to a point, but I think that's what the committee is interested in.

Mr. Martin Collacott: Just to wrap up then, I think we're the most generous country in the world by far, and I can give you statistics to show that in terms of the high levels of acceptance of claims. People say that if we don't implement the RAD, we're not being generous enough. We'll still be the most generous country in the world by far.

I'll skip some of the other issues.

One of the things that was raised in the October 8 meeting was whether there's a security concern about the refugee system. I'll be glad to speak to that if any of the members are interested.

What we need is an overall overhaul of the system. The Auditor General of Canada made that very clear in one of her reports, and I don't think you can look at the RAD without looking at the whole system. The whole system is highly dysfunctional in many ways. The decisions are highly inconsistent among the various members. I think we have to look at the question of appointment of board members, how that's done.

I'll wrap it up there, Mr. Chair. I'd be happy to take questions.

● (0925)

The Chair: Thank you very much, sir.

We'll now go in rounds, with each caucus having seven minutes for questions to either of you. We'll start off with Mr. Karygiannis.

Hon. Jim Karygiannis: Good morning, and thank you both for coming.

Mr. Collacott, it states here that you were a former ambassador to Asia and the Middle East. Can you state which countries and which years?

Mr. Martin Collacott: I was high commissioner to Sri Lanka from 1982 to 1986, when the civil war started and the refugee flows began. I was ambassador to Syria and Lebanon from 1990 to 1993, and I was ambassador to Cambodia from 1993 to 1995.

Hon. Jim Karygiannis: Thank you, sir. You certainly will appreciate the fact that in the countries you served in—be it Syria or Sri Lanka or Cambodia—and during the years you served, the situation changed day to day.

Mr. Martin Collacott: Some aspects did and some didn't.

Hon. Jim Karygiannis: In Sri Lanka, sir, between 1982 and 1986, the situation was changing daily. In Syria, between 1990 and 1993, the situation was changing daily. In Cambodia, by the time you left, the situation was changing daily.

Mr. Martin Collacott: It depends on what you want to say by “changing”. I don't think the basic elements did.

Hon. Jim Karygiannis: In Sri Lanka, for example, you can say that between 1982 and 1986, hostilities on both sides were rising; today in Sri Lanka we have people who were arrested during the civil war last year. There are reports that people were executed. So the situation is very fluid and it changes daily, which goes to the point that I also want to ask you, sir. That is, somebody comes to Canada and claims refugee status from a particular country because they fear for their life; they fear persecution because they've got different political views. When this person comes here...by the time the hearing starts and by the time the hearing finishes, if they have the right to appeal, it might take two or three years, and sometimes even longer. From that time, sir, the situation in that country changes daily, so a decision that is made today for somebody in Sri Lanka, to the time they're removed two years from now...things change. These people should have the right to appeal.

When you apply for Canada pension disability benefits, when you apply for EI, when you apply for anything else in Canada, if the first level refuses you, you have the right to appeal. Why should you or anybody else in this room refuse these people the same right to appeal as other Canadians are enjoying? Is it because they're not Canadians that they shouldn't have the right to appeal?

Mr. Martin Collacott: I do have some problems about whether non-Canadians should have all the same rights as Canadians. The fact is that I, and everyone else—

Hon. Jim Karygiannis: Oh, I'm sorry. Did you say “Canadians and non-Canadians”? Are you saying that immigrants are not Canadians, or people who want to be prospective immigrants do not have the right—

Mr. Martin Collacott: No, I didn't say that, sir. I didn't say anything about immigrants. I said people who are not Canadians, people who simply come here and claim refugee status—sometimes criminals, sometimes terrorists—who simply say, “I have exactly the same rights as Canadians”. I know under the Singh decision of 1985, before the Supreme Court, they were given a lot of the same opportunities to present their case. I guess we won't get into that

issue. I think that was a mistake. If someone is not a landed immigrant and they simply arrive here and say they want to be a Canadian, I'm not convinced they should have exactly the same legal rights as a Canadian citizen or even a permanent resident.

Hon. Jim Karygiannis: Think about this, sir. I came to this country seeking refugee status, and a few years later I'm a member of Parliament. According to you, sir, I shouldn't have the same rights.

Mr. Martin Collacott: You do now—

Hon. Jim Karygiannis: No further questions, Chair. I will pass my time to Ms. Mendes.

Mr. Martin Collacott: Sorry, I disagree—

The Chair: Sorry, sir?

Mr. Martin Collacott: Well...that's all for the moment.

The Chair: Okay.

Ms. Mendes.

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Thank you, Chair.

I would just like to ask that if in terms of our obligations as signatories of the Geneva convention we should not be offering these rights to every single person who knocks on our door and asks for refugee status. I'm not saying there aren't people who are abusing the system; there probably are. We do have obligations as signatories of the Geneva convention.

● (0930)

Mr. Martin Collacott: Absolutely, and I think that's perfectly clear. I think refugee claimants should be given a fair hearing if they are genuine refugees, and they should have some provision for appeal. What I'm saying is the current situation needs a lot of improvement and changes. To implement the RAD at this point without clearing up the other problems would be very unwise. This is my point.

Mrs. Alexandra Mendes: Perhaps it would be unwise, but something has to be done, and done quickly. The problem right now is that the system may need improvements, but we're not doing anything. This is one sector of the law that touches human lives, lives that could be put into danger if they are returned to their country.

Mr. Martin Collacott: Surely we already have by far the most generous system to begin with. We have the highest acceptance rates in the world. I'm not sure what the rush is to make it even higher before we look at some of the fundamental problems.

Mrs. Alexandra Mendes: I'm done.

The Chair: Okay.

We'll move to Mr. St-Cyr.

[Translation]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): Thank you, Mr. Chair.

My comments are also directed at Mr. Collacott.

Something you said at the end of your presentation surprised me a little—indeed, it was a pleasant surprise—although it seems to contradict all of your other arguments.

You criticized the lack of consistency applied to the determination of refugee status cases, and rightfully so. There were clear cases, such as that of two Palestinian brothers who applied for refugee status on the same grounds but who received different outcomes from different board members. In addition, there are board members with an acceptance rate of nearly 100%, while the rate of others is close to 0%. This shows the total lack of consistency between decisions. You agree since you mentioned it in your presentation.

Do you not think that these facts alone justify creating an appeal tribunal, in order to ensure that decisions are consistent, and to monitor and control the work of board members in the court of first instance? That way, they could no longer render decisions where the claimant had no further recourse. They will eventually have to deal with the appeals. If, too often, their decisions are overturned, people will start to ask questions. Establishing a body of case law is the goal of any appeal tribunal. And none exists today.

Do you not think that justifies creating an appeals division for refugees?

[*English*]

Mr. Martin Collacott: I repeat what I said earlier, Mr. St-Cyr: none of us object to having some kind of substantive appeal. The question is whether you introduce yet another layer before you clear up the other mess. I think the inconsistencies of the decision you mentioned point to another problem: why are there such massive inconsistencies?

There has been some discussion of whether we should have a different system for appointing board members. I think we should. You'll get some inconsistencies, but the inconsistencies are just massive. The Auditor General, for instance, pointed out that—

• (0935)

[*Translation*]

Mr. Thierry St-Cyr: I will stop you there because we agree on that.

There are inconsistencies simply because we do not have a body of case law that has been approved by a higher court. Refugee claimants in Canada do not have the option of appealing a decision on the merits.

On February 10, I made the following comment to the minister when he appeared before the committee: “[...] the Refugee Board is the only tribunal in the Canadian justice system that does not provide for appeals on the merits. Am I correct in saying it is not possible to appeal on the merits?” The Honourable Jason Kenny answered: “Technically, you're correct, Mr. St-Cyr [...]”.

On that front, we can look at government documents dating back to December 1997. They explain that the judicial review system is too restrictive when it comes to refugee decisions because of the requirement to obtain authorization before filing an appeal. We have already talked about that. There is no possibility of appealing. Even very qualified board members can have different opinions, and without a higher court to rule on the matter, there is no consistency. That is a clear fact, and it is true for any system.

I want to point out that the appeals division gives not only unsuccessful claimants the option of appealing, but also the minister.

You mentioned the case of the Czech Republic and the fact that board members were accepting claims from that country. If an appeals division existed, the minister could appeal those decisions. Currently, there is no appeals division, and that gives rise to nonsensical decisions.

For example, when board member Laurier Thibault was assessing cases, he turned down 98% of applications. Mr. Collacott, imagine finding yourself before a judge one day—which could happen to anyone at this table, even a law-abiding citizen—and you learn that that judge convicts 98% of the individuals who appear before him. Would you feel that justice would be served?

[*English*]

Mr. Martin Collacott: Again, you've underlined just how badly the system works, and I'll repeat what I said earlier: yes, let's do have a substantive appeal, but let's not just pile that on top of the endless series of appeals we have now. We have people here who've been avoiding removal for 20 years: Mahmoud Mohammad Issa Mohammad was mentioned last time.

There are so many different appeals and reviews, so there's no question why three Liberal ministers refused to implement this RAD.

[*Translation*]

Mr. Thierry St-Cyr: I will continue with Mr. Rico.

I appreciate that you agree that there should be a possibility of appeal. The lawyers who appeared at our last meeting pointed out that there were a number of ways to improve the system without making legislative amendments. Furthermore, everyone agrees that it needs to work well. But it seems to me that adding the appeal recourse is a fundamental point.

Mr. Rico, I want to delve a bit further. The bill before us today aims to bring into force legislation that already exists. When the Immigration and Refugee Protection Act was enacted, we went from two board members to one. The addition of an appeals division for refugees was supposed to balance that out.

Do you think that the first part of the amendment should be passed, that is, going from two board members to one, without passing the second part, namely, adding an appeals division?

[*English*]

The Chair: You have 30 seconds, Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: More fundamentally, should we not respect acts of Parliament first and, if they do not work, amend them later, rather than never implementing legislation that was passed?

[*English*]

The Chair: Mr. Rico.

Mr. Francisco Rico-Martinez: Yes, and the discussion that NGOs and civil society had when we were discussing the Immigration and Refugee Protection Act, and the commitment we received from the Minister of Immigration at the time when we were putting together the Immigration and Refugee Protection Act...she was going to implement the appeal division, and they reduced two members of the IRB to one. Under the criteria, there will be a safeguard mechanism that is going to review the decisions of that member, the only member who is going to see the cases. Therefore, I think I support totally the implementation of the appeal division, because it's not only fair, it's part of the Immigration and Refugee Protection Act, and it's about time. Different ministers have just overseen this situation.

I totally agree with your analysis in terms of the lack of consistency and different things that have happened at the Immigration and Refugee Board, which make stronger the argument for an appeal division at this particular moment.

● (0940)

The Chair: Thank you, sir.

Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): Mr. Rico, regarding your friend from Mexico, her husband died, was killed in Mexico, her daughter was kidnapped and raped, and then she came to Canada. The case for her entire family, including her daughter, was rejected. They were deported back to Mexico. Subsequently, in Mexico her daughter was kidnapped, killed, and her body dumped on the street. This is in Mexico. So Mexico, in your mind, is not necessarily always safe for some people.

Are you surprised if I give you two statistics? Number one, Canada last year accepted 21,860 refugees, the lowest number since 2000. So we have a drop in the cases of refugee claimants' acceptance in Canada. Number two is the refugee board: the independent audit found that the majority of the appointees—in fact, 61% of them—were appointed without merit or without fulfilling some kind of guiding principles and guidelines of fairness or transparency, etc. So under that kind of situation, is it surprising that this system at this point has failed your friend and her family, and how would the appeal division assist in your specific case where the family was deported?

Mr. Francisco Rico-Martinez: What I was trying to say when I presented the case to the committee, and I maybe failed to do that, is that this case is an example of the lack of recourse that a rejected refugee claimant has under the Immigration and Refugee Protection Act. It's clear in this case that if we had an appeal division that analyzed the case on its merits and reviewed the case itself, it would have concluded differently. But the judicial revision system doesn't meet the standards for an appeal division.

The other thing is that we also don't have mechanisms to correct mistakes we make in the system when we send poor people back to their countries and these people have further problems or further risk. In the case of the family from Mexico, we have to think outside the box. We have to call the management team in Ottawa and the embassy to make an application for a temporary resident permit. That doesn't apply itself to this situation, but they understood the risk and they understood the mistakes the system made in this case and

they brought it back. This case is a good example to prove the lack of recourse.

We have other recourses that you have to analyze. You are moving in the right direction with the appeal division, but we need to talk as well about an immigration ombudsman who is going to take complaints and make immigration officers everywhere accountable to the procedures and to the morality of this country. We don't have that mechanism yet. That's why the whole situation must be.... Now that we are not changing anything else yet, now that we are dealing within a points system that is lacking in terms of the selection of the best members for the IRB, one mechanism to safeguard decisions and to save lives is to implement the appeal division of the Immigration and Refugee Protection Act.

● (0945)

Ms. Olivia Chow: Do you agree that for the refugee board all appointments should be done according to merit and according to clear guiding principles, instead of partisan considerations, and that they shouldn't be through an order in council? They should not be appointed by the minister's office, because clearly the audit said that if 33 out of 54 appointments were not made based on merit, or failed the guiding values, then there is something wrong that one board member would decide on the fate of the family, like the one you are talking about. That board member would have life and death—in this case, death—on his hands.

So it's critically important that there is an appeal process.

Mr. Francisco Rico-Martinez: As far as I know, all of the experience of refugee law agrees that we don't have a good system to appoint or to screen or to select board members. Everybody, even the Conservative Party, agrees that we have to improve the system. The difference is, or the problems are, how they believe it is to be improved.

The last modification the Conservatives did to the selection of board members, when they basically reduced the independence of the committee that nominates the board members, goes in the opposite direction and creates more problems in terms of the political influence of the party in government to decide on the members of the IRB, which is totally wrong. We have to go in the opposite direction. We have to create a full technical review of the board members and select based only on the merits and experience they have in deciding these cases. We will have a wonderful institution that is run with fewer problems in terms of the decisions they make, and it will be less influenced by the political estates of the minister of immigration at any moment—for example, using the bogus claims from Mexico. The political appointee of the IRB is deciding at this particular moment that all of the cases from Mexico are bogus, and therefore the rate of acceptance for Mexican cases, even though the country conditions are totally different, is going down every single day.

The Chair: Thank you, Mr. Rico and Ms. Chow.

Mr. Calandra, you're next.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): Thank you, Mr. Chair.

I'm thinking about the witnesses. Mr. Collacott, you obviously have a great deal of experience and you've obviously maintained a fairly decent knowledge of the system and everything that has been going on. You've been hearing a lot of testimony, obviously, with respect to this.

I'm trying to wrap my head around a number of issues. I want to go down one avenue with you. You've said in your statement that we have one of the most generous systems in the world for both legitimate refugee claimants and those who are not.

I actually want to talk about the economic refugee claimants, because they are treated much the same way as those who we really want to encourage to come to Canada and we want to protect. Much of the time, the economic immigrants are doing it to jump the queue as such. In your remarks, you started to go down the road of explaining some of the difficulties with our current system. I wonder if you might continue in that vein and tell me how you think the current system actually attracts the bogus refugee claimant as well as the real claimant.

Mr. Martin Collacott: Thank you for the question. Largely, because we have such a generous system—we approved last year, for instance, a little over 51% of the claims that were finalized. Other countries average about 15%. No one comes close to our numbers.

I'd like to get back to the question Mr. Rico-Martinez was asked: Who decides these cases? Who are the members of the board? The point has been made that they should be completely independent of government policy. The fact is, other countries use professional civil servants who are specially trained in immigration law and human rights to make the initial decisions. Then you get more consistency. And then you have a good review system, with an appeal. So these things go together. But right now, we have a system where anyone from any country can make a claim.

The system where we had two board members ruling on a claim actually slanted the playing field in favour of the claimant, because if only one approved, that was enough. If the other disapproved of the claim, the claim went through. Then there was another aspect that if a claim was refused, there had to be a report written; it didn't have to be written if it was approved, only if it was rejected. As a result, the playing field was heavily slanted in favour of the claimant. Now it's not. Therefore, I think there's ample evidence that many of the people who we do approve, compared with what other countries approve, do not have a good case. If you have a good case, you're going to make your claim overseas. We take more than 10,000 people a year from overseas. That's where we should be getting most of our people, not those who are making claims in Canada. Some may be genuine, but by international standards most are not.

If we were being balanced and fair and humanitarian, we would give more money to help refugees in camps. We give about \$3 or \$4 a year to each of the 10 million or so refugees in camps. We spend \$10,000 a year on claimants here, who by international standards are mostly not real refugees. I think our system is badly out of whack. There's a whole industry formed around processing people who make claims in Canada. There's no industry formed around helping immigrants in camps overseas, or helping select those. We have some commitment to helping those who are overseas, but that's

where we should be putting our money and our efforts, selecting people overseas, helping people in camps.

We should adopt international standards on safe third countries and safe countries of origin, like other countries do. The numbers making claims would be much lower. We could process their claims more fairly, I think with public servants, which was what was recommended in the government-commissioned "Immigration Legislative Review", and then we should have a good appeal system that could include something like the IRB. But you must clean up the present mess first or you'll simply make things worse.

● (0950)

Mr. Paul Calandra: That's a theme that we've been hearing a lot, actually. Two weeks ago, when we were also hearing witnesses on this matter, witness after witness was telling us that the system needs to be modified or changed, that bringing in an appeals division on its own would potentially make the system even worse, and I know our minister is considering bringing forward some changes very soon.

Let me ask you bluntly: what impact do you think bringing this legislation forward right now, on its own, would have on making Canada even more attractive to the economic refugee claimant?

Mr. Martin Collacott: I think it would have that impact. One of the attractions of the system now is that even if you're turned down, you can keep appealing and having reviews. Somebody estimated that implementing the RAD would add another five months to the system. So I can see why immigration lawyers would love it—another chance for them to intervene in the process.

I think it's abundantly clear it will only make the matter worse. Once again, I think there is need for a provision for a substantive review of the merits of the case. There's a lot already done in that area, even though not officially, through the Federal Court reviews of cases. But unless you're going to look at the thing as a whole, let's not make it worse before we make it better.

The Chair: That's it.

We have about five minutes left. The first hand I see gets it.

Go ahead, sir.

Mr. Andrew Kania (Brampton West, Lib.): Mr. Collacott, a quote I took from you in terms of one of the reasons why you're opposed to this is you said that refugees have an "endless series of appeals". I want to review that with you.

At present there's the refugee protection division, which makes these decisions, correct? And you'll agree with me that there actually is no formal appeal from that at present, correct?

• (0955)

Mr. Martin Collacott: Not as part of the IRB, but you have the pre-removal risk—you have a series of appeals that are available to a refused claim.

Mr. Andrew Kania: No, no, this is technical.

Mr. Martin Collacott: All right. Technically, within the IRB, yes.

Mr. Andrew Kania: There's no actual appeal right now at all from the refugee protection division, correct?

Mr. Martin Collacott: Not within that division, no.

Mr. Andrew Kania: Right. So if somebody wants to try to actually appeal, they have to file an application for leave to appeal to get judicial review from the Federal Court, correct?

Mr. Martin Collacott: They can do that, yes.

Mr. Andrew Kania: Right. And you'll agree with me that they have very limited grounds for where they actually would grant judicial review.

Mr. Martin Collacott: Technically, yes.

Mr. Andrew Kania: Right. So it's a very small percentage of cases that actually would have the benefits of judicial review at all, correct?

Mr. Martin Collacott: Yes. May I comment on that?

This is partly because we've already approved in the IRB a much higher percentage than any other country in the world. I think we've probably gathered in most of the legitimate cases, so not many do get reversed by the Federal Court.

Mr. Andrew Kania: But one of the reasons for that is because when the Federal Court examines it, first, they don't have the power to reverse it. They can only send it back for hearing, correct?

Mr. Martin Collacott: Yes.

Mr. Andrew Kania: Secondly, they're reviewing it on very limited technical grounds such as whether there has been a mistake on the question of fact or law, something like that. It's not a full review to determine whether it was just simply correct as a decision, you will agree.

Mr. Martin Collacott: They do in fact get into questions of merit, although you're quite right, technically their job is to simply review whether due legal process has been followed.

Mr. Andrew Kania: Not whether or not the decision was what they would do, but whether there were some mistakes made.

Mr. Martin Collacott: Yes.

Mr. Andrew Kania: So in essence there is no appeal right now, correct?

Mr. Martin Collacott: In principle.

Mr. Andrew Kania: That's right.

Mr. Martin Collacott: There's no appeal on the merits, technically.

Mr. Andrew Kania: Right, exactly. That's the point; there's no appeal on the merits. And even for somebody who wants to try to get

judicial review, they have to find a source to fund that to go to court. You can't do it for free, correct? You need a lawyer.

Mr. Martin Collacott: Yes, and you can get legal aid.

Mr. Andrew Kania: Assuming that they give enough hours and assuming that they approve the person, right?

Mr. Martin Collacott: Yes.

Mr. Andrew Kania: So in essence, then, you'll agree that there really should be an appeal mechanism at some point, out of fairness, to make sure that the substance of the decision is actually reviewed by somebody. You must agree with that.

Mr. Martin Collacott: I've said that already.

The Chair: Okay.

I'm going to give Mr. Young a question.

Go ahead, sir.

Mr. Terence Young (Oakville, CPC): Thank you, Chair.

Mr. Collacott, did you say there are 10 million people in refugee camps in the world?

Mr. Martin Collacott: Yes, and those aren't just internally displaced; those are actual refugees outside the country.

The Chair: A point of order, Mr. St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: On a point of order, Mr. Chair. I understand that Mr. Young still has questions he would like to ask, but when this committee was formed, we established certain rules. Accordingly, after the Liberal critic, it is the Bloc Québécois' turn to ask a question.

[*English*]

The Chair: You're right. You have the floor for a couple of minutes.

[*Translation*]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good morning, gentlemen.

[*English*]

Mr. Terence Young: On the same point of order.

The Chair: Mr. St-Cyr is right, although he's not taking his—

Mr. Terence Young: I'm not disagreeing, sir. I'm trying to understand, Chair, what is this procedure where you say to the committee members “hold up your hand and whoever is first”—

The Chair: No, no, I created a new rule and now I withdraw it.

I think our time has come to an end, ladies and gentlemen.

Gentlemen, I appreciate your both coming. Now the committee is going to have a clause-by-clause review. There's only one clause.

Thank you very much for coming.

- _____ (Pause) _____
-
- (1000)

The Chair: Okay, ladies and gentlemen, I'd like to start the second hour of this committee, which is clause-by-clause consideration.

Mr. Dykstra has put me on notice that he wishes to make a notice of motion on something.

Mr. Rick Dykstra: Yes. I have to speak on the issue prior to moving to clause-by-clause.

I do appreciate the fact that we've been at this for a while in terms of dealing with the bill. We've actually had two pretty interesting sessions in regard to our witnesses. I'm suggesting that for any of the witnesses we've heard from, from all of the parties involved, regardless of which party you happen to represent, there is a strong desire. Obviously, regardless of the positions that our witnesses have taken with respect to the private member's bill, each and every one of them have indicated that there needs to be an update, if you will, on new legislation introduced in regard to this whole issue of asylum seeking in this country, of refugees making claim here.

I'm simply asking the committee to consider not voting against this. I know that all parties have made up their minds in terms of how they're going to vote, or all individuals have. I'm just going to respectfully move and ask this committee to support, and based on the minister's intention to move forward with a package of reforms to the refugee system, which may actually include an appeals mechanism suitable to members of this committee, that pursuant to Standing Order 97.1(1) this committee request a 30-day extension for consideration of this bill.

The Chair: The motion is in order.

Mr. Karygiannis.

Hon. Jim Karygiannis: Thank you, Chair.

I hear what Mr. Dykstra, the parliamentary secretary, is saying. Certainly in the last couple of days there have been some heightened tensions and some celebrated cases of people seeking refugee status, and the minister has jumped in and made some comments, pretty well putting a prejudice on the case and not letting the system work on itself. We have the boatload of refugees who have come from Sri Lanka, and the minister has already jumped and made the decision and has given directions to the people about which way they should be moving, influencing the outcome of this. Certainly this is not the place of the minister.

Now I hear Mr. Dykstra saying he wants another 30 days. Well, do you know what? I personally think we've done due diligence on this. We heard it. It was from last summer. I have to give Mr. St-Cyr credit for bringing this forward. I don't think we can afford another 30 days. This is something we examined. The committee has to move on its own. When the minister comes forward with amendments or changes and all those things, we will discuss it then.

I don't see why we should wait until the minister makes up his mind. This committee is a master of its own direction and therefore

we should let the committee deal with where we want to go. When the minister decides where he wants to go, then he can tell us what he wants us to examine. I don't think we should be tied to the minister, or what the minister's schedule is, or the minister's press releases, or what the minister's thoughts are.

The Chair: Yes, Monsieur St-Cyr. Then Ms. Mendes and then Mr. Dykstra.

[*Translation*]

Mr. Thierry St-Cyr: I do not think that this is a matter for debate. I just want to remind the parliamentary secretary that the bill sets out a one-year implementation period. I do not think the government needs a year and 30 days to implement its bill, not including the time needed to have it passed by the Senate. Even if we can agree that the system is in need of a comprehensive review, there is nothing in the bill to prevent us from walking and chewing gum at the same time.

- (1005)

[*English*]

The Chair: Ms. Mendes has withdrawn.

Mr. Dykstra.

Mr. Rick Dykstra: The reason for the request is simple. I'm not trying to be strategic in terms of trying to pull something out of the hat here. This is a reasonable request. I'm suggesting that the request is being made based on the fact that we are going to have legislation introduced by the minister. I've stated in my remarks that there is a potential for Mr. St-Cyr's request to be part of that legislation.

I would think that if the committee members can take me at my word on this, there in fact will be the opportunity to debate this legislation at this committee for a good deal of time. I'm simply making a request to delay the vote on this to allow for the minister to implement what everyone around this table has asked for in terms of legislation. I'm not saying everyone's going to agree with that legislation. It's going to come to this committee. We're going to debate that legislation. We're going to obviously move to clause-by-clause on that legislation. It's just a simple request to give us an additional 30 days to allow the minister the time he needs to be able to move forward with respect to that introduction.

The Chair: Thank you.

Ms. Mendes.

Mrs. Alexandra Mendes: If I may, Mr. Chair, I will note that we did give the whole summer to the minister for the introduction of the new legislation. It was upon a request from the government that I withdrew a motion in this same sense. We did have the whole summer. We're now at the end of October. I don't see what 30 days is going to change.

If this bill will be integrated in the legislation the minister is going to propose, all the better, but it won't change anything. It does provide for a year until implementation. It's not something that is going to be requested to be submitted in the next 30 days in the House, so I don't see on what reasonable grounds we'd have to wait another 30 days.

The Chair: Ms. Chow.

Ms. Olivia Chow: We heard the submission that many things can be done without having the legislation changed. For example, we could restore the \$4 million in cuts inflicted on the refugee board. We could hire more of the permanent refugee protection officers and give them the power to grant approval status. That would fast-track a whole whack of them. It would clear up the backlog and remove political patronage from the appointments at the refugee board. All of that can be done right now by the minister without dealing with the legislative change, so I see no need to delay.

The Chair: On the motion to extend for 30 days, all those in favour?

(Motion negatived)

The Chair: I'm going to call clause 1 of Bill C-291.

Mr. Rick Dykstra: Can I ask for a recorded vote?

(Clause 1 agreed to: yeas 6; nays 5)

The Chair: Shall the title carry?

Mr. Rick Dykstra: Can we get a recorded vote?

The Chair: Okay. Here we go again, Mr. Clerk.

(Title agreed to: yeas 6; nays 5)

• (1010)

The Chair: Shall the bill carry?

Mr. Rick Dykstra: Can we get a recorded vote?

The Chair: Mr. Clerk, a recorded vote, please.

(Bill C-291 agreed to: yeas 6; nays 5)

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Clerk of the Committee (Mr. Andrew Chaplin): There's no reason to ask to reprint the bill, so that question need not be put.

The Chair: Then we're finished.

Some hon. members: Hear, hear!

The Chair: Excuse me. Just one minute.

Did you want to make a motion on something, Mr. Karygiannis?

Hon. Jim Karygiannis: There's a motion, and if we have the time I could certainly address it now, or I can come back to it next time. Everybody was given an opportunity to....

The Chair: Maybe we'll distribute this to the members, if you could hold on for a moment, Mr. Karygiannis.

Hon. Jim Karygiannis: Sure.

The Chair: This is a motion that Mr. Karygiannis served some time ago, so it should be familiar to you.

Do we all have copies?

An hon. member: Yes.

The Chair: Mr. Karygiannis, would you move the motion?

Hon. Jim Karygiannis: Thank you, Chair.

I'd like to move this motion. It is something I submitted back on September 18. It was in our briefing books.

I would like to call departmental officials as well as witnesses so that we can review what we see time and time again in our constituency offices. We get people coming in saying that their application for a visitor's visa for their parents has failed or that an application for a visitor's visa, be it for diplomats or for a performing group that is coming to Canada, has failed.

Most often, although we're able to give them advice on what to do or not do, we're not getting information back from the post. The post sometimes sends us back an answer saying that they failed and that's it; go away and leave us alone. Although we try our best to give information and direction to our constituents on how to make a perfect application, time and again there's a bit of failure on everybody's part.

This is an opportunity for us to call witnesses, stakeholders, and department officials and to examine how the process is done, how we can make things better, and how we can answer our constituents. It's not only for members of this committee but for other members also. From this we will get more information. I believe that at the end of the day we would be serving our constituents as well as people who want to come to visit Canada.

Many people applying to come to Canada figure they can send their application in without any supporting documentation, or the supporting documentation is not what it needs to be, or other countries do not have supporting documentation of the kind we want. We ask people to present tax returns, but from countries where there's no taxation whatsoever, what tax returns can they present?

There are people who feel that they've been wronged when they apply. I'd like the opportunity—at this session, or whenever we get some free time—to call people in to examine this.

There are also people who report that they cannot go to a post, people who live in countries where it's difficult for them to go. For example, people from Armenia who want to apply for a visitor's visa need to travel to Moscow, or they can send it in. They never get an opportunity to see an immigration official face to face. Maybe we need to look at an opportunity for people from those countries; we may need to get more site visits into those countries where we have no posts.

That's one of the things I'm bringing to this table, and I'm looking for the support of the committee because I think we all face those difficulties. Although we have a high success rate from a lot of countries, there are things we can do better to attract more visitors to Canada as we try to beef up our economy and make it better.

I've seen reports coming out of China where people have applied and have failed because they don't include everything; people sometimes don't think they have to.

So I'm giving this to the committee and asking for your support.

•(1015)

The Chair: Ms. Chow.

Ms. Olivia Chow: Mr. Chair, I want to speak in favour of this motion.

I have noticed that we turn down about 20% of the applicants for visitors' visas. That's about 200,000 each year—we bring in 1,000,000. There seems to be a variation in some visa offices. In Chandigarh or Islamabad the refusal rate is very high, whereas in other visa offices the approval rate is extremely high. The officials send out a standard answer form on which there's just a check box that says “you do not have sufficient ties”; I'm sure all of us have seen these kinds of forms.

Often we are asked as members of Parliament to intervene. The applicants and the relatives here in Canada should not have to call upon their member of Parliament to intervene in these cases.

I think, if nothing else, we should examine this matter and look at how other countries, such as Australia and England, deal with this. They have an appeal process, but we haven't. At a bare minimum, the process needs to be more transparent; it needs to appear fairer. Right now, many applicants who are rejected have no reason for having been refused. It's very difficult for them to understand why Canada is turning them down.

We're talking about 200,000, which is a very large number of applicants, and their relatives here in Canada. I would definitely support studying this issue.

I know we are dealing with foreign credentials this Thursday, and a few weeks later we're dealing with family class wait times. My understanding, Mr. Chair, is that after we do the family class wait times we do not have a matter in front of the committee. This would fit perfectly after we do the family class wait times. I would support this as a priority after the two issues in the next few weeks. I think we're ready to look at this issue.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Mr. Chair.

This motion has been on the books for awhile. It has been tabled and is being introduced today. One of the things we have done at this committee is refer these types of study motions to our steering committee to find a time and proper place for the study to be done. I would recommend that we refer it to our steering committee.

The Chair: Let's see whether it carries first. If it carries, then your comments are legitimate. If it doesn't carry, your comments aren't legitimate.

Mr. Kania.

Mr. Andrew Kania: Thank you, Mr. Chair.

I'm not on this committee, as you know. I've only been an MP for one year, but my impression, having worked with the immigrant communities for years before as a lawyer, is that during the last four

years there has been a significant increase in denials of visitors' visas. I personally think there is a crisis in this country with respect to treating immigrants fairly and allowing their friends and family to come to visit.

In July, at an event called the World Punjabi Conference, which was a thinkers' conference to promote Punjabi culture at which Minister Kenney and I spoke, it came to light that of these thinkers and academics who were trying to come into Canada to speak and participate at this conference, 12 out of 12 people from Pakistan had been denied visas, and 50 out of 75 from India had been denied visas. I called at that time for public review by the minister of these visa requirements; it was in the press. I've been ignored by the minister. I think this motion needs to be adopted so that we can consider this fully.

As well, I have written confirmation from the minister's office now—because with the number of denials in the countries of origin, what next occurs is that people apply for minister's permits—that they will not accept and consider applications for minister's permits for special occasions any longer, for weddings, anniversaries, and those sorts of things. In circumstances where the minister will no longer take the time to consider special occasions, it is imperative that we consider and make sure that the visa requirements at the ground level in the countries of origin are fair and transparent. We must be considering this.

•(1020)

The Chair: Mr. Karygiannis.

Hon. Jim Karygiannis: I'd like to add to what my colleague Mr. Kania said.

Maybe I'm wrong, but I'd like to make a correction. I think the minister will not entertain any requests for minister's permits if they're coming from the opposition parties; however, sir—

An hon. member: No, no, that's not true; that's—

Hon. Jim Karygiannis: Let me have my say.

An hon. member: What does this have to do with the motion?

The Chair: All right, let's stop this.

We're going to vote now.

(Motion agreed to)

The Chair: I think Mr. Dykstra is correct. We have an agenda that we have set. The committee has approved it; the motion has carried. I would suggest that this matter be put to the subcommittee, to be perhaps dealt with at the end of what our current agenda includes.

Is that agreed?

Mr. Karygiannis.

Hon. Jim Karygiannis: I would add, just as a clarification, that this matter should be referred to the subcommittee to be added to the agenda.

The Chair: I don't know. We're getting tricky here.

[*Translation*]

Mr. Thierry St-Cyr: It is not complicated. When we adopt a motion such as this.... In subcommittee, when we set the agenda, we look at.... Before the steering committee meets again, we will no doubt have adopted a few others, in keeping with tradition. We review them and set priorities. That is all that needs to be done.

[*English*]

The Chair: The motion has carried. Unless there are some strong objections, it's going to the subcommittee.

Ms. Chow.

Ms. Olivia Chow: I'm wondering whether, because of your very efficient chairing—it's 10:20 right now—the subcommittee might

meet immediately after this meeting so that we can get it dealt with. I don't really want to have another separate meeting for one item at another time, unless you want to figure out another time before all the other issues. We have confirmed foreign credentials and family class wait times. I don't think we are going change that, and I don't think it's rocket science for us to decide what we do afterwards.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: No, I don't want any answer. We have a normal procedure on this.

The Chair: Okay.

The meeting is adjourned.

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