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Chair

Mr. Norman Doyle

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● (1530)

[*English*]

The Chair (Mr. Norman Doyle (St. John's East, CPC)): We should get moving, I suppose, because my watch says it's half past the hour, right on the button. We'll get on to our agenda.

First on the agenda is the first report of the subcommittee on agenda and procedure.

We had our first steering committee meeting on Wednesday of last week, I believe it was. Essentially, we dealt with three items on the steering committee agenda. The first recommendation was that the committee begin clause-by-clause consideration of Bill C-14 on Wednesday.

I think we can just leave that one and go on to Bill Siksay's motion:

> That, pursuant to Standing Order 108(2), the Committee recommends that the government place an immediate moratorium on deportations of all undocumented workers and their families who pass security and criminality checks while the new immigration policy is put in place; and
>
> That the Committee adopt this recommendation as a report to the House and that the Chair present this report to the House.

The third recommendation was that the committee undertake a work plan. You have the work plan there.

Does everyone have a copy of the report? The work plan is there, as you can see.

The first one is not in any way controversial, is it—that we would try to get on to clause-by-clause by Wednesday on Bill C-14?

Okay. I guess we will talk a little bit about Bill Siksay's motion. Are there any concerns anyone would like to raise?

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): I have a concern I'd like to raise, Mr. Chair, at some point, if Mr. Siksay wishes to address it. As I understand it, the first two motions in their entirety have been withdrawn or are not before this committee.

The Chair: They're not before the committee.

I'll just go to Bill first on his motion. Bill.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, chair.

You'll remember that I tabled three motions and referred them to the agenda subcommittee. We decided that the first two could go to the times when we discuss the question of undocumented foreign workers, regularization, and temporary foreign workers, but there was some feeling at the agenda and planning committee that the third motion—the one that's before us now—was more urgent, given that there were—

The Chair: That will be dealt with probably in the agenda items we're going to talk about.

Mr. Bill Siksay: Right. The other two will be dealt with on the back page of this report.

But there was some sentiment at the agenda subcommittee that we should deal with this one now, given that undocumented folks were currently being deported, notably Portuguese workers in the Toronto area, mainly in the construction industry, but also folks originally from Pakistan, and that this was causing considerable hardship for their families. Also, there was considerable concern that they were making a substantive contribution to the Canadian economy, that their work was necessary, particularly in areas like the construction trades, and that to remove these people despite the fact of their adaptation to Canada and their contribution to the economy was an inappropriate way to proceed.

The motion asks that those deportations be stopped where there are no issues of criminality and security, and that a new policy be put in place to deal with the circumstances of these people, and that until that new policy is in place there be no further deportations.

The Chair: Thank you, Bill.

Ed.

Mr. Ed Komarnicki: I had raised the issue directly with Mr. Siksay, and certainly in my own regard I feel that the motions themselves are made pursuant to Standing Order 108. I think it would be fair to say that it would be, to my mind, inappropriate to have a report go to the House when it's really not a report, particularly in light of the fact that, as I understand it, one of the issues we're going to be dealing with in fairly urgent priority is the undocumented workers as a whole. It would be number two in our items, and it certainly could be number one. I don't have an issue with saying that it's important enough for the committee to have a look at, and I certainly would have invited Mr. Siksay to amend his motion to say that the matter would be one of the considerations of the committee. There are obviously two points of view, two issues, to the whole issue that is raised in his motion, and it should be something that the committee considers from both sides before they make a recommendation.

More importantly, I find that Standing Order 108 was not meant for the purposes that we are now using it on a regular basis, to do motions of various kinds for whatever reasons. They are meant essentially to be for studies and reports. If we look at Standing Order 108(1)(a)—and this is a point of order, Mr. Chair, I'd like you to rule on—standing committees have a number of ways that they report to the House. First, the House under Standing Order 108(1)(a) can request that a committee study a matter and report. If we look at the words that they use, they talk about "study and report".

We go to Standing Order 108(2), and it says:

> (2) The standing committees, except those set out in sections (3)(a), (3)(f), (3)(h) and (4) of this Standing Order, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House.

It also says:

> In general, the committees shall be severally empowered to review and report on:

a number of issues that relate to its mandate, and its mandate, of course, is pretty wide and varied and deals with matters related to its general policy and operations on immigration.

When we look at Marleau and Montpetit, it talks about, very specifically, what a committee is entitled to do. It says that the committee can hear witnesses, get points of view from various interested parties, hear all of the aspects, and after they review it and after they hear it, they then put forward a report. It indicates very specifically what the report is to look like in terms of summarizing the evidence, the issues, and putting the conclusions forward by way of recommendations and motions such as Mr. Siksay has proposed to the House to consider, and the House then reports back. But without considering a shred of evidence, without calling any witnesses or doing anything in the nature of what's considered to be a report, we're asking this House to respond to something that has no substance to it. The House would probably report back and say, study the situation and have a look at what the appropriate recommendation should be.

I would say that it would be an abdication by this committee to simply proceed with a motion without doing any review whatsoever, and pass it off to government to respond in 120 days, because this, at most, is all that's going to be accomplished—a response to that motion.

We look at the Oxford definition of the issue of a "report", and it's defined quite simply as normally an account given or an opinion formally expressed after an investigation or consideration. The word "review" means an assessment of a subject or thing. These are conditions precedent to making the matter come before the House. So I don't think we can put forward motions this willy-nilly because of any particular reason without giving this committee the opportunity to actually debate it, discuss it, review it, call witnesses if necessary, and do it in a proper fashion, and then put it in the form of a report to the House.

To simply have a motion that gives a conclusion without the committee doing anything, and having any business to do anything, except make a point of order is irresponsible, I think. It doesn't put the committee members in the place where they should be, and it is an affront to them. I myself consider that having to vote on an issue without having any basis or facts upon which to rely is an abdication of my duty.

So I strongly, on a point of order, would oppose a motion that is not a report going forward to the House. I would, therefore, take issue on a point of order and say that this motion is inappropriate under Standing Order 108 and should not be allowed, Mr. Chairman.

● (1535)

The Chair: Are there any further comments on the motion?

Mr. Telegdi.

Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.): Mr. Chair, I don't think this is quite willy-nilly. The committee has been around and has heard many witnesses on this issue. You see how the issue of undocumented workers has really moved up on the priority list on the agenda.

One of the things I mentioned when we were debating this in committee is that we have probably 2,000 to 3,000 people who have fairly serious criminal records that fall into that category on whom our resources should really be focused in terms of apprehension and deportation, versus undocumented workers who are contributing to the economy. The minister said that when he was in front of us, recognizing that these undocumented workers are making a substantial contribution.

The two previous ministers had indicated that they wanted to deal with this issue. The last minister we had before the government fell, Minister Volpe, tabled a work plan with this committee. His number one priority was undocumented workers. It didn't just start from there. It was built upon by what was done by Minister Sgro prior to that.

The reality is that we've had numbers of incidents pertaining to this issue. I must say, the government actually did the right thing, and I say that very sincerely, as it pertained to the situation in schools where officials for security were going in and using kids as bait to get their hard-working parents—which has been documented.

Again, there was a report on the news last night where an undocumented worker came forward and reported a crime, which helped to put a pedophile behind bars. The Conservative government did the right thing on that—they landed her—because there was this whole policy issue about whether we were going to punish good Samaritans.

But the fact of the matter is that this is not a new issue. This is an issue that has been around. It might be new to the parliamentary secretary, and I understand that, because the parliamentary secretary hasn't served on this committee before. I dare say, if you go through the witnesses we have heard, you'll see that quite a bit of work has been done and we have heard from witnesses on this.

It just doesn't intuitively make any sense—it's a high priority for the committee, and I'm sure it must be a priority for the department, and I hope it is—that you would be spending resources on going after undocumented workers who are making a contribution to the Canadian economy. Essentially, I don't see any problem in dealing with this at this time. I'm very sincerely hoping that the government will put their focus on those criminals who we all agree should be put out of this country, instead of going after somebody who's making a contribution to the Canadian economy on an issue that we are dealing with.

So we will be supporting this motion that is before us, and I very sincerely hope the government acts on it in good faith.

● (1540)

The Chair: Boris, you have a point, and I will take one more point from Ed, and then we'll see what we're going to do to move on to our witnesses.

Boris.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): In fact, I'll be echoing some of the statements made by Mr. Telegdi.

This is not, as was presented, a new issue. The issue of undocumented workers has been with us for quite a while. It's an issue that's been treated with great seriousness by this committee in the past. Some of the terminology used by Mr. Komarnicki was really unfortunate, when he said that this was a willy-nilly attempt at changing the process, and he used the words “willy-nilly”.

We're dealing with human lives. The previous government had come forward with a work paper on how to deal with this very serious issue. We're in fact trying to save this government from itself, because it's this government that's been proceeding willy-nilly, sending law enforcement officers into schools to hold kids as ransom to get at their parents and separating families. Canadian-born children are being separated from parents who are being deported.

The motion puts a moratorium on this to try to prevent the Canadian government from proceeding in a manner that's having a tremendously negative impact on people's lives, people who've lived here for many years, worked hard, and have no criminal records. There are no security concerns about them.

We can proceed with evidence to take a look at and to give careful thought on how we should start the process of landing these people. In the meantime, let's do the right thing and put a moratorium forward so that we don't make mistakes.

● (1545)

The Chair: Thank you, Borys.

Mr. Ed Komarnicki: So we're not confused on the issue, there's obviously much in terms of compassionate grounds that we as a Conservative government have taken into account. As Mr. Telegdi has indicated, we have acted compassionately and will continue to do so. When you compare the record of what we've done in the short term that we've been in government against what the Liberal governments have done, you will find that we've done fewer deportations than the Liberal governments have done.

Why was there not a moratorium after 13 years? It's a problem that didn't arise yesterday; it's been there. It's been there for a long time, and you've done absolutely nothing.

I don't take issue with the substance of the motion, because it's something we need to consider in the study, it's an important issue, and it's an issue that needs direction from this committee. What I am taking issue with is this committee abusing Standing Order 108, using it for something that it was never intended to do, and trying to do a report, which is not a report, by way of a motion. It's a discredit to this committee.

If you follow this particular Standing Order 108, you need to do a report. A report would require you to bring forward the evidence that you have, put it before the committee, and put it in report form so that it can go forward to the House.

The compassions are great, the importance of the case is great, and we've done more in the short term than you've done in 13 years.

The Chair: Okay.

Mr. Ed Komarnicki: But that's not the issue. The issue is jurisdiction. You're trying to abuse Standing Order 108, and I don't want to be a party to it or responsible for that kind of report, which is not a report.

The Chair: A point of order has been raised and some authorities have been quoted. I've asked the clerk to check the various authorities.

We'll take it under advisement and we'll get back to the committee. If we have a committee meeting tomorrow on Tuesday, we can get back to you then. If not, we'll be back on Wednesday.

We'll check the various authorities that you've quoted.

Hon. Andrew Telegdi: Mr. Chair, if Bill was here, he'd tell you that the committee does what the committee does. I don't feel that—

The Chair: Mr. Komarnicki has raised a point of order.

Hon. Andrew Telegdi: Well, he's raised a point of order. We can have a ruling on it.

The Chair: He's cited various authorities. We need time to check out the authorities, and I've asked the clerk to do that. We'll come back on Wednesday with a ruling at that time.

Mr. Siksay, I'm reluctant, because it's 10 minutes before 4 o'clock.

Mr. Bill Siksay: I hear you, Mr. Chair.

I only want to say very briefly that I believe the committee has often proposed this kind of motion to a very specific issue, recommended a very specific action, passed it after debate at the committee without necessarily hearing witnesses, and reported it to the House. I see that as being very consistent with our past practices and I take serious issue with the parliamentary secretary's arguments on it.

The Chair: We'll certainly take that into consideration when we're checking the various authorities.

Can we move along to number two on the agenda?

We have witnesses today on Bill C-14, An Act to amend the Citizenship Act.

I want to welcome on your behalf four people from Citizenship and Immigration: Rose Kattackal is director general of the Integration Branch; Mark Davidson is director of Citizenship (Registrar); Alain Laurencelle is counsel, integration and admissibility team, legal services; and Karen Clarke is acting manager, policy and program development, citizenship division.

Welcome to our meeting to talk about Bill C-14.

I will pass it on to Rose.

● (1550)

Ms. Rose Kattackal (Director General, Integration Branch, Department of Citizenship and Immigration): Thank you, Chair.

I will present a short deck to you and then we'll be very happy to answer your questions. The experts are here with me today, so hopefully we'll be able to do that.

[*Translation*]

I am delighted to be here today to talk about Bill C-14, an Act to amend the Citizenship Act (adoption). I would like to explain the proposed amendments.

Bill C-14 is the culmination of many years of work involving stakeholders, members of Parliament, standing committees, and Parliament as a whole. This is a redesigned, modern piece of legislation that reflects Canada's national and international obligations.

The content of today's presentation is as follows: the purpose of the amendments, a summary of the bill; information with respect to who is eligible; certain criteria to be met with respect to adoption; adult adoptions; the review process; a brief discussion of the coming into force of the legislation; and a comparison between the current Act and what is proposed in the bill.

As regards the purpose of the amendments, the proposed legislation would facilitate access to Canadian citizenship for foreign-born children adopted by Canadian citizens. It would reduce the difference in treatment between children adopted by and children born to a Canadian parent outside Canada.

Under the proposed amendments to the Act, children adopted by a Canadian citizen would be able to acquire Canadian citizenship as soon as the adoption was finalized.

[*English*]

Now I have a few words on the summary of the bill.

The bill would allow any person adopted outside Canada after February 14, 1977, by a Canadian parent to become a Canadian without first having to become a permanent resident. Adoptive parents may still choose to sponsor their child through the immigration process. And you may ask why. For example, this may occur if the adoptive parents are concerned about the child losing his or her nationality of origin should the child's country of birth not recognize dual citizenship.

Adoptive persons would no longer have to meet the citizenship grant requirements of permanent residents seeking citizenship, including, where applicable, residence, language, knowledge, and oath of citizenship.

To respond to charter concerns, all adopted persons would no longer be prevented from acquiring citizenship for any criminality or security issues. The reason for this is to reduce the difference in treatment between children born to and those adopted abroad by Canadians. Adopted persons cannot be subject to prohibitions. This is a matter of equity. Children born to Canadians outside Canada are also not subject to these prohibitions. Also, making a distinction between persons based on age may also raise charter concerns; for example, having prohibitions apply to adoptive persons who are 18 and older, but not those under 18.

The proposed criteria for adopted persons seeking citizenship reflect the criteria listed in the Immigration and Refugee Protection Act and regulations.

Who is eligible? As soon as the provision comes into force, any person residing in or outside Canada who is adopted abroad by at least one Canadian parent after February 14, 1977, can apply for citizenship under this process. The provision is available to persons adopted after this date because this is the date the current act came into force. Children born outside Canada to a Canadian parent after that date are citizens.

Persons not eligible: neither parent is a Canadian citizen at the time of the adoption; and it is not a full adoption, that is, a simple adoption or guardianship.

Slide 6: I'll say a few words on children adopted in Canada. Some countries, as you may know, do not allow adoptions or do not allow people who are not their citizens to adopt a child from their country. Other countries may only allow a guardianship arrangement to allow the child to leave the country and enter Canada with the intention of being adopted in Canada. IRPA contains a provision to allow a child to be sponsored and enter Canada as a permanent resident with the intention of being adopted in Canada by the sponsor.

If there is an intention to adopt the child, until the adoption is completed in a province or territory, the child is not considered to be adopted. The proposed provision would only apply to children who have not yet been adopted and who enter Canada with the intention of being adopted. It is important to note that immigration recognizes a broader set of relationships for sponsorship purposes than the relationship recognized for citizenship. Citizenship only recognizes the parent-child relationship. Until the adoption takes place, the legal relationship between adoptive parent and adopted child does not exist. Once the adoption is completed, application for citizenship is possible.

● (1555)

[*Translation*]

At the same time, the adoption must meet certain criteria: first, the adoption of a minor must be in the best interest of the child; there must be evidence of a genuine parent-child relationship, it must meet the legal requirements of the country of adoption and the country where the adoptive parent resides, and finally, it must not be an adoption of convenience.

Adoption of adults must meet the above criteria, with the exception of "the best interests of the child", and be approved once it has been established that a genuine parent-child relationship existed prior to the child turning 18, and at the time of the adoption.

[*English*]

I will cover a few of these criteria for you in slide 8.

The adoption must be in the best interests of the child. CIC will check that there is evidence that an approved home study has been completed and that the child has undergone a medical exam for the purpose of providing the prospective adoptive parents with information about the medical condition of the child. An application will not be refused for a medical condition.

As part of the citizenship process for children destined for Canada, CIC visa officers will request confirmation from the province or territory where the adoptive parent resides to confirm that the province or territory approves the international adoption, or has no objection, as the case may be. This process will reflect what already happens under immigration and refugee protection regulations, and it acknowledges provincial-territorial jurisdictions in adoptions.

Slide 9: genuine parent-child relationship. The adoption must have created a genuine parent-child relationship that permanently severs legal ties to the child's biological parents. Simple adoptions and guardianships do not meet this requirement, but may qualify for permanent residence. As you may recall, I said earlier that some foreign countries do not allow or provide for full adoptions to take place in their country. They may allow the child to leave the country and enter Canada with the intention of being adopted in Canada. So the adoptive parents will still have to sponsor their child through the immigration process, in cases where the adoption is going to take place, and/or be finalized, in Canada.

Slide 10: legal adoption. The adoption must be completed in accordance with the laws where the parent resides and the laws where the adoption took place. For parents residing in Canada, the province or territory must confirm that the adoption is valid and that it meets Hague Convention standards. Included is a special provision recognizing the unique adoption provisions of the Quebec Civil Code. Uniquely, Quebec law does not finalize an adoption until the child is residing in Quebec, even if a full adoption takes place outside Canada. Without this provision, children destined for Quebec would have to go through the immigration process to enter Canada, because they would not have access to the provisions in Bill C-14 until after they arrived in Quebec and after the adoption was recognized by the Quebec Superior Court. This provision must be in the act, not in the regulations, to allow access to citizenship for children destined for Quebec.

For adoptions where the families are remaining abroad, the decisions of the country of adoption and the country of residence of the parents will be respected. Where the foreign authorities do not require home studies or medical examinations, this provision will provide CIC authority to request such evidence.

Slide 11: adoption must not be undertaken primarily to gain immigration or citizenship status, or the primary purpose of acquiring privilege or status under IRPA or the Citizenship Act. Essentially this refers to adoptions of convenience, which would be refused. Officers are given the delegated authority to grant citizenship to foreign-born children adopted by Canadian citizens because they have the necessary knowledge and experience to assess foreign adoptions. This is how we will make sure that adoptions of convenience do not happen.

Slide 12: adult adoptions. Persons who are adopted when they are 18 years of age or older at the time of the adoption will be eligible for citizenship under this provision, providing there is a parent-child relationship that existed before the person turned 18 and at the time of the adoption.

● (1600)

The adoption must also meet other criteria, including that the adoption was legal and met the applicable requirements as to where it took place and where the adoptive parents reside; that it created a genuine parent-child relationship; that it not be subject to the "best interests of the child" criterion, because after the age of 18 you're considered not to be a child; and that it not be an adoption of convenience.

An example of where this might occur is when the child is residing with a foster parent before the age of 18 and, only later when the child is an adult, it is decided to make the parent-child relationship permanent through adoption. Including adult adoptions is necessary for charter reasons.

There will be a review process, which is explained on slide 13. Applicants whose application is refused by a citizenship officer may apply for judicial review. This is the same review mechanism available for other negative decisions rendered by the minister or his delegate under the Citizenship Act. If the judicial review is negative, failed applicants would also have access to the Federal Court of Appeal and, with leave, to the Supreme Court of Canada. Other applications for which the minister or delegate is a decision-maker are those for the grant of citizenship for children under 18 and the issuance process for citizenship certificates; that is, proof of citizenship.

Delegated citizenship officers determine who is and who is not a citizen under the act. A judicial review would allow the court to review the reasonableness of the decision of the visa officer, who would be acting as a citizenship officer. Currently, a full appeal to the Federal Court on fact and law is not available in either the citizenship or immigration context. From a policy perspective, giving full appeal rights to the Federal Court to one group creates an inequity. The same can be said for giving access to the IAD for refused citizenship applications for adopted children.

Slide 14 deals with coming into force. The provisions will come into force after the regulations and adoption are completed and on a date to be set by the Governor in Council. This means that applications can be submitted on or after the date the provision comes into force. Adoptive persons who have an existing application for citizenship when the provision comes into force can be assessed under the new provision.

Finally, slide 15 compares the current and proposed legislation. Under the current act, you would have to apply for permanent residence for the adopted child; and if qualified, the child would enter Canada as a permanent resident. Under the proposed Bill C-14, it would then become the same: an application for Canadian citizenship; if qualified, granted citizenship; and then entering Canada as a Canadian citizen.

That's the end of my presentation. We'd be very happy to answer your questions.

The Chair: Thank you.

Before I go to Andrew, you mentioned charter concerns—that adopted persons were subject to criminality or security prohibitions. Can you tell us the nature of the charter concerns there would be? I don't think you explained to us what the nature of the charter issues would be if adopted people were subject to criminality or security prohibitions. Do you have any information you can share with us on that?

● (1605)

Mr. Mark Davidson (Director, Citizenship (Registrar), Department of Citizenship and Immigration): Mr. Chair, the statement is here.

We've looked at the issue of how far we should go in reducing the distinction between natural-born children and adopted children and whether we can reduce it to this extent. The feeling after looking at court cases, particularly a case a number of years ago that started with the human rights tribunal and eventually led to the Federal Court of Appeal, was that we had to reduce as much as possible distinctions between natural-born and adopted children, and that would include reducing or eliminating the prohibitions under citizenship.

In the case of natural-born—or biological—children of Canadian citizens who are born abroad, there are no security or criminality prohibitions. In having those kinds of prohibitions for adopted children, the feeling is that you'd be making a significant discrimination between adopted children and natural-born children.

In reviewing that, we also need to look first at whether it would likely lead to a section 15 failure in the charter—I think the assumption is that it probably would—and whether there could be a section 1 defence of that. The challenge is to be able to argue in a section 1 defence that it's more likely for adopted children than for natural-born children to be criminals.

In asking the question, you almost give yourself the answer. Certainly we don't have any evidence in front of us that would suggest that adoptees are more likely to be criminals or security concerns than natural-born children.

The Chair: Of course, you hear so much about terrorism today and of adoptions of convenience. Is there any evidence you can point to of terrorists wanting to bring children into Canada through adoption and the citizenship process, or anything like this, that has come before you or you might be aware of?

Mr. Mark Davidson: The short answer is no. The slightly longer answer is that the vast majority of these cases are the classic Canadian family adopting minor children, under four or five years, and the vast majority of those cases are processed very expeditiously. There is no evidence there is a problem.

The challenging cases tend to involve older children where there is some evidence of concerns about adoptions of convenience. But in terms of security or criminality concerns for adoptees, there are absolutely none.

The Chair: Thank you.

Andrew.

Hon. Andrew Telegdi: Thank you, Mr. Chair.

The Chair: We're going to the seven-minute round. Okay?

Go ahead.

Hon. Andrew Telegdi: To touch on what you just mentioned, you had me wondering. If somebody is being adopted who definitely has a security consideration—somebody 15 or 16 years old who might even have gone to a camp—what would the mechanism be for us to say, no, you can't?

Mr. Mark Davidson: The process would normally start where the parent resides in Canada. The province would do the first review. The Canadian citizen parent would apply for a grant of citizenship for this individual. If we had concerns that there was an adoption of convenience—for instance, that the purpose of coming into Canada was to circumvent the immigration or citizenship rules, or even the rules around security or criminality in the context of citizenship—the application could theoretically be refused. But barring that scenario, there would not be a mechanism for us to refuse the granting of citizenship to this kind of individual.

Again, the purpose here is to eliminate the distinction between those children born to a Canadian citizen overseas and those adopted by a Canadian citizen overseas. The goal is to reduce that distinction as much as possible.

● (1610)

Hon. Andrew Telegdi: I think there's a bit of inconsistency in terms of how you want to treat people, because we have cases right now where children less than a year old come to this country and 20 years down the road, for whatever reason, they never got citizenship and end up being deported. So you have that scenario, and that's because they committed crimes in Canada. And in this case, you have the other scenario in which you have people who might have committed offences and might have attended these camps all of a sudden getting a pass into the country.

Somehow that doesn't jive, in my way of thinking. You really are splitting hairs, except I think you would more...let the first ones, who have spent all their lives in Canada and gotten into trouble, stay versus being deported.

Mr. Mark Davidson: If the first individual was either adopted by a Canadian citizen after the 14th of—

Hon. Andrew Telegdi: No. We have families where somehow the kids spent 20 years in the country and they never took out citizenship. We'll take those people and deport them, even though they've spent all their adult life and their childhood growing up in Canada. That's the point I'm trying to make. The parents might have citizenship, because they took out their citizenship, but the kids didn't.

I have seen this happen on numerous occasions, where young kids grow up in Canada, having come here at a very early age, and 20 years down the line get sent out. That's my problem with this.

Mr. Mark Davidson: There certainly is a review in the immigration context for long-term permanent residents who may be subject to deportation because of the provisions of the Immigration and Refugee Protection Act. For those cases there is a fairly careful review that goes through before those individuals would be subject to removal from Canada. Again, if the individual had been adopted after February 14, 1977, even if they are not now a citizen, they would benefit from this amendment to the Citizenship Act. Likewise, anyone who was born to a Canadian citizen overseas after February 14, 1977, would gain the benefit.

Hon. Andrew Telegdi: You're going on my dime here, so let me stop you there.

My next question comes from the law association, the submission to Citizenship and Immigration by the Canadian Bar Association. Is there any way of trying to work on an appeal to the IAD? I don't know if you saw their paper. They raised some good points, and I wonder if you could take a look at it and see if you can address it, because there's a world of difference between the IAD and judicial review. Judicial review is very narrow; it doesn't go into it to the extent that IAD does, so it infers that if you go to the immigration section, you get a better deal on appeals than if you go through this section. I'm wondering if you could harmonize that by an amendment by this coming Wednesday.

Mr. Mark Davidson: We have seen the submission, thanks to the CBA having sent it to us. The kind of decision we're talking about here is a decision of the minister or the minister's delegate. The review mechanism that exists presently in the Citizenship Act is a judicial review. Unlike judicial reviews that exist in the immigration context, there does not have to be a leave to the Federal Court for the individuals to have direct judicial review.

By creating another kind of review, you're setting up a distinction between these children and, potentially, other children who are applying for citizenship under other provisions of the Citizenship Act. You're creating a distinction between this group and other groups in the Citizenship Act that don't have access to that review.

● (1615)

Hon. Andrew Telegdi: Except that if they go to the Immigration Act they have the benefit of that review, and if they go to the Citizenship Act they don't. It seems to me it would make sense to harmonize them, since we're dealing with kids trying to get citizenship. If harmonization were possible, I think it would make it a better bill. That's the point I want to make.

I'm out of time.

The Chair: Thank you.

We might have to tighten up a little bit, because if we're going to stick to our schedule of closing up at 4:30 and bringing on our next group, it might be a little bit difficult, given the seven minutes for each one and then going to five-minute rounds.

Madam Faille.

[*Translation*]

Ms. Meili Faille (Vaudreuil-Soulanges, BQ): In Quebec, there are three possible methods of adoption, depending on the child's country of origin. There is the process whereby a child is adopted from a country that has ratified The Hague Convention. There is also a scenario where the adoption is finalized abroad, before the child arrives. And finally, there are cases where the adoption is finalized only once the parents have demonstrated that they are good parents by undergoing certain assessments, and that they have abided by the conditions and criteria in effect in those countries, which is the case with countries such as Thailand and the Philippines.

First of all, can you provide us with figures regarding the countries of origin of adopted children? What proportion of children are adopted in countries that have ratified the Convention, and what proportion are adopted in other countries? In what percentage of cases is the adoption finalized abroad, and in what percentage of cases does that occur only once the child has arrived in Canada? Could you also explain in detail how this is going to work?

The minister assured us that this bill had been fully reviewed by the Government of Quebec. And yet no one seems to know what the final process will entail. We don't know at what point information will be exchanged with the provinces, given that they have jurisdiction over international adoptions. Do you have any material in that regard that you could provide us?

[*English*]

Mr. Mark Davidson: Just to answer the final question first, we have been discussing this bill and the ultimate regulations with stakeholders, primarily the provinces. We've been having that conversation with provincial governments for a number of months, if not years. The bill was drafted particularly in concert with the Province of Quebec in order to guarantee that extra step that's necessary in Quebec adoptions.

We have undertaken to share the draft regulations with the provinces and other key stakeholders, and will certainly be sharing think documents, think pieces, with them over the summer.

The final process has not yet been regularized. It's likely to look very much like the present immigration process, where the adopting parent can start the process of applying for a grant of citizenship even before they have a named child. Most often what happens is that the parent contacts the province and indicates that they're interested in adopting. Preliminary communication starts with the Department of Citizenship and Immigration, and then the parent contacts the foreign country or the foreign country's agencies to identify a child. So we would start the process on the citizenship side, and once the child had been identified and the match had taken place between the parent and the child, the application would be finalized. All of that has yet to be finally nailed down, but it will be very similar to the existing process.

On the numbers from various countries, I don't have that broken down by province. We have shared some information with the committee on the number of immigration adoptions where the adoption has been finalized. That's in the range of 2,000 per year. That does not include the individuals who are to be adopted in Canada. In other words, these are adoptions that have been finalized overseas and are the best match to the Bill C-14 scenario.

Children to be adopted in Canada are the ones Rose referred to in the slide on page 6. For those individuals, the Bill C-14 process would only kick in once the adoption had been completed in Canada. In other words, they'd have to come in via the immigration process and have the adoption finally recognized in Canada—be adopted. Only after they were adopted would the Bill C-14 process take place.

● (1620)

[*Translation*]

Ms. Meili Faille: Thank you. Can you provide us with detailed statistics by province?

Just to add to what my colleague was saying with respect to appeals and the parents' rights, I'd say that we are somewhat concerned about the process that has been proposed. There is also the fact that these provisions will only come into effect once it has received Royal Assent. I don't want to sound negative, but thus far, the Department has decided what provisions it wants to put in place, and we have absolutely no control over the regulations.

So, unless you can provide us with assurances that the bill will be passed in its entirety, we will continue to have concerns with respect to certain clauses.

[*English*]

The Chair: Thank you, Madam Faille.

Bill.

Mr. Bill Siksay: Thank you, Chair.

Thank you for being here today.

I want to come back to where Mr. Telegdi ended up on the review process. I'm sure you know that in last Parliament, when the committee was doing its work on the Citizenship Act, we often tried to be very clear that we thought citizenship was of such importance to people and so fundamental that the review process, the appeal process, needed to be strongly upgraded. The committee in its recommendations said, specifically on adoption, that when an application is refused there should be a full appeal in the Federal Court.

I know that you raised concerns about it being an equity issue because that kind of appeal doesn't exist in other parts of the Citizenship Act. Can you expand on that a bit further for me?

Mr. Mark Davidson: As was explained previously, there are other kinds of decisions comparable to this decision; in other words, a grant of citizenship where the minister or the minister's delegate is making the decision.

The way the present Citizenship Act is structured—and we have to remember the act has been in place fundamentally since 1977—the review mechanism that exists for that kind of decision is judicial review without the requirement for leave. This is a review where the Federal Court is looking at the case where it's been appealed, or where a review has been asked for by the client, and determining if the decision made by the citizenship officer was reasonable. If the Federal Court judge feels the decision was not reasonable, it will be sent back for readjudication by a new citizenship officer.

The kind of appeal the Canadian Bar Association has been suggesting, either to the Immigration Appeal Division of the IRB or to the Federal Court, is something that does not currently exist in the Citizenship Act. The concern is, by creating a distinction between that group of adopted children and not giving other individuals the same kind of appeal, you're again creating a distinction between one group in the context of citizenship and another group.

On the last point on the IAD, the IRB, the Immigration and Refugee Board, has no jurisdiction in citizenship. Their mandate flows from IRPA, the Immigration and Refugee Protection Act, and there is no mechanism in the Citizenship Act for them to have jurisdiction, so there is no precedent for the IRB to pick up citizenship applications.

Finally, I think it's also important to highlight that it will be up to the parent to choose which approach they want to take. Do they want to take the IRPA process with certain extra costs to that, in other words, processing costs, but also with the benefit of the IRB or the IAD appeal, or do they want to have access via the Citizenship Act? The individual, the parent for minor children, will have that choice—of picking either the IRPA process or the citizenship process.

● (1625)

Mr. Bill Siksay: In IRPA there was an explicit provision for regulatory review, and that's not included in this legislation. I think a lot of what the legislation hopes to accomplish will be accomplished through the regulations. I'm wondering why that wasn't included, and perhaps you could comment on that.

Mr. Mark Davidson: Again, we have to go back to the era of the acts. The Citizenship Act has far more meat in it than IRPA. IRPA, when it was created, was very much a framework act. If we take the case of adoptions, that's a classic example. Adoption or adoptees are not mentioned at all in IRPA. I don't think you'll find any provision in the act itself that makes a reference to adoption or adoptees, whereas, with Bill C-14, a lot of the rules will actually be placed in the act.

When IRPA was created in 2001-02, the feeling was that it was appropriate at that time for the committee to have an extra mechanism to review those regulations because the bill itself was a framework bill. That's not really the case with the Citizenship Act—as I say, adoption being one of the best examples.

Mr. Bill Siksay: Thank you, Mr. Chair.

The Chair: Thank you.

You left three minutes, and thank you very much for that.

Mr. Komarnicki, you've got seven, if you want to use them.

Mr. Ed Komarnicki: Following up on what the chair was pursuing and Mr. Telegdi mentioned with respect to security concerns and also criminality, the argument was that if you made a distinction, there may be a problem with a charter breach and a problem of justification under part 1. This act relates to those over 18, and for that category in this particular act, I'd say from 18 years of age on they could come through an adoption. Would that argument still apply for the charter, or would that survive a charter challenge? How strong are you in that position of it not being justified under part 1, particularly for those 18 and over?

Mr. Mark Davidson: I'll give the policy answer first, but I'll ask my colleague Alain Laurencelle to speak, as well, from the legal side.

The idea would be, as I hear it, that we would have two rules, one for adoptees who are over 18, where they would be subject to criminality or security prohibitions...but not for adoptees under 18. So you're creating two distinctions there. You're creating the obvious age distinction among adoptees, but you're also still creating a distinction between individuals who have been adopted and individuals who are natural-born.

So my previous comment about that going against the purpose of the bill still applies. You would still be saying—and you'd still have to come up with a section 1 defence—that individuals who have been adopted are more likely to be criminals or security threats than individuals who are not adopted, because you're not saying to someone who was born to a Canadian citizen 18 years ago or 20 years ago that their citizenship is subject to a criminal test.

I'm not sure if Alain wants to add anything to that.

Mr. Alain Laurencelle (Counsel, Integration and Admissibility Team, Legal Services, Department of Citizenship and Immigration): Yes. I think that the operative comparison here is what you've just mentioned, Mark, in looking at the situation. The two groups include the person who is adopted by a Canadian abroad, versus the person who was born to a Canadian citizen and now, at age 18, 19, or 20, is involved in criminal activity. How do you make that justification under the charter? And asking the question is, in essence, responding to it.

Mr. Ed Komarnicki: It would seem to me that it would be easier to make that justification for those who you know are a security risk and have criminality issues when they're adults than those who are not. That is the issue I was getting at.

I'd like to go back to another question that was posed by members opposite. It was the fact that, as we now have it, those going through the regular channels and applying for permanent residence before adoption would actually have the ability to an appeal *de novo*, where they would actually have a hearing and a decision, whereas those applying under the act would go through a judicial process that is very different. It's more technical, it's procedural, but it's not substantive.

So what we have here is a group, essentially, a parent who might be prompted to go both ways: going through the other process in case they want an avenue of appeal *de novo*, and at the same time going under this act because it may be a quicker way to go. Isn't that creating a distinction between those who proceed in the normal fashion, which they still can, and those who don't? The distinction is quite severely different because of the fact of the trial *de novo*, notwithstanding that it has some differences with the rest of the act. Isn't that a legitimate concern?

● (1630)

The Chair: Can I have a one-minute response? Then I think we have to go to the Canadian Bar Association.

Thank you.

Mr. Mark Davidson: I guess the response would just reiterate the same point, and that is that within the citizenship context, we need to look at reducing the distinction as much as possible. That is, again, the purpose of the bill. Treating these adopted children, giving them a kind of citizenship appeal that isn't available to naturalized children, would harm that protection of the distinction. In a sense, we've got the best of both worlds, though, because we're allowing the individual to continue to choose to do the IRPA process or to apply directly for a grant of citizenship.

The Chair: Obviously we have a lot of interest in asking questions. We will have two quick little questions: one from Blair, one from Nina.

Blair.

Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Thank you, Mr. Chair.

Are there transitional rules so that when somebody applies under the age of 18, and then during the process becomes over the age of 18, they are subject to criminal and security checks?

Mr. Mark Davidson: There are no criminal or security checks in this bill for these adoptees, so there's no mechanism for it. There's no requirement for a transitional provision. None of the adoptees who fall under Bill C-14 are subject to criminal or security prohibitions.

Mr. Blair Wilson: Because they're under 18?

Mr. Mark Davidson: No, because it would be inappropriate to have those prohibitions and not have them for natural-born children. We want to make adoptees and natural-born children as close as possible.

The Chair: Thank you.

Nina.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): What does the American government do with respect to security and criminal checks for adoptions?

Mr. Mark Davidson: Every country handles these kinds of situations a little bit differently, but as I recall, the Americans actually do not have a security and criminality provision. I'm saying this with a bit of a question mark in my own mind. I know that the Americans actually don't have a direct mechanism like this for citizenship, because the individuals have to apply first under the immigration provision, and it's only by their arriving with an immigrant visa can they actually become a citizen. So Bill C-14 provides a much more direct mechanism for citizenship.

The Chair: Thank you very much.

On behalf of the committee, I want to thank you for coming along. You've given a lot of good information. It's too bad we don't have more time, but there it is. Thank you.

We will just give our witnesses time to move out, and the Canadian Bar Association will be taking the chairs in just a moment. We have to bear in mind as well that we have committee business after the Canadian Bar Association. We have a fairly straightforward motion from Andrew that we have to deal with.

Right now, on your behalf, I welcome the Canadian Bar Association: Stephen W. Green, executive member, national citizenship and immigration law section; and Tamra Thomson, director of legislation and law reform.

Welcome. It's good to have you here today. You have a presentation to make to us. Generally, it should be in the order of about 10 minutes. Anyway, feel free to go under or a little over that; we won't smack the gavel.

I'll just pass this over to you.

● (1635)

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair.

The Canadian Bar Association is very pleased to appear before this committee today on Bill C-14, with these particular amendments to the Citizenship Act. We have addressed these issues before this committee before, in previous bills in previous Parliaments. Our written submission has been circulated to you in advance. Given the questions that you asked of the past witnesses, I know several of you have read it. We're glad to see that.

The Canadian Bar Association is a national association, with about 36,000 members across the country. The primary objectives of the organization are improvement in the law and improvement in the administration of justice. It is in that light that we have made our written submission and make our comments to you today.

I'm going to ask Mr. Green, who is a member of the executive of the citizenship and immigration law section, to address the substantive issues in the bill.

Mr. Stephen Green (Executive Member, National Citizenship & Immigration Law Section, Canadian Bar Association): Thank you very much, and I thank you for the opportunity.

The intent of the bill is to unite Canadian families as quickly as possible following the adoption by a Canadian parent of a child from a foreign country. This result is achieved by granting citizenship to the adopted child upon the finalization of an adoption, thereby eliminating the process of a Canadian citizen having to sponsor that child, and then as soon as that child comes to Canada, having the child be immediately—quite candidly, that day—able to apply for a grant of citizenship.

The CBA section supports the bill's intention to streamline the system by having the system put in place. Steps need to be taken to correct the difference in treatment between adopted children and natural-born children in the present Citizenship Act. The bill, however, is not in keeping with the legislative safeguards in the Immigration and Refugee Protection Act and the immigration and refugee protection regulations that protect the interests of foreign children adopted by Canadian parents, including compliance with the Hague Convention.

Under the current law, as you've heard from some of the previous witnesses, a person must be sponsored to come to Canada if they are adopted, and then they apply through the present Citizenship Act to be granted their citizenship. The bill eliminates this. But we wish to comment on some of the problems or shortfalls we see with respect to this bill.

First is non-compliance with IRPA and the regulations. The contents of Bill C-14 were originally drafted many years ago, when the governing legislation with respect to immigration was the Immigration Act and those regulations, the legislation that preceded the current Immigration and Refugee Protection Act. The old Immigration Act defines what "adopted" means, and you'll see how similar the present bill is with respect to that old law. It states:

> "Adopted" means a person who is adopted in accordance with the laws of a province or of a country other than Canada or any political subdivision thereof, where the adoption creates a genuine relationship of parent and child, but does not include a person who is adopted for the purpose of gaining admission to Canada...

So you see that they've taken the old act and put the words in the present bill.

IRPA and the regulations expanded the definition of the family class to include a child whom the sponsor intends to adopt in Canada. Regulations make it clear that in a foreign child adoption they must look at the best interests of the child. That is done by regulation. I would just mention some of these regulations...and it's interesting to see which is silent.

We heard from one of the other witnesses that the Citizenship Act has a lot of meat. I don't think there's so much meat in this particular amendment, and you'll see why.

The regulations dealing with IRPA define best interests of the child, all the way through paragraphs 117(3)(a) to (g). Some of those include: before the adoption, the child's parents give their free and informed consent to the child's adoption—that's what best interest is about; the adoption creates a parent-child relationship; the adoption was in accordance with the laws of the place where the adoption took place; the adoption was in accordance with the laws of the sponsor's place of residence; if the sponsor resides in Canada at the time the adoption takes place, the competent authority of the child's province of intended destination must have stated in writing that it does not object; and it goes on.

So how much meat is there really in this new bill?

Assessing whether an adoption is in the best interests of the child has a legitimate purpose, for protecting against child trafficking—and we are all concerned about that—and adoptions of convenience.

The immigration and refugee protection regulations talk about the role of the provinces and how important it is. There's silence here. The rights and interests of the provinces and territories must be respected in any federal legislation that deals with subject matter that is intended to be within the purview of the provinces and territories. That being said, in our previous submissions in 2002 that dealt with Bill C-18, we discussed how the layering of the province's involvement can be quite confusing for many adopting parents.

● (1640)

Notwithstanding the above problems with respect to the provinces, we have to deal with IRPA and the regulations, and the provinces are involved. The lack of consistency between this bill and the Immigration and Refugee Protection Act and regulations is, in our submission, not appropriate. We cannot have this, and it is our submission that to avoid this problem we have to really look at the regulations. The regulations are important.

Just as in the Immigration and Refugee Protection Act, there is a provision when we are dealing with regulations under this act that they go before a committee like this. It is our submission and recommendation that a provision similar to subsection 5(2) of the Immigration and Refugee Protection Act should be included in Bill C-14 to ensure that any regulations implemented under Bill C-14 are brought before the appropriate committee for further consultation and discussion and to ensure consistency with the Immigration and Refugee Protection Act regulations and those of the provinces and territories.

Without that, we will have confusion. This will protect. One of your members stated, before the committee had looked at this, how important appeal rights are. I would submit also that this is extremely important, because we need to know the meat, and I think the meat should come before this particular committee.

Our next concern is loss of appeal rights. Canadian adoptive parents who sponsor their children for permanent residence, if that application is refused, have the right to go to the immigration appeal division of the board. The immigration appeal division has the right to have a full trial *de novo*.

They can hear everything. They can hear from the adoptive parents; they can hear from the natural parents; they can hear about custom and usage. And it's so important—I have appeared many a time before the board—to talk about customs in adoptions. You have to get that before people to fully understand it.

So this appeal is a full appeal, but under the proposal, that is gone. Under Bill C-14, the application is for grant of citizenship to adopt a child. If this application is refused, the Canadian will only have one resort for judicial review. Other members have commented to say it is a very limited review. It is a review based on paper, on affidavits from both the people who are appealing and from the visa office abroad.

Then the question becomes that if you are successful at your appeal in the Federal Court, the matter is referred back to a different visa officer, unlike the situation with the appeal board, which has the right to say, "I grant you your adoption. Your adoption is valid in law, and we're going to give you permanent resident status." It is not so with the Federal Court. It goes back, and we go through this process.

What we would submit is that if someone were considering this process, they would do both in order to protect their appeal rights: they would file an application for citizenship and file a sponsorship, protecting their rights. It's double the workup for the Department of Citizenship and Immigration. It's not double the cost, because a grant of citizenship, I believe, is $100, and to do a sponsorship it's $150. That's what we see would be happening, and there would be a tremendous waste of resources.

So the CBA section recommends that parents have a right of appeal from a decision to refuse a grant of citizenship to adopt. This may be accomplished in two ways, we submit: amending the Immigration and Refugee Protection Act to expand the jurisdiction of that board to include reviews of refusals to grant citizenship to adopted children of citizens; or in the alternative, amending Bill C-14 to state that a refusal of citizenship under proposed section 5.1 is deemed to be a refusal of a visa, entitling that person to go before the board.

It is this board that is expert in this matter. They have been doing it for years.

Those are our submissions with respect to the bill.

● (1645)

The Chair: Thank you very much. I would imagine we have quite a number of questions lined up for you.

We'll go to Andrew, and I guess we'll have seven-minute rounds. I think we'll be breaking around 22 or 23 minutes after the hour to deal with motions.

Andrew.

Hon. Andrew Telegdi: I'm going to be splitting my time with Borys.

Mr. Green, there's one thing that haunts me when we're dealing with international adoptions. A number of years ago, there was a special on television relating to a nine-year-old Romanian girl who was adopted after Ceausescu fell. I'm not sure if you saw the program, but she came here and the Canadian parents sent her back to Romania within a year. This resulted in terrible hardship for the child, and it was done under existing adoption rules.

What bothered me about it was that the child's experience became incredibly negative. It truly caused her incredible pain because she ended up losing her Romanian citizenship. When she went back to Romania, she couldn't go to school because she wasn't a Romanian citizen and she couldn't afford to pay the fees. That really bothered me.

Did you see the show? What can we do to try to guarantee that those things do not happen?

Mr. Stephen Green: I did not see the show, but I don't think this legislation really deals with that type of issue.

Hon. Andrew Telegdi: No, it doesn't.

Mr. Stephen Green: It could be that a Canadian had a natural-born child who was born in Romania, brought to Canada, and sent back. Yes, the trafficking of children is a terrible thing.

I think other legislation may be able to deal with it, but I don't think the present amendments will address those types of issues.

Hon. Andrew Telegdi: No, they won't. But in some way, would the commissioner of citizenship have a role in that?

Mr. Stephen Green: I can't comment. I'm sorry.

The Chair: Borys, are you sharing your time with Andrew?

Mr. Borys Wrzesnewskyj: Yes.

I would like to return to questions that Mr. Telegdi had in the previous round. They deal with security concerns for young adults who are youths but not infants.

These changes envisage bringing about equivalency between birth children and adopted children. There isn't an equivalency at birth. We are not envisaging changes for adult adoptions. If we truly want equivalency in law, is there a definition for infancy that would be a category more equivalent to children born to parents as opposed to adopted? Are there categories for youth beyond 18 and under 18?

I've travelled in a number of countries where you see indoctrination begin at a pretty early age. Does the law envision different categories of youth? To what ages would infancy and a young adult be?

● (1650)

Mr. Stephen Green: I think your question really centres on the security issue with regard to adopting children. The Canadian Bar Association certainly commends the department for coming out with a policy that does not do that. I think the purpose of this bill is to put everyone on an equal footing.

Unfortunately, we have natural-born children of Canadian citizens. They may have been born in Romania, as an example, lived there for 30 years, and got into trouble in Romania. They have the absolute right to come back to Canada. This bill is trying to give an equal footing to an adopted child who got into trouble, in the same type of situation, to be permitted to come to Canada.

So I don't think the philosophy or the policy here, which is to put everyone on neutral ground and treat them as in the McKenna case, which we heard about, would be able to stand. As we heard from a previous witness, if this is not a true child-parent relationship, and it was done for the purpose of bringing a person to Canada, I think there are enough safeguards in the present legislation and in this bill to stop it.

We would not want to see a distinction between someone who is over 18 and someone who is under 18. As far as we are concerned, and as you've heard today from the department, the law requires that everyone be treated the same.

Mr. Borys Wrzesnewskyj: What you're saying is that although this deals with child adoptions, the same should hold true with adult adoptions.

Mr. Stephen Green: Yes, because under the way the legislation is written there must be a parent-child relationship existing before that. I think that's enough of a safeguard that the department could say prove to us, establish to us, that there was or was not a parent-child relationship. Maybe that's another reason why it's important that we have the IAD to look at the full sphere of whether there is a parent-child relationship, because I don't know how the Federal Court would be able to do something like that. Therefore, I think there are enough safeguards to protect.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: You have about a minute and a half left, Borys. I think Alan wanted to use that minute and a half, and that will conclude the seven.

Do you want to do that, Mr. Tonks?

Mr. Alan Tonks (York South—Weston, Lib.): Yes, thank you very much, Mr. Chairman.

A very simple question. You've indicated that adoption comes under the jurisdiction of provincial governments, of course, and you talked about the complexities of that. In the administration of an application for citizenship, certain discretion lies with the immigration officer. What are the tests that the immigration officer uses simply to make a decision that an application can begin or that there can be a process at all?

Mr. Stephen Green: Unfortunately, we can't answer that, because the bill talks about just the framework. I think it's the regulations that will answer those questions, and that's why the Canadian Bar Association feels very strongly that every regulation with respect to this should go before a committee like this, to discuss it, because we don't know.

Mr. Alan Tonks: I see.

Thank you, Mr. Chair.

The Chair: Madam Faille.

[*Translation*]

Ms. Meili Faille: I put my questions to departmental officials who appeared just before this group.

I have the same concerns as the Canadian Bar Association. We don't know how this bill is going to work. In Quebec, there are specific procedures in place that are well known. There are three possible options: one for cases where the children are adopted in countries that have ratified the Convention; one for cases where the children are adopted in countries where the adoption is finalized before the child arrives in Canada; and a third one for cases where the parents become guardians, and then parents, once they have fulfilled their obligations as guardians. In Quebec, many adoptions fall into the third category.

There is also the fact that citizenship is granted prior to adoption. In our briefing notes, it says that citizenship will be granted once the case is finalized—in other words, before the provincial courts have determined that the adoption is final and official. That is the case in Quebec, because of the Civil Code.

Under the proposed legislation, could a child being granted citizenship eventually have his or her citizenship revoked? According to the bill, the federal government retains the right to intervene, but we don't know at what point the process ends. I don't know whether this applies to the other provinces, but have you looked at the Quebec model in that regard? There is a danger that the child could see his citizenship revoked at some point. That is one of the provisions of the current Citizenship Act.

● (1655)

[*English*]

Mr. Stephen Green: There is a whole provision within the present Citizenship Act dealing with revocation. There's a process available for that. I think that still exists—

Ms. Meili Faille: It still applies.

Mr. Stephen Green: —and would apply. I don't think it affects anything in this regard. An issue that you may look at or perhaps want to be concerned with also would be that under proposed paragraph 5.1(c) in this proposal, it states:

> (c) was in accordance with the laws of the place where the adoption took place and the laws of the country of residence of the adopting citizen;

We're going to have to find out what “the laws of the country” means, because we've heard today and we know that the provinces are responsible for adoption, not Canada. Unless the regulations state, perhaps, that the laws of the country mean each province, then we would have clarification. Again we don't know.

The question becomes, would that stand up in court, or would someone argue and say it has to be according to the laws of the country that the Canadian is in? Well, I'm in Canada and there are no Canadian adoption laws; they are within provincial jurisdiction. We will have to find out what that means. And with respect to Quebec, of course, that's a very serious issue.

Ms. Meili Faille: It's a very serious issue.

Merci.

The Chair: Bill, go ahead, please.

Mr. Bill Siksay: Thank you, Chair.

I want to come back to the review issue and ask you to comment on this committee's past discussions. In those, we talked about having a full appeal on the merits of the case in Federal Court, on citizenship issues—and not just a judicial review, a full review with high evidentiary standards. Would that address the bar's concerns about this legislation?

Mr. Stephen Green: One of our recommendations is to have a full appeal at the immigration appeal division, so that it could be a full trial *de novo*. The judicial review process is extremely narrow. It's very difficult. Especially in adoptions, when you have to look at the best interests of the child and what it's all about. A board member has to hear all those facts, and the judicial review doesn't cut it for us.

Mr. Bill Siksay: But is it possible to have that kind of review at the Federal Court?

Mr. Stephen Green: No, it's not possible at Federal Court to have that. I guess you could make a special application under the Federal Court rules, but the general provisions would apply under the 300 rules, and it's all done by affidavit. It would be very difficult, I think, for the court to be able to intervene.

Mr. Bill Siksay: So your sense then is that the only effective appeal would be through the immigration appeal system?

Mr. Stephen Green: Right. But people will be able to have that. They'll just do both.

Mr. Bill Siksay: That's my question.

The Chair: Ed, go ahead, please.

Mr. Ed Komarnicki: I'm just curious about something the previous witness mentioned with respect to the appeal process. I'd like to deal with that for the moment. You said that giving access for some citizenship applicants would create inappropriate distinction for others who do not have an appeal under some applications for citizenship within the act itself.

I appreciate that you're saying those who apply now in the normal fashion under IRPA have a trial *de novo* process, but what if you then create another appeal by trial *de novo* by amending the act? What about other provisions of the act and other applications for citizenship that would not have the appeal by trial *de novo?* How do you answer that question?

Mr. Stephen Green: I think that under the present Citizenship Act there are different modes of appeal for various situations. Section 5.1, regarding a grant of citizenship, deals mostly with situations in which people have come to Canada as immigrants and have to satisfy residency requirements, and have certain knowledge. If you are refused by a citizenship judge, you have the right of appeal to the Federal Court, and that's it. There is no further right of appeal; there is just the trial level.

In the present amendment you have before you today, under section 5.1—and we heard from the witnesses that it's a different mode of appeal—you will have the right to go for judicial review to the first level, then you will have an automatic right to go to the court of appeal. So there is no privative clause, meaning you can't stop going.... You can go with respect to adoptions. So we have this distinction already within the act.

Furthermore, regarding the grants of citizenship, if I am a Canadian and my child is born abroad after 1977.... The majority of the grants of citizenship involve just a documentation process, in which I show I'm a citizen, and this is my child, and that's the issue.

In this process, we're looking at many things. We're looking at the best interests of the child and whether there is a genuine parent-child relationship. At least we know that to start. So I don't know if I really accept the distinction, or at least that distinction, because it exists already.

● (1700)

Mr. Ed Komarnicki: So you're saying there are substantive differences between the act portion and actually what we're dealing with here in adoption under this amendment.

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: The other item that I was going to ask a question about was with respect to some of the considerations within the act that you say are similar to what exists under IRPA and some that are not. The ones that exist in the act are obvious ones. Regardless of where you're taking them from, they are the kinds of things that you would expect. But the rest is left up to regulations, and of course that builds in a certain element of flexibility. You see a need for some flexibility if you're dealing especially with adoptions in foreign jurisdictions, and you may want to react to that. Going through regulations is a lot simpler than actually passing an act, as we know. What's involved in getting a piece of legislation through the House is quite different from regulation. So comment on that.

Secondly, when the regulations are going through, there is of course a process through which they're gazetted, and there is input that can be made with respect to those regulations and input by various parties, which is not necessarily brought back before a committee.

Now, it seems to me that bringing it back before the committee for some input is maybe an extension of what already exists. Why would that be necessary? Do you not think that a certain measure of flexibility is okay? Rather than having some of these items enshrined in the act, isn't it wiser to leave it up to regulation and, I suppose, department officials and those who deal day-to-day with these issues to implement them in the normal fashion? I mean, it's not just peculiar to this bill. Regulations do get passed in the fashion that's suggested.

Mr. Stephen Green: I think flexibility is a great thing, and I don't think it would ever be undermined by coming to the appropriate committee. The public would come forward, the experts would come forward to give their opinions, and you would be able to question them about these regulations.

It was so important for the Immigration and Refugee Protection Act to put that in. And that was dealing with foreign nationals who don't have a right to come to our country. Now we're dealing with the Citizenship Act, which I would submit to you is on a higher level, more so than the Immigration and Refugee Protection Act. It is so important that the regulations before you be discussed.

We're talking about children. We want to protect those children. We want to stop the trafficking of children.

I think it's best served if it comes before committees like this one, where we have the flexibility. It's debated and discussed. We hear from the department, and you hear from witnesses.

Mr. Ed Komarnicki: You're not suggesting for a moment that these be put into the legislation. As you were discussing, there is a list of a couple of things within legislation, but not as fully as they are set out in IRPA. You're not suggesting that they actually be enshrined in legislation, you're just suggesting that they come back to the committee via the regulation process.

Mr. Stephen Green: Yes.

Perhaps I wasn't clear. What I'm suggesting is to put in the act that they "must" come to the committee. Then the committee decides, as it does under the Immigration and Refugee Protection Act. That's all I'm saying.

Mr. Ed Komarnicki: So you're actually tying the committee's approval to legislation?

Mr. Stephen Green: Exactly.

Mr. Ed Komarnicki: Is that fairly common in pieces of legislation you've reviewed?

Mr. Stephen Green: I've really only reviewed the Immigration and Refugee Protection Act; it's quite voluminous. It was a very important part.

Mr. Ed Komarnicki: It seems to me that it's not normally a practice to have amendments come back before the committee for approval.

● (1705)

Mr. Stephen Green: I can't comment, but it seems, just as it is with the Immigration and Refugee Protection Act and with this bill, that we're given the framework but we don't know....

Many of the acts in the past, as one of the witnesses said, had lots of meat. We don't have the meat. So when we're dealing with not-meaty acts and bills, I think it's important.

The Chair: Thank you.

On behalf of the committee, I want to thank you for coming here today to give us this information. It was a lot of information that the committee can chew on for a while.

Again, thank you very much.

Mr. Stephen Green: Thank you.

The Chair: Now we have to get on to the last piece of business on the agenda, which is the notice of motion from the honourable Andrew.

Andrew, is there any further comment on it?

Hon. Andrew Telegdi: No, just that the motion read, "Resolved, that in the opinion of the committee, the government should...".

The Chair: So it's in the opinion of the committee now, instead of in the opinion of the House, that the committee should...one, two, three, four?

I guess we will call for the question.

Go ahead, Ed.

Mr. Ed Komarnicki: There is one point I want to make in reference to this. It goes back to the Standing Order 108 argument I made—I'm not going to raise a point of order on this one—which is to simply suggest, quite appropriately, that the matter probably might have been better being put forward through another committee.

Secondly, it has a substantial allegation of facts in the "whereas" clauses that are difficult for the committee to substantiate. Ultimately, it's the kind of thing where the committee could say, look, we'll bypass the actual requirements of Standing Order 108; the essence of the motion is to commemorate the 50-year anniversary of what happened.

So given that, and the fact that we don't dispute the end result—and I've talked to Mr. Telegdi on that—I won't be raising the point of order, although I think it's raisable. As stated earlier, it's still not in the same category.

The Chair: So those last four items are part of the motion now.

Do you want me to read these?

Hon. Andrew Telegdi: Yes. But there is one point I want to make on the way it ties in to the committee—and I'm mindful of that—and that is that because of the events of 50 years ago, a real paradigm shift happened in the way Canada dealt with refugees. It expanded to one of the members of the committee who came from Uganda, and the boat people, and the Czechs. This was a total, new...it was the golden age for immigration.

Mr. Ed Komarnicki: Then again, the issue is not the substance of what you're attempting to accomplish; it's how it's being accomplished and the buildup to it. So I'm not going to raise that point of procedure, except to say that's the kind of thing—

The Chair: You're not going to raise that.

Mr. Ed Komarnicki: Right, although I could.

The Chair: Thank you.

We'll go to Bill.

Mr. Bill Siksay: Thank you, Mr. Chair.

I think the parliamentary secretary dislikes Mr. Telegdi more than he likes me, unfortunately.

I just want to say, in support of the motion, because I think it's a really important one, that the 50th anniversary of the Hungarian Revolution is a very important moment in European history, and indeed in world history and in Canadian history. The challenge to Soviet authority there was a very significant moment, and one that many of my relatives were involved in, because it directly affected their lives as Hungarians.

And as Andrew points out, the refugee movement that happened, and Canada's particular response to that refugee movement, really did pave the way for our present refugee policies. In that sense, it was sort of our first great stab at a major refugee resettlement, a modern one in any case.

So I think this is an appropriate motion to discuss at this committee because of those connections, and I just wanted to indicate that I would be supporting it.

The Chair: Alan, you have the floor.

Mr. Alan Tonks: Mr. Chairman, I find this resolution—regardless of the tie-in with respect to the committee, and there are others who can argue that better—a very inspiring one, and I congratulate Mr. Telegdi on this motion. I remember at school, during the events in Poland—and they were dramatic and traumatic in many ways—meeting Mr. Lech Walesa, and I asked him what the greatest inspiration was with respect to Solidarity and what happened in Poland. He said that his hero was Nagy, and that the inspiration for what occurred came from Hungary in 1956, and that he was a great scholar of the events of those times.

I think that if you thread the chain that resulted in détente, you probably will find that the chain began with the dramatic Hungarian Revolution and the fight for freedom. And I congratulate Mr. Telegdi on this.

● (1710)

The Chair: Thank you.

(Motion agreed to)

The Chair: Congratulations, sir. It is unanimously carried.

Hon. Andrew Telegdi: Thank you.

The Chair: Now, Madame Folco is not here today, so we'll just wait on her motion. She gave a notice of motion.

Mr. Alan Tonks: What was hers?

The Chair: Her motion had to do with directing the Auditor General to do an audit of CSIS.

Mr. Alan Tonks: She could table that.

The Chair: We'll just wait for her to come back.

Our next meeting will be on Tuesday. Is our next meeting tomorrow? I'm not aware of it.

Hon. Andrew Telegdi: It's on Wednesday.

The Chair: Normally it's on Wednesday. So at our next meeting, we'll do the clause-by-clause of Bill C-14.

Mr. Ed Komarnicki: Mr. Chair, I'm not sure what the will of this committee will be, given the proposed amendments. I think we have to consider that. But I would like to raise this for the committee's consideration.

The Chair: Before you do that, we didn't get around to the third item on the agenda in the first report, I'm told, which was that it was agreed that the committee undertake the following prioritized work plan: refugee issues, undocumented workers, temporary foreign workers, application backlog.

Everyone is aware of that. That's agreed as well.

Mr. Ed Komarnicki: You might want to come back to that.

But to deal with the meeting date, I'm wondering if there wouldn't be some merit in bringing forward our meeting to Tuesday, rather than having it on Wednesday, with the idea of seeing if there is a will to actually see this adoption act go through before the House adjourns, with or without amendment. There may need to be some close consideration....

If there's any consensus, we might be wise to do it perhaps later on Tuesday. If we do it on Wednesday, I'm afraid we're probably looking at the next session. I'm not saying that's not good; it's just that if there are some significant concerns, and we want to delay it to hear more on some of the issues raised, we could do that. But if the idea was to deal with those concerns and actually have a chance to bring it through the House, we might want to bring it forward sooner than Wednesday.

I leave that with the committee, because that may be determinative of what happens. It's something to think about.

The Chair: Okay.

We'll hear from Madam Faille on that.

[*Translation*]

Ms. Meili Faille: I don't think that will be possible, unless you want to sit at midnight. I have a meeting tomorrow with the law clerk with respect to drafting amendments. I don't see how that could be done before tomorrow evening, unless you want to sit at 8 or 9 o'clock tomorrow.

[*English*]

The Chair: Okay. The meeting for your amendments is tomorrow. Could we not deal with the amendments on Wednesday? I know it might be tight, but if we can't have the meeting—

Mr. Ed Komarnicki: We could. I'm just suggesting that—

The Chair: We can't have our meeting on Tuesday.

Mr. Ed Komarnicki: We can't have it Tuesday? That's fine. There may be the will to deal with it on Wednesday.

The Chair: Unless we had our meeting very late on Tuesday, and I don't particularly—

An hon. member: It would have to be very late.

Mr. Ed Komarnicki: So I guess that's out of the question. Fair enough.

The Chair: So Madam Faille will go ahead with her meetings, and maybe we can do it on Wednesday.

● (1715)

Mr. Ed Komarnicki: That's fine. I want to bring that to the attention of the committee.

For the second point, I know that when the issue was raised by Mr. Siksay with respect to the three motions, I had filed some of my written arguments respecting that. I want to make certain they would apply to the motion that was discussed here. I'll refile the arguments with the chair to be sure—

The Chair: This is for the third motion?

Mr. Ed Komarnicki: Right, with respect to the third motion.

Finally, in the discussion of the.... First of all, we left it to the committee to decide what issues were going to come before this committee in the next session. I think we had some 17 or 18 different suggestions or ideas, and so on. The subcommittee came forward today with six of those motions. I'm not saying those are necessarily the priorities I've chosen, but they are areas we were all looking at.

The one I noticed, which we had mentioned, is not on there. It's the provincial nominee program, which somewhat ties in with the undocumented workers. It was one of the 17 issues or whatever we had on there. It's certainly a program that's being utilized by some, but not all, of the provinces. Maybe it's something we want to consider in some fashion when we're looking at the six—either as a subheading of one of the six, or as an addition to the six. I don't know what the subcommittee's views were—whether they actually looked at that particular issue or not, or whether they simply picked six and it didn't happen to be one of them.

I think it would be appropriate for us to have a larger discussion about whether that particular one should be on the agenda somewhere. It seems relevant to what we're discussing in one fashion or another.

So I'd like to get some direction from the committee or the chair as to whether or not they're open to that additional point.

Mr. Blair Wilson: Mr. Chair, I understand the member of interest wants to put something else on the agenda. But I would go back to the process we put forward at the very beginning to say, here are the different issues we're all interested in, we laundry-listed 18-plus different issues, and we all submitted our rankings. Then it was up to the steering committee to come up with their top rankings from one to eighteen. I'm assuming this is just one to six, and that there is seven to eighteen in some other format, but let's just work through one to six in the time we have.

Jennifer Wispinski (Committee Researcher): Yes, I tabulated per the committee's agreement as to the procedure for prioritizing what the future business would be. I took all of the rankings I had received and tabulated them according to which of these alternatives got the most points, from highest to lowest. So the first six priorities on there are the ones that got the most points, from highest to lowest. The provincial nominee program came in as number nine.

The Chair: So when we deal with these six, maybe at some point the provincial nominee program will get on to some of these other agenda items.

Mr. Ed Komarnicki: Mr. Chair, I want to make the point here. Obviously whether we do the provincial nominee program or not is something that can be decided, and anything that's decided by the steering committee comes back before the larger committee. It's quite appropriate for the larger committee to discuss what the steering committee puts forward. If they wish to add to, amend, or overrule it, that's the way it works. The subcommittee gets its authorization from the committee in the main, so it's not inappropriate to do that. I think we need to be aware of that.

Mr. Blair Wilson: I just want to be clear that we're very happy with the way the process has been going, and that we've got a chairman who runs our committee here—

The Chair: And you're not asking for a vote on this?

Mr. Ed Komarnicki: No. I just wanted to say that what we could do is this. It would not be inappropriate for me to amend that by asking that it be added to the list and be defeated by this committee, and that would be quite appropriate—

The Chair: It is on the list. It'll be number nine on the list, according to the points. Everyone was asked to submit their priorities, and they were given a ranking based on the numbers of people who voted for what.

Mr. Bill Siksay: On a point of order—

The Chair: The steering committee met. We came up with these six because of the points that had been assigned.

Bill.

Mr. Bill Siksay: On a point of order, Chair, a few minutes ago you called for consensus on the recommendation, and you received it, so we're actually out of order at this point, unless you want to go back to reconsider.

The Chair: Actually, I received consensus on one and two, and I never brought up three.

Mr. Bill Siksay: But you did raise three, and then you asked for consensus before you moved on to Mr. Komarnicki.

Mr. Ed Komarnicki: You can't get consensus by assuming you might; it has to actually be put. It's not an issue I'm prepared to move an amendment to.

● (1720)

The Chair: Okay, we'll hear Mr. Telegdi, and then we'll try to close off.

Hon. Andrew Telegdi: Mr. Chair, I think before we close it would be a good thing to figure this out.

Normally, the process is that when somebody raises an objection on procedural grounds, you, as chair, confer with the clerk and then you come a timely decision. I think, from my experience on the committee and sitting in your chair, the motion that was moved is definitely in order, and I hope—

The Chair: Are you talking about Mr. Siksay's motion?

Hon. Andrew Telegdi: That's right.

I hope that in the future you'll make a timely decision around it just by consulting with the clerk. Otherwise, it can seriously impede the work of the committee.

I wish to say to the parliamentary secretary that we've got the chair, we've got two vice-chairs, and you are the parliamentary secretary, and I was parliamentary secretary before. Normally the parliamentary secretaries bring the views of the department; they're there for clarification, but it was never meant to supercede the role of the chair, and I think that's important.

Mr. Ed Komarnicki: Let me comment on that, because I think it's important, Mr. Chair.

The Chair: Okay, this is the last comment and then I'm adjourning the meeting.

Mr. Ed Komarnicki: Far be it from me to suggest that the parliamentary secretary is anything like that. It's the chair's decision, but the chair shouldn't be forced to make a decision on an important matter until the chair's satisfied.

This issue we're talking about is not a minuscule motion. It has some significant, substantive jurisdictional issues that need to be addressed, and it's quite appropriate not to necessarily make the decision on the moment. That's a prerogative of the chair and it's something that needs to be taken into account in the course of events.

The Chair: I think the clerk needed some time to—

Mr. Blair Wilson: On a point of order—

The Chair: —check the various references that were made.

Mr. Blair Wilson: I have a point of order.

Just before you go, I know you're going to be ruling on the Standing Order 108(2) that we talked about earlier, but since this committee has been formed, we've had one motion already that's gone before it, and it was unanimously passed under that same standing order. So the precedent you have set is that we've accepted this 108(2) prior to, and now we're looking at it again.

The Chair: Those motions are different.

Anyway, on the agenda, first of all, I think we have our agenda set, and we will be adding various items to it as we go along. The steering committee will be looking at other items as we finish up these.

On Mr. Siksay's motion, of course, we'll be dealing with that on Wednesday, when I have advice from the clerk on it.

In the meantime, the meeting is adjourned if there's no other business. The meeting is adjourned.

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