House of Commons
CANADA

# Standing Committee on Citizenship and Immigration

CIMM • NUMBER 029 • 1st SESSION • 39th PARLIAMENT

**EVIDENCE**

## Tuesday, December 12, 2006

---

## Chair

**Mr. Norman Doyle**

# Standing Committee on Citizenship and Immigration

**Tuesday, December 12, 2006**

● (0905)

[*English*]

**The Chair (Mr. Norman Doyle (St. John's East, CPC)):** We'll begin our committee hearing this morning as we continue our study of refugee issues.

Today we will be dealing with the backlog in the Federal Court. To help us understand the problem of backlogs and how best to deal with that problem, we've invited witnesses to come along this morning. We have witnesses from the Federal Court of Canada, who will be here from now until about 10 a.m., after which we have more witnesses coming in.

I welcome you to our committee meeting this morning. As you are aware, I think you have opening remarks that you will make, and generally these run about ten minutes or so, after which we open our meeting to committee members, who might want to ask questions or have a discussion with you about your statement and what have you.

I will pass it over to you, gentlemen. You can introduce yourselves, and we'll begin our committee meeting. There is an interpretation device down below, and it might be better for hearing purposes if you plug it in. I noticed that you were straining a little bit to hear me, and my flu doesn't help any. Maybe you could use your little earpiece and you will hear me a lot better.

I'll just pass it over to you to make your opening statement.

Thank you.

[*Translation*]

**Mr. Raymond Guénette (Acting Chief Administrator, Office of the Chief Adminsitrator, Courts Administration Service, Federal Court of Canada):** Thank you, Mr. Chair.

[*English*]

My name is Raymond Guénette, and I am the acting chief administrator of the Courts Administration Service. I am with Wayne Garnons-Williams, who is the registrar of the Federal Court of Canada.

Thank you for this opportunity to provide information on the operations of the Courts Administration Service in the Federal Court registry, immigration applications for leaves for judicial review, and judicial review procedures.

I would first like to make a point of clarification regarding the first item in the notice of meeting for the orders of the day, which says “Refugee Issues-Federal Court backlogs”. Federal Court backlogs are a thing of the past. The Federal Court is up to date in substantially all its work. That's very important.

I'll provide you with some contextual information regarding the organization that I head, the Courts Administration Service. The Courts Administration Service is a relatively new organization that came into force in 2003, and it evolved from the old regime of the Federal Court of Canada.

Yes, Madame?

**Ms. Meili Faille (Vaudreuil-Soulanges, BQ):** The translation can't keep up.

**Mr. Raymond Guénette:** Am I too fast?

**The Chair:** Our translators can't keep up, so maybe you could slow down a little bit.

**Ms. Meili Faille:** Because then we can't understand what you're saying.

**The Chair:** Yes.

[*Translation*]

**Mr. Raymond Guénette:** In my field, I am used to being brief.

[*English*]

The Courts Administration Service Act provides for a unified provision of administrative services for the four federal courts: the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada, and the Tax Court of Canada, each one of them being a superior court of record.

The chief administrator is the deputy head of the Courts Administration Service, and the chief administrator has all the powers necessary for the overall effective and efficient management of the administration of all four courts. There's one central administration for all four courts.

The chief administrator must consult with the four chief justices in relation to administrative matters pertaining to the operations of their own courts. The Courts Administration Service Act does distinguish between administrative functions, which fall under the chief administrator's jurisdiction, and judicial functions, which fall under the judiciary.

Consultation and coordination between the administrative and judicial activities are key to ensuring the optimal administration of justice for all Canadians, but primacy of the act is accorded to the judiciary, as the chief justices may issue binding directions in writing to the chief administrator with respect to any matter within their authority. No such binding directions have been issued so far.

[*Translation*]

The Federal Court is presided by Chief Justice Allan Lutfy. There are 33 Federal Court judges and five Prothonotaries in the Federal Court. There is currently one position for prothonotary that is vacant. In 2005, there were 9,731 proceedings instituted in the CAS Federal Court registry of which approximately 6,000 were refugee cases. During that year, 6,939 cases were determined by the Federal Court in the refugee area. These decisions were in the context of applications for judicial review, which process is described in the following section.

Immigration and refugee matters fall under the statutory jurisdiction of the Federal Court, which can hear applications to review decisions made by the Immigration and Refugee Board, Citizenship and Immigration Canada and the Canada Border Services Agency pursuant to the Federal Courts Act and the Immigration and Refugee Protection Act. Section 18 of the Federal Courts Act gives the Federal Court exclusive judicial review jurisdiction over certain administrative tribunals.

The Immigration and Refugee Board, being a federal board, commission or tribunal, falls within the general review powers of the Federal Court. In most cases, it is necessary to obtain leave by a judge of the Federal Court under section 72(1) of the Immigration and Refugee Protection Act to commence an application for judicial review in the Federal Court.

Upon leave for judicial review being granted, the six grounds of review of a decision of a board, commission or tribunal by the Federal Court are found in section 18.1(4) of the Federal Courts Act.

I believe that you have a copy of the text. I will not read aloud each one of the six grounds for review, unless you wish that I do so.

● (0910)

[*English*]

On the application for leave for judicial review, there is a step-by-step process in the immigration and refugee context.

The applicant files an application for leave and for judicial review and serves certified copies on the respondent within 15 days of notification of the tribunal decision. The applicant pays a $50 filing fee, as set out in the federal immigration rules. The applicant must also file proof of service within 10 days of service.

The respondent files a notice of appearance and proof of service within 10 days from the service of the application. If required, the Federal Court registry will send a request to the tribunal for written reasons, or a notice that none exists.

The applicant must prepare and file a record, with proof of service, within 30 days of instituting the proceeding, or 30 days from receipt of the tribunal's reasons. The respondent then has 30 days to file the affidavit and memorandum of argument, together with proof of service. The applicant may file a reply memorandum within 10 days of service of the respondent's memorandum.

The application for leave is then considered without personal appearance of the parties to the proceeding. If leave is refused there's no appeal, and that concludes the case and closes the file.

Should the applicant be granted leave for judicial review, the next step in the process is moving from the application-for-leave stage to the process of judicial review.

[*Translation*]

I will briefly summarize the judicial review procedure.

If leave for judicial review is granted, a Federal Court order is issued, setting out details and time limits for the filing of further material, together with the date, time and place set for the hearing of the judicial review application.

The Federal Court registry sends the Federal Court order granting leave to the tribunal. The tribunal prepares a record and sends certified copies to the parties as well as to the Clerk of the Federal Court Registry.

The matter is heard and a decision is rendered by the Federal Court.

Should an error under one of the six grounds for review be found to have been made by the lower level tribunal, the tribunal decision is overturned by the Federal Court and the original decision is sent back to the tribunal for reconsideration.

The Federal Court judge rendering a decision of an immigration judicial review, may certify a question for appeal to the Federal Court of Appeal.

For a question to be certified, it must be “a serious question of general importance” and must invite the Court of Appeal to deal with the specific decision under appeal.

Should a question be certified from the Federal Court judicial review decision, the next step in the process is moving from the “judicial review” stage of the process to the “appeal” stage of the process.

[*English*]

I'll briefly explain the process before the Federal Court of Appeal.

An appeal to the Federal Court of Appeal must be filed within 30 days after the pronouncement of the Federal Court judgment under appeal.

The Court of Appeal is not restricted to answering the certified question. All issues raised in the appeal may be considered by the Court of Appeal.

It is, naturally, an opportunity to file an application for leave to the Supreme Court of Canada from the Federal Court of Appeal. However, I won't go into that process.

I stated earlier that 6,939 refugee cases were determined by the Federal Court in 2005. Of these cases, application for leave or judicial review were granted in 1,034 files.

That concludes my opening remarks.

We are both available for questions.

● (0915)

**The Chair:** Thank you, Mr. Guénette.

I will now go to committee members. Our first member is Mr. Andrew Telegdi, who will have seven minutes.

**Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.):** Thank you very much for appearing before us.

I know you usually take 6,000 cases a year related to refugees; you mentioned that on the third page. And it mentions that you disposed of 6,939, so you cleared up a backlog of 939 from previous years.

**Mr. Raymond Guénette:** That's correct.

**Hon. Andrew Telegdi:** I'm interested in looking at the number of cases you could class successful, and that was 1,034 out of approximately 6,000.

**Mr. Raymond Guénette:** Yes, 1,034, that's correct.

**Hon. Andrew Telegdi:** That's about one-seventh.

**Mr. Raymond Guénette:** That's correct.

**Hon. Andrew Telegdi:** One-seventh successful.

What percentage of the court's time is taken up hearing refugee cases?

**Mr. Raymond Guénette:** I'm sorry, I didn't hear you.

**Hon. Andrew Telegdi:** What percentage of the court's time is taken up hearing refugee cases?

**Mr. Raymond Guénette:** That's a very good question. I really couldn't answer that.

For a full case to go through the process, it takes, on average, I believe, 4.1 to 4.6 months. But as far as the court case itself, it depends on the filing, it depends on the thickness of the file, how many documents the judge has to read. It could be, and I'm only guessing here, from 10 minutes to 10 hours. It depends on every single file that comes before the court. They're all different. It depends on the issues they have to look at.

**Hon. Andrew Telegdi:** One of the things we were debating in the past is having a refugee appeal division within the Immigration and Refugee Board.

I guess the judges are all very aware there's no appeal to the decision within—RAD doesn't exist, so there's no appeal of the decision of the board members within the IRB. They recognize that if they turn down an appeal, if a mistake is made, it's not going to be caught.

How mindful are the judges of the fact that there's no appeal to the refugee division, and to what extent might it influence their handling of the case?

You might not be the one to ask.

**Mr. Raymond Guénette:** I'm not the one who is able to answer that question. That would be—

**Hon. Andrew Telegdi:** Let me rephrase it. I have worked in the judicial system before and had commentary from judges. Essentially what they say is that they recognize they're all fallible, and they sleep better at night knowing that their decisions can be appealed to a higher court in case they make a mistake, because all judges will make mistakes.

I guess the members of the judiciary would be very much aware as to what happens with no internal appeal provisions.

Coming around another way, and perhaps this question should be put to a judge from the Federal Court, if there were an appeal process within the IRB, then it would seem that instead of hearing 6,000 or 7,000 cases in one year, they probably would end up hearing fewer cases.

**Mr. Raymond Guénette:** That is definitely a possibility.

**Hon. Andrew Telegdi:** One of the things the committee is trying to get a handle on is how much the refugee appeals cases costs for the Federal Court.

● (0920)

**Mr. Raymond Guénette:** We figured out the cost, as far as the filing and the staff, but not the judicial costs, and the total for the 4.1 to 4.6 months is $1,277.43. We've considered the filing fee, staff salaries, and what not.

**Hon. Andrew Telegdi:** Essentially you multiply it by 6,000, so that would give us a figure of something like $7 million.

**Mr. Raymond Guénette:** Not $7 million.

**Hon. Andrew Telegdi:** It costs $1,277 a case. Yes, something like $7.6 million, $7.7 million in total.

**Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.):** At $1,200 a case, yes.

**Hon. Andrew Telegdi:** Yes, $7.6 million, and that doesn't include the cost for the judges themselves.

**Mr. Raymond Guénette:** That's correct. I did not figure out the judicial costs in that.

**Hon. Andrew Telegdi:** Could we get some kind of figure from you as to how much time the judges spend on it, what's the percentage of their time, and what the cost would be? I guess one could divide and go from there.

**Mr. Raymond Guénette:** I could certainly look into it and report back to the committee.

**Hon. Andrew Telegdi:** That would very much be appreciated.

**Mr. Raymond Guénette:** Okay.

**Hon. Andrew Telegdi:** The other issue is you're dealing with deadlines, and the ability of people to file and provide information on time on what the judicial review is going to be based on. If somebody comes up with new evidence outside of the timeframe, does that get considered?

**Mr. Raymond Guénette:** There's always a provision for you to apply for an extension of time for filing certain documents.

**Mr. Wayne Garnons-Williams (Acting Registrar, Registry Branch, Courts Administration Service, Federal Court of Canada):** As a point of clarification, you are correct, sir, in the sense that no new evidence may be considered in a judicial review.

**Mr. Raymond Guénette:** But they can still apply for an extension of time at any step of the way, if they're out of time.

**The Chair:** You will probably want to conclude there, Mr. Telegdi—or should I move on?

**Hon. Andrew Telegdi:** No, that's fine. If we could receive the information I asked for, that would be great.

Thank you.

**The Chair:** Thank you.

Madame Faille.

[*Translation*]

**Ms. Meili Faille:** I thank Andrew for his very good questions.

Generally speaking, when leave is granted to attend the Federal Court, how much time goes by before an application is processed? What is the timeline?

**Mr. Raymond Guénette:** As far as I know, it takes between 30 to 90 days.

**Ms. Meili Faille:** It is rather quick, then.

**Mr. Raymond Guénette:** Yes, it is rather quick. These files do not linger or remain unchecked, they are processed rather quickly.

**Ms. Meili Faille:** Therefore, after three months, an application is reviewed, which may take between four to six months. Is this correct?

**Mr. Raymond Guénette:** No, the entire process from beginning to end may take between four to six months maximum.

**Ms. Meili Faille:** Okay.

Earlier, you said that it cost about $1,277.43 per case, correct?

**Mr. Raymond Guénette:** Yes, for each case.

**Ms. Meili Faille:** What other costs are associated with having a case determined by the Federal Court?

**Mr. Raymond Guénette:** There is the judge's compensation and the time he devotes to each case. That is something that I did not consider.

**Ms. Meili Faille:** Okay. Do you also have figures for provincial legal aid?

**Mr. Raymond Guénette:** No, I do not have those figures at all. I don't even have an idea of what they may be.

**Ms. Meili Faille:** A report was drawn up by Mr. Frecker. Are you aware of it? The report was published and submitted to Justice Canada in 2002, and was commissioned by Justice Canada. I wanted to know what your thoughts were on it.

**Mr. Raymond Guénette:** I'm not familiar with it.

**Ms. Meili Faille:** The report contained cost indicators for legal aid for immigration services, and also contained an opinion on the creation of an appeals section. The report said that if there were an appeals section, additional costs for legal services would range between $1.2 million to $2.6 million.

In your opinion, if an appeals section were created, do you think that the number of cases heard by the Federal Court would fall substantially?

**Mr. Raymond Guénette:** I'm sorry, I cannot answer your question.

**Ms. Meili Faille:** You would not know the answer.

**Mr. Raymond Guénette:** I'm not familiar with the document, therefore—

**Ms. Meili Faille:** Between 2005 and 2006, the figures seemed to fall substantially. Is it simply because the Federal Court received fewer applications?

● (0925)

**Mr. Raymond Guénette:** That is the case, yes.

**Ms. Meili Faille:** Therefore, the catch-up work done by the IRB necessarily had an impact.

**Mr. Raymond Guénette:** Absolutely.

**Ms. Meili Faille:** I'd like to ask you another question in order to complete what Mr. Telegdi was saying.

Will you be able to provide us with the costs?

**Mr. Raymond Guénette:** I will certainly see if I can do so.

**Ms. Meili Faille:** Can you please remind me how many judges at the Federal Court hear cases.

**Mr. Raymond Guénette:** There are 33 Federal Court judges who hear all of the cases.

**Ms. Meili Faille:** How many judges take part in one hearing?

**Mr. Raymond Guénette:** There's one judge, and always one judge.

**Ms. Meili Faille:** There's one judge per case. Is anybody reviewing the work of these judges?

**Mr. Raymond Guénette:** No, because there are no appeals.

**Ms. Meili Faille:** Therefore, there is nobody who checks on the judges. In recent years, I have read several rulings. Some judges seem to have expressed unease over the fact there is no appeals section. Really, a judicial review is not an appeal. I believe that will be all for now. I will have further questions later.

[*English*]

**The Chair:** Okay. Thank you, Madame Faille.

Mr. Siksay is next, please.

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

Thank you for visiting with us this morning and for your briefing. It was very helpful to see that process laid out so clearly, and it will be useful for me in particular in the future, because what happens on your side of the process has always been a bit of a mystery to me.

I have a quick question: prothonotary is a word I haven't heard before; what is a prothonotary?

**Mr. Raymond Guénette:** To explain it to you very briefly, it's something like a mini-judge. They can hear certain matters, but there are other matters they cannot hear. They do sit all day and they do sit as judges, but they're limited. I believe they can't hear a case above $50,000, and there are certain other areas that they cannot hear, but they sit as judges all day long. They do a lot of case management. Many files go through their offices.

**Mr. Bill Siksay:** Would they ever hear immigration and refugee cases?

**Mr. Wayne Garnons-Williams:** They would hear the motions for extension of time, motions for various aspects, but I don't believe they would hear the actual judicial review.

**Mr. Raymond Guénette:** The act does say "a judge of the Federal Court", and they are not judges of the court.

**Mr. Bill Siksay:** I take your point about there not being a backlog, and I hear some pride in getting to that point. Mr. Telegdi suggested there had been a backlog of around 900 cases. Can you tell me a bit about statistics from other years so that we have a point of comparison for the number of immigration and refugee cases that the board might hear, and how that compares to what has been on the schedule more recently?

**Mr. Raymond Guénette:** I'll direct this to Wayne Garnons-Williams to answer. He's the expert on statistics.

**Mr. Wayne Garnons-Williams:** Thank you.

Yes, for refugee cases only, let's start at year 2000, for new proceedings. In the year 2000 there were 4,490. In 2001 there were 4,067. In 2002 there were 4,986 refugee cases started. In 2003 there were 8,857 new refugee cases started. In 2004 there were 9,104 cases, and I believe you have the statistics for 2005. Our current estimate for 2006, for the year end, will be 4,917. That's an estimate.

**Mr. Bill Siksay:** I think you may have touched on this already, but how did the court decide to deal with the issue of the backlog that existed, and what were the steps that were taken to reduce that and get it under control?

● (0930)

**Mr. Raymond Guénette:** The steps taken by the chief justice were that he had at one point two judges assigned to deal with the majority and he then appointed four of them. We also increased staff to deal with these in order for him to get rid of all this backlog. So there was a blitz, judges and staff working together to get rid of the backlog.

**Mr. Bill Siksay:** So were new permanent staff and permanent judges added, or was that all temporary overtime?

**Mr. Raymond Guénette:** To a great measure, yes.

**Mr. Bill Siksay:** So it was people just doing extra work to clear up the backlog?

**Mr. Raymond Guénette:** That's correct, and judges working on Saturday and evenings. They used to get big cases of files in their offices on a daily basis.

**Mr. Bill Siksay:** Is there any suggestion that there needs to be an increase to permanent staff or the number of judges to deal with the caseload before the Federal Court?

**Mr. Raymond Guénette:** Not at this time.

**Mr. Bill Siksay:** I think those are all the questions I have, Mr. Chair.

Thank you very much.

**The Chair:** Thank you, Mr. Siksay.

Mr. Komarnicki.

**Mr. Ed Komarnicki (Souris—Moose Mountain, CPC):** Thank you.

I have some questions relating to the grounds for judicial review that you had referred to in your opening remarks, the grounds for judicial review in the present Federal Courts Act, under subsection 18.1(4).

As I read the first ground, the court can look at whether or not the lower-level decision was one where they acted without jurisdiction, or beyond its jurisdiction, or refused to exercise its jurisdiction.

Would you agree with me that there would be a question of law, and mixed law and fact, in that determination?

**Mr. Wayne Garnons-Williams:** I believe so.

The six heads of power as stated in subsection 18.1(4) are, of course: without jurisdiction or beyond its jurisdiction; observe the principles of natural justice; procedural fairness or other procedures that it is required to observe; erred in law in making decision—

**Mr. Ed Komarnicki:** No, I'm just talking about ground number one. It's a question of both mixed law and fact. Ground number one: the Federal Court deals with the mixed question of law and fact in its determination.

Would you agree with me there?

**Mr. Wayne Garnons-Williams:** I'd have to say potentially yes.

**Mr. Ed Komarnicki:** Also, as you were referring to paragraph four, they can also deal with the decision based on an erroneous finding of fact based on the material before a lower court.

**Mr. Wayne Garnons-Williams:** That's correct.

**Mr. Ed Komarnicki:** That's correct.

They can then, if they decide that based on the record or the evidence there was an erroneous finding of fact, so find and refer it back to the lower level tribunal for a rehearing?

**Mr. Wayne Garnons-Williams:** That's correct.

**Mr. Ed Komarnicki:** When we look at the RAD application itself, section 110, it indicates that in an appeal on RAD, it's an appeal on a question of law, of fact, and mixed law and fact.

Would you agree with me that this is similar to what already exists in the Federal Court?

**Mr. Raymond Guénette:** That's correct, yes.

**Mr. Ed Komarnicki:** If we go on to the third procedural matter under the refugee appeal division, it indicates that it proceeds without a hearing. That would mean without the calling of evidence or presenting of witnesses, and that kind of fact?

**Mr. Raymond Guénette:** It would simply be no witnesses, but all the facts and all the file is before the judge.

**Mr. Ed Komarnicki:** But no new facts, no viva voce testimony.

Isn't that the same as the appeal grounds in the Federal Court: there's no calling or hearing of new witnesses for additional evidence?

**Mr. Raymond Guénette:** That's correct, sir.

**Mr. Ed Komarnicki:** In that respect, they're the same?

**Mr. Raymond Guénette:** Yes.

**Mr. Ed Komarnicki:** In the RAD provisions that we have, it indicates that it proceeds on the basis of the record itself for what was heard before the lower-level board or tribunal.

**Mr. Raymond Guénette:** That's correct.

**Mr. Ed Komarnicki:** In the Federal Court, it has its hearing based on the record of the lower-level IRB decisions. Is that not true?

**Mr. Raymond Guénette:** That's correct, sir.

**Mr. Ed Komarnicki:** In that sense, they're identical and the same.

**Mr. Raymond Guénette:** Yes.

**Mr. Ed Komarnicki:** Do you not see that the two processes are parallel to one another in the sense I've discussed?

**Mr. Raymond Guénette:** Pretty much, yes.

**Mr. Ed Komarnicki:** Indeed, there's a duplication in those areas.

**Mr. Raymond Guénette:** Whether or not it's a duplication, I'm not sure.

**Mr. Ed Komarnicki:** You've agreed they're doing the same thing. In that sense, there would be a duplication of the same process.

**Mr. Raymond Guénette:** Yes.

**Mr. Ed Komarnicki:** Would it not seem wiser and more cost-efficient to have one tribunal for the process, as opposed to two?

**Mr. Raymond Guénette:** You're in a better position to answer that than I am.

**Mr. Ed Komarnicki:** You're able to deal with issues of cost and how much the extra provision of costs would be for RAD. If you're duplicating the same process, would there not be an additional cost through that fact alone?

● (0935)

**Mr. Raymond Guénette:** That's correct, yes.

**Mr. Ed Komarnicki:** When the Federal Court looks at the record below, it would be doing the same thing as the refugee appeal division in looking at the record below. If they disagree with the decision, the Federal Court can send it back to the IRB for another hearing. If RAD comes to the same conclusion, they too can send it back to the IRB for a hearing.

**Mr. Raymond Guénette:** Is that the case, Wayne?

**Mr. Wayne Garnons-Williams:** I believe so. I believe you're correct.

**Mr. Ed Komarnicki:** Both levels do the same thing in that respect.

**Mr. Raymond Guénette:** Correct.

**Mr. Ed Komarnicki:** The only difference I can see between the two levels is that the RAD provisions allow for the appeal division to substitute its own decision, which would not be available to the Federal Court. Is that right?

**Mr. Wayne Garnons-Williams:** That is correct.

There is one aspect you didn't mention, and that's paragraph 171 (c), where the decision of the panel of the RAD would have the same precedential value that the decision of an appeal court has for a trial court.

**Mr. Ed Komarnicki:** How is that different from the Federal Court?

**Mr. Wayne Garnons-Williams:** It's not different. It's one of the things you failed to mention. In your analysis, the RAD would potentially provide a precedential value to the lower level.

**Mr. Ed Komarnicki:** The other point is this. A number of grounds set out in the Federal Court of Appeal are actually broader or more extensive than the ones set out in RAD. Would you agree with me?

**Mr. Wayne Garnons-Williams:** Yes.

**Mr. Ed Komarnicki:** Wouldn't it be more cost-efficient to elongate or amend the Federal Court provisions that already exist to incorporate some of the things that we have in RAD, rather than duplicate the process in some respects?

**Mr. Wayne Garnons-Williams:** I wouldn't know. I wouldn't be able to comment on that unless there were some specific provisions we could analyze.

**Mr. Ed Komarnicki:** In addition, if we were going to leave that alone, on the same grounds we're talking about, anyone who appealed to RAD could also appeal after the RAD decision to the Federal Court on the basis of the Federal Court provisions to provide another ground of appeal, so to speak, or another avenue of appeal. Is that right?

**Mr. Wayne Garnons-Williams:** It's a judicial review, yes.

**Mr. Ed Komarnicki:** We've in essence created yet another level of determination, which would extend or add to the length of time it would take to determine a refugee application if a person were to use all available avenues.

**Mr. Wayne Garnons-Williams:** That's potentially correct.

**Mr. Ed Komarnicki:** In the present Federal Court of Appeal, when you deal with the pre-removal risk assessment issue and there is new evidence, does the Federal Court of Appeal deal with those kinds of issues, new evidence that may be entertained in a pre-removal risk assessment situation?

**Mr. Wayne Garnons-Williams:** In a pre-removal risk assessment situation, a party has a procedural right for any administrative decision to seek judicial review of that decision. If there is a pre-removal assessment decision, the party would have the right to seek an application for leave for a judicial review.

**Mr. Ed Komarnicki:** On that kind of an application, if new evidence comes forward that is negative to the refugee, they can apply through the judicial process in the Federal Court of Appeal for a determination. Is that correct?

**Mr. Wayne Garnons-Williams:** To the Federal Court, yes.

**Mr. Ed Komarnicki:** Yes, on the basis of new evidence.

**Mr. Wayne Garnons-Williams:** Yes, to seek application for leave for a judicial review.

**Mr. Ed Komarnicki:** They can also do it on an application for humanitarian and compassionate grounds, can't they?

**Mr. Wayne Garnons-Williams:** I believe that's correct as well.

**Mr. Ed Komarnicki:** Isn't it more than they can do under the RAD provisions, because it doesn't allow for new evidence?

**Mr. Wayne Garnons-Williams:** I again don't think we're in a position to comment on the RAD provisions. I think we have to limit our testimony to Federal Court procedures.

**Mr. Ed Komarnicki:** Each counsel in a Federal Court appeal is entitled to make submissions based on the record, are they not?

**Mr. Wayne Garnons-Williams:** Yes.

**Mr. Ed Komarnicki:** Do you agree that's similar to how the RAD provisions apply—submissions can be made by counsel on the record?

**Mr. Wayne Garnons-Williams:** Yes.

**Mr. Ed Komarnicki:** Thank you.

**The Chair:** Thank you.

Mr. Telegdi.

**Hon. Andrew Telegdi:** I have a couple of quick questions. I wonder if you could provide us with information on how many cases the Federal Court handles in the humanitarian and compassionate process and the pre-removal risk assessment process. Perhaps you could get that information to us when you're getting the other information.

What is the salary range of a Federal Court judge?

● (0940)

**Mr. Raymond Guénette:** I believe at the moment it's $240,000 a year.

**Hon. Andrew Telegdi:** That's at least double what we pay somebody on the refugee board.

Thank you very much.

**The Chair:** Thank you.

Madame Faille.

[*Translation*]

**Ms. Meili Faille:** As there is no appeals section, you said earlier that there is no case law in this respect. When the Federal Court hands down a ruling, do you hear of cases of individuals from the same family where some applications were approved, and others denied, though circumstances were very similar? How would a Federal Court judge react to such a situation?

**Mr. Raymond Guénette:** I am sorry, but I cannot answer. I have no idea.

**Ms. Meili Faille:** Okay.

**Mr. Raymond Guénette:** That is a question—

**Ms. Meili Faille:** You cannot answer that question.

**Mr. Raymond Guénette:** It would be a very specific case, and I would have to see if there is any case law. I really have no idea as to whether or not there is any.

**Ms. Meili Faille:** How can we now make sure that all refugee rulings are uniform? Earlier, you said that decisions subject to judicial review are not revised. In addition, when decisions under judicial review are denied, do you inform the people concerned and provide them with the details of the refused application?

**Mr. Raymond Guénette:** Indeed, in addition, they receive a copy of the judge's order through registered mail.

**Ms. Meili Faille:** Do you provide them with a detailed report on the grounds of the refusal?

**Mr. Raymond Guénette:** I do not believe that the judge provides the grounds of refusal for each decision. Did I understand your question properly?

**Mr. Wayne Garnons-Williams:** Yes. In the majority of cases, the decisions do not include extensive explanations. Normally, there is another process for the judicial review.

**Ms. Meili Faille:** What you do to ensure the quality of the decisions made in the judicial review? You seem to be driven by fear of creating a backlog. What do you do to make sure that the decisions are fair?

**Mr. Raymond Guénette:** The judges are the ones who make the decisions. They have experience in the field. It is not the staff's role to review the judges' decisions.

**Ms. Meili Faille:** What would allow for a certain degree of control over the quality of these decisions?

**Mr. Raymond Guénette:** An opportunity to appeal before a court of appeals.

**Ms. Meili Faille:** The right to appeal?

**Mr. Raymond Guénette:** If there were a right to appeal Federal Court decisions.

**Ms. Meili Faille:** Thank you.

[*English*]

**The Chair:** Thank you.

Mr. Siksay, please.

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

I just want to come back to the question of refusal to grant leave to appeal. I understand there aren't very detailed reasons, or maybe no reasons given in that case. Is that correct?

Can you tell me in how many cases reasons are provided? Is it unusual to give reasons for a refusal to grant leave?

**Mr. Wayne Garnons-Williams:** It really depends on the merits of each individual case, of course. It's left to the discretion of the judge to render a decision and reasons for a decision. I couldn't give you a specific figure.

**Mr. Bill Siksay:** Do you have any sense of it? Would you normally expect to see reasons, or just normally not expect to see reasons?

**Mr. Wayne Garnons-Williams:** We normally do not expect to see reasons when leave is denied.

**Mr. Bill Siksay:** Okay.

Has there ever been analysis done of the cases, about why leave would be denied? Has there ever been an analysis done of the circumstances where that decision is made, either by the administration or by the judges themselves, about the kinds of cases that come to them?

I guess what I'm getting at is, is it seen as a nuisance kind of requirement to go through this process, or is there analysis done about the kinds of cases that are coming and why they're getting refused leave to appeal, that kind of thing? Is there any analysis of what's before the court, in that sense?

I understand that the court would deal with everything that comes to it, but has there been no analysis of the kinds of decisions or reasons?

● (0945)

**Mr. Raymond Guénette:** The judges are traditionally independent to hear, and it's not up to us to interfere.

**Mr. Bill Siksay:** Yes, and I understand that the administrative branch wouldn't do that either.

**Mr. Raymond Guénette:** Yes, definitely not.

**Mr. Bill Siksay:** You don't know of any research, or whatever, that has been done on that kind of question by other folks.

**Mr. Raymond Guénette:** Not to my knowledge at the Federal Court.

**Mr. Bill Siksay:** Okay, thank you.

**The Chair:** Thank you.

Mr. Wilson.

**Mr. Blair Wilson:** Thank you, Mr. Chair. I have just a couple of short questions, actually.

First, has the Minister of Immigration asked you for data with respect to the costs of carrying out your responsibilities vis-à-vis the implementation of the RAD? As you know, the committee is reviewing why the government hasn't implemented the RAD, and one of the underlying points we're trying to get to today is what the cost is to implement the RAD vis-à-vis what the cost is to carry out the work at the courts presently. Has the minister asked your department for any information?

**Mr. Raymond Guénette:** I have not received any such request.

**Mr. Blair Wilson:** The figure you used earlier, $1,277 per case, was that the paperwork costs per case?

**Mr. Raymond Guénette:** And the salary of the staff to deal with the file.

**Mr. Blair Wilson:** What would the cost be for all the overhead and salaries of judges and processing?

**Mr. Raymond Guénette:** I will try to obtain that information. There was a previous question to that and I said I would try to provide that kind of information. I don't have that information.

**Mr. Blair Wilson:** Okay, thank you.

Lastly, if the government were to implement the RAD—and I know the parliamentary secretary has had numerous questions with respect to the duplication possibilities there—would there not be cost savings and workload reduction in the courts if the RAD were to be the avenue of appeal?

**Mr. Raymond Guénette:** We cannot answer that, because we honestly don't know. We don't know whether people will simply continue and avail themselves of every appeal process or not. Until the system is in place, it's very difficult to see what's going to come to the court or not.

**Mr. Blair Wilson:** Thank you.

**The Chair:** Mr. Komarnicki, please.

**Mr. Ed Komarnicki:** Some of the questions I was going to ask, actually, Mr. Wilson asked. But have you determined how many extra judicial positions would be required if you were to leave the Federal Court of Appeal procedure as it is and implement RAD? Can you determine that based on the number of cases that presently are appealed? Have you done any of that analysis?

**Mr. Raymond Guénette:** We haven't done that analysis, sir.

**Mr. Ed Komarnicki:** What about the fact that presently, to the Federal Court, there is a process of leave to appeal and appeal based on the initial IRB decisions? If you have RAD, you will probably have leave to appeal and appeals based on the decisions of RAD. Is there going to be any difference in volumes with respect to leave to appeal and appeals, any difference in workload? Are you able to say?

**Mr. Raymond Guénette:** No, sir, I am not able to say.

**Mr. Ed Komarnicki:** Are you able to do any kind of analysis in that regard?

**Mr. Raymond Guénette:** The only comment I can make about that is that definitely every time you add an appeal process you're going to eliminate some cases at the end, because some people are going to be successful and won't have any need to go to the final appeal process. That's about all I can say.

**Mr. Ed Komarnicki:** So you haven't done any particular study.

**Mr. Raymond Guénette:** No.

**Mr. Ed Komarnicki:** Notwithstanding the implementation of RAD, the process of appeals and procedural administrative appeals based on decisions made on the pre-removal risk assessment applications and humanitarian and compassionate grounds applications would continue to go to the Federal Court of Appeal. If we were to add time to the whole refugee determination process by establishing yet another layer of appeal, would not some of that in itself increase the number of humanitarian and compassionate grounds applications because of the passage of time?

**Mr. Raymond Guénette:** It could very well be.

**Mr. Ed Komarnicki:** You haven't done any determination or analysis of that. But wouldn't it stand to reason that some cases may take as little as five months, and some may take as long a year or two years to dispose of, depending on the contingencies of each case? That in itself would obviously provide some grounds, potentially, for humanitarian and compassionate grounds applications.

**Mr. Raymond Guénette:** I would say yes. I would agree with that statement.

**Mr. Ed Komarnicki:** Have you thought about somehow streamlining the whole process and combining it to make it more efficient? If we look at all levels of determination—pre-removal risk assessment, humanitarian and compassionate grounds, appeals from the IRB—would that sort of streamline the whole process so that it works in tandem?

● (0950)

**Mr. Raymond Guénette:** We have not at all looked at what goes on below us. We deal strictly with the judiciary and what comes before the Federal Court, but no other process. We have not had any meetings or consultations with anyone from CIC.

**Mr. Ed Komarnicki:** Thank you.

**The Chair:** Thank you, Mr. Komarnicki.

Madame Folco, please.

**Ms. Raymonde Folco (Laval—Les Îles, Lib.):** Thank you, Mr. Chair.

My question comes right after Mr. Komarnicki's—although it's not really a question, because you did give him an answer.

I would like to make a comment to the chair of this committee. When eventually we look at the type of report that this committee will wish to present to the House of Commons, I think it's important that when we look at the RAD, we see it not as being off and by itself but within the context of all the other types of appeals to which refused refugee claimants have access. I'm talking about humanitarian and compassionate grounds, I'm talking about risk of return, I'm talking about the Superior Court, and so on.

If I were a refugee claimant who had been refused and I went to the RAD, if the RAD existed, and the RAD told me, no, I couldn't do it, then obviously my next step would be to go on asking someone else, and someone else, and someone else. Because right now that's what the system allows, almost ad infinitum.

I would make the suggestion to the committee that when we come to our suggestions and recommendations for the minister and the House on the role of the RAD and whether the RAD should exist, we should put it in the context of all the appeals that are possible for refused refugee claimants. We should try to bring some kind of homogeneity and logic to the whole system of appeals on behalf of the refugee claimants.

I don't know whether you want to make a remark on that, Mr. Guénette.

**Mr. Raymond Guénette:** I agree with you 100%.

**Ms. Raymonde Folco:** Thank you.

**The Chair:** Madame Faille.

[*Translation*]

**Ms. Meili Faille:** The commissioners of the IRB are appointed. In the past, the appointment process was such that many questioned the competence of the commissioners. Following that, a new process was established in 2004 by Ms. Sgro. Yet, today, one hears the same criticism about this new system, which has not put an end to partisan appointments.

How are judges appointed to the Federal Court?

**Mr. Raymond Guénette:** The lawyer in question makes an application and there is a committee in place at the Office of the Commissioner of Federal Judicial Affairs. The committee is composed of citizens and judges. The committee reviews applications and decides whether or not the person is qualified. In addition, the candidate indicates in his or her application that he or she wishes to be appointed to the Federal Court, the Canada Tax Court, or the provincial Superior Court. To my knowledge, the minister then asks for a list of people deemed qualified, and they are appointed as judges.

**Ms. Meili Faille:** Are you familiar with the commissioner appointment process and can you tell us about the difference between the two?

**Mr. Raymond Guénette:** I am not at all familiar with the process for appointing IRB commissioners.

Pardon me, but I can only concentrate on my four courts.

**Ms. Meili Faille:** In your role, do you make recommendations to improve how the courts function?

**Mr. Raymond Guénette:** Absolutely, that is my role.

**Ms. Meili Faille:** What are the recommendations you would have made with respect to how refugee applications are processed?

**Mr. Raymond Guénette:** I will ask Mr. Garnons-Williams to answer that question.

[*English*]

**Mr. Wayne Garnons-Williams:** Right now we're looking at the processing of the various applications that we have in the Federal Court. We are a paper-based court right now. Our vision, and what we're trying to move on, is to be an electronic court of the future. We're looking at that with respect to service to Canadians, with respect to results for Canadians. And for us that will mean faster processing times, more efficient use of court personnel, and quicker determinations. Monsieur Guénette has been spearheading the court's evolution from a paper-based court to an electronic one.

So that's one of the things we're moving on to improve our system.

[*Translation*]

**Ms. Meili Faille:** When these recommendations are put into effect by the court, could the savings and efficiencies be used to create an appeals section? People would then be able to appeal. Since you are already taking measures to create savings and efficiencies, could those savings then be redirected to establish an appeals section?

● (0955)

**Mr. Raymond Guénette:** Certainly.

**Ms. Meili Faille:** I have one last question about statistics. How many cases do judges hear per year? What is the approval rate of applications under judicial review?

**Mr. Raymond Guénette:** The approval rate? Okay.

**Ms. Meili Faille:** How many cases do the 33 judges hear, and what is the approval rate for cases under judicial review?

**Mr. Raymond Guénette:** Okay.

**Ms. Meili Faille:** Thank you.

**Mr. Raymond Guénette:** Not at all.

[*English*]

**The Chair:** I think that pretty well completes our questioning.

I want to thank both of you for coming here today to provide evidence. You've cleared up a lot of confusion about so-called backlogs.

We will suspend for a moment or two until our next witness, Mr. Frecker, comes before the committee.

Again, gentlemen, thank you very much.

● _____ (Pause) _____

●

● (1000)

**The Chair:** Does the committee want to deal with Mr. Karygiannis's motion?

I was going to ask, while we're waiting for the witnesses to come, if we want to deal with the motions, but it wouldn't be fair, I guess, to Nina.

Go see if Nina is around, and then we can deal with Mr. Karygiannis's motion while we're waiting for Mr. Frecker to arrive. If Mr. Frecker has not arrived, then we can deal with Mr. Siksay's motion as well. But we'll just start with Mr. Karygiannis's motion when our people get back in the room here, while we're waiting for Mr. Frecker.

I said while we're waiting for Mr. Frecker to arrive—apparently he hasn't arrived here yet—we could deal with Mr. Karygiannis's motion. Do we have agreement to do that? No?

**An Hon. member:** Once everyone is here.

**The Chair:** We can do it once everyone is here.

**Mr. Ed Komarnicki:** I don't know that we want to necessarily deviate from the agenda. I'm still getting some information that I'd like to have. We can't change the agenda whenever you feel like it.

**The Chair:** We don't have to deal with it, because Ms. Grewal left when we indicated that we were waiting for Mr. Frecker to arrive, and it wouldn't be fair—we're not really sitting—to Ms. Grewal to deal with any of the motions. She is gone on the basis that Mr. Frecker hadn't arrived. So we will leave it until she gets back.

By the way, we're not back into session yet. Now, what were you going to say? This is totally informal. We are not back into session.

**Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.):** Mr. Chair, on a point of order, I'm sure that if you were to seek—and probably even call the question—to deal with the motions at the top of the list even before we get Mr. Frecker into questioning—

**The Chair:** I'm reluctant to do that. Our agenda is set now. We operate on the basis of cooperation in committee. We have our agenda set. I don't believe it would be fair to all committee members if we change our agenda in the middle of the proceedings.

**Hon. Jim Karygiannis:** It's a simple vote, Mr. Chair. Or are we hiding something?

**The Chair:** We are going to sit until 11:30 this morning, so both motions will be dealt with.

**Mr. Blair Wilson:** Mr. Chair, just for expediency in saving all our time, we've been waiting now five, six minutes, and the witness has not appeared.

**The Chair:** We can't do it. Ms. Grewal left the room when she found out that we were waiting.

**Hon. Jim Karygiannis:** Ms. Grewal left the room before she found out.

**The Chair:** Anyway, I'm adjourning the meeting until our witness comes.

● _____ (Pause) _____

●

● (1005)

**The Chair:** We'll get our committee back to order again.

I want to welcome, on behalf of the committee, Mr. John Frecker.

**Hon. Jim Karygiannis:** Mr. Chair, we can't start. One of our members is still missing. Wasn't that your ruling?

**The Chair:** We have a quorum.

**Hon. Jim Karygiannis:** Wasn't that what you ordered today?

**The Chair:** Order, please.

I want to welcome on behalf of the committee Mr. John Frecker, president of Legistec Incorporated.

Welcome, sir. I'll pass it right over to you now for your comments, and then go to questions.

Mr. Frecker.

**Mr. John Frecker (President, Legistec Inc.):** Thank you very much, Mr. Chairman and committee members.

My apologies for arriving late. I went to the wrong door, being a creature of habit, and then wandered around and met Mr. Farrell downstairs, who showed me up.

I was asked to attend at the committee late last week—quite by surprise, because it's about four years ago that I did this study for the Department of Justice on legal aid. I've moved on to do work in other areas besides immigration over the past four years. It was a bit of a refresher course for me to go back and read my own paper.

I gather that the committee is interested in the issue of cost of the refugee appeal division. That was a peripheral part of the study we did on legal aid and legal aid cost drivers, which covered a whole lot of different things—global pressure, what's driving refugees to come to Canada, process problems at the first level and at the second level and at the court level. The RAD component was an important part, but only part of that broader study.

Excuse me. I'm a bit out of breath from running.

What we were looking at in that study was specifically the cost implications for legal aid. We concluded that the addition of an appeal level would have definite cost implications; that there would be added legal aid costs simply because there's more process. But the flip side of that is that the appeal division serves a very important purpose in actually simplifying the process.

The problem we have now with the first-level decision, and then the only recourse left being the pre-removal risk assessment process or judicial review, is that all the cases that are rejected, or a very high percentage of the cases that are rejected, seek leave in the Federal Court.

A significant percentage of these cases get leave, and when the Federal Court hears the cases, the most it can do is quash them and say that the decision was defective and then remit the case back to the refugee protection division for a new hearing.

The process in the Federal Court is intrinsically slow, partly because of court backlogs. I gather from Mr. Farrell that you've just heard witnesses testify that they, fortunately, have reduced their backlogs, which is very good to hear. But also, the court process itself is slow and cumbersome.

The idea behind the RAD is to have an expert tribunal of people who are familiar with country conditions and familiar with the issues the refugee protection division is dealing with and who can deal in a very efficient manner with the appeals.

The appeal division would also be different from the Federal Court, in that it would have the power to enter the correct decision rather than just quashing it and sending it back for a rehearing. If you look at its remedial power and think that it can get to the right decision more quickly in the cases where the first-level decision should be overturned, that's a significant time saving. Time is one of the biggest cost drivers in the entire asylum process—the delay of having people hanging around the country before removal, if they are slated for removal, or the delay in getting their status regularized, if they are people in need of protection.

The Federal Court would not disappear from the equation, because it's a plenary jurisdiction of the court to review the decisions of subordinate or statutory tribunals, but one can surmise that the deference that would be accorded to the decisions of the refugee appeal division would be higher than the deference that's currently accorded to the decisions of the refugee protection division, simply because it would be recognized, constituted, designed, and I trust recognized by the court as an expert tribunal.

We see this across the spectrum of administrative tribunals. Certain ones are accorded a very high level of deference—only a very small number of their decisions are ever quashed by the court—and I would submit that we could anticipate a comparably high level of judicial deference for the decisions of the refugee appeal division.

● (1010)

This means that we would get to final disposition on the merits of refugee claims more quickly than we do under the present system, and that would represent a net saving to the system, even though there would be predictable increased legal aid costs for representation in the proceedings before the appeal division.

That was the central hypothesis or thesis in the paper that we prepared for the Department of Justice.

Rather than speculating on what may be of interest to the committee, I would welcome any questions you might have, and I will try to answer them as best I can.

My primary preoccupation is system efficiency. That's probably shared by most members of this committee, who obviously are very concerned about having a refugee protection system that protects genuine refugees in need of protection and filters out those who are not in need of protection, and hopefully gets them removed from the country as quickly as possible.

**The Chair:** Thank you, Mr. Frecker.

We have approximately 45 minutes, so I will go first to Mr. Karygiannis.

**Hon. Jim Karygiannis:** Mr. Chair, I'd like to split my time with Madame Folco.

Mr. Frecker, welcome to the committee.

I have only two questions. Your study encompassed what would happen and the length of time it takes to get to the Federal Court and some folks who are probably not able to reach there because they are on the removal stream and get to be removed. Have you looked at the—

● (1015)

**Mr. John Frecker:** That wasn't a preoccupation of this particular study. We were commissioned to look at legal aid cost drivers, because in 2002, when the study was commissioned, there was an ongoing debate between federal justice and provincial governments, provincial legal aid authorities. They wanted to know, since immigration is a federal matter, what was driving the cost in immigration. So that was the focus of the study.

These other issues are very legitimate issues.

**Hon. Jim Karygiannis:** Are all the provinces still covering refugee hearings with legal aid, or have some provinces opted out?

**Mr. John Frecker:** As far as I know, some have opted out. Again, I have been away from this particular field for the past three years, so I would be guessing. I wouldn't be able to give you a definitive answer.

**Hon. Jim Karygiannis:** Go ahead, Raymonde.

**Ms. Raymonde Folco:** I'd like to thank Mr. Karygiannis for sharing his time.

Mr. Frecker, it's good to see you again, to begin with.

**Mr. John Frecker:** And you, as well.

**Ms. Raymonde Folco:** Thank you.

I'm sorry my question doesn't address legal aid; it addresses the big picture. The question, which I asked Mr. Guénette of the Courts Administration Service, is essentially the same question I'll ask you.

To begin with, I'm for the RAD. It's an important piece of legislation and should be implemented. However, I don't think it should be another piece that is added to the complete picture of all the recourse refused refugee claimants have access to right now. My feeling is that we have to look at the whole set of recourse, with all the meanderings involved, in terms of adding a RAD, replacing it, and sort of juxtaposing pieces together.

I know you've done a great deal of thinking about this in the past. Would you like to make a fairly detailed comment on how you see the whole set of recourse to which refused refugee claimants have access, in terms of bringing in the RAD and changing the whole dynamics of recourse?

**Mr. John Frecker:** The issue of recourse for refugee claimants is very difficult, and I think quite confusing. Madame Folco is very knowledgeable on this, having served on the board.

People talk about all this recourse that claimants have. But if you look under the current act, they have their hearing before a single member of the refugee division. They then have the right to seek leave for judicial review. That's not getting to the court; that's getting permission from the court to go to the court. I don't know what the current statistics are, but when I did the study only about 12% of cases got leave. So this meant that of those who were rejected and who sought leave, 88% were out of luck at that point.

Then their other recourse is the humanitarian and compassionate application, which is available to all immigrants. And it has nothing to do with the asylum claim; it has to do with the circumstances the individual finds himself in, family circumstances and things like that, and whether removal from Canada would be an undue hardship. And it's, at the end of the day, a discretionary remedy that rests with the minister.

The other remedy is the pre-removal risk assessment, which only kicks in if there is a significant delay in removing a failed refugee claimant; and that only deals with allegations of changed circumstances in the country of origin.

So the claimant never has the chance to re-litigate the matters that were heard by the single member before the refugee division. That case is closed, unless it's overturned by the Federal Court on judicial review.

In the pre-removal risk assessment, they can bring forward, if such evidence exists, evidence of changed circumstances in the country, if there's a coup or if there's a civil war started, or something like that, that would make removal to that country dangerous. But that's a very limited process. So the total bundle of recourse that's available to refugees is not in fact as broad as some of our newspaper editorialists would have us believe.

The big problem in the system is slowness in removing failed claimants, and that's a resource problem for the Department of Immigration. I don't think it's lack of will on their part, particularly during the period when we had 45,000 claimants a year coming and a significant number of these were rejected. The task of having these people removed or going and collecting them and effecting the removal is very difficult, and you find that a very significant percentage of them just never get removed. That is a fundamental problem in the system, but it's not a problem with the recourse.

So I would see the RAD as being a vital element in this system, but I wouldn't see removing the pre-removal risk assessment process or the H and C. And as I mentioned in my earlier comments, access to the Federal Court is a legal remedy that's available because of the status of the refugee board as a statutory tribunal. What I would hope would happen, as a practical matter, is if the quality of decisions at the refugee board, the RAD, were demonstrably high, the incidence of judicial review being granted and the delay that's associated with it would be eliminated.

● (1020)

**Ms. Raymonde Folco:** Are you suggesting that the system stay pretty much as it is and that we add the RAD simply as another piece to it?

**Mr. John Frecker:** Yes. I think that it would actually represent an improvement in efficiency of the present system. This is where I probably part company with some of the people who see it simply as adding layers. With the kinds of things the RAD does, it gets you the correct decision in the appeal process instead of just getting you a quashed decision and sending it back to be reheard. It also provides guidance, precedential decisions to guide the decision-making at the first level.

One of the big problems that a big tribunal like the refugee board faces, particularly with offices spread across the country, is consistency in decision-making. People tend to look at very similar cases, and, because of a difference in the way evidence is presented or differences in the culture of local offices, they will decide demonstrably similar cases differently, and that's, frankly, an injustice.

If you have an appeal division that's centralized and that's hearing these diverse cases and developing a guiding jurisprudence on recurring fact patterns, that will actually make decision-making at the first level a lot more efficient.

**Ms. Raymonde Folco:** Would you suggest that the RAD include in its decisions a look at humanitarian and compassionate factors, and return of risk as well, as a complete package? What I am looking at is to try to limit the time in which people go back into the system time and time again. Would it be possible for the RAD decision to include these other two factors?

**Mr. John Frecker:** The amendments to the act in 2001 expanded the definition of the general protection grounds to include persons in need of protection.

The humanitarian and compassionate is a different beast. As I said, it's not to do with asylum. It's not to do with refugee protection. It's to do with the circumstances of the person in Canada, and that's really an immigration issue. So I think it's important that discretion over humanitarian and compassionate admission to the country remain a ministerial discretion and that it not be appropriated by the board.

**Ms. Raymonde Folco:** Would there be a risk of return, also?

**Mr. John Frecker:** The risk of return is covered now. The risk of return.... I think I misunderstood you.

The pre-removal risk assessment, by its nature, kicks in at the moment of removal, so if there's a delay between a RAD decision and removal, as there is now a delay between a refugee protection division decision and removal, there may still be the need for a pre-removal risk assessment. I personally would have liked to have seen the pre-removal risk assessment taken over by the board, because it has the expertise, but Parliament in its wisdom decided to leave that at the departmental level.

**The Chair:** Okay. Thank you, Madame Folco.

Madame Faille is next.

[*Translation*]

**Ms. Meili Faille:** Firstly, I wish to thank you for providing assistance to the committee as it considers the issue of refugees. As you know, this subject is very important to me and one that I have been working on for several years now. I also understand that you witnessed the assessment of the Auditor General in 1997-1998.

Do you have any vague recollection of what the Auditor General's recommendations were at the time?

[*English*]

**Mr. John Frecker:** I can't tell you off the top of my head. I remember it, because we were very actively involved in the discussions at the time, but it hasn't been at the top of my thought pattern for the past few weeks, I will admit.

[*Translation*]

**Ms. Meili Faille:** I will not ask any questions on those details.

One of the important recommendations made at the time was to have a non-partisan commissioner appointments process. One of the recommendations was to make the appointment of an IRB commissioner a non-partisan process.

**Mr. John Frecker:** That is true. I believe that is ongoing and is not contradictory.

● (1025)

**Ms. Meili Faille:** But the issue is still not resolved.

**Mr. John Frecker:** I do not understand the question.

[*English*]

**Ms. Meili Faille:** When the RAD was evaluated in 2001-02 before implementation at that time, many experts gave the committee a recommendation that in the nomination of commissioners at the IRB, the commissioners be elected. It would be a little bit similar to the Federal Court, in terms of their—

**Mr. John Frecker:** It would be a merit appointment process. Yes; I think I misunderstood your question. I'm sorry.

**Ms. Meili Faille:** From what we know at the present time, this has not been addressed or improved at the IRB, and many experts still believe that the existing system right now could potentially, possibly, allow political nominations in the IRB, and that we don't have a merit base.

**Mr. John Frecker:** I've been away from it for five years, so I'm probably less informed about this than members of this committee, but my understanding is that they've made considerable strides toward merit-based appointments. The chairperson, Monsieur Fleury, has probably spoken to this committee on this issue. The committee that's established to screen nominees has improved its processes considerably, so there's a better screening, as is happening with a lot of other administrative tribunals.

The problem, as I understand it, is that the committees can make all kinds of recommendations for qualified people; hopefully, they eliminate the patently unqualified, but because there's still a politically based appointment process, there's no guarantee that the most qualified get appointed, and it may be that from the pool of qualified people, marginally qualified are appointed ahead of superbly qualified.

With the appeal division, the proposal that was being developed when I was at the board—and I don't know if it's still the case, but I think it was certainly Monsieur Fleury's preference—was that the membership of the RAD be made up of experienced members, people who'd had experience in the refugee protection division and who had proven themselves to be exceptionally competent. It was a two-tier filtration process, if you will: the initial screening for a merit-based appointment combined with demonstrated skill on the job. One of the reasons was that if the RAD is to do its job properly as a court of second instance dealing with factual cases, it's very important that the members of that division be genuinely expert in country conditions as well as in legal questions. That was the way that issue was going to be addressed.

[*Translation*]

**Ms. Meili Faille:** The IRB also told us that it wanted to deal with cases like refugee protection claims in less than six months. In your experience, is this possible?

[*English*]

**Mr. John Frecker:** I'm probably guilty of advocating a six-month processing time very vigorously but never attaining it. I think, in principle, that a six-month processing time is attainable. I think it's a rational delay, if you will, for dealing with asylum claims.

I note in the report on plans and priorities from the board that they're now looking at about a 10-month processing time. They've managed to get it down from the 18-month delay that had built up during the big influx in the early part of this decade. But if you look at the process rationally and the objective steps that one has to go through to deal with an asylum claim—allowing the claimant sufficient time to gather the information they need, allowing for an in-person hearing, and allowing for a decision to be delivered following receipt of evidence—then provided there are adequate resources at the board level, six months is, objectively, a reasonable timeframe.

The delays that are there are a function of the accumulated inventory and the lack of personnel at the board. Right now, I gather that they have 40 vacancies, for instance. So their ability to deal with the cases they have is compromised because they don't have a full complement of members.

● (1030)

[*Translation*]

**Ms. Meili Faille:** I have one last question for you. In the past, have you assessed the cost of setting up an appeals section for each province?

[*English*]

**Mr. John Frecker:** The legal aid study I guess was the closest one came to looking at what would be the implications for the provinces. I looked at three different scenarios at that time that projected somewhere between $6 million and $9 million, depending on different assumptions. It was all based on assumptions, because we were dealing with a hypothetical situation. That was at a time when we had an intake of 40,000 claims. Now we have an intake of 20,000 claims. So I think you could safely cut that number in half, because the volume of cases would be halved.

There are the other costs to provinces, which I gather immigration representatives have already spoken about, which are the welfare costs and things like that. If my thesis is correct and the RAD actually results in getting to decisions and effective removals more quickly, that would actually reduce those costs rather than increase them.

**The Chair:** Thank you.

Thank you, Madame Faille.

We'll go to Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Mr. Frecker, for being here. And thank you for dredging up your thoughts on the report. I know I have difficulty remembering what I did last week, let alone several years ago. So I appreciate your getting ready for that.

I also want to thank Madame Faille for suggesting that you come today. I think it's been very helpful to hear your comments on the RAD and the process, to hear your argument that it actually simplifies the process. I think that's very helpful for us to hear.

On the discussion you were just having with Madame Faille about the cost to the provinces, just so I'm clear, the $1.2 million to $2.6 million was the estimated cost to the federal government in increased legal aid costs. And the provinces, you estimated at the time, would see an increased cost for legal aid of $6 million to $9 million. Is that correct?

**Mr. John Frecker:** If you'll bear with me one second, I'll go to the.... We developed three scenarios, and that was based on what was the leave rate at the Federal Court and various other things, and we tried to factor in all the different elements.

In fact, I've probably misled the committee. By my calculations—and this is direct national legal aid costs, so that would be shared between the provinces and the federal government—they were estimated at $6.5 million pre-RAD based on the intake levels that existed in 2002.

Under scenario one, which was the most optimistic scenario, that there would be a 50% reduction in the rate at which leave for judicial review was granted because of a high level of deference and that the RAD would correct the decisions that are now remitted back for a rehearing by the refugee division, the total legal aid costs would have been $7.75 million.

Then for scenario two, which was that.... I'm trying to get my thoughts straight on this. It says for 75% of those cases that are currently overturned on judicial review plus one-third of the cases for which leave is currently granted with increased judicial deference at a rate of 25% instead of 50%—with that change, it was going to be $8.5 million.

In scenario three, the RAD would only resolve 50% of the cases currently overturned on judicial review. So there would be a higher incidence of judicial review after the RAD. It would be $9.1 million. That was at a starting case intake of 40,000 instead of 20,000.

I'd have to go back and try to reconstruct how I did these calculations, but they were based on all the different elements that went into the process at the time.

**Mr. Bill Siksay:** Could you tell us something about the work that a legal aid lawyer would do with a client in this process and how that might change?

**Mr. John Frecker:** In the RAD process?

● (1035)

**Mr. Bill Siksay:** Yes.

**Mr. John Frecker:** The RAD process, as designed, was purely a paper process. There was no oral hearing. The reality is that with refugee claimants, because most are non-francophone, non-anglophone, and totally unfamiliar with the Canadian legal system, they need somebody to help them prepare their documents.

So the lawyer would be assembling the information from the refugee hearing, identifying what would be the error on which an appeal could be based, whether it was the failure to consider evidence properly or whether it was a jurisdictional error or whatever, and would analyze these problems. If there weren't going to be transcripts, they were going to get audiotapes or recordings of the hearing, and they would review that to see if they could identify an appealable error, and prepare a written submission for the RAD. The RAD would then review that written submission and make its decision. So the lawyer's role would be actually preparing that written submission.

It's very similar to what lawyers currently do on leave for judicial review applications, but the difference is that instead of being leave for judicial review and then going to judicial review, they'd be going for the ring, as it were, because the RAD would have the authority to enter the correct decision.

**Mr. Bill Siksay:** Thank you.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Siksay.

Mr. Komarnicki, do you have some questions for Mr. Frecker?

**Mr. Ed Komarnicki:** Yes, I do. Thank you, Mr. Chair.

I'm going to focus specifically on the costs of the legal aid provision of it. I understand the legal aid services are jointly provided in terms of costs federally and provincially. Is that what I heard you say?

**Mr. John Frecker:** The federal government contributes to the provincial plans.

**Mr. Ed Komarnicki:** But the actual province would pay for the legal aid services itself?

**Mr. John Frecker:** Yes, and they get grants from the federal government to defray some of the costs.

**Mr. Ed Komarnicki:** These grants are negotiated between the provinces and the federal government?

**Mr. John Frecker:** That's correct.

**Mr. Ed Komarnicki:** And it's dependent on a whole lot of factors, not necessarily RAD? The negotiations of the various—

**Mr. John Frecker:** It's criminal law, it's family law, it's civil legal aid. There's a whole bundle of things.

**Mr. Ed Komarnicki:** But we do know one thing, that by having the RAD provisions implemented, it will be an extra drain or an extra requirement on the legal aid services provided by the province.

**Mr. John Frecker:** Yes, and, as I said, I made a mistake when I gave you the $6 million figure. It would be somewhere between one and three million.

**Mr. Ed Komarnicki:** I'm not so much concerned about the figure right now, but the province would be providing the legal aid services. Would you agree with me that as between provinces there are differences in the provision of services as among the legal aid commissions or agencies, in that some use staff lawyers, some use private lawyers, and some have other contractual terms? Is that correct?

**Mr. John Frecker:** Absolutely. In fact, the level of service varies wildly across the country.

**Mr. Ed Komarnicki:** And since the level of service varies wildly, so would the cost.

**Mr. John Frecker:** And the manner of delivery.

**Mr. Ed Komarnicki:** The manner of delivery and the amount of costs would vary.

How do you come to a cost figure, when there's such a variance from province to province?

**Mr. John Frecker:** What we did when we were doing the analysis was look at the procedures each province used and extrapolate how much extra it would cost in that jurisdiction if they had lawyers preparing RAD applications instead of preparing leave for judicial review applications.

**Mr. Ed Komarnicki:** Is there a cost difference between staff lawyers providing a service and private lawyers doing so?

**Mr. John Frecker:** That's an interesting question. There's been a lot of literature on it. Theoretically, services provided by staff lawyers are cheaper, because in judicare, with billing per hour, there's less control over cost, but some studies have indicated that when you have legal aid clinics with staff lawyers, the effort they expend on the cases tends to be greater than a lawyer who is on a legal aid tariff would put in on the same case. It may be that there's a higher quality at the same price, or it may be that when.... The evidence is not conclusive. It certainly seems that—

**Mr. Ed Komarnicki:** You would agree with me that it's the kind of thing private lawyers would certainly be amenable to: using the system to the extent they could to the maximum benefit of their client.

**Mr. John Frecker:** In fact that's one of the central theses of the study, that there's an economically rational behaviour to maximizing income from a program like that. The incentives to control costs are not as strong as they would be in a situation with a paying client.

**Mr. Ed Komarnicki:** As a non-paying client, wouldn't you obviously want to use every resource available, if somebody were paying for your legal costs, privately under contract or through a clinic?

**Mr. John Frecker:** The way the legal aid plans have controlled that cost typically has been to put a cap on what you can bill. Yes, you can take a claim, but the maximum you can bill for that particular service, regardless of how much time you spend on it, is *x* dollars.

**Mr. Ed Komarnicki:** By the same token, if I were a client, so to speak, I would want to use not only the appeal to RAD, which you say is one avenue, but if I were unsuccessful, I would also want to use legal services in another avenue, and that's to go to the Federal Court of Appeal for judicial review; would I not?

● (1040)

**Mr. John Frecker:** Okay. I come back to the reasoning why.... I hear what you're saying, but please allow me to explain.

If the granting of legal aid is based on a merits test—whether there is a reasonable prospect for success, and most legal aid plans do have that threshold—and you have a RAD that's doing its job properly, the likelihood of cases that are left over after the RAD has done its job having a reasonable prospect of success in the Federal Court goes down demonstrably. The number of cases that would likely qualify for legal aid would predictably be reduced.

**Mr. Ed Komarnicki:** Obviously, if you were to err on the side of the client to appeal if there were any kind of question at all, certainly that wouldn't eliminate appeals to the Federal Court.

**Mr. John Frecker:** No. I'll explain.

Any statutory tribunal is subject to review by the Federal Court, but it's on leave, and the Federal Court, if it has a high level of confidence in the tribunal, is likely to dismiss a large number of the leave applications.

**Mr. Ed Komarnicki:** Have you taken that extra cost into consideration?

**Mr. John Frecker:** Yes. These costs are calculated on the basis that people would be.... I said it was different percentages of people going to the Federal Court after the RAD.

**Mr. Ed Komarnicki:** If you were to take into account the fact that there would be additional time to do both a RAD application and then an appeal to the Federal Court of Appeal, those two processes in themselves would generate additional humanitarian and compassionate grounds applications in the legal service that would have to be provided for them. It would make just good common sense, wouldn't it?

**Mr. John Frecker:** No, not necessarily. I disagree with your—

**Mr. Ed Komarnicki:** You don't think a claimant would want to use those grounds available, if they were available?

**Mr. John Frecker:** A failed claimant would want to use whatever means are available at their disposal, but if the RAD is working efficiently.... The target for the RAD was to have decisions out within three months. The Federal Court delay, when I was looking at it, was somewhere between 12 months and 14 months.

If you got to a RAD decision, that would have two salutary effects. One is it would correct the cases where the people who were genuinely in need of protection would have otherwise had to wait for 14 months to get a Federal Court decision. For the cases that were not entitled to protection, it would have been a second decision confirming the first, and articulating in very clear terms why the claim was without merit.

That would make it possible for the Federal Court to dispose of a larger number of these unmeritorious claims at the leave level, and that would happen much more quickly, so it would actually get them out faster.

**Mr. Ed Komarnicki:** Excuse me, I think you're missing my point.

If RAD took whatever time it took, three or six months to make a determination, and a person was also able to appeal that decision unfavourable to the Federal Court of Appeal, that time, when you combine it together or individually, could be a basis for a reasonable application under humanitarian and compassionate grounds and would require legal costs or services to be provided.

**Mr. John Frecker:** You're missing the point. I don't know what the current delay is, but two years ago it was 12 to 14 months in the Federal Court leave process. I think it was about six months in the leave process and then about a year in the actual merits process. You had a very long delay in the Federal Court. A lot of people were having children in Canada and various other things that gave rise to humanitarian and compassionate claims. If the system is dealing with the merits of the case more quickly instead of getting tied up in a procedural morass in the Federal Court, you are actually going to reduce the circumstances where people are building up humanitarian and compassionate cases.

**The Chair:** We're over eight minutes. I've allowed a minute's grace and I'm going to have to do the same over here. We're into five-minute rounds now.

Mr. Telegdi, please.

**Hon. Andrew Telegdi:** We're getting to the discussion that the committee really wanted to have. Essentially what we're looking at with the RAD is improved decision-making, a simplified process, and reduction of costs. I think that's important. What I'm wondering is how can we get those overall figures. We had so many things coming out. The bureaucracy said to Mr. Komarnicki that welfare costs would go up to the provinces. Obviously, if what you are saying is correct, welfare costs would go down for the provinces and there would be a cost savings involved.

We're trying to arrive at the figures as objectively as possible and with as great a degree of precision as possible. I wonder if there's somebody you think the government could hire or commission to get a look at this and provide an objective report to the government and to the committee so we can make a recommendation.

● (1045)

**Mr. John Frecker:** I'm sure it's possible to hire a consulting firm, one of the big accounting firms, or anybody else who has the technical qualifications to go through all of the factors. It is complex: it's not just the RAD, it's not just the judicial review, it's the removal process. You've got to look at the whole package and say we've got an efficient process for determining the merits of cases, a process that doesn't leave itself open to endless procedural challenges because we try to do things in a quick and dirty way—which I think is the problem with the present system—and that really gets behind the issue of removals with respect to people who are not bona fide refugees.

The whole system breaks down when you have a large number of people who are not genuine refugees coming through the system and then staying in the country indefinitely because of failure to remove. The procedural aspect is almost a backdrop to that core problem.

**Hon. Andrew Telegdi:** The other issue we have is it seems to me that once you apply for refugee status you have to go through the process and you have to be a failed refugee claimant to then be able to apply for a PRA, a pre-removal risk assessment, and H and C. I wonder why we don't have a system where you can have a determination at the front end that there's a pre-removal risk assessment, so even if you go to the refugee claimant and everything else.... You should be able to do it right away to avoid the refugee hearing altogether, and that would save time. The other one is the H and C.

**Mr. John Frecker:** That's the point I made to Madame Folco. The pre-removal risk assessment is a legal necessity when there is a delay. The initial decision by the refugee protection division is the risk assessment, and it's valid for a reasonable period of time. If you wait for two years before you remove the person, and there's been a civil war in that country and a change in government and all of these other things, it could be that these objective conditions that the refugee protection division made its decision on have totally changed, so you need the pre-removal risk assessment very close to the time of removal. You don't need it at all if you effect the removal very quickly after the initial decision.

The H and C is a tricky area, because it is an immigration jurisdiction; it's not a refugee protection jurisdiction at all. It has to do with the exercise of Canada's control over immigration and the people we welcome into the society as immigrants, and it is constituted as a ministerial discretion. The minister could delegate that authority to the tribunal, no question. Is the H and C jurisdiction being exercised on protection grounds, which is what the refugee protection division has expertise in, or is it exercised on other grounds? Who has the expertise on these other grounds? There's no reason why you couldn't train the refugee protection division members to do that. In our present system, the feeling in the immigration department is that particular jurisdiction should be exercised within the department, and that's why it's split. It would be a matter for the minister to decide whether he wants to delegate that authority to the tribunal, and then to ensure that the tribunal members were adequately trained to exercise that in accordance with established policy.

**The Chair:** Thank you.

Did you want to finish a thought there?

**Hon. Andrew Telegdi:** Very obviously, we have two sets of views on the matters presented to us. You very well articulate the view that some members of the committee have, and then we have the view of the bureaucrats who are arguing the other. I think our job is to find which one is the correct one. I think we could come to an agreement, Mr. Frecker, if your view of the world is correct, versus the bureaucracy. We'd have the parliamentary secretary jumping online, I'm sure, with the minister. So that's what we are struggling with and trying to come to terms with.

● (1050)

**The Chair:** Thank you, Mr. Telegdi.

We now go to Mr. Komarnicki.

**Mr. Ed Komarnicki:** Thank you.

On this issue, I have a couple of concerns. The quality of the judges, of course, in the Federal Court is fairly high. I would expect that your appointments to the RAD would not be superior to the Federal Court. Would you agree with me there?

**Mr. John Frecker:** They wouldn't be superior, but they might be more expert in the specific subject area. There are some wonderful judges on the Federal Court who will be the first to tell you that they deal with intellectual property, admiralty, and all these other issues.

**Mr. Ed Komarnicki:** Judges can adapt to different areas just as quickly as anybody else can. And let me tell you this: their review is first of all based on the record. Would you agree with me on that?

**Mr. John Frecker:** Yes, absolutely.

**Mr. Ed Komarnicki:** In both cases, the refugee appeal division and the Federal Court, they review the record. There's no new evidence. Do you agree with me on that?

**Mr. John Frecker:** Correct.

**Mr. Ed Komarnicki:** When they review the record, they can make determinations based on errors of law and mixed errors of fact and law. Is that not so?

**Mr. John Frecker:** Correct.

**Mr. Ed Komarnicki:** Would not Federal Court judges be at least experts in areas of law?

**Mr. John Frecker:** Yes. The Federal Court would have the expertise in law, I agree with you, but the difference between the Federal Court jurisdiction and the RAD jurisdiction is that the Federal Court jurisdiction can only review and quash an erroneous decision or uphold a correct decision. The RAD can actually enter the correct decision. The Federal Court can't enter the correct decision because that's not part of its jurisdiction.

**Mr. Ed Komarnicki:** It can't enter the correct decision—that's the only distinction—but in fact they can refer the matter back for a rehearing to the IRB, as can the RAD. Those are the same.

**Mr. John Frecker:** The whole purpose of the RAD is to eliminate in as many cases as possible the need to refer the cases back and to get to the decision.

**Mr. Ed Komarnicki:** They're looking solely on the basis of the record. They're not looking at new evidence. They're not looking at new submissions; they're just looking at the record.

**Mr. John Frecker:** The record and submissions, and submissions that would identify errors in the record.

**Mr. Ed Komarnicki:** Submissions that identify errors in record are also submissions that can be made in court.

**Mr. John Frecker:** Absolutely, the processes are very, very similar. I agree with you.

**Mr. Ed Komarnicki:** So we have two processes, and if you were to receive a negative decision, you obviously take it to the next level to have yet another review on the same basis.

**Mr. John Frecker:** Yes, but as I said to you before, if the RAD is doing its job properly and the members are people who are genuinely expert in the subject area, one can reasonably anticipate that the Federal Court will grant considerable deference and will not grant leave in as many cases. Therefore, the delay that takes place at the Federal Court drops out of the system.

**Mr. Ed Komarnicki:** Let me ask you this question. The Federal Court Act says that the court can deal with an appeal on the basis that the initial tribunal "acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction". Does RAD have a similar provision?

**Mr. John Frecker:** The RAD's jurisdiction.... The RAD, because it's an appeal authority, would be able to reverse on error if there were outrageous errors—factual errors, misinterpretation of the country conditions, and things like that.

**Mr. Ed Komarnicki:** If there are factual errors and misinterpretation of fact, the Federal Court can also overturn the decision on that basis.

**Mr. John Frecker:** It can overturn it and send it back for rehearing, but the RAD, because it has the subject matter expertise, can actually enter the right decision.

**Mr. Ed Komarnicki:** Let me bring you back to my first question. Does RAD have a specific provision that would allow the appeal to be overturned because the initial body acted without jurisdiction, beyond its jurisdiction, or refused to exercise its jurisdiction, based on administrative law?

**Mr. John Frecker:** As far as I know it would have that jurisdiction as well, yes. I'd have to read the actual provision in the act to be sure, but I think the intention at the time was that it would have the jurisdiction that is currently exercised by the Federal Court.

**Mr. Ed Komarnicki:** My question is not what the intention was, but whether there is a specific section in the RAD that allows for this.

**Mr. John Frecker:** Bear with me a second.

**Mr. Ed Komarnicki:** It's section 111, perhaps, or 110.

**Mr. John Frecker:** Just quickly looking at this—and again, it's been quite a while since I've been steeped in this area—

**Mr. Ed Komarnicki:** The answer is no, it doesn't.

**Mr. John Frecker:** There's no definition. So it would have the same jurisdiction as the protection division would have in dealing with the case, but it would be dealing with the case on the record rather than on new evidence.

**Mr. Ed Komarnicki:** And the second point is that the Federal Court Act says in its grounds of appeal that where the initial tribunal "failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe...."

There is not a similar provision in the RAD provisions. Would you agree with me?

**Mr. John Frecker:** I'd have to concede, because I haven't read through the whole act—

● (1055)

**Mr. Ed Komarnicki:** Well, not the whole act; it's section 110—

**Mr. John Frecker:** No, but there's nothing to that effect in section 110.

**Mr. Ed Komarnicki:** And section 110 and section 111 are actually the basis for appeal in RAD—would you agree with me?

**Mr. John Frecker:** Yes.

**Mr. Ed Komarnicki:** Okay. And those two points I raised are not there.

**Mr. John Frecker:** No, but if the RAD is an appeal division, you don't need that. The whole point is you don't need these technical grounds. If it's an appeal division, it is sitting in the same position as the original decision-maker.

**The Chair:** Okay. I'll have to cut it off right there.

We have a couple of minutes left. Does anyone feel that they have a question that needed to be asked and didn't get time to be on the agenda?

No? Okay.

Thank you very much, Mr. Frecker, for coming in today. On behalf of the committee I want to say thank you.

We will wait for a couple of minutes to give Mr. Frecker time to move away and then we will deal with the two motions we have.

Thank you again, sir.

**Mr. John Frecker:** Thank you.

● _____ (Pause) _____ ●

**The Chair:** Okay, we're back in session again.

The first motion we have to deal with is from Mr. Karygiannis. You all have a copy, I believe, of Mr. Karygiannis's motion. We will move now to Mr. Karygiannis to present this motion.

Mr. Karygiannis.

**Hon. Jim Karygiannis:** Mr. Chair, I want to thank you for allowing me the opportunity. It's very simple. I think this committee at its inception, and certainly going back to previous Parliaments, when the Reform, then the Alliance, and the Conservative Party were able to call appointees in....

One of the things I'm asking is that we call the appointees for citizenship judges. There are six people on the list, and I understand that since this list was published there have been another three people added to it. I would ask that we ask the citizenship judges to come to tell us why they're such good people and also ask them questions regarding their appointments.

**The Chair:** Thank you, Mr. Karygiannis.

Mr. Jaffer.

● (1100)

**Mr. Rahim Jaffer (Edmonton—Strathcona, CPC):** Thanks, Mr. Chair.

I agree with the principle of this motion. As Mr. Karygiannis just mentioned, in the previous incarnations of the opposition, I remember supporting this sort of effort. I don't ever recall the government of the day agreeing to it at the time, but I'm glad to see that there's a change of heart now that the Liberals are in opposition.

I have a problem with one part of this. I don't have any issue with accountability and transparency in hearing from these people, but I would be more inclined to support hearing witnesses who are IRB judges, Federal Court appointments, or the sorts of appointments that actually affect the outcome of people's cases.

Citizenship judges are more symbolic in nature. Surely they have an important role and confer citizenship, but the process is already finished by the time they give the citizenship to individuals. So I would be inclined to add even Federal Court judges or other appointments that are more significant in the effect of the outcome.

We trusted the process under the previous government, and I trust the process now. But I think it would be a waste of our time, seeing that we have limited resources.

I know Mr. Wilson was talking earlier about the cost to committee, and I think hearing citizenship judges, as opposed to some of the other more significant appointments, would be a waste of our time.

So if there is will for a friendly amendment, I would ask to consider removing the citizenship judges part from this motion. But I'll also even potentially add other appointments that affect the outcome regarding immigrants and refugees. So that's what I would suggest. But I'm willing to support—

**The Chair:** According to our Standing Orders,

> The committee, if it should call an appointee or nominee to appear pursuant to section (1) of the Standing Order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated.

Does that exclude other people?

Go ahead.

**The Clerk of the Committee (Mr. William Farrell):** Right now what you have in front of you is a motion moved by Mr. Karygiannis, dealing with these orders in council.

What Mr. Jaffer suggests is if there are other orders in council on which he would like to call people, he can give a notice of motion, listing what orders of council were put before the committee that were deemed referred to the committee. Then the committee can make a decision on that.

**Hon. Jim Karygiannis:** Point of order, Mr. Chair.

**The Chair:** Point of order.

**Hon. Jim Karygiannis:** I'm sure that Mr. Jaffer certainly has done his homework. If so, he would find out that citizenship judges have an impact on people's lives. As well, they have judicial review. We moved the citizenship part away from a judge, and only when there are questions that affect people's lives—if they become a citizen or not—does it go to the judge. Then an individual appears in front of a judge, and gives evidence and questions. The judge has a means of making decisions. So the citizenship judge is not just somebody who sits up and swears people in. He also has powers.

**The Chair:** Thank you.

Mr. Siksay and Madam Folco.

Do you have a point to go back on, on the same point?

**Mr. Rahim Jaffer:** Yes, I do on that point, since it's become a point of debate. Mr. Karygiannis talks about his homework. Can he identify a citizenship judge who's refused or caused any challenge for any citizenship that's already been conferred through the process? I don't think there's been one.

**Hon. Jim Karygiannis:** Do you want this from my files, or do you want the ministry to find out how many of them have been refused? You will be surprised.

**The Chair:** Mr. Siksay, please, then Rahim.

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

I support this motion. It's something the committee should be doing, and we'll be voting for it. I'm also supportive of looking at other appointees, should we have that kind of motion come before us.

I'd like to remind committee members of the first report of this committee that we made in this Parliament, where we were asking the government to development skill- and competence-related criteria for all appointed positions, and we were asking for that kind of information.

I know this hasn't necessarily been accepted by the government at this point, but I'm wondering if the analysts and the clerk can do their best to get any of the information that exists, which we could have before we meet with these folks, should this motion pass, including existing job descriptions for the position.

Also I believe that the minister's office would be able to provide us with the curricula vitae of the appointees. This is information that we should have before the scheduled meeting with these appointees.

● (1105)

**The Chair:** It's worth noting that on Monday, May 15, 2006, it was unanimously agreed that the Government of Canada develop skills- and competence-related criteria for all government appointments, including board members and senior officers of crown corporations. So that was unanimously agreed to at that meeting on May 15. It was a very good point.

Who do we have? Madam Folco, please.

**Ms. Raymonde Folco:** Following Mr. Siksay, I noticed that in the list of appointments we're getting, the CVs of these people are never attached. In the past, when the appointment was made, the second page was always the résumé of this person's professional life. I wonder if we could ask the clerk to send us the professional résumés of those people who have been appointed by the present government in anything that touches immigration. That would be both citizenship judges and members of the IRB.

**The Chair:** Yes.

**Ms. Raymonde Folco:** As a matter of fact, as a matter of regular procedure.

**The Chair:** And the clerk has just informed me that the request has already gone in. It went in yesterday, as a matter of fact. Thank you.

Okay, the motion is before us, and you know what the question is.

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** Thank you.

Okay, the second motion is a notice of motion from Mr. Siksay. I wouldn't read this. I don't think I'd get through it. I'll just pass it over to you, Mr. Siksay.

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

I think everybody should have a copy of the motion in front of them. I'm going to read just the "therefore be it resolved", the main one:

> Therefore, be it resolved that the Standing Committee on Citizenship and Immigration calls on the Minister of Citizenship and Immigration to immediately rescind the CIC Interim Policy and recognize legal marriages of gay and lesbian couples performed in jurisdictions outside Canada for purposes of immigration in exactly the same way as the legal marriages of heterosexual couples are recognized.

Mr. Chair, I find it passing strange that we would have a policy that doesn't recognize legally performed marriages in other jurisdictions in other countries, like the Netherlands, Belgium, Spain, South Africa, and the Commonwealth of Massachusetts in the United States, for purposes of immigration, when we in Canada have made that change to our own laws, made that change in terms of legal recognition of gay and lesbian marriages here in Canada, and when just last week we reaffirmed that policy in the House of Commons by the vote we had. So I think it's very important that we call on the government to immediately make this change and to be very clear about that.

I think the clerk distributed the information that appears on the CIC website, and I printed it just this morning. I called that up this morning and printed it off, so you can see exactly what it does say, up to date, hot off the press this morning. If you'll look under the section on the bottom of the first page, sponsoring your same-sex partner as a spouse under the family class, and then it says "CIC's interim policy", you turn over the page to the second page, and just under the list of various provinces there, you will see this paragraph:

> If you were married outside Canada, you cannot apply to sponsor your same-sex partner as a spouse. However, if you are a Canadian citizen or a permanent resident, you may qualify to sponsor your partner as a common-law or a conjugal partner.

Mr. Chair, I think that's clearly discriminatory. It sets up married gay and lesbian partners to go through a different process, to go through a process that's made for people who aren't legally married. It's made for people in common law relationships or conjugal relationships, and I think that's clearly inappropriate. We need to have exactly the same policy for legally married spouses, whether they're heterosexual or gay or lesbian, and we need to have that kind of policy as soon as possible.

And Chair, I have just one editorial change to the "whereas" clause, the second "whereas" clause. It probably should say "Commonwealth of Massachusetts", not "State of Massachusetts", to be absolutely correct. If we could make that as a friendly change, I'd appreciate it.

Thank you, Mr. Chair.

**The Chair:** Okay, we can make that change. Commonwealth? Okay. Does everyone agree to making that change?

**Some hon. members:** Agreed.

**The Chair:** Madame Folco and Mr. Telegdi.

● (1110)

**Ms. Raymonde Folco:** Yes, I wish to put it on the record that I support this motion. It's one of the things that is going to.... Let me speak in French.

[*Translation*]

It is one of the outcomes which will result from the enactment of the legislation last year. Other ministers, as well, will have to go in the same direction, and decide how they will comply with the act. To my mind, this is truly a human rights issue.

[*English*]

And as we promulgated a law and, as Mr. Siksay very well commented, we voted once again on this legislation just the other day in the House of Commons, it is time that everything that would in any way touch the law that was passed by Parliament should be amended in order to be exactly parallel and not be in conflict with the laws of Canada.

**The Chair:** Mr. Siksay, I noticed you had a comment directly related to Madam Folco. Maybe I'll just go to you briefly, if it's agreed, and then go to Andrew.

**Mr. Bill Siksay:** Mr. Chair, it is something I forgot to mention in my remarks, and it is very brief. I just want to mention that I did speak directly to the minister about this on Friday, and he indicated his openness to reviewing this. I want to have on the record that the minister was open to reviewing the policy. I still think the encouragement from this committee would be a helpful thing.

**The Chair:** You said the minister was open to reviewing that policy. Okay.

Mr. Telegdi, please.

**Hon. Andrew Telegdi:** On that issue, Parliament had made the decision that we would no longer discriminate between same sex and opposite sex in terms of marriage. For the department to have a policy that goes the other way is totally unacceptable. I suggest to you it is in contempt of Parliament. I very much support this motion and I hope the minister acts with dispatch to drag the department into the 21st century.

**The Chair:** Thank you, Mr. Telegdi.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** Just to get to the point that Mr. Telegdi makes, the issue that Mr. Siksay raises was a valid issue back whenever the policy may have first been put in place, and we don't have any evidence of when that was. My understanding is it was perhaps back in 2004.

Mr. Telegdi, it was your government that hadn't done anything about the policy change. It's a direction that should come properly from the government, and you failed to do so until today's date.

Let me say this—

**Hon. Andrew Telegdi:** I don't talk about government, Mr. Komarnicki. I talk about the department.

**Mr. Ed Komarnicki:** This is a policy decision of the government, and your government has done nothing since 2004, despite the fact —

**The Chair:** Please direct your comments to the chair, both members.

**Mr. Ed Komarnicki:** Province to province, there have been recognized gay and lesbian marriages on the same basis as heterosexual marriages, and they have done nothing.

**Hon. Jim Karygiannis:** On a point of order—

**The Chair:** Order.

It's always debate with you.

Mr. Telegdi has a point of order that he wants to raise.

**Hon. Andrew Telegdi:** In the last committee we tried to be non-partisan in terms of around the whole issue, and my reference was to the department.

Let me tell you, Mr. Komarnicki, whether I sit on the government's side or I sit on the opposition side, I was speaking to the department.

What I am asking the government now to do is to bring them in line. You are the government. If we were the government, that would be fine, but we're not the government now. You are, so act like it.

**The Chair:** This is not a point of order, and I don't detect a whole lot of Christmas spirit around this table today.

We have a point of order by Mr. Karygiannis.

**Hon. Jim Karygiannis:** Call the vote, Mr. Chair. Certainly going back and forth this way is not productive. Call the vote.

**The Chair:** Mr. Jaffer.

**Mr. Rahim Jaffer:** I just have a technical question when I have a chance. I don't want to debate. I just have a question for Mr. Siksay. I don't know if he is finished.

**Mr. Ed Komarnicki:** I'm not finished yet.

**The Chair:** We're still in the discussion stages. We'll call the vote when it's appropriate to do so.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** Right. Now let me finish.

As Mr. Telegdi indicated, it's a government—

**Hon. Jim Karygiannis:** Mr. Chair, once you are asked to call the vote, *Robert's Rules of Order* says you have to call the vote, so let's —

● (1115)

**The Chair:** We called for discussion on the motion, and I think, in the spirit of cooperation—

**Hon. Jim Karygiannis:** If the question is put, Mr. Chair, *Robert's Rules of Order* dictate that you must put the vote. It's futile—who's what, who, where, and whatever.

**Mr. Norman Doyle:** You can't do that on a point of order, I'm told by the clerk.

**Mr. Ed Komarnicki:** Let me finish. I want to say this for the record. I think there's no question that gay and lesbian couples should be treated absolutely no differently from heterosexual couples when it comes to immigration matters, and that in the end there should not be any discrimination. Any policies in violation of that would need to be brought up to line and should reflect that. So I think, in principle, we agree that those marriages should not be treated any differently in any respect.

Having said that, there is no question that the department would need to instruct people in the field regarding the policy. They would have to rework that and it would take some time. I should also say that we're accepting all the "whereas" clauses in terms of the various countries that recognize marriages, but we haven't had anybody from the department come before us and indicate what the policy is, what need there is for change, and how it might be changed to reflect it.

Let me raise something for Mr. Siksay. For instance, the way the motion now reads, you would "recognize legal marriages of gay and lesbian couples performed in jurisdictions outside Canada for purposes of immigration in exactly the same way as the legal marriages of heterosexual couples are recognized"—and, I would like to say, provided they are also legally recognizable in Canada, because some jurisdictions recognize marriages that are not recognized in Canada, whether they be polygamous relationships or inter-family relationships.

I think we ought to hear about the issues and determine whether there is a better motion that can be put forward, provided the principle is that heterosexual couples and gay and lesbian couples, or same-sex couples, should not be treated any differently in any respect. We need to come up with a policy that actually makes some sense, and there's no rush on it.

I think we can reaffirm in principle that that's so. I would perhaps ask that this motion be tabled until we get back, and that there be some movement on the department's part and on the minister's part to come back with a proper policy for this committee to consider for approval, as opposed to just passing the motion as it now is. If we're intending to do that, if we want to deal with it today, I would move a friendly amendment to this one. But I would first ask that we just delay this to get the minister and the department to come back to us as to what they have done with respect to ensuring that principle is respected, that the heterosexual and the same-sex marriages are treated the same.

The other thing I might say is there are some cases in process and some cases perhaps in appeal that the department would have to review in light of whatever decision we make, and it would take some time.

So I'm saying that in principle, I don't think you'll find any argument from this side of the table with what you're saying, but let's be rationale and logical about it and give it some time to happen, because there are cases in process. There are cases probably in some areas of litigation—I don't know that. But at least the department should appear before us and respond or come back with the principle that's acceptable.

Thank you.

**The Chair:** Do I detect any desire around the table to accommodate Mr. Komarnicki's request? No?

Okay, I have a list of people who wish to speak. I have to go to Mr. Jaffer, and then back to you, Mr. Karygiannis.

**Hon. Jim Karygiannis:** Mr. Chair, I need to speak to that, to what Mr. Komarnicki said.

**The Chair:** Okay, you will after Mr. Jaffer.

**Mr. Rahim Jaffer:** My question is just a technical one, and I don't know if Bill can answer it or whether it would have to be a CIC official.

One thing I'm concerned about, because I think Ed basically said that he didn't think there was any opposition to what this motion's trying to do, is that, obviously, there are only some jurisdictions around the world that recognize same-sex marriages. As you know, currently, we often get problems with abuse in the representation of certain marriages; namely, I think of my original country, India, and others, where people engage in a marriage of convenience, so to speak, to try to come forward to get into the country. Is this motion going to limit it to those jurisdictions that recognize those same-sex marriages?

What I'm afraid of is that unless we can have some control on that, we're going to get people who are going to try to get into this country on the basis of abusing that relationship. I don't know if someone can clarify that for me. That's the only concern I had.

● (1120)

**The Chair:** That's a fair question.

Can you clarify that, Mr. Siksay, for Mr. Jaffer?

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

The motion does clearly say "recognizing legal marriages", so we're not talking about civil unions. We're not talking about any other form, other than a legal marriage in those jurisdictions that perform legal marriages.

While I'm responding, I would just respond to Mr. Komarnicki's point. There already is a process in the department for dealing with the question of legal marriages. We don't need to set up a new structure. We have a process that examines legal marriage already, and that's all we're asking to happen in this case.

**The Chair:** Mr. Karygiannis and then Mr. Telegdi.

**Hon. Jim Karygiannis:** Picking up on what Mr. Komarnicki said, maybe we can rework the motion to instruct the minister to come to us with specific details vis-à-vis polygamous and/or other situations. This committee would instruct the minister to update the website and come to this committee and clearly define what we need to go on.

**The Chair:** That would involve a change in the motion.

**Hon. Jim Karygiannis:** A friendly amendment.

**The Chair:** A friendly amendment to the motion. Are you willing to accommodate that?

Anyone can move an amendment. We can vote on it. Did you wish to move an amendment?

**Hon. Jim Karygiannis:** I move that this committee instruct the minister to take into account what Parliament's wishes are—

**The Chair:** The clerk says it has to be in writing and signed, so I'm sorry about that, Mr. Karygiannis. You would have to write it up.

I guess we'll have to move on.

You can write the motion up for the clerk, if you wish.

**Hon. Jim Karygiannis:** I will withdraw my amendment, Mr. Chair.

**Hon. Andrew Telegdi:** I would like to move that we call the question. I want to go to the vote and get this done, and if necessary, we can vote on it. I don't want a debate.

**The Chair:** No, this is not debate.

You can move an amendment if you want and you'll have to have it in writing.

**Mr. Ed Komarnicki:** I will do that.

**Hon. Andrew Telegdi:** Mr. Chairman, I think when I called the question on the motion, which is what I did, without debate, then we vote on the motion in front of us.

**Hon. Jim Karygiannis:** You called it.

**Hon. Andrew Telegdi:** I called it. I didn't call for debate or whatever.

**Hon. Jim Karygiannis:** You called it. It's not debate.

**Hon. Andrew Telegdi:** I called it.

**The Chair:** So is that in order, Mr. Clerk?

**Mr. Ed Komarnicki:** I had always indicated an intention to make an amendment. Now surely you can't take that right away by simply calling for a vote on the motion.

**Hon. Andrew Telegdi:** No, no. We are going to have to go by the rules. Otherwise, we're going to run out of time.

**Mr. Ed Komarnicki:** The rules suggest the amendment should be dealt with first, and then you can call the vote, but you can't call the vote and obliviate the amendment.

**Hon. Jim Karygiannis:** It was in debate and he called the question. This is what the clerk said.

**Hon. Andrew Telegdi:** It's not that the minister cannot do that.

**The Chair:** You can do that in the House but you can't do it in committee, I'm told by the clerk. You can't move the previous question.

**Hon. Jim Karygiannis:** Are we working under *Robert's Rules of Order*?

**The Clerk:** No, we're using the Standing Orders of the House of Commons.

**The Chair:** So where are we?

**Hon. Jim Karygiannis:** So it's which way we feel like what's good for us now. A few minutes ago you said that when we're in debate we can call the question, which was done.

**The Chair:** No, it can't be done. I'm told by the clerk that Mr. Komarnicki can move an amendment. He can put it in writing and he can put it to the committee. So I'm just wondering now, and I ask the clerk's advice on this, whether we just wait until Mr. Komarnicki has his amendment. The clerk tells me yes, that's proper to do so. Mr. Komarnicki will now read his motion and submit it to the clerk, and then we will vote on the amendment and then we will vote on the main motion.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** Mr. Chair, to make my point, I'm going to make the amendment not exactly in the way I would have liked it to be, but with the view that hopefully I get the approval of the committee to an amendment.

I move that we add the following words to the motion as it now reads: "provided they are also recognized as legal marriages in Canada".

● (1125)

**The Chair:** Would you please clarify that a little more, Mr. Komarnicki?

**Mr. Ed Komarnicki:** As the motion now reads, what Mr. Siksay is calling for is that we recognize legal marriages of gay and lesbian couples performed in jurisdictions outside of Canada, and I'm saying that's fine, provided they are also recognized as legal marriages in Canada.

**Hon. Jim Karygiannis:** Doesn't he cover that in his fourth paragraph, in the last sentence, "for purposes of immigration in exactly the same way as the legal marriages of heterosexual couples are recognized"?

**Mr. Ed Komarnicki:** But he doesn't say anything about in Canada—

**Hon. Jim Karygiannis:** If I'm reading this right, it says, the fourth paragraph:

> Therefore, be it resolved that the Standing Committee on Citizenship and Immigration calls on the Minister of Citizenship and Immigration to immediately rescind the CIC Interim Policy and recognize legal marriages of gay and lesbian couples performed in jurisdictions outside Canada for purposes of immigration in exactly the same way as the legal marriages of heterosexual couples are recognized

**Mr. Ed Komarnicki:** He's talking about legal marriages outside the jurisdiction, but you can have a legal marriage outside—

**Hon. Jim Karygiannis:** Isn't it the same? Hold on a second here —and I really do not want to get into debate on this—we recognize heterosexual couples coming into this country. The only thing he's asking for is that homosexual couples be given the same rights. In his fourth paragraph he puts this down, so I don't see where the problem is.

**The Chair:** Okay. Is that a valid point?

**Mr. Ed Komarnicki:** Give me a chance to think about it and I may withdraw the amendment.

**Hon. Jim Karygiannis:** So what is it exactly that you want to say?

**Mr. Ed Komarnicki:** I want to add the words "provided they are also recognized as legal marriages in Canada".

**Hon. Jim Karygiannis:** Is that a problem with the mover?

**Mr. Ed Komarnicki:** The essence being that if a marriage is recognized—

**Mr. Bill Siksay:** It's not necessary, you're right, Jim.

**Mr. Ed Komarnicki:** —somewhere else, but it wouldn't be recognized—

**Hon. Jim Karygiannis:** I mean, whether he adds those words in or he doesn't, does it really make a difference?

**The Chair:** Mr. Siksay.

**Mr. Bill Siksay:** Chair, I have to agree with Mr. Karygiannis. I don't think that the amendment adds anything to the motion.

The purpose of the motion is to ensure that gay and lesbian marriages are treated in exactly the same way as heterosexual marriages, that legal marriages are treated like legal marriages. We have the mechanisms. We all understand what we're talking about when we're talking about legal marriages. I don't think Mr. Komarnicki's amendment adds anything at all to the motion, and I wouldn't support it in that case.

**The Chair:** Are you withdrawing the amendment, Mr. Komarnicki?

**Mr. Ed Komarnicki:** No, I'll move the amendment. We can vote on it.

**Hon. Jim Karygiannis:** This thing was settled in the House of Commons.

**The Chair:** Mr. Komarnicki has moved his amendment.

**Mr. Bill Siksay:** On a point of order, Chair, could I move that we freeze the clock at 11:29?

**The Chair:** Yes, I think that's—

**A voice:** Well, we're going to deal with this now.

**The Chair:** We're going to deal with it in the next moment.

**Mr. Bill Siksay:** Okay.

**The Chair:** The amendment is that we take out the words "immediately"—

**A voice:** No, no.

**The Chair:** Okay, the amendment is to the fourth paragraph, after the word "recognize", to put in "provided they are recognized as legal marriages in Canada".

**Hon. Jim Karygiannis:** Can you read the fourth paragraph the way that Mr. Komarnicki wants to have it?

**The Chair:** Okay.

> Therefore, be it resolved that the Standing Committee on Citizenship and Immigration calls on the Minister to immediately rescind the CIC Interim Policy and recognize legal marriages of gay and lesbian couples performed in jurisdictions outside Canada for purposes of immigration in exactly the same way as the legal marriages of heterosexual couples, provided that they are recognized as legal marriages in Canada.

(Amendment negatived)

**The Chair:** Now, is it reasonable to go to the main motion?

I call the main motion.

(Motion agreed to)

**The Chair:** Before you leave, I want to draw attention to the fact that our analyst here won't be with us when we come back in January, until she becomes a mom. She's going to be away for a while. It will probably be close to a year, I guess, Jennifer. We want to wish Jennifer well in her new role as a mom coming up.

**Some hon. members:** Hear, hear.

**The Chair:** Jennifer, all the best to you, and we'll be thinking about you during the Christmas season.

● (1130)

**Ms. Jennifer Bird (Committee Researcher):** Thank you very much.

**The Chair:** And I want to thank all of you for your cooperation and wish all of you a great Christmas and Happy New Year.

See you in February.

**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliament of Canada Web Site at the following address:**
**Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :**
**http://www.parl.gc.ca**

---