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# **Standing Committee on Citizenship and Immigration**

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**EVIDENCE**

**Thursday, March 29, 2007**

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**Chair**

**Mr. Norman Doyle**

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## Standing Committee on Citizenship and Immigration

Thursday, March 29, 2007

• (1105)

[English]

**The Chair (Mr. Norman Doyle (St. John's East, CPC)):** I've been told in no uncertain terms by a member of the committee, "Let's get moving", so I guess we'll have to get moving.

I want to welcome all of you here today to our meeting and our consideration of Bill C-280, An Act to Amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171).

I want to welcome here today, from the Department of Citizenship and Immigration, Mr. Malcolm Brown, assistant deputy minister, strategic and program policy; Micheline Aucoin, director general, refugees branch; and Mr. Eric Stevens, legal counsel, legal services. Thank you for your presence here today to help us out as we consider Bill C-280.

I think you are well aware of the drill. I think you have opening remarks, so I'll go to Mr. Brown, the ADM, for opening remarks. Do you all have opening statements?

**Mr. Malcolm Brown (Assistant Deputy Minister, Strategic and Program Policy, Department of Citizenship and Immigration):** No, we just have brief opening remarks.

**The Chair:** That's fine, thank you.

You can begin, and if the committee wishes to interact and ask questions afterwards, of course, the opportunity is there.

Thank you.

[Translation]

**Mr. Malcolm Brown:** Thank you, Mr. Chairman.

I would like to thank the committee for having invited departmental officials from Citizenship and Immigration to speak to you on the issue you are studying, that is to say Bill C-280, an Act to amend the Immigration and Refugee Protection Act.

As you stated, Mr. Chairman, I am accompanied today by Ms. Micheline Aucoin, Director General, Refugees Branch, and by Mr. Eric Stevens from the department's Legal Services Branch.

The committee is aware of the subjects of concern to the government as far as Bill C-280 is concerned. The committee also knows that the government opposes the bill. We are here to answer procedural questions, for example concerning the necessary preparations for the implementation of a schedule, and questions related to the transition.

At Citizenship and Immigration Canada, we are very proud of our Canadian refugee determination system. It is often described as being one of the best in the world, including by the United Nations High Commissioner for Refugees. There is no doubt that Canada respects its international commitments and the requirements of the Canadian Charter of Rights and Freedoms, and that it even goes beyond that. Canadians can be proud of their humanitarian tradition.

[English]

Let me begin by drawing your attention to the fact sheet entitled "Refugee Appeal Division" that the department tabled at this committee in December of last year. In that document, we discussed the many opportunities that refugee claimants currently have to show why they should not be removed from Canada.

First, they have access to the refugee protection division of the Immigration and Refugee Board, where independent, well-trained, well-informed decision-makers hear the claimants' stories and review the information put forward to support that story.

Second, claimants have access to the pre-removal risk assessment, where they can put forward any new information that has not been considered by the IRB. Well-trained, well-informed public servants ensure that individuals are not returned for persecution, torture, or death.

Third, failed refugee claimants can apply to stay in Canada for humanitarian and compassionate reasons, including reasons of risk. Refugee claimants can and do make such applications, and many are accepted. About half of applicants for permanent residence on humanitarian and compassionate grounds—H and C, for brevity—are failed refugee claimants. The general H and C acceptance rate is 50%.

Fourth, refused refugee claimants can apply for a judicial review of that decision. The Federal Court review involves a full paper review of the IRB decision on grounds of fact and law, much like the refugee appeal division as proposed in Bill C-280.

The Federal Court can send and has sent cases back to the IRB based on patently unreasonable errors in findings of fact in a range of cases, including on issues relating to the claimant's credibility, assessing medical evidence, gender persecution claims, as well as the availability of police protection and country conditions.

I would like now to turn to some of the technical issues that are raised by Bill C-280.

The first issue has already been raised by Jean-Guy Fleury, the former chair of the IRB, when he appeared before this committee in December 2004. He advised that the board would require approximately one year to establish a fully operational refugee appeal division. I believe this lead time to be optimistic.

While the IRB is here to testify later this morning, there are a number of issues worth identifying. Board members with a different competency in hearing appeals than is currently the case would need to be assigned to the RAD, or appointed. Finding members and training them will take time. As well, a new set of rules establishing the procedures and conduct of a new division would need to be created. The IRB would also need to locate office space, set up systems for applications to be made, and establish case management technologies to implement the RAD. Resources would need to be identified even to begin such a process.

The second group of issues relate to the lack of transitional provisions in Bill C-280, which raises a number of questions. Who would be eligible for this new appeal? Would it apply to old cases, since the Immigration and Refugee Protection Act came into force in 2002, or only to new ones? What would be the rule for cases currently before the Federal Court? Who would hear cases sent back by the court: the refugee protection division or the refugee appeal division? What are the risks of saddling the new appeal division with a large backlog, which would cause further delays? These are issues that could have serious consequences, if Bill C-280 is enacted into law.

In the fact sheet the department tabled in December, we indicated that the addition of the refugee appeal division would add at least another five months to the already long refugee process. This is based on the assumption that the RAD would be given a fresh start without a backlog on day one and that it would be implemented with a full set of trained decision-makers already in place. Should this not be the case, these delays could stretch to many more months.

I would also point out that among the unproclaimed provisions of IRPA is a section, section 73, that ensures that the government could appeal any decisions of the refugee appeal division. This section does not form part of Bill C-280. Just as failed claimants have access to the Federal Court, so should the Minister of Immigration.

Thank you for your time listening to me. We welcome your questions.

Thank you, Mr. Chairman.

• (1110)

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

If there are no further statements, we can go immediately to our seven-minute round of questions and to Mr. Alghabra.

Mr. Alghabra.

**Mr. Omar Alghabra (Mississauga—Erindale, Lib.):** Thank you, Mr. Chair.

Good morning, everybody, and thank you for coming here today.

I understand from your remarks that there are some challenges and there would be some challenges if we were to implement the appeal division. I'm sure there are challenges in maintaining our refugee and

IRB system as is right now. I'm not trying to dismiss or refuse to acknowledge that there would be some challenges in implementing the appeal division.

But having said that, at the time we reduced the IRB panel from two judges to one judge, wasn't the intent that it be a compromise, to reduce the panel and make it more efficient, but in exchange for an appeal division that IRB would implement?

**Mr. Malcolm Brown:** You're really asking me two questions, and I'll try to answer both.

In terms of the challenges, yes, of course there are challenges in running any system. What we've tried to identify today are specific challenges that I think are unique, in terms of our having been asked about the specific implications of Bill C-280.

There is a responsibility upon officials to identify what those are. They are significant and, I would argue, they are not simply business-as-usual ones in operating big systems. They're complex.

As I underlined in my statement, and I won't repeat it, there are very significant implications if the bill is passed as it currently stands, in terms of the absence of transition provisions and those sorts of things.

On your second question, about the "deal", to paraphrase what you've described, there is no question that IRPA contained the provisions and that RAD was not implemented. I'm not sure it's a question of the history of it; it's the question of the implications of the decision around implementing the RAD. At the time, there were implications in terms of backlogs, and there was a decision made.

I think as well, our assessment is that the system we have now is working quite well. As for the concerns some people may have had at the time around a single decision-maker and whether their system was robust enough and had sufficient protections in place, we think adding a new measure of appeal wouldn't significantly change things and would in fact only result in further delay and more money.

Our view is that the circumstances of how IRPA was negotiated at the time of the bill is an historical point. As an official, I have to deal with the consequences of the legislation before us, and a debate, frankly, about what was or wasn't agreed to at the time is really outside my pay grade, if I can put it that way.

**Mr. Omar Alghabra:** Okay. I certainly appreciate and accept the fact that you are sharing with us what you feel would be the challenges of implementing the appeal division. As I said, I'm not dismissing them.

You will also perhaps agree with me that these decisions made by IRB are significant and will have significant ramifications upon the people who are seeking a decision by IRB. Any significant alteration of the decision process will sometimes have life-and-death ramifications upon the lives of those people. And not only do we have to be fair, but we have to be seen to be implementing a fair and transparent process.

This committee has heard from various witnesses about the challenges and the obstacles an applicant would have to face if he or she is denied, based on what they feel was an unfair decision, and if the court review process or the PRA process did not afford a transparent or open appeal mechanism.

Let me get back to this question. Would you, then, favour reinstating two judges on the IRB panel instead of implementing the appeal division?

• (1115)

**Mr. Malcolm Brown:** As an official, I'm not sure my personal views about that are germane.

**Mr. Omar Alhabra:** Well, we're asking you here to tell us what the challenges are, so—

**Mr. Malcolm Brown:** Well, I can talk to you about the challenges, but in terms of policy advice, in terms of the way the system should or shouldn't be, the position of the department and, as a consequence, my position is that we think the current structure we have, including the single decision-maker with all the appeal mechanisms that are in place, is robust, is fair, and provides sufficient—in fact, numerous—appeal avenues, and that it's not clear that adding an additional one would radically address the shortcomings people have identified. It would add another step, but it's not clear that it would get to the heart of shortcomings people are...

And frankly, I think the issue people are dissatisfied with involves negative decisions.

**Mr. Omar Alhabra:** Right, and the issue is, given the individual who may have a legitimate claim for one reason or another, to get a sense that their decision has been reconsidered by another individual who's qualified to do that.

Then let me rephrase the question: would it be less of a challenge to reimplement two IRB judge panels than to implement the appeal division?

**The Chair:** Could I have a very brief response, Mr. Brown, because we're going into eight minutes on this. I have to move on.

**Mr. Malcolm Brown:** Frankly, that's not been an issue. We've been focusing on the implications of Bill C-280. You're going to hear from the IRB later today. They may be unhappy with me for saying this, but I think really it's an important question for the IRB in terms of the implications it would have for them. I wouldn't want to trespass on what is, I think, largely their question to answer. It's certainly an issue that if the committee so instructs, the department can look at the questions of the implications of going back to decision-makers. But I think the government and previous Parliaments made a decision about the merits of a single decision-maker.

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

Madam Faillie.

[Translation]

**Ms. Meili Faillie (Vaudreuil-Soulanges, BQ):** Before continuing, Mr. Chairman, I would like to know if we will follow the agenda being proposed today. Are we going to exhaust our questions and then move on to the next witnesses?

[English]

**The Chair:** Yes.

[Translation]

**Ms. Meili Faillie:** My questions deal with the memo you allude to on your website. What progress have you made since 2005 on the review of the refugee status determination system? I do not understand why the department persists in opposing the will of Parliament expressed here by its elected members in 2001. The issues are important for those claiming refugee status. The consequences are significant, as you have seen in the press on countless occasions. Citizenship and Immigration Canada is criticized regularly for the fact that it has no appeal section and the fact that there can be no appeal on the merits. Why does the department refuse to allow appeals on the merits of claim?

• (1120)

[English]

**Mr. Malcolm Brown:** I'm not intimately familiar with the website reference, Madam Faillie.

[Translation]

There are two components to the answer. First of all, the government is much broader than the Department of Citizenship and Immigration.

[English]

The government makes a decision in terms of proclamation and that decision's been made, and the government has explained the reasons for that decision.

[Translation]

**Ms. Meili Faillie:** You state that this is a political decision and that it is up to the government to make it.

**Mr. Malcolm Brown:** It is up to the government to make this decision, but one must add that it is not only the officials or the people who work at the Department of Citizenship and Immigration who make it.

Second, I would say that the current situation is different from that of 2002.

[English]

For example, there were real questions about how to manage the already extraordinary backlog that the IRB faced in those days.

So I think the government has explained the reason for its decision. It is, I think, a different question as to whether or not there's consensus on why that decision was taken.

[Translation]

**Ms. Meili Faillie:** I would like to ask you some questions.

Are there a sufficient number of members at the IRB to hear the cases?

[English]

**Mr. Malcolm Brown:** Frankly, that's a question for the IRB. It's clear there are vacancies and the government has taken steps to fill those vacancies. That's a process that's ongoing.

[Translation]

**Ms. Meili Faillie:** All right.

The department provided us with statistics on the pre-removal risk assessment and on the experience of the officials who are called upon to make the decisions. Is it normal that half of these people have less than two years' experience and no experience with administrative tribunals?

**Mr. Malcolm Brown:** That issue was raised in December. We answered a question on the capacity...

**Ms. Meili Faille:** It is because you are alluding to...

**Mr. Malcolm Brown:** I understand the question.

**Ms. Meili Faille:** You allude to people who are qualified and experienced and who make serious decisions on refugee files. There is no appeal on the merits of a claim.

**Mr. Malcolm Brown:** I understand.

**Ms. Meili Faille:** All right.

**Mr. Malcolm Brown:** This issue was raised in December, and we gave a clear answer. We said that the people who make these decisions had the necessary qualifications. Micheline could perhaps give you some more details, but in my opinion,

[English]

the decision-makers do have the capacity, and frankly I think the quality of those decisions stands up to scrutiny.

[Translation]

**Ms. Meili Faille:** When people apply for humanitarian reasons, is it true that they are not removed before a decision is made? Can you confirm that for me?

**Mr. Malcolm Brown:** I repeat clearly that the people doing this work have the necessary qualifications to do the work appropriately. We should not challenge the quality of their decisions.

• (1125)

**Ms. Meili Faille:** I know, but you are not answering my question.

[English]

**Mr. Malcolm Brown:** No, no.

[Translation]

**Ms. Meili Faille:** People can be deported before a decision has been made for humanitarian reasons. Some people no doubt have the necessary experience and qualifications. The fact remains that more than half of these people have less than two years' experience.

Can you confirm for us that none of your officials can make any mistakes on a file?

[English]

**Mr. Malcolm Brown:** I don't think any of us can make that commitment.

[Translation]

**Ms. Meili Faille:** You will therefore understand that an appeal section is necessary for appeals on the merits of claims.

[English]

**Mr. Malcolm Brown:** But if that's the standard to which we're being asked to ascribe, I don't know any human activity that can meet that standard. I understand the objective, believe me. In my job I've been to refugee camps and I see the consequences of decisions. But I honestly don't know, in a human endeavour, how you can strive

to produce an undertaking that has no mistakes. If there's a method, we'd like to hear it.

**The Chair:** Okay.

**Mr. Malcolm Brown:** Believe me, we'd like to hear it.

**The Chair:** Thank you, Mr. Brown. I have to cut it off there at 7:17 and go to Mr. Siksay

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

Mr. Brown, I wonder if you can tell me if there are other aspects or sections of the Immigration and Refugee Protection Act that haven't been implemented, or is it just the refugee appeal division?

**Mr. Malcolm Brown:** I believe it's just the refugee appeal division, but I'd like to reserve and, if I'm wrong, inform the committee right away. I don't think there's anything significant that's not been proclaimed.

**Mr. Bill Siksay:** And Ms. Aucoin and Mr. Stevens aren't aware of any aspect of it that...?

**Ms. Micheline Aucoin (Director General, Refugees Branch, Department of Citizenship and Immigration):** I'm not aware of anything.

**Mr. Bill Siksay:** Maybe you can help me in terms of the coming into force and transitional provisions of IRPA. Those are still effective. The coming into effect of IRPA can still be determined by the Governor in Council, a date according to the Governor in Council, so that the government still does have the option of implementing the RAD and determining the date when the RAD could be implemented under the provisions of IRPA as it was originally passed?

**Mr. Malcolm Brown:** Yes, if all the provisions are part of it.

**Mr. Bill Siksay:** The government could still, if they chose to take that initiative, determine the timetable and have the authority to do that, given the legislation that was already passed.

**Mr. Malcolm Brown:** In terms of IRPA, yes.

**Mr. Bill Siksay:** There are transitional provisions in IRPA to allow for the production of regulations and those other issues that may be necessary to effectively implement the legislation.

**Mr. Malcolm Brown:** Yes.

Eric may want to add something, as he is the lawyer.

**Mr. Eric Stevens (Legal Counsel, Legal Services, Department of Citizenship and Immigration):** There is just one qualification on that. The transitional provisions in IRPA are now out of date because they were written at a time when it was contemplated that RAD would happen at the same time as the rest of the legislation.

**Mr. Malcolm Brown:** Yes, those provisions exist. If someone said...and maybe this is where you're going; it's always dangerous to speculate. If your question is, to implement RAD tomorrow, would we just snap our fingers and move, the answer is no, because frankly the transition provisions would have to be examined. There have been changes, and we will let the IRB talk about those, but they would in a sense need to be updated. There isn't a switch to throw and have everything go back to a state that it wasn't even at when IRPA was passed.

**Mr. Bill Siksay:** Surely it was worked on and regulations were associated to the RAD. There are probably draft regulations that exist in the department, and all of those things could be dusted off. And maybe even somebody has looked at them in light of the current bill that we're discussing this morning.

**Mr. Malcolm Brown:** The reality is that with the provisions there was a sequencing, and frankly, work on other parts of the legislation was more advanced. I can tell you I have not personally examined the state of those regs, because there's a lot of current regulatory business that's going on.

My experience with the regulatory business in this department is that it would take some significant amount of time if you were to simply snap your fingers and make a decision about the RAD a priori, based on the current legislation. It's not simply a case of blowing the dust off some things on the shelf.

**Mr. Bill Siksay:** Is that work that would normally land on your desk?

**Mr. Malcolm Brown:** Yes, I would be coming to talk to you about that work.

• (1130)

**Mr. Bill Siksay:** You mentioned your concern about section 73 not being included in this, but the passage of Bill C-280 doesn't preclude the government from taking action on section 73 if it chose to do so. Is that correct?

**Mr. Malcolm Brown:** Before I answer that question, Micheline has also emphasized that there's a whole series...and you can ask the IRB, when they testify later this morning, about their own set of rules. They have a regulatory process, but also they rule through the IRB, and that would take time.

I'm sorry, I've forgotten the question.

**Mr. Bill Siksay:** You mentioned a concern about section 73 not being included, but there's nothing to prevent the government from implementing that immediately, should Bill C-280 pass, if the government was concerned about the absence of that.

**Mr. Malcolm Brown:** I think it's the interplay of ensuring that you have.... It's a series of apples and oranges, and theoretically, yes, but the practice is that you match the appeal mechanisms to.... You'd want a coherent package, a comprehensive package.

**Mr. Bill Siksay:** If we contend that the coherent package is already in IRPA...you're not answering my question. Even though section 73 might not be mentioned in Bill C-280, if Bill C-280 were passed and went ahead, the government could also go ahead on section 73 at any time, because it's already been passed by Parliament and the mechanism to do that is there.

**Mr. Malcolm Brown:** It could, but I'm not sure it would apply to the provisions that are contained in the current Bill C-280. There's an assumption that there's a perfect match and the provisions of section 73, as they apply to IRPA, can be applied to Bill C-280. The advice I'm getting is that they can't be.

**Mr. Bill Siksay:** You'll have to explain that to me. I understood that all Bill C-280 does is set a deadline for implementing existing sections of IRPA.

**Mr. Malcolm Brown:** Only certain parts of the act.

**Mr. Bill Siksay:** Pertaining to the RAD. I think it's everything except section 73. I still contend that if the government wanted to implement section 73, it could do it immediately.

**Mr. Malcolm Brown:** As I understand it, there is no question that the better way of doing it, the cleaner.... The objective of officials, the question we were asked, is, what are the technical implications of Bill C-280? Just as we officials in 2000-01 were drafting the bill to make it comprehensive in its entirety, that is still a problem, still a challenge for us. And so the question is, would it be better to have the provision for section 73 included? If you were asking about what the implications are, yes, it would be.

I personally think there are questions. That section can be implemented, you're absolutely right, because it hasn't been proclaimed yet. The questions are in the context of the interplay of that with the way Bill C-280 rolls out in the short term. From a drafting perspective, it's better to tie the two together.

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

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

We will now move to Mr. Komarnicki.

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

Thank you, Mr. Brown, for your various comments.

I'm gathering from what you're saying just now that this Bill C-280, if it were going to include sections 110, 111, and 171, probably should also have included section 73 to bring that line of sections together in one place and one bill, and that there isn't any good reason why it was not included.

**Mr. Malcolm Brown:** That's right.

**Mr. Ed Komarnicki:** Do you see any reason why it couldn't be included in Bill C-280?

**Mr. Malcolm Brown:** No.

**Mr. Ed Komarnicki:** All right. Then the other aspect of it is the transitional provision. Bill C-280 doesn't appear to address the issue of transitional provisions, as I see it. Do I take it from what you're saying that someone ought to address when this bill would take effect and whether it would apply back to the date of section 215 or whether it would be on a go-forward basis or something between that or at a future date?

• (1135)

**Mr. Malcolm Brown:** I think that's right.

Without trying to get drawn into a conversation about what happened in 2002, some pretty significant questions would need to be answered before there could be a coherent implementation of the RAD in terms of who's eligible. Committee members need to be fully aware of the implications of the absence of transitional measures and an instantaneous backlog of an additional 40,000 people. That's, I think, our estimate of the potential number of people who might apply if there are no traditional transitional provisions, in terms of who's eligible to apply, in terms of decisions that have been made two or three or four or five years ago.

That's one example. Our colleagues from the IRB can better talk to you about the implications that would have for them.

The other piece of this is, just to reiterate, that all the assumptions on lead time, which are the subject of some debate, are all premised on assuming there is no backlog and the IRB is ready to go. They can talk more about the implications of that, but the consequences for implementing a decision without the appropriate structures in place are pretty significant, I think.

**Mr. Ed Komarnicki:** There's no reason you couldn't have, in the form of Bill C-280, transitional provisions that would ensure there would not be a backlog created by retroactive application. Would you agree that you could also deal prospectively with the anticipated time of implementation and allow for that to take place within a reasonable timeframe to ensure that it got implemented, and that both those issues could be dealt with by drafting additional provisions to Bill C-280, as we now have it?

**Mr. Malcolm Brown:** I think that's absolutely right.

**Mr. Ed Komarnicki:** The other aspect I want to talk about a little bit is that some witnesses in previous appearances before the committee—Peter Alterman, for instance, as well as another witness—indicated that Canada's model is based on getting it right the first time and providing other avenues of recourse through the CIC-administered pre-removal risk assessment process and discretionary assessment of humanitarian and compassionate factors. That's the model that Canada has, which maybe is unique compared to other jurisdictions.

Taking Bill C-280 and making an appeal division in the midst of that model might to some extent be counter-productive if you're not changing the model. Can you describe whether I'm right in the assessment of the model we have in Canada and how it may be difficult to add something to a model that's already put together without looking at the whole model, including the RAD—in other words, looking at how you might deal with the system as a whole as opposed to piecemeal?

**Mr. Malcolm Brown:** I'm going to try to separate a formal government position on this. I think ministers are on the public record on this question, but there is no question that piecemeal change is problematic, and piecemeal change that we haven't thought through in terms of transition absolutely. If you're going to change a system and if you've decided the system has these faults, only going after one of the questions is probably not the way to do it. From a public policy perspective and from a reform of the system perspective, it's better to look at its entirety. The net result of a

piecemeal approach is that we take a system that is already very lengthy, and I don't think there's any dispute about this—well, no, I think there is dispute, but our position, the government's position, is that the process would get longer, and that's probably not the intended result of a reform initiative.

• (1140)

**Mr. Ed Komarnicki:** What I'm gathering from what you're saying is that you have a system designed in one fashion, and if you add another component without modifying the rest of the system, you're simply adding more process, more time, to a system that already is taking inordinate lengths of time—in some cases, years.

**Mr. Malcolm Brown:** I think that's right. I'd also add that we now know more about the system and how it's working than we did in 2002 when RAD was initially proposed. I think you can make the case that some of the public stakeholder issues around RAD at the time.... We didn't have a lot of split decisions of the two-member panels. We have a system that is still widely held in terms of public support and international support. We should be assessing the whole system before we make a change in a particular piece of it.

**The Chair:** Okay. That was 7 minutes and 27 seconds, just to be fair. I had the same time for most members.

Mr. Telegdi.

**Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.):** Thank you very much, Mr. Chair.

Mr. Brown, can you tell me how long you've been with the department?

**Mr. Malcolm Brown:** Yes, I joined the department two years ago.

**Hon. Andrew Telegdi:** You've only been in Citizenship and Immigration for two years.

**Mr. Malcolm Brown:** That's right.

**Hon. Andrew Telegdi:** Ms. Aucoin, how long have you been with the department?

**Ms. Micheline Aucoin:** Since September 2005.

**Hon. Andrew Telegdi:** Mr. Stevens.

**Mr. Eric Stevens:** I think over a decade.

**Hon. Andrew Telegdi:** So you have the most experience. You were actually around when the appeal division was put in the last immigration act.

Mr. Chair and members of the committee, we're talking about delays. We have one-third vacancy on the refugee board and that causes all sorts of delays.

Mr. Brown, you mentioned you've been in a refugee camp. Well, 50 years ago I was a refugee in a refugee camp—

**Mr. Malcolm Brown:** I know that.

**Hon. Andrew Telegdi:** I have been back to refugee camps. And as a member of Parliament, I have dealt with cases where bad decisions were made and people were sent out of the country. I don't know what happened to them, in some cases. I'm haunted by those things. It bothers me. So the appeal division is not going to be perfect, just as the Supreme Court doesn't always make perfect decisions, but by the time it gets to the Supreme Court and they make a decision, I will be able to sleep at night.

I'm going to read—and I suggest you listen, because you haven't been with the department very long—from a clause-by-clause manual that came out when we were dealing with the immigration and refugee act: “The establishment of this right of appeal and new Division would improve the refugee determination process in Canada by enabling the correction of clear errors in decisions of the Refugee Protection Division without recourse to the Federal Court and by enhancing”—and I underline the word enhancing—“the quality and consistency in decisions through the provision that the decisions of three member panels of this Division are binding on the Protection Division on questions of law.”

One of the problems we have had, and it has certainly been a lot worse with the one-member panel, is that just as the Federal Court of Appeal sets the rules for the Federal Court justices, so does the putting in place of a refugee appeal division....

This discourse I have heard in the last 40 minutes or so is straight out of *Yes, Minister*. I really cannot believe, to the extent that the will of Parliament...and it was the will of Parliament to put in a refugee appeal division. I hope you understand that the refugee appeal division is going to pass, and we're going to hold the government accountable if it doesn't act upon it.

And I dare say I am somewhat disturbed that a person who holds your position has such little experience in the Department of Citizenship and Immigration.

• (1145)

**The Chair:** Thank you.

We only have about seven or eight minutes left. I'm trying to get a couple of minutes for each of you. If we can get three, three, and three, we can probably break for a few minutes.

Mr. Gravel, go ahead, please.

[*Translation*]

**Mr. Raymond Gravel (Repentigny, BQ):** I simply want to make a comment, because I am not an immigration specialist. Legislation was passed in 2002. I do not understand why we would be obliged to create new legislation in order to enforce another act. I have a problem with that. In the end, you seem to be defending the non-enforcement of the law.

Mr. Brown, you said that it was possible to turn to the Federal Court of Appeal and that this more or less replaced an appeal section. However, numerous witnesses came here and told us that the Federal Court of Appeal was inaccessible, that only a small percentage of people could get access to it. How can we talk about justice and fairness for refugees who have no other recourse when their application is turned down?

The legislation must be enforced as quickly as possible. If Bill C-280 is not passed, I will be very disappointed. This bill is not intended for animals or dogs: it is intended for human beings. I think it is worth taking more time in order to achieve results that will be more fair and just for all the refugees who come to our gates.

**Mr. Malcolm Brown:** I am not sure I heard a question.

**Mr. Raymond Gravel:** It was only a comment on my part.

**Mr. Malcolm Brown:** All right.

[*English*]

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

Mr. Siksay, do you want to use a couple of minutes?

**Mr. Bill Siksay:** No, I'll pass. Thanks, Chair.

**The Chair:** I'll go to Mr. Komarnicki.

**Mr. Ed Komarnicki:** Yes, Mr. Chairman. I see our time is getting short. What time do we have?

**The Chair:** Our schedule is from 11 o'clock until 11:50.

**Mr. Ed Komarnicki:** I'm going to ask a couple of particular questions, but I also want to raise a motion to extend the hearing time we have for these witnesses.

**Hon. Andrew Telegdi:** No, it's a waste of time.

**Mr. Ed Komarnicki:** Well, first of all, I want to read into the record the fact that we've had other ministers, previous Liberal ministers like Judy Sgro, who had said we have a very fair process, and there are at least four avenues of review or appeal on every application.

The Honourable Joe Volpe said every member should know that the appeals processes are there for everybody and that they work well; we're not interested in adding another layer of appeals. He also said, “the Refugee Appeal Division, which was proposed by the committee and accepted in Parliament, was an additional impediment to streamlining the process...”.

He also said:

Protection is really what counts and that's what the current system delivers.

... It still takes too long for decisions to be made and too long for decisions, once they are made, to have an impact. Simply by adding another layer of review or appeal to what we already have will do little to address this shortcoming; in fact, it may make it worse.

My decision is therefore not to implement the RAD.

Some ministers expressed some reservations with respect to putting in another layer. Was that your understanding of the positions of the various ministers previously, Mr. Brown?

**Mr. Malcolm Brown:** Yes, it was.

**Mr. Ed Komarnicki:** Some legitimate issues need to be—

**Hon. Andrew Telegdi:** Fifty vacancies under this government—

**The Chair:** Order, please.

**Mr. Ed Komarnicki:** Some additional questions, which I think are legitimate, that we need to be concerned about are how the RAD itself might interplay with respect to appeals to the Federal Court. I think there's an issue there as well that would relate to that, so you might want to respond to that.

Then, Mr. Chair, after he responds, I would like to put a motion on the floor to extend the length of time these witnesses are questioned.

**The Chair:** Mr. Brown, a quick response, please.

**Mr. Malcolm Brown:** Sure, I may ask Eric, as the legal—

**Hon. Andrew Telegdi:** Mr. Chair, I have a point of order. If you're going to have an extension of the meeting you're going to do it now, because we have got to the time.

**The Chair:** We still have a minute.

Go ahead, Mr. Brown.

**Mr. Malcolm Brown:** Eric, do you want to answer the specific question about the interplay between the Federal Court and the RAD?

**Mr. Eric Stevens:** The way it works currently is that denial at the RPD decision goes to the Federal Court on judicial review. Should the RAD be enacted, then the legislation does provide that that would be the decision, that it goes to the Federal Court for judicial review.

• (1150)

**The Chair:** Okay, thank you.

Mr. Komarnicki, do you have a motion?

**Mr. Ed Komarnicki:** Yes. Essentially, I want to put a motion forward—

**The Chair:** Is it accurate to say your motion is that the committee continue meeting and receiving testimony from CIC officials until members no longer have questions?

**Mr. Ed Komarnicki:** I want to phrase that a little better. I want to raise this issue as follows.

We're dealing with something that is a significant issue to everyone concerned, including—

**Hon. Andrew Telegdi:** On a point of order, Mr. Chair—

**Mr. Ed Komarnicki:** Let me finish.

**Hon. Andrew Telegdi:** On a point of order, Mr. Chair, the time has run out.

**Mr. Ed Komarnicki:** I'm putting forward a motion. I'm entitled to speak to the motion.

**Hon. Andrew Telegdi:** A point of order takes precedence.

**Mr. Ed Komarnicki:** Look, I'm raising a motion and I want to speak to that motion. I think I have every right to speak to that motion.

**Hon. Andrew Telegdi:** A point of order takes precedence.

**Mr. Ed Komarnicki:** I haven't put the motion forward, I'm raising the motion. How are you going to—

**Hon. Andrew Telegdi:** I have a point of order.

**The Chair:** Will you specify the motion, please?

**Mr. Ed Komarnicki:** I'm going to. I'm in the process of specifying the motion.

**Hon. Andrew Telegdi:** Mr. Chair, you're supposed to deal with a point of order when it is raised.

**The Chair:** A point of order.

**Hon. Andrew Telegdi:** Thank you very much, Mr. Chair.

The time has now run out. That one minute you were talking about has gone into much more than one minute.

**The Chair:** I'm going to hear the motion.

**Hon. Andrew Telegdi:** I think we should go on with the agenda.

**The Chair:** I'm going to hear the motion. The motion, please.

**Mr. Ed Komarnicki:** I want to put forward a motion that gives us—

**The Chair:** And right away.

**Mr. Ed Komarnicki:** We've been at this thing for a long time. This thing has been around since 2002. Circumstances have changed. I think we've done three or four meetings on lost Canadians, where Mr. Telegdi has done a whole—

**The Chair:** That's debate; I want to hear the motion and hear it now, Mr. Komarnicki.

**Mr. Ed Komarnicki:** I'm getting to it.

**The Chair:** No debate. I want to hear the motion, please.

**Mr. Ed Komarnicki:** All right. The motion is coming.

**The Chair:** Do the motion right now.

**Mr. Ed Komarnicki:** The motion will be as follows: that the committee extend the hearing time of these particular witnesses so additional questions that have not yet been answered could be asked on an important issue.

**The Chair:** Okay, so you've heard the motion, that the committee continue receiving testimony from CIC officials to extend the hearing time of this committee.

Debate on the motion? Discussion on the motion? No discussion on the motion?

**Mr. Ed Komarnicki:** Yes, I want to discuss the motion. I'm moving the motion, I should have an opportunity to present some thoughts on it, I would think. We haven't come to that place yet.

**Mr. Rahim Jaffer (Edmonton—Strathcona, CPC):** You have unlimited time.

**An hon. member:** Are you just trying to eat up the clock?

**Hon. Andrew Telegdi:** I have a point of order, Mr. Chair.

**The Chair:** I have to allow him to discuss the motion.

**Mr. Ed Komarnicki:** Let me say this. I take exception to the fact that any member of this committee would try to ram a significant bill through this committee in one sitting, where we have witnesses called, where those witnesses aren't able to fully present their testimony on all of the issues that concern the members, and where we want to move forward to clause-by-clause consideration without taking into account what the witnesses have to say. There's something wrong with that process.

On the issue of lost Canadians, for instance, we have previously had four meetings with various witnesses on the same issue as Mr. Telegdi wished to have, and we're trying to limit debate. The department officials—

**Hon. Andrew Telegdi:** I have a point of order, Mr. Chair.

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

**The Chair:** I can hear a point of order and then come back to you, I'm told.

**Hon. Andrew Telegdi:** Mr. Chair, can we move on to the orders of the day? We are taking away time from other witnesses. We are already staying on until two o'clock today.

**The Chair:** That's not a valid point of order.

I have to hear Mr. Komarnicki out on his motion, please.

**Mr. Ed Komarnicki:** My view is that it would be only reasonable that we be given a reasonable opportunity to examine witnesses until the process is finished.

To give an example, on various issues before this committee, we have had a round of seven minutes, followed by a round of five minutes, followed by a further round of five minutes, until people had no further significant questions on the issue.

**Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.):** On a point of order, Mr. Chair, could you please just call for the vote? We've heard his arguments.

**The Chair:** You're out of order, Mr. Wilson.

I'm going back to Mr. Komarnicki, to continue his motion.

**Mr. Blair Wilson:** For how long?

**The Chair:** I'm told by the clerk that there's no limit on the time.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** In fairness, I'm making a point, and I think it's a valid point. It's a point that as members of this committee, we should not be limited in our questioning of department officials—or any witnesses, for that matter—on an issue as significant and as important as the refugee appeal division.

**An hon. member:** Hear, hear!

**Mr. Ed Komarnicki:** That will change the course of how we do business. It will change the course after a number of years and significant circumstances have come into play that had not been taken into account when the issue was first proposed. Four ministers have spoken and have said that they've looked at this thing and don't think it should be implemented in the fashion that it is.

It should not be implemented in the fashion that it is, because circumstances have changed. There are better ways to do it. We must look at it from a whole-system perspective. It wouldn't be appropriate for us to proceed without taking the due diligence. I would suggest the due diligence for this committee would be to look at what the shortcomings are, to look at how those shortcomings may be addressed—

• (1155)

**Hon. Andrew Telegdi:** You are the shortcoming.

**Mr. Ed Komarnicki:** We should look at the shortcomings and at how those shortcomings may be addressed in this bill by way of amendment. I think it would only be reasonable. There was some issue that was presented here before this committee, saying that we need transitional provisions because five years have passed. Is it unreasonable to take that into account and ask how we might address that in the bill, or how we might address it in terms of this piece of legislation?

You're asking about going forward, about implementation, about the cost it may take to implement this. Depending on whether you're going to create a backlog or not create a backlog, that will have some significance, so you have to have some kind of staging, some kind of plan that will take this into account on a go-forward basis. We haven't done that, and it doesn't appear the committee is interested in doing that. That's irresponsible, and it's not being properly diligent. I

don't think it takes the whole system into account, as it should, for the benefit of either government or anyone else.

When we look at the bill as it now reads, it—

**Mr. Blair Wilson:** On a point of order, Mr. Chair, I came to Ottawa as a member of Parliament to work in this minority government and to get things done. Obviously the parliamentary secretary on the other side is filibustering during this process in order to tie up witnesses. We have witnesses here who are being paid and are waiting for this committee.

We've heard his argument. He has talked for five or six minutes now. That's more time than anybody has had to talk. In the interest of working together and having a Parliament that is getting things done, I would just ask that he please wrap it up in the next thirty seconds so that we can have a vote.

**The Chair:** I know members would like me to write a new set of rules for every situation that pops up here at committee, but the rules are the rules. I have no choice but to adhere to the rules that govern this committee.

I'm told by the clerks that Mr. Komarnicki is free to move a motion. He has unlimited time, and I cannot change the rules in that regard. If we don't like the rules, let's go to Parliament and change them, but they won't be changed here at this table.

I have to go back to Mr. Komarnicki, under the rules.

**Mr. Ed Komarnicki:** The point I'm making is that we're not prepared to take the time to address legitimate issues, but we can procedurally take the time to talk about why that's wrong. I think this committee ought to take the appropriate time to be sure every member on this committee has asked the questions that they think are pertinent and relevant to the implementation of this bill. That opportunity should be given.

There may be an excess of that request, but there has to be a measure of reasonableness in there somewhere. I can tell you that one round of seven minutes on an issue as big as this, for one person, is hardly reasonable. If the committee wants to be reasonable, then it should be, but it should not try to jam this thing through—

**Hon. Andrew Telegdi:** On a point of order, Mr. Chair, I am challenging your ruling on allowing the parliamentary secretary to filibuster.

**The Chair:** You can challenge, yes. It's the appropriate manner in which to do that, so you're challenging the ruling.

**Hon. Andrew Telegdi:** I am.

**The Chair:** Since I'm not a parliamentary expert, I again turn to my clerks for advice.

You're challenging the ruling of the chair that the member has unlimited time to present his motion.

**Hon. Andrew Telegdi:** That's correct.

**The Chair:** Where do we go from here, Mr. Clerk?

• (1200)

**The Clerk of the Committee:** You put the question, shall the ruling of the chair be sustained?

**The Chair:** Shall the ruling of the chair be sustained?

(Ruling of the chair overturned)

**Hon. Andrew Telegdi:** On a point of order, Mr. Chair, I move that we go on to the next witnesses.

**Mr. Ed Komarnicki:** There's a motion on the floor, and there's a point of order.

**Mr. Rahim Jaffer:** There are consequences to your challenge of the chair. We now have to hear what the consequences are of your challenging the chair.

**Mr. Blair Wilson:** I'd call for a vote.

**The Chair:** We're now back to the motion.

**Mr. Rahim Jaffer:** Let's find out what the rules are. What are the consequences now that he's challenged the chair?

**An hon. member:** There's no debate.

**Hon. Dan McTeague (Pickering—Scarborough East):** On a point of order, Chair, there's no debate on a substantive motion before the committee. The chair has been challenged. The chair has been overruled. You now proceed to the next order, which is the motion itself, of course.

Thank you, Chair.

**The Chair:** My experts here at the table tell me that's correct. We have to move on to the next order of business.

**Mr. Ed Komarnicki:** The motion should be read.

**The Chair:** I'm told I have to put the question on your motion.

All in favour of the motion—

**Mr. Ed Komarnicki:** Before the question is put, I would like to speak to the motion.

**The Chair:** You can't speak to the motion. The motion is finished. I have to call for the vote on the motion.

(Motion negated)

**The Chair:** Thank you for your presence here today, and my apologies for the delay.

I'm going to suspend for a minute to allow other people to come to the table.

• (1200) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1210)

**The Chair:** I'm sorry we were delayed a bit, but we seem to be having some procedural differences at the table.

Just to clarify to Mr. Telegdi, now I'm told by the clerk that I could have recognized the point of order while Mr. Komarnicki was speaking. I'm not going back to any of this, mind you, but to clarify what has happened, I could have recognized the point of order while he was speaking. But you cannot move a motion to challenge the chair on the point that I was supposed to go back to Mr. Komarnicki.

So for future reference, that's the procedure, according to the rules I'm told about by the clerk. However, what's done is done.

**Hon. Andrew Telegdi:** Mr. Chair, I suggest we check on that with the clerk upstairs.

**The Chair:** I certainly have the clerk checking right now.

**Hon. Andrew Telegdi:** I don't mean the clerk here.

**The Chair:** So I will now go to the Immigration and Refugee Board of Canada. We have with us today Krista Daley, senior general counsel; and Paul Aterman, director general, operations branch.

Welcome. I know you have opening statements.

**Mr. Paul Aterman (Director General, Operations Branch, Immigration and Refugee Board of Canada):** Thank you very much, Mr. Chair.

I have an opening statement. I'll try to be brief.

One thing I'd like to emphasize at the outset is that the board is an independent administrative tribunal. It doesn't engage in the broader policy questions.

I hope to give you an overview of the refugee appeal division, the legislation and how it would work, the implications in terms of cost and processing time, and to highlight for you some of the particular challenges the board might face if we were called upon today to implement the RAD.

As I indicated, the board is an independent administrative tribunal. I'm sure all of you know that one of its functions is to make determinations in matters of refugee status.

In 2006 the refugee protection division of the board made about 20,000 determinations. Of those, status was granted in about 9,300 cases, about 8,100 were rejected, and the remainder were either abandoned or withdrawn in the process.

The refugee appeal division would add a fourth division to the board—an entirely new organism. The function of this division in the legislation would be to provide for an appeal of an RPD decision. A claimant whose claim is rejected, or the minister in a case where status was granted, would have a right of appeal. The right of appeal does not exist for those individuals who the RPD has decided have abandoned or withdrawn their claims. It's restricted to decisions that are made on the merits of the case.

Like any appeal process, the RAD would serve two functions. One of them is to do justice in individual cases. The other one is a broader systemic function to promote consistency of decision-making at the RPD by providing guidance and direction.

The reason we want to put this forward is that sometimes there are misperceptions from comments in the media about the RAD. It's important to illustrate what it would not do. Number one, it's an appeal that would be decided on the facts of the case as they existed at the time the RPD made its decision. In other words, the RAD would not entertain any new evidence.

It's a paper process. The RAD would not conduct any oral hearings; it wouldn't hear testimony from individuals.

Finally, the RAD's sole function is to determine whether a person is a refugee. In other words, it would not include the functions of the pre-removal risk assessment, nor would it adjudicate on issues such as humanitarian and compassionate grounds for remaining in Canada.

When the RAD makes its determination, it can do one of three things: uphold the decision the RPD made, set it aside and substitute its own decision, or set aside the RPD decision and direct that the matter be heard again.

As Mr. Stevens pointed out in the previous testimony, the moment someone gets a negative decision from the RPD, they can seek leave of the Federal Court for judicial review under the legislation. If the RAD were implemented, a person could only access the Federal Court by first going through the RAD.

• (1215)

[Translation]

I would like to talk to you about the context at the time the RAD was deferred and the context today. When the implementation of the RAD was initially delayed, the volume of claims was at an all time high in the system, that is about 52,000 were waiting to be heard.

During this period of time, when the board worked to ensure the successful implementation of other reforms introduced in the new act, we also began...

[English]

**The Chair:** We can hear the English, yes.

[Translation]

**Mr. Paul Aterman:** ... to direct our attention to addressing the crisis of the growing backlog.

Our former chairperson has spoken to this committee on several occasions on the transformation agenda that was launched in 2003. This plan consisted of more than a dozen specific initiatives that sought to standardize and simplify processes, provide decision-makers with greater institutional guidance to enhance the quality and consistency of decision-making, and improve the efficiency of hearings. We standardized our country-of-origin documentation, introduced chairperson's guidelines and jurisprudential guides, and provided ample opportunity for members to discuss best practices in decision-making in order to promote consistency.

As well, temporary funding was secured by the IRB to hire additional resources to address the backlog. By mid-2006, our inventory had been reduced to less than 20,000 claims.

Today, however, our inventory of claims waiting for a decision is growing again. We project that, by the end of the fiscal year, our inventory will have climbed back to over 26,000 claims waiting for a decision.

[English]

Turning to the implementation of the RAD, as I've indicated before, the board does not want to make pronouncements on policy. Obviously the question of whether to pass this bill is strictly a matter for Parliament. What I would seek to do is to give you some sense of what implementation might mean for the board in terms of cost, processing time, and member recruitment.

In relation to cost, certain one-time start-up costs would be incurred in the first year of operation. Thereafter, there are the regular operating costs of a division. All of the estimates that I'm referring to are very preliminary, I'd like to stress that, and we might need to revisit them in the course of implementing.

Exclusive of information technology costs, we estimate that the one-time start-up cost relating to implementation would be around \$2 million. Most of that is directed at ensuring that we get the right people with the right skills in place on the day that an appeal is first filed. Much of that is targeted at human resources work. It involves creating competency profiles for decision-makers, recruitment of decision-makers, recruitment of staff, and classification actions. A lot of training would need to be done. In addition, we need to develop the rules of the refugee appeal division, and we need to address our mind to such issues as accommodations and equipment.

I'd like to mention very briefly the question of information technology. In 2003 the board began work to replace what is an outdated case tracking system. We would have to institute a case management system for the refugee appeal division that would be compatible with the one that we've now developed for the refugee protection division.

We've taken a very preliminary look at the business requirements for the RAD, and that's a one-time cost that we estimate at \$6 million. The one-time start-up costs that we see are \$6 million for IT and \$2 million for everything that is non-IT-related.

In relation to the operating costs, this is largely driven by the demand—in other words, the overall volume of appeals that the RAD would receive every year. That obviously is a function of how many cases the RPD finalize. We would anticipate that in any given year the operating costs would be somewhere between \$6 million and \$8 million. Again, it's something that depends on the volume of appeals that are filed.

• (1220)

[Translation]

To have a fair process, the law requires that the person appealing the case be given the time to review the original decision and prepare their written arguments. That would take about 45 days from the original decision. It would take the RAD a further three to three-and-a-half months to complete the case, so we estimate that, on average, the appeal process would add an additional five months to the board's overall average processing time.

Those are the costs and timeframes that the board can speak to; there are other costs that may be incurred by other federal organizations or other levels of government until the appeal is resolved. The success of the RAD depends on getting the right kind of decision-maker. The work that is done in adjudicating appeals in a paper process is different from the work required to conduct an oral hearing, where parties are present and give evidence.

The RAD members would need to have a practical approach to the appeal process, so past experience in adjudicating refugee claims at the first level would be a great asset.

[English]

I've given you a summary of what it would take in preparation and implementation. Taking all of those various elements together, the board estimates the RAD would be ready to function within 12 months of legislation being passed.

I'd like to stress, however, that the one-year window is really dependent on certain critical assumptions. One is that the funding is available for the board to do this job. Two is that there are timely appointments or reappointments of decision-makers. And the important third assumption, which really is critical to the success of the RAD, is that it doesn't come into existence with a backlog of appeals waiting to be adjudicated.

If the board does not have sufficient lead time to establish and staff the RAD prior to the right of appeal taking effect, then the RAD will start life with a backlog. This will potentially increase the processing time from the five months I've just mentioned, and raises questions about the workability of the appeal process.

**The Chair:** Can I cut in here? You're now at about 12 minutes, Mr. Aterman.

**Mr. Paul Aterman:** I beg your pardon.

**The Chair:** This is not your fault. I would generally let you go on for a while longer, but we're trying to stick to our schedule, and our next group will be coming along pretty soon. You were to finish at 12:40.

We're going to try to get back on schedule here, so I'll give you 30 seconds. Then I'll have to go to a round of about four minutes each.

Go ahead, sir.

**Mr. Paul Aterman:** I'll take less than 30 seconds, because that was essentially the substance of what I wanted to say.

The only other thing I would add is that the board has confidence in the quality of the decisions that are currently being issued by the RPD. As you know, Canada's approach right now is to get the decision right the first time, and there are other avenues of recourse.

The question of whether to pass the bill is a matter for Parliament, of course. I just hope what I've said to you today gives you a better understanding of what the practical implications might be for the board.

Thank you.

•(1225)

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

Mr. Wilson, I'm going to give you about four minutes.

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

Thank you, witnesses.

I have a couple of quick questions here.

I looked through the costs and the implementation time. What is your budget right now, and how much has it changed since the last fiscal year?

**Mr. Paul Aterman:** Do you mean the overall budget of the board?

**Mr. Blair Wilson:** Yes.

**Mr. Paul Aterman:** The overall base budget is \$150 million. In the last few years the board has had one-time funding. There is currently no one-time funding, so we're working with the \$150 million.

**Mr. Blair Wilson:** So the cost of implementation is roughly 2% of your total budget?

**Mr. Paul Aterman:** I haven't done the math, but I'll take your word for it.

**Mr. Blair Wilson:** In your presentation you said that the backlog of refugees has increased from 20,000 claims to 26,000 claims. That's a 30% increase in less than a year. Why has the number of refugees increased by 6,000?

**Mr. Paul Aterman:** We have a shortage of members at the moment.

**Mr. Blair Wilson:** What is your shortage?

**Mr. Paul Aterman:** I think we have 52 vacancies right now.

**Mr. Blair Wilson:** You have 52 vacancies out of a total of how many judges?

**Mr. Paul Aterman:** An ordinary full complement would be 156, and as of March 26 we had 104.

**Mr. Blair Wilson:** So roughly one-third are vacant. How can you operate a department when you have one-third vacancies? Why aren't these being filled?

**Mr. Paul Aterman:** We're hearing cases with the available members. There are certain limitations on our capacity, given the number of cases that need to be heard, and I think I've touched on that in relation to the RPD. That's essentially why we're seeing the number go up.

**Mr. Blair Wilson:** From a parliamentarian's point of view, from a Canadian's point of view, it seems like it's complete mismanagement of the department to not appoint enough judges and cause a backlog increase of 6,000 people. These aren't just 6,000 files, these are 6,000 human beings' lives, 6,000 families that are waiting in the queue because of what obviously looks like mismanagement of the process.

I'll move on quickly.

We have the cost of \$2 million. Has the department done any work on what the savings will be? Right now, an appeal is taken to a judicial level, and there has to be a cost associated with that. So if we won't be going through that channel and we're going to substitute the RAD, what are the savings by not going through the other channel?

**Mr. Paul Aterman:** Number one, the board can make estimates of what it's going to cost the board to function. I think what you're alluding to are processes that are outside the board's jurisdiction, namely the impact that it might or might not have on the Federal Court. So I can't comment on that. It's not a matter, as I understand it, of one venue being completely replaced by the other, because as I indicated in my presentation, if somebody wants to access the Federal Court, my understanding of the legislation is that they still can do that; it's simply that they have to pass through the RAD first in order to do so.

**Mr. Blair Wilson:** I think if somebody took a look at the numbers, and if the minister was doing her job properly, she'd do an evaluation and see that it is going to cost us less than 1% of our budget to add a new level of justice into our system, and on an ongoing basis it's going to cost us \$6 million to \$8 million dollars versus the alternative, which may be costing \$20 million to \$30 million. So the implementation of this RAD could very well save the taxpayers money and could provide another level of justice to its system.

Thank you, Mr. Chair.

**The Chair:** Thank you.

We'll now go to Madam Faille.

[Translation]

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

I would like to thank you for appearing before the committee and for having presented the same figures as your predecessor, Mr. Fleury, who appeared previously as the chairman. Mr. Fleury cared about the Refugee Appeal Division being set up, but he felt that it was a political decision.

Despite everything, the legislators passed the bill here, in Parliament. The sections of the law are in place. I know that the tribunal is independent and that Citizenship and Immigration Canada is in control as far as the implementation of the Refugee Appeal Division is concerned.

It was the Assistant Deputy Minister, Mr. Malcolm Brown I believe, who said earlier that there would be 40,000 additional refugee cases in the backlog and that that would have repercussions on the Refugee Appeal Division.

Do you know where these refugees would come from?

• (1230)

**Mr. Paul Aterman:** If I remember correctly, that number was linked to the absence of transitional provisions in the act. So I assumed that the calculation is linked to that.

[English]

Regardless of what numbers might be, I would like to stress the significance from the board's perspective, just purely from an operational perspective. I don't want to comment on the merits of any policy choice.

It's very difficult for an organization that is involved in adjudication to start its existence with a backlog. Often it's very difficult to stop one from developing, but it would be a considerable challenge if the RAD were to start with a backlog.

[Translation]

**Ms. Meili Faille:** I understand. I was working at the Department of Citizenship and Immigration when the commission was set up. I also read the Auditor General's 1998 reports and learned of the terrible situation there.

Unfortunately, over time, the successive federal governments did not necessarily increase the commission's budget sufficiently to enable you to do your job properly.

I must say, however, that I am happy with your Media Centre as regards procedures brought into force at the IRB. Mr. Fleury mentioned that processing time at the IRB had been reduced to nine months, I believe.

**Mr. Paul Aterman:** More than nine months. We were aiming for a six-month period. We ended up with an 11-month period. Now, that is starting to increase.

**Ms. Meili Faille:** To go up, yes. That is worrisome. At any rate, I hope that there will be a sufficient number of commission members to help you make decisions in order to reduce the number of cases in the backlog.

I do not really have any questions for you, because we are running short of time. I think that in the past you have had ample opportunity to provide evidence on the Refugee Appeal Division. Thank you.

[English]

**The Chair:** Okay, I'll go to Mr. Siksay.

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

I just have some comments, and I want to thank the witnesses for their presentation.

Chair, I'm going to reject the allegations that the parliamentary secretary was making earlier, when he was beginning his filibuster, that somehow other members of this committee aren't interested in doing their appropriate job, or aren't doing a good job in terms of dealing with this issue and with this piece of legislation. I want to reject that categorically.

If the government, whether Liberal or Conservative, had done its job, and if the Conservatives had remained consistent with the position they took in the last Parliament in support of the RAD, if the government, whether Liberal or Conservative, had respected both the will of Parliament and the law that was passed, we wouldn't be here today discussing a bill to implement existing legislation. Those of us who have been advocating for a fair and just refugee process in Canada wouldn't have this frustration, and we wouldn't have to resort to this kind of legislation.

It is ridiculous, as Monsieur Gravel pointed out, that we should have to have a bill to implement existing legislation. That could have been dealt with easily along the way and long before now, with very positive results for the system.

I'm going to say to the representatives from the IRB that no one in this room wants to overwhelm the IRB. If anything, we want to be advocates for an effective IRB, and we have done that in our work in terms of our concern about the backlog and the lack of appointments. We will continue that work. It's not our intention to frustrate the excellent work of the IRB on very important and life-and-death questions for many people, but we are extremely frustrated with the refusal of the government to implement the provisions of IRPA.

The reality remains that if the government were concerned about creating backlogs, they could implement the RAD today. They could take those steps. They could announce their commitment to it. They could announce a timeline, and I'm sure all of us would be willing to consider that kind of timeline and that kind of process if there were a firm and hard commitment to doing that. They have chosen not to do that, and that's why we're in this position today.

The government could have short-circuited Bill C-280 the day before it was passed in the House. They could have short-circuited it—I'm sure—the day after it was passed in the House. If they wanted to take into consideration that a strong majority of the members of the current Parliament supported this legislation because they believe the RAD is an important piece of our refugee determination process, they had the ability to respond to that action by Parliament, and they chose not to. So that's twice that the government has chosen not to do that.

Though I understand the frustrations that implementation might cause and the stresses it might cause, it is within the government's ability to deal with that at any time.

I have one question. You say that it might take 12 months to establish the RAD. When I ask for a deadline, I usually put some extra time in it. If pressed, could it be shorter, or is that a minimum timeline?

● (1235)

**Mr. Paul Aterman:** In the board's view, that is a minimum timeline. Staffing takes a long time. As I indicated, we have rules that we have to get passed. There are the logistical issues around setting up the organization. Essentially, we have to look at all of the work that was done in the past in light of the fact that five years have now passed. We've had five years of decisions from the Federal Court, so there are policy questions that we have to look at. The board has changed in the way it's functioning. If a decision is made to implement it, the board will need adequate time to do that.

I'd like to come back to the question that Mr. Wilson raised, just to clarify my response, because I am particularly inept at mathematics. I've had it clarified for me that the budget of the board is \$115 million, not \$150 million as I might have misspoken. Consequently, the cost associated with the RAD would be about 7% of that, not 2%.

**The Chair:** Thank you.

We'll go to Mr. Komarnicki.

**Mr. Ed Komarnicki:** Just to make a point in reference to what Mr. Bill Siksay has said, it would not be my view, given everything I've seen and how the committee has worked, that it would be reasonable to hear witnesses and shorten the time to hear them on relevant legislation and what the amendments might be and then go to a clause-by-clause, without having any time to reflect as to any amendments. I wouldn't agree with him there. It's certainly not something I would consider appropriate.

Having said that, there are some legitimate concerns that you and others have raised about transitional provisions and implementation. The bill, as it now stands, doesn't deal with the transitional provision as to when it'll become effective—whether back to 2002 or otherwise—which might inadvertently create an immediate backlog.

Is that what you were referring to as a significant issue?

**Mr. Paul Aterman:** There are two potential ones. One of them relates to transition, and the other one relates to an effective date. If one leaves aside the question of the persons whose claims were heard prior to the existence of the refugee appeal division, the board still needs, as I've tried to indicate, about a year from the date the legislation is passed going forward to the date it starts to do the work. That is a separate issue from the question of any transitional

rights that might accrue from, I don't know, 2002 or some point onward.

● (1240)

**Mr. Ed Komarnicki:** What I'm hearing from you is that if something like Bill C-280 were implemented, you would like to see, first, a provision that would ensure that we're not starting with a backlog from what may have happened before its proclamation. And you would like to see some provision giving some lead time to be sure you're up to speed with personal resources, people, training, equipment, and so on. In your mind, you would need about a year.

**Mr. Paul Aterman:** Yes, ultimately all those choices are policy choices. All I want to do is highlight for you that they have practical implications, and the practical implications can be problematic if the organization starts its existence with a backlog.

**Mr. Ed Komarnicki:** So if they're not addressed, this is what could happen. But even if they were addressed, from what I hear from you, just adding another layer of appeal to the existing system would add additional amounts of time. I'm not sure if you said five or six months or something like that. Am I correct?

**Mr. Paul Aterman:** Again, the question of whether to introduce an appeal is fundamentally a policy choice. What I can tell you is how long the current process takes at the RPD. Right now we're averaging around 12 months, and what we anticipate is that the appeal process would take an additional five months, on average.

There is just one other thing. The board is looking to reduce the average processing time at the first level.

**Mr. Ed Komarnicki:** I have some—

**The Chair:** He only has two and a half minutes.

**Mr. Ed Komarnicki:** I'm going to pass off to Mr. Devolin.

**The Chair:** Okay, I can give a question to each person if they want, because we have a couple of minutes to go, and then we'll move on to Mr. Gallagher. So do members want to have a fast question?

**Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC):** I'm just using his time.

**Mr. Ed Komarnicki:** I'll use up my time, but I'm giving him my time so he can actually—

**The Chair:** I told him he had about a minute left.

**Mr. Ed Komarnicki:** I thought you said two minutes to two and a half minutes.

**The Chair:** Go ahead, Mr. Devolin.

**Mr. Barry Devolin:** Thank you, Mr. Chair.

I want to get on the record, because there's been a lot of discussion here this morning concerning the bigger question of the RAD. I think we can all recognize the fact that in the past, legislation was passed that included the RAD. At that time, for some reason, the minister of the day, who was a Liberal, and the government decided not to implement that portion. Subsequently, there were at least two other Liberal ministers who did not implement it. There have been two Conservative ministers of citizenship and immigration who did not.

As a parliamentarian, I sit in the House and I recognize that there are five current or former ministers there, none of whom seem to believe that going ahead with this is a good idea. I wondered about that. And I can tell you that the other night I sat and watched the vote and saw the three Liberal former ministers there, and I actually saw one of the ministers vote against Bill C-280 and the other two remain in their seats, which is a powerful statement in itself, and not vote on it. They would not take the party's position that they supported Bill C-280.

I respect the fact that many people believe the RAD should be implemented, and I respect the fact that the NDP and the Bloc members on this committee feel that way. My question is for the Liberal members of this committee. I think you should be asking yourselves if some of your own colleagues, and I appreciate what Mr. Telegdi has said—

**The Chair:** Please direct any questions to the chair.

**Mr. Blair Wilson:** On a point of order, Mr. Chair, I'd be happy to take the question.

**Mr. Barry Devolin:** No, no, just let me finish. Please let me finish.

**The Chair:** Yes, I'll let you finish.

**Mr. Barry Devolin:** I have heard what Mr. Telegdi has said, and he says it colourfully, but basically what he says is that when you become minister, the bureaucracy gains control of you, and that explains why all these ministers wouldn't do it. It's an interesting question whether, if Mr. Telegdi had ever been made minister, he would have been taken over as well.

That aside, I think we owe it to ourselves and to Parliament and to Canadians that we think this through. This is not just a political thing to be kicked back and forth. I think there are some good questions we need to look at, and it doesn't seem to me that some of my colleagues want to take the time to look at those questions.

• (1245)

**The Chair:** Okay, your point is made.

Our schedule has now taken us a little beyond here, but if we want to get a question from each of the other parties here, we can go another couple of minutes, five minutes or so. Okay, fine.

So who will go? Mr. Wilson or Mr. Telegdi?

**Mr. Blair Wilson:** I'll share my time with Mr. Telegdi.

**The Chair:** Okay.

**Hon. Andrew Telegdi:** Mr. Chair, I had my name down on the list.

**The Chair:** Okay, Mr. Telegdi or Mr. Wilson?

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

In terms of responding to that, one of the problems we have had is that we have had ministers who did not have the experience in the department to be making those decisions. It doesn't take a rocket scientist to figure that out. The fact of the matter is that we had Parliament pass the bill. It was passed to enhance the decision-making and enhance the fairness, and that point was made.

Since I have the floor, I would like to make a motion that the chair not receive any dilatory motions, quorum calls, or requests for

unanimous consent, and proceed with the meeting as put on the agenda, and the timeline already established at the beginning of the committee meeting.

That's my motion, Mr. Chair.

**The Chair:** The motion is in order. Is there debate?

**Mr. Ed Komarnicki:** I'd like to have a written copy of that motion and I'd like to have a look at it. Certainly I'd be prepared to speak to it.

**The Chair:** In the meantime, while that's being circulated, we can go back to questions and have a go at that in a few minutes.

Would you want to proceed with your question, first of all?

**Hon. Andrew Telegdi:** Yes, I want to proceed with that.

In regard to the 26,000 backlog—and I think this is a big concern to all parliamentarians, to all parties, and I hope to all members of this committee, even the Conservatives—if we did not have a shortfall of 52 members, what would the 26,000 backlog be?

**The Chair:** Mr. Aterman.

**Mr. Paul Aterman:** It's difficult to say. I guess the best way to answer that.... I can't pinpoint precisely the time that we started to have vacancies, but there was a tendency downward in terms of the pending inventory. If I recall correctly, we reached—

**Hon. Andrew Telegdi:** Let me rephrase that. The average decision-maker makes 200 decisions a year, so if we had 50 times 200, then we'd be talking about 10,000. We were down to 20,000, so subtract 10,000 from 20,000, and we'd have a backlog of 10,000.

Would that be reasonable, in broad strokes?

**Mr. Paul Aterman:** I think what we were looking at, if I recall correctly—and this was at the end of 2005 and in 2006—is that the intake had gone down. We had a full complement. The inventory was going down. I think we were heading towards a year-end inventory at the end of 2005-06 of around 18,000, and if it had continued we would have gone down to, I think, around 15,000.

**Hon. Andrew Telegdi:** Thank you very much.

The other question I have is this. You made a point about having good decision-makers. Can I suggest that given the high quality of people we have had at the IRB, we could have picked the best of the crop who have left? There is that body of people with expertise to draw from.

Would I be correct in that statement?

**Mr. Paul Aterman:** Ultimately, the question of who the government appoints is a matter for the government. I can tell you that the nature of the work that's required at the RAD is somewhat different from the work that's required at the RPD, because—

**Hon. Andrew Telegdi:** I appreciate that, but you said you wanted people who ideally had experience at that level. There's a body of people who could serve as a pool for the appointments, and we want to appoint the best and most experienced people. So I'm saying you already have a ready-made pool of people who have served on the IRB particularly well, because you have evaluations of folks as well. Is that correct?

**Mr. Paul Aterman:** I don't think the board would want to limit its search necessarily to—

• (1250)

**Hon. Andrew Telegdi:** I wasn't asking if you want to limit it. That's a pool you could draw upon.

**Mr. Paul Aterman:** People who had experience adjudicating refugee matters in the past are those who could do that job, provided they had the right other attributes.

**Hon. Andrew Telegdi:** Thank you.

**The Chair:** Okay. Are you sharing your time with Mr. Wilson?

**Hon. Andrew Telegdi:** Yes. We have a motion.

**The Chair:** Mr. Wilson.

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

I want to respond to Mr. Devolin's comments. He should take a look at the blues from the discussions this committee had when the Conservatives were in opposition and were fighting in favour of the RAD. So it's not just the minister who's in charge; it seems to be which side of Parliament the party is on.

The parties on the opposition side seem to argue vehemently in favour of the RAD, and whoever is on the government side seems to dismiss it. So I would ask him to look at the words of his colleagues when they were in opposition here.

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

**Hon. Andrew Telegdi:** Can we deal with my motion?

**The Chair:** I'm just going to complete the table and then we'll do your motion.

Mr. Gravel.

**Hon. Andrew Telegdi:** No. We want to deal with the motion.

**The Chair:** I already recognized Mr. Gravel.

Mr. Gravel, go ahead.

[Translation]

**Mr. Raymond Gravel:** I am going to ask a question and make a comment.

How high would the backlog be if there were a sufficient number of commission members to process the applications?

**Ms. Meili Faille:** Earlier on, he said 15,000.

[English]

Did you say 15,000?

[Translation]

**Mr. Paul Aterman:** Yes, but I would not use the word "backlog". There are approximately 15,000 files in the inventory. That represents more or less six month's work.

**Mr. Raymond Gravel:** Basically, you are about 50 members short. No one has had to pay those salaries. The 7% of the budget thus saved could have been used to open the RAD. Setting up the RAD would not cost any more.

**Mr. Paul Aterman:** I would like to remind you that the division would be permanent.

**Mr. Raymond Gravel:** Yes, but we have been told that setting it up would cost \$4 million and that the annual operating costs would be \$2 million.

**Mr. Paul Aterman:** The start-up costs are estimated at approximately \$8 million, and the annual operating costs would be between \$6 and \$8 million.

**Mr. Raymond Gravel:** Fine. Thank you.

[English]

**The Chair:** Thank you.

Is it your wish to deal with the motion? I was going to allow another question from Mr. Siksay.

**Mr. Bill Siksay:** No, Mr. Chair, I'm anxious to proceed to the motion.

**The Chair:** The motion comes from Mr. Telegdi, that the chair not receive dilatory motions, and proceed with the meeting as per the agenda and timelines already established at the beginning of the committee meeting.

Is there any discussion? Mr. Jaffer.

**Mr. Rahim Jaffer:** I've heard the motion, and I think it's a fair one, but I would like to move a friendly amendment, if possible. I think there needs to be a context to this motion.

I'd like to add as an amendment, "unless there is a need to put more questions to the witnesses relating to the importance of implementing RAD".

It's clear that if there are dilatory tactics that relate to any other issue outside of what this committee is focusing in on at this time, all members of the committee have a right to be able to call that into question and to overrule any sort of delaying tactics. However, I think it's clear that we haven't given a fair amount of time to this particular issue relating to RAD. We have only had now, I think, this particular meeting in terms of being able to call witnesses on Bill C-280.

The previous effort by my colleague the parliamentary secretary was simply to try to extend the time of the committee so that it could have a few more questions for the previous witness, and all hell seemed to break loose. But in the last round of questioning where we had the witnesses, clearly all opposition members asked questions. All the government members actually allowed them to ask those questions because they were burning questions.

I think it's so important that we consider amending this motion put forward by Mr. Telegdi—

• (1255)

**Hon. Dan McTeague:** I have a point of order, Mr. Chair.

**The Chair:** Mr. McTeague.

**Hon. Dan McTeague:** For an amendment to be on the floor, to my understanding it has to be moved and also seconded. The substance of what Mr. Jaffer—

**The Chair:** No, it doesn't have to be.

**Hon. Dan McTeague:** But what Mr. Jaffer is suggesting is debate.

**The Chair:** No, that's not correct. It doesn't have to be seconded.

Mr. Jaffer.

**Mr. Rahim Jaffer:** As I was saying before I was so rudely cut off by Mr. McTeague, the Honourable Andrew Telegdi moved a motion without taking into consideration the fact that in the last round of questioning, only one government member asked any questions relating to RAD. Almost every opposition member asked a question. All we were trying to do was extend the time in this particular round—

**Mr. Bill Siksay:** That wasn't the case.

**Mr. Rahim Jaffer:** In the last round, yes, it was.

**The Chair:** Order.

**Mr. Rahim Jaffer:** I'm still speaking. I have the floor.

**The Chair:** Order, please.

**Mr. Rahim Jaffer:** In moving forward, one of the things this committee has done...and I have been a member of this committee for close to three years now, it seems to me, in opposition for almost two years, if not more, and now in government for almost a year. One thing we took pride in, as I think Mr. Telegdi would agree—

**Mr. Blair Wilson:** Point of order, Mr. Chair.

**The Chair:** [*Inaudible—Editor*]

**Mr. Blair Wilson:** Okay.

**Mr. Rahim Jaffer:** Thank you, Mr. Chair.

One thing we took pride in, and Mr. Telegdi can vouch for this, was that we had a great spirit of cooperation on this committee. It never interfered with the work the committee did. If there were serious concerns raised by members on this committee relating to time, relating to the order of precedence when it came to questioning, relating to the material at hand, there was always consideration given to the points raised and to the fact that members may have valid interests on particular issues.

So in moving this amendment, I think it's clear what I'm trying to suggest, that any particular ability for us as members to deal with Bill C-280, especially if we have questions for witnesses.... I know I had some questions from the previous witnesses, and I was—

**Mr. Bill Siksay:** Point of order.

**The Chair:** Are you finished, Mr. Jaffer?

**Mr. Rahim Jaffer:** I'm not finished, but are you recognizing the—

**The Chair:** Okay, a point of order, Mr. Siksay.

**Mr. Bill Siksay:** On a point of order, Chair, I didn't hear Mr. Jaffer actually move an amendment. I heard him call for a request for a friendly amendment. So unless he's prepared to move an amendment, I think he should be out of order. He is giving argument, he hasn't moved an amendment, and he's out of order.

**The Chair:** Is it my understanding that you moved an amendment, Mr. Jaffer?

**Mr. Rahim Jaffer:** I will move it officially at this point, if the chair so wishes.

**Mr. Bill Siksay:** On a point of order, Mr. Chair, he did not move an amendment, so he is out of order and should not have the floor.

**Mr. Rahim Jaffer:** No, as a committee member, I have the floor. I'm not out of order.

**The Chair:** No, you're not.

**Mr. Rahim Jaffer:** You didn't rule me out of order. I had the floor.

**The Chair:** You can move your amendment.

**Mr. Rahim Jaffer:** I'll move my amendment accordingly, and it's seconded by....

**The Chair:** You have already moved the amendment, according to the clerk.

**Mr. Rahim Jaffer:** Well, then, there you go.

**Hon. Dan McTeague:** On a point of order, Chair, I just made the same substantive request. You accepted that this was already made. It's abundantly clear now that Mr. Jaffer did not in fact make the motion. He can make his motion now, and then we go to the list of speakers.

**The Chair:** He has made his motion.

**Hon. Dan McTeague:** Did he or did he not?

**The Clerk:** I can clarify this for the committee, if they wish.

**The Chair:** Okay. I'm going to go to the clerk to clarify that for the committee.

**The Clerk:** The original motion reads: "That the Chair not receive any dilatory motions, forum calls, or requests for unanimous consent, and proceeding with this meeting, as per the agenda and timeline already established at the beginning of the committee's meeting."

**The Chair:** That's Mr. Telegdi's.

**The Clerk:** Mr. Jaffer moved an amendment to add at the end of the motion, "unless there is a need to put more questions to the issue of implementing RAD".

**Hon. Dan McTeague:** Point of order, Mr. Chair.

**Mr. Blair Wilson:** At that point you should have called for the debate.

**Mr. Rahim Jaffer:** What is the procedure? Do I have the floor? I've moved that.

**Mr. Blair Wilson:** Point of order, Mr. Chair.

**The Chair:** Mr. Jaffer, you have the floor.

**Mr. Rahim Jaffer:** Thank you. I appreciate that. I thought that was clear.

When you move a motion—and I think committee members should know this, as many of them are experienced—you have the floor; you have the ability to speak to the motion.

**Hon. Dan McTeague:** On a point of order, Chair, you did not recognize that as a motion. Regardless of what the clerk said, when the motion was put forward it was not seconded as is required.

**Mr. Rahim Jaffer:** Dan, why are you making up stories?

**Hon. Dan McTeague:** But more importantly, Mr. Chairman, if the motion had been accepted—and I recognize you made a ruling—then the next thing would be to open it to debate, which you did not do. You can't have the sort of seamless throwing in of a motion and then continue to debate it. The correct procedure, Chair, would have been for you to instigate a debate.

The motion has been brought forward. The reasons have been given. You must now go to the list, beginning with Mr. Wilson.

• (1300)

**Mr. Rahim Jaffer:** I'm glad Mr. McTeague has joined us at this committee, but clearly he's not the chair.

**The Chair:** I will recognize subsequent speakers after Mr. Jaffer has finished moving his motion.

**Mr. Rahim Jaffer:** The clerk has recognized my motion as being moved. If there is confusion on the other side, that's their own problem.

**Mr. Blair Wilson:** Point of order, Mr. Chair.

**The Chair:** Order, order.

I'm going to Mr. Jaffer, on continuation of his motion.

**Mr. Rahim Jaffer:** That's right. The rules are clear that when you move a motion and it's recognized, as it was, then the floor is given to that particular member.

**Hon. Dan McTeague:** Rahim, it wasn't recognized. Until I intervened—

**The Chair:** Order. Order, please.

**Mr. Rahim Jaffer:** Mr. McTeague should know, being a previous chair of a committee, that you're allowed—

**Hon. Dan McTeague:** Read the blues.

**Mr. Rahim Jaffer:** If Mr. McTeague didn't realize my motion was moved, since he wasn't paying attention the first time I moved this motion, I'll make my arguments all over again for his benefit, so he can know why I think this motion is so important.

**Hon. Dan McTeague:** Point of order, Chair.

**Mr. Rahim Jaffer:** Clearly, when a friendly amendment is made—

**Hon. Dan McTeague:** Point of order, Chair.

**The Chair:** We have a point of order, Mr. Jaffer.

Mr. McTeague.

**Hon. Dan McTeague:** Chair, I would urge you and your clerk to look very carefully at the blues and my first inquiry, which will demonstrate beyond any doubt that there was no clarity on your behalf. You subsequently reversed that in the intervention you had with Mr. Wilson. I'm simply trying to get from the chair, as opposed to Mr. Jaffer's intervention, which now appears to be dilatory tactics to prevent the committee from doing its work—

**Mr. Rahim Jaffer:** You could have let me speak.

**Hon. Dan McTeague:** If you would simply look at your blues and confirm that you in fact reversed yourself.... I'm not going to ask on any point of order, because it would not be in order for me to challenge the chair, but I want to demonstrate that the confusion emanated from you and your clerk.

**The Chair:** First of all, we don't have any blues we can go to.

**Hon. Dan McTeague:** You will.

**The Chair:** It's my understanding that Mr. Jaffer moved the motion. I then recognized him to speak to his motion.

**Mr. Blair Wilson:** That was a mistake.

**Mr. Rahim Jaffer:** It was not a mistake. As I've mentioned, by the rules of any committee, when you, as a member, move a motion you can speak to that motion. And when you've finished speaking, then you vote.

**The Chair:** I will ask Mr. Jaffer to continue with his motion.

**Mr. Rahim Jaffer:** Thank you.

**The Chair:** And wrap it up whenever—

**Mr. Rahim Jaffer:** As I said earlier, Mr. McTeague is a veteran member of committees. I think he has been a committee chair. He knows the procedure. I understand—

**Hon. Dan McTeague:** On a point of order, Chair, I've never been a committee chair.

**Mr. Rahim Jaffer:** I think he is a veteran on these committees. He knows that when things don't work in favour of a particular side of the table it doesn't mean you can start yelling "point of order" and try to change the rules accordingly.

Now that it has been so confused, I want to read my motion once again. I know it has already been registered, but I want to read it again. I think it's clear that if we are going to have a chance to be able to get through this process in a friendly manner—and that's exactly the point I was making before I was cut off...

Mr. Telegdi actually had the chance to preside over this committee, and I was one of the critics on the other side. One of the efforts we made on this committee was to have participation that was open, that was friendly, and that was non-partisan. So I'm quite confused, especially when I move a motion like this, where—

**Mr. Omar Alghabra:** More bad news for the Conservatives.

**The Chair:** Order.

**Mr. Rahim Jaffer:** It seems to me, if there are relevant questions to be asked about RAD, we should be able to ask them in this particular forum. If we do have to change the time slightly, I think there should be at least the goodwill on behalf of committee members to be able to do this.

I don't usually move motions like this, nor do I speak on particular motions of this nature, but I must admit I was offended in the first round of questioning, as I mentioned. When we did have the ability to ask further questions, we were looking at changing the format according to the schedule. I know we've done that many times.

I sit on the steering committee with a number of members on the other side, and often what's determined at the steering committee is changed here at a particular committee if the majority of members don't agree with it. I know that in this particular case, to ask for slightly more time of witnesses, even though I know we have a very packed committee, there's no reason why we shouldn't be able to look over even potentially delaying witnesses. At the last meeting, I remember that we were going through the detention certificates report, and there were witnesses waiting, Mr. Chair. I felt sorry for them, yet our committee decided that we were going to send them home in order to continue on with the study of our report.

All my motion is speaking to is the particular fact that right now, if we want the ability to ask further questions, I don't think there should be any reason not to. There were legitimate efforts on behalf of members to find out, as we talked about, what sort of backlog is going to exist with this RAD if it's implemented and what sort of timeline will exist with the RAD if we are going to pass it.

Just because the opposition says so, and although they may have the majority on this committee and pass this bill here and later in the House, it doesn't make it so magically. There are going to be implementation issues that the government has to take into consideration, including the cost. We were just informed by Mr. Aterman that in fact it's going to be 7% of the current budget, which is clearly going to have an impact on the backlog position.

Of course, being the Government of Canada, we have to take this into consideration. The opposition doesn't necessarily have to worry about those implementation issues. They can pass anything they like and then simply say it's our problem to put it into effect. For these reasons, it's clear that we must have time to ask further questions. Again, my friendly amendment to the motion is simply suggesting that. Why wouldn't we have the ability to do so?

I know that even the last time around when we had the officials here, I wanted to ask what the minister would do in an appeal decision to RAD, and why the bill would include a provision for the minister to seek judicial review of RAD decisions. I wasn't able to put the questions to the previous witnesses. We would, in the spirit of this amendment that I'm moving, have the ability to actually bring back those witnesses in order for us to get the proper questions in. I think that's something the committee should really take into consideration.

On this refugee appeal division I think we've heard from a number of speakers around the table, including most recently my colleague Barry, who was asking a particular question that I think is a valid one. In the last opportunity I had to actually move a motion here at the committee—and I think it was the last time the committee met—I asked specifically that as a follow-up the committee consider what Barry had asked current witnesses. That was the question of why the previous ministers of immigration, in opposition, had not supported this new Bill C-280. When it comes to RAD, it was obvious to me there were huge splits, huge problems.

• (1305)

**Mr. Blair Wilson:** Point of order, Mr. Chair.

**The Chair:** Point of order, Mr. Wilson.

**Mr. Blair Wilson:** I would like to move that the floor be taken away from Mr. Jaffer and that the microphone on the floor be given to my colleague Mr. McTeague.

**The Chair:** I'm told by the clerk that's out of order.

**Mr. Blair Wilson:** On a point of order, Mr. Chair, could we put that to a vote?

**Mr. Rahim Jaffer:** No, you can't do that. Listen, Blair—

**The Chair:** Order.

I'm going to give you a couple of minutes to get this in order, and I'll go back to Mr. Jaffer while you get that.

**Mr. Blair Wilson:** I have a point of order, Mr. Chair.

**Mr. Rahim Jaffer:** I've got the floor.

**Mr. Blair Wilson:** I challenge your decision not to move the microphone and move the floor to Mr. McTeague. You've made a decision, and I'm challenging your ruling.

**Mr. Rahim Jaffer:** If Mr. Wilson paid attention, he might learn something instead of yelling out points of order.

**The Chair:** Order, please, while I confer with the clerk.

**Mr. Rahim Jaffer:** Isn't it clear that once I have the floor I can continue speaking to my amendment whether they like it or not? I think that's clear in the rules. It's unfortunate that they're trying to delay democracy.

**The Chair:** I'm told by the clerk that it's out of order to move that speaking time be taken away from the individual who is moving the motion.

**Hon. Andrew Telegdi:** Challenging the chair is in order.

**Mr. Blair Wilson:** Challenging the chair is not out of order. I can challenge the ruling.

**The Chair:** Yes, you can challenge that ruling if you wish.

**Mr. Blair Wilson:** I'd like to challenge your ruling, Mr. Chair. Could you please put it to a vote?

**Mr. Rahim Jaffer:** I have the floor. Doesn't that count for anything in a democracy?

**Mr. Blair Wilson:** It doesn't matter. It's a point of order.

**Mr. Rahim Jaffer:** It doesn't count in a democracy if you have the floor? Are you willing to take away my democratic right to speak at the committee, Mr. Wilson?

**The Chair:** Order. The chair can be appealed on that.

**Mr. Blair Wilson:** I'd like to call a vote.

**The Chair:** Shall the decision of the chair be sustained?

(Ruling of the chair sustained)

**Mr. Blair Wilson:** I'd like to go back to the main motion.

**The Chair:** We haven't voted on the amendment yet.

Is there additional discussion on the amendment? Mr. Wilson.

**Mr. Blair Wilson:** I'd like to move a subamendment to that motion, if I could have a piece of paper, please.

• (1310)

**The Chair:** Do we want to continue discussion on the amendment while we're getting the subamendment?

**Mr. Ed Komarnicki:** I'm going to speak to the amendment.

**Mr. Blair Wilson:** You're not recognized yet.

**The Chair:** Order, please.

We have to deal with the subamendment first.

**Mr. Blair Wilson:** Do I have the floor, Mr. Chair?

**The Chair:** Yes.

**Mr. Blair Wilson:** I'd like to move that the words provided by Mr. Jaffer be deleted and that the motion that was originally there stand.

**Mr. Ed Komarnicki:** That is irregular voting.

**Mr. Bill Siksay:** The voting needs to be amended, Chair.

**The Chair:** That subamendment is out of order because the proper course of action is to vote on the amendment.

**Mr. Blair Wilson:** I would ask that the chair please call the vote.

**The Chair:** I'm going to adjourn this meeting if I can't get attention here.

Let's deal with this in proper fashion. Let's deal with the amendment, first of all.

**The Chair:** The amendment is on the floor. Is there further discussion on the amendment?

**Mr. Ed Komarnicki:** I want to speak to the amendment.

**The Chair:** You want to speak to the amendment, Mr. Komarnicki.

**Mr. Blair Wilson:** On a point of order, Chair, I thought I was on the list to speak.

**An hon. member:** You already did, and you passed your—

**Mr. Blair Wilson:** No, that was a point of order.

**The Chair:** I'm told that I have to go back to the amendment and deal with that, so I'm dealing with the amendment.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** I will speak to the amendment.

For the benefit of those who just recently came to this committee and are raising matters of order with respect to the amendment, what we have here is a bill that has come to this committee for the first time today. With respect to a bill that has not yet been proclaimed, the committee members are trying to jam through all of the witnesses in one day, without full and adequate discussion and questions to each witness with respect to relevant portions of the amendments to the bill.

They have already indicated that five years have passed and circumstances have changed. Ministers have changed position because of the passage of time and the differences in the system. They have indicated that there are amendments that need to be considered—

**Mr. Blair Wilson:** I have a point of order, Mr. Chair.

**Mr. Ed Komarnicki:** —from a practical point of view, and we haven't had the opportunity to fully canvass—

**The Chair:** There's a point of order. Mr. Wilson.

**Mr. Blair Wilson:** I'd just like to add—

**Mr. Ed Komarnicki:** We haven't been able to fully canvass—

**Mr. Blair Wilson:** Excuse me, but who has the floor?

**The Chair:** Mr. Komarnicki.

**Mr. Ed Komarnicki:** —from those witnesses, all of the—

**The Chair:** Mr. Komarnicki, Mr. Wilson has a point of order on the floor.

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

I just wanted to bring to your attention that the government of the day, the Conservative Party, is now filibustering in every single committee on Parliament Hill at this time.

**Hon. Andrew Telegdi:** This is not democracy.

**Mr. Blair Wilson:** This is an affront to democracy, this is an affront to the parliamentary system, and this is an affront to the members who are giving their valuable time to represent the people right here and to the witnesses who are sitting before us. We're wasting their time.

Canadians didn't elect this Parliament—

**Mr. Ed Komarnicki:** On a point of order, that's debate, and he should know better.

**The Chair:** Order, please.

**Mr. Blair Wilson:** —to filibuster. They elected us to get something done.

**The Chair:** Order, please.

**Mr. Blair Wilson:** Stop this filibustering. The Conservatives are doing it from one end of the Hill to the other end.

**Mr. Ed Komarnicki:** You're misleading this committee. You should be ashamed.

**The Chair:** Order, please.

Filibustering is an age-old parliamentary trick, and it has been going on for a long time.

**Mr. Ed Komarnicki:** I'm making a valid point.

**The Chair:** I'm going back to Mr. Komarnicki.

**Mr. Ed Komarnicki:** You can hardly call it filibustering when someone wants to ask witnesses before this committee some pertinent questions on relevant issues. We normally have seven-minute rounds, five-minute rounds, and two-minute rounds, and this committee is not prepared to give us the benefit of that with respect to witnesses.

**Hon. Andrew Telegdi:** I have a point of order, Mr. Chair.

**Mr. Ed Komarnicki:** This amendment that I want to speak to—

**The Chair:** Mr. Telegdi, on a point of order.

**Hon. Andrew Telegdi:** Mr. Chair, as you know, I have been on this committee since 1998. I have never seen a parliamentary secretary take these kinds of actions in the committee. This has been the worst behaviour ever by a political party in my time in this committee.

**Mr. Ed Komarnicki:** On a point of order, that's debate, not—

**Hon. Andrew Telegdi:** Mr. Chair, I'd like to move that we suspend at this point in time, and that we then reconvene after question period. We can then spend all night, if need be—

**The Chair:** That cannot be moved on a point of order, I'm told by the clerks at the table. Consequently, it's out of order and I have to give the floor back to Mr. Komarnicki.

**Mr. Ed Komarnicki:** I have the floor, and I need to speak.

I'll address that, Mr. Telegdi. I haven't seen anyone trying to—

**The Chair:** We are on the amendment. Are you speaking to the amendment?

**Mr. Ed Komarnicki:** —I'm speaking to the amendment—to circumvent this committee by trying to ram something through in one sitting when due diligence would require us to hear from witnesses.

It's part of democracy to not only make a full answer in defence, but to know what's out there, to investigate what the options are, to look at what amendments might be required, and to do it in a fashion that's timely. There's a difference between delay and asking for the fundamental opportunity to question witnesses.

• (1315)

**Mr. Rahim Jaffer:** That's right.

**Mr. Ed Komarnicki:** That's how democracy ought to work. Trying to ram it through in one day is not appropriate.

**Hon. Andrew Telegdi:** For five years, Mr. Komarnicki—

**Mr. Ed Komarnicki:** I speak in favour of this amendment.

Thank you, Mr. Chair.

**The Chair:** Is there any further debate on the amendment?

Mr. Devolin.

**Mr. Blair Wilson:** I'd like to call the question, Chair.

**The Chair:** No, I've recognized Mr. Devolin.

**Mr. Blair Wilson:** I'd like to challenge your ruling on that.

**Mr. Rahim Jaffer:** You'll just have to be patient, Blair. We know you don't like democracy. Let the man speak.

**Mr. Barry Devolin:** Mr. Chair—

**The Chair:** All right, would you specify what the challenge is?

Actually, I did recognize another individual, so I'm going to let Mr. Devolin speak.

**Mr. Blair Wilson:** On a point of order, Mr. Chair, I'd like to challenge your ruling to go to a speaker.

**Mr. Barry Devolin:** Thank you, Mr. Chair.

I'd like to speak to the amendment that has been put forward. I think it's very reasonable. As frustrating as it is that some of my colleagues who don't want to hear this—

**Mr. Blair Wilson:** On a point of order, I've challenged your ruling and I'd like you to put it to a vote.

**Mr. Barry Devolin:** —think we should plow ahead with this without the opportunity to ask good questions—

**Hon. Raymond Simard (Saint Boniface, Lib.):** You have to hear the point of order.

**Mr. Barry Devolin:** —to people who are familiar with the issue—

**The Chair:** Mr. Wilson's motion to challenge the chair on his recognition of Mr. Devolin is in order.

**Mr. Blair Wilson:** And to go to the question.

**The Chair:** Shall the ruling of the chair be sustained?

(Ruling of the chair overturned)

**Mr. Blair Wilson:** I would like to call the vote.

**Mr. Barry Devolin:** I thought I had the floor, in order to speak to the—

**The Chair:** No, you don't. You've been ruled out of order.

We have to go to the motion. We're going to vote on the amendment.

You have heard the amendment. The amendment is to add, at the end of the motion, "unless there is a need to put more questions to the issue of implementing RAD".

(Amendment negated)

**Mr. Blair Wilson:** On a point of order, Mr. Chair, I ask you to go to the main motion and call for the vote.

**The Chair:** The motion is now on the floor.

**Mr. Ed Komarnicki:** I want to speak now.

**The Chair:** Yes, you get to speak now.

**Mr. Ed Komarnicki:** I want to move an amendment to that motion.

**The Chair:** The amendment has been defeated, so now we'll go to the main motion.

**Mr. Ed Komarnicki:** No, I want to move an amendment to that motion.

**The Chair:** Mr. Komarnicki wants to move an amendment to that motion.

**Mr. Blair Wilson:** He can't do it. You have to deal with the main motion after the—

**Mr. Ed Komarnicki:** Yes, I can.

**The Chair:** Order, please.

**Mr. Rahim Jaffer:** Let him chair the meeting.

**The Chair:** Order, please.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** I wish to move an amendment to that motion. Specifically, the amendment I'd like to make to that motion is to add "accept that Professor Peter Showler be allowed to testify at another date".

I want to speak to why I'm moving that amendment. The reason I'm moving this amendment is that—

**The Chair:** Could you just repeat the amendment, please?

**Mr. Ed Komarnicki:** It's "accept that Professor Peter Showler be allowed to testify at another date". The reason I say that is that I'm absolutely astounded that he is added as a witness—

**Hon. Dan McTeague:** I have a point of order, Chair.

**Mr. Ed Komarnicki:** —to a spot that was allotted to a witness I had suggested, who I would want to have in that slot.

**The Chair:** Mr. McTeague has a point of order.

**Hon. Dan McTeague:** Sorry, Mr. Komarnicki.

I just wanted to clarify whether you've accepted Mr. Komarnicki's amendment. Have you accepted it?

**The Chair:** Yes.

**Hon. Dan McTeague:** And has it been seconded?

**The Chair:** It doesn't have to be seconded.

**Hon. Dan McTeague:** Thank you, Chair.

You want to go with the motion.

**Mr. Ed Komarnicki:** I have the floor. I have a right to speak to this amendment.

**The Chair:** Mr. Komarnicki.

**Mr. Ed Komarnicki:** What I'm saying, and the reason behind this amendment—and I'll be quite clear—is that I question how witnesses come before this committee, because to get the witness I asked to come before this committee, Mr. Stephen Gallagher, I had to have a motion before this committee for Mr. Gallagher to be able to appear in a time slot that I thought was mine.

• (1320)

**Mr. Blair Wilson:** I have a point of order, Mr. Chair.

**Mr. Ed Komarnicki:** I find when I get here that his time is being split with another witness. No one asked—

**The Chair:** Mr. Wilson has a point of order.

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

I'm going to try to go slowly here, because we've done it three times and it seems it hasn't quite gone the way the procedure is supposed to follow.

**Mr. Rahim Jaffer:** [*Inaudible—Editor*]...this is democracy.

**Mr. Blair Wilson:** So I would like to now challenge your ruling on going to Mr. Komarnicki and on allowing him to speak, and I would like to move that the main motion be voted on. So I'm challenging your ruling, Mr. Chair, to accept the amendment of Mr. Komarnicki.

**Mr. Ed Komarnicki:** I am going to be entitled to speak to my amendment.

**Mr. Blair Wilson:** I'd like that put to a vote.

**The Chair:** Okay, we'll let Mr. Komarnicki speak to his amendment.

**Mr. Ed Komarnicki:** I want to finish. Let me finish.

**Mr. Blair Wilson:** I have a point of order, Mr. Chair.

**Mr. Ed Komarnicki:** Blair, there's been a decision to allow me to—

**The Chair:** This meeting is adjourned. I'm not taking part in this any longer. This is a farce.

The meeting is adjourned.

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