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# Standing Committee on Citizenship and Immigration

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**Thursday, April 19, 2007**

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**Chair**

**Mr. Norman Doyle**

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## Standing Committee on Citizenship and Immigration

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• (1110)

[English]

**The Chair (Mr. Norman Doyle (St. John's East, CPC)):** Since we have a quorum, I think we should get started. I want to apologize for being a little bit late, but our other committee didn't vacate the room on time.

Welcome, as we continue our hearings on the Immigration and Refugee Board of Canada appointment process. I want to welcome our witnesses here today.

Mr. Joseph Allen, attorney and president of the Quebec Immigration Lawyers Association, welcome, sir. Janet Dench, Canadian Council for Refugees, executive director, welcome. From the Canadian Bar Association, Stephen Green, secretary, national citizenship and immigration law section, and Tamra Thomson, director of legislation and law reform.

Welcome to all of you, and again, our apologies for not starting on time. I think you know what the drill is; some of you have appeared before our committee before. I don't know if anyone is the spokesman for the group or if all of you will be making separate statements, but I will turn it over to you.

You are first on the list, Mr. Allen, to make opening statements if you have any.

**Mr. Joseph Allen (Attorney and President, Quebec Immigration Lawyers Association (AQAADI)):** Thank you for the honour, but I will turn the floor over to the representative for the CBA. We had a little conference outside the room, and in terms of organization we might be best to proceed in that manner.

**The Chair:** Sure.

Ms. Thomson.

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

We thought that changing the order of the witnesses slightly would give a better flow of information for the members of the committee.

The Canadian Bar Association is very pleased to appear before this committee today to speak about the appointment process for the Immigration and Refugee Board. The Canadian Bar Association is a national association representing over 37,000 lawyers across Canada with a mandate to work toward improvement in the law and improvement in the administration of justice. We have a long history of involvement in and commenting on the particulars of both judicial appointments and appointments to administrative tribunals generally

about those processes and specifically about appointments to the IRB.

I am joined today by Mr. Stephen Green, who is on the executive of our national citizenship and immigration law section. He will be referring to the letter we sent to the committee, which I understand you have in front of you, and I will ask Mr. Green to make some brief opening remarks.

**Mr. Stephen Green (Secretary, National Citizenship and Immigration Law Section, Canadian Bar Association):** Good morning, and thank you for permitting me to appear.

I think it's important to go through a very brief history with respect to this board. It was created in 1989 for the purposes of hearing matters. It was an independent tribunal, and it reports to Parliament through the Minister of Citizenship and Immigration. In 1995 there was a minister's advisory committee that was struck to assist with respect to the selection of individuals who would be sitting on this board.

In 1997 the Auditor General examined part of the selection process with respect to individuals and expressed some concerns as to how people were selected to be placed on this board. In 2004 the minister was the Hon. Judy Sgro. She created a system in order to respond to the Auditor General, where an advisory panel was created and a selection board was created, and that's what we have been operating with as of today.

In 2006 the then minister asked for a review of the appointment system, and then there was this report we have before us today, from January 2007, by the Public Appointments Commission Secretariat, talking about these recommendations.

We think it's important to bring to your attention that we're talking about really four separate groups that hear matters.

We have the refugee protection people who sit on the board to hear refugee matters.

We then have public servants who hear admissibility matters: Are you allowed to come into Canada? Are you allowed to visit?

We have another group, again public servants, who deal with detention: Should this person be released within the Canadian community?

The last group, which is also very important, is the appeal section, and it's that section that Canadian citizens and permanent residents appear before to see if their spouses or partners can be admitted into Canada as a result of a refusal of a visa back home; whether or not an immigrant who has been removed from Canada perhaps because of criminality should be removed from Canada or permitted to stay; whether or not an immigrant loses their permanent resident status because they haven't lived here according to the Immigration and Refugee Protection Act residency requirements; and, finally, whether an appeal by the Minister of Citizenship and Immigration should be allowed against a permanent resident or even a person who is visiting here in Canada.

We submit to you that the present system of selection, we believe, is quite professional. It is functioning well, and we have quite competent people who sit and hear these matters. The selection process, as indicated to you, looks at these competencies in determining whether or not a person should be appointed to the board.

It is, in our submission, non-political. It's based not on ideology but on merits. It's a merit appointment system based on those competencies that have been put forward. But the final decision still remains with the minister. So there is the prerogative that is protected and respected within the system.

What exists today, quite candidly, in the present process is a crisis. When the government came to power there were approximately five vacancies; we now have over 50.

Canadians should be concerned, and are concerned, with this appointment system. The objectives of the Immigration and Refugee Protection Act are spelled out quite clearly in this act, and one of them is family reunification. The problem is that people who appear before this board who are trying to bring their family members to Canada who have been refused are waiting up to three years because there aren't board members who they can appear before. Canadians and permanent residents are being separated from their spouses, partners, and parents because there's no one to hear their case. There are presently eight Federal Court applications dealing with this exact issue: "I am a Canadian. I am a permanent resident. My spouse has been refused a visa. There's no one to hear my case. Help me." That's what exists.

●(1115)

On security, people who should or should not be removed from Canada don't have anyone to hear their cases. There are not enough board members, so we have people who have perhaps been convicted, who have an absolute right in certain circumstances to go before this board and argue their cases to stay—or the minister argues that they shouldn't stay—but no one is hearing these cases because there's no one to hear them.

Finally, many of these officers who represent you and me to put these cases forward don't have much to do because there's no one to hear their cases. So we have CBSA officers who are willing and ready to put these cases before board members who just aren't there.

We need to come to a decision quickly about the selection of these board members. We believe we have a pretty good system. It's transparent and based on merit. We respectfully submit that

permitting the minister to be involved in the appointment of people who will make that selection just doesn't provide Canadians with a transparent and meritorious process to support our board. The present system still provides the minister with that final prerogative of yes or no.

That is our submission. Thank you.

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

Is that the extent of your submission? Will we go to questioning now, or do you have other people who want to make opening statements?

**Mr. Joseph Allen:** Thank you very much, Mr. Chairperson.

To all members of the committee, I wish to thank you for the opportunity you've extended to me to appear before this committee to comment on the IRB board member appointment process. I'm honoured to appear here.

Although my comments are personal reflections, I'm sure they represent the position of the majority of the members of AQAADI, the Quebec Immigration Lawyers Association.

The Quebec Immigration Lawyers Association is a group of immigration practitioners concentrated or centred in Quebec. We number some 100 to 120 individuals, depending upon the time of the month, the year, and the volume of work that has to be done—allowing people who wish to specialize in this area. Obviously we are involved in federal legislation as well as provincial legislation by virtue of the immigration work we do.

I've had the opportunity to review the letter that was submitted by the Canadian Bar Association—the excellent submissions that were set forth in the letter to the committee—

**The Chair:** If I could interrupt for a moment here, our translators sometimes have difficulty keeping up, so slow down a little bit. You have plenty of time, believe me. We won't interrupt you in any way.

**Mr. Joseph Allen:** Thank you. I'm sorry, to the translator.

**The Chair:** We all forget that from time to time.

●(1120)

**Mr. Joseph Allen:** It's almost an unforgivable sin, considering the fact that I appear before the protection division on a regular basis and I should be used to it by now.

Thank you.

I've had the opportunity to review the Canadian Bar Association letter and the excellent submissions that are set forth. That letter reflects many, if not most, of the concerns and preoccupations of our members at AQAADI. I will therefore try not to repeat the contents or the factual summary of incidents that I think give rise to the concerns we express before you today.

To be to the point, briefly stated, and for most of the reasons set forth in that letter, we do not support the Public Appointments Commission Harrison report recommendation that the Minister of Citizenship and Immigration should name members to the advisory committee of the IRB, let alone 50% of those members. It is a position we do not accept.

Following years of grave concern by, among many others, the stakeholders of the IRB CCPP, the consultative committee on policy and procedures, which I have sat on as a member for over four years, about what was widely viewed, all too often, as a flawed patronage-oriented system, in 2004, under the leadership of the past chairperson, Mr. Jean-Guy Fleury, the IRB external advisory committee was created. That was done in the context of the board's much appreciated attempts to improve the quality of its decision-makers and to implement a merit-based selection process meant to identify candidates whose names would be submitted to the minister for GIC appointments.

I know from having sat around the table with Mr. Fleury that his objective was not only to provide competent and merit-based appointments, but was also to provide at least three recommendations for every available position for a decision-maker. Unfortunately, that objective was set, as Mr. Green stated, when the board had a shortage of only five board members. I think that objective has fallen apart, now that we are faced with some 50 vacancies that are now required to be filled. Notwithstanding that, the goal was laudable, and I believe the process that was established was a good one.

Although many of the CCPP stakeholders continue to express concerns today with regard to the reappointment processes for existing IRB board members, the creation of the external advisory committee, whose duty it was to screen and recommend quality, merit-based new appointments, was highly appreciated.

From its creation until their recent, unfortunate, although I believe understandable decision to resign, for reasons directly related to the issues now being addressed, that committee of what I would consider highly qualified, independent, capable individuals set out to fulfil their mandate to identify the necessary personnel.

At the time of their resignations, my understanding, as I earlier stated, was that they had left some 50 approved and recommended individual candidates' names for consideration for approval for the GIC appointments, who for the most part, I understand, have been overlooked or ignored. And this is, in Mr. Green's own words, which I agree with, notwithstanding the grave crisis that the IRB is facing due to the serious shortage of board members and the consequent inability to meet caseload demands and the duty to provide fair and well-reasoned decisions in an expeditious manner.

Mr. Green pointed to the difficulty with regard to the Immigration Appeal Division. I might say that the same problem exists before the Refugee Protection Division. We have individuals now who are waiting some 12 months, on average, to pass to a full hearing and a decision. Many are exceeding that delay.

• (1125)

These delays have a tremendous cost in terms of the stress and uncertainty that the claimants have to experience over the course of this period of time, and it's obviously a great burden on Canadians with regard to the expenses and costs to assist these people who, when they enter the country, are for the most part financially unable to maintain their own needs. It is a crisis and it should be addressed quickly.

Although the IRB external advisory committee likely could not, and certainly would not, pretend that all their choices would be infallible, what is paramount in our opinion is that the committee gave absolutely no appearance of political bias or patronage, or of any motive other than to select people on a merit basis. Their actions within the context of the recent crisis are, I believe, an indication of their concern that their independence was being compromised.

My understanding behind part of the rationale for the report's recommendations to allow the minister to name persons to the external advisory committee is partly couched in the belief that it is legitimate and appropriate for selected candidates be in tune with, and sympathetic to, government policy.

Respectfully, I disagree. The sole mandate and duty of an IRB decision-maker is to hear the parties and the facts adduced in evidence, and to rule in accordance with the law, the principles of natural justice, the Canadian Charter of Rights and Freedoms, and the Immigration and Refugee Protection Act. Government policy cannot be, and should never be, the concern of a decision-maker.

I have no quarrel with the argument that the administrative heads of the IRB should be in tune with government policy. I believe it is important that the chairperson and the executive director be in the confidence of the minister and that they be attuned to government needs, policies, and priorities in order to implement administrative decisions to meet those policy concerns. The IRB has important administrative challenges to meet and will, undoubtedly, always have them. Those challenges demand direction from the government. I believe the minister is entitled to receive advice from persons he trusts.

Examples of policy issues that require direction through consultation and cooperation between the minister and his management direction are those such as how the board will deal with caseloads in the context of available resources while keeping budgetary constraints in mind. I'm not sure if all the members sitting on this committee are aware that in 1993 and 1994 the rising caseload of persons seeking asylum in Canada strained the board's capacity almost to the breaking point, and currently the appeal division is facing new appeals that exceed the board's ability to hear those appeals. Backlogs and delays are steadily increasing, both in the appeal division and the protection division. Administrative solutions must be found. The chairperson must be in tune with, and have the confidence of, his minister in order to deal with such issues in accordance with government policy.

However, these issues are not and must not be the concern of the independent, impartial decision-maker. No matter how many claimants or appellants are knocking at the door, no matter what budgetary considerations face the board, no matter how the minister chooses to deal with these issues, the decision-maker's only duty is to render decisions that are in conformity with the law, decisions that he is duty bound to make one at a time, case by case, regardless of government policy.

In the case of the protection division, the member's sole duty and preoccupation is to apply the evidence that is put before him at hearings that respect the charter, jurisprudence, and rules of natural justice, and then to apply that evidence to the relevant sections of the IRPA in order to determine if the claimant has a well-founded fear of persecution. For the decision to be fair and impartial, he or she must not be concerned with, or involved in, issues of backlogs and budgets.

• (1130)

Therefore, I respectfully submit that the selection of policy-sensitive decision-makers is not desirable, and that this committee should make recommendations in that sense. To allow for such appointments is to take a step backwards in the effort to provide the board with competent and qualified decision-makers, persons who render decisions in matters of potential life and death consequences.

As a closing word, at its inception in 1989, the IRB was recognized internationally as being in the forefront as a model for refugee determination. I suggest that it still is, that it still has that potential to be a leading example. This tribunal deserves to be nurtured and supported. It is a tribunal that Canada and Canadians should be proud of. However, one of the persistent flaws, one of the nagging concerns that has plagued this institution since its inception, has been the issue of patronage appointments in the context of flawed decisions and improper conduct of some board members. I suggest, respectfully, that to allow even the slightest hint of political patronage and bias in the member appointment process is to render an enormous disservice to this tribunal.

Thank you.

**The Chair:** Thank you.

Ms. Dench, do you have a statement that you wish to make as well?

**Ms. Janet Dench (Executive Director, Canadian Council for Refugees):** I do.

**The Chair:** Okay, it's over to you.

[*Translation*]

**Ms. Janet Dench:** I am here to represent the Canadian Council for Refugees, which is a confederation organization. We have nearly 170 member organizations across Canada. Our mandate is to promote the protection of refugees in Canada and in the world, and the settlement of refugees and immigrants in Canada.

I'm going to start with a little history. Since the creation of the Immigration and Refugee Board, the Canadian Council for Refugees has consistently identified two principal concerns relating to the Board: the issue of appointments and the lack of an appeal on the merits for refugees.

[*English*]

The main issue of concern in relation to appointments has been the quality of appointments and reappointments, i.e. whether those appointed have the required competencies for the job. A secondary but nevertheless important issue has been the timeliness of appointments; that is, whether members are appointed when vacancies arise.

The current crisis facing the IRB because of the failure to appoint is not without precedent in its history. The underlying problem has been that various governments have sacrificed the needs of good and timely decision-making at the IRB to partisan political concerns. It's worth emphasizing that we are concerned about both appointments and reappointments. For the latter, concerns include the maintenance of excellent and experienced members, the damage to the credibility of the IRB when bad members are reappointed, and the lack of motivation and morale problems for sitting members when it is evident that reappointment is not tied to performance.

Now you've heard a bit, particularly from Mr. Green, about attempts at reform. In response to the persistent criticisms of patronage appointments and the appointment of incompetent members, there have been some attempts at reform. In 1995, then Minister of Citizenship and Immigration, Sergio Marchi, created a ministerial advisory committee. This committee did not succeed in establishing any credibility. There were rumours that it was made up of people such as the minister's golfing partners. Perhaps this is why, after the initial announcement, little information was disclosed about the committee, and in subsequent years ministers even refused to give the names of the members.

In March 2004, then minister Judy Sgro implemented a more significant reform. This was welcomed by the CCR as a step in the right direction, although we continued to have concerns. In a letter to the minister in April 2004 we drew attention to, and I quote, "the potential for political patronage considerations to re-enter through the backdoor, particularly should your successors not share your commitment". We particularly drew attention to the fact that the new process did not establish a ratio of candidates to vacancies, leading to the danger that ministers could hold off making appointments asking for more and more names to be forwarded until they found names that met their political criteria and diluting the effect of a screening panel as a mechanism to identify the most qualified candidates. We also highlighted our concern that the process did not address the question of reappointments, which also need to be protected from real or perceived partisan political influence. We believe that subsequent events have shown that the concerns we raised in 2004 were well founded.

To look at the current situation, as we've all said, the IRB is facing a crisis because of the lack of members in place. There is a serious shortfall of approximately one-third of the members. This problem has been gradually growing in intensity over the last couple of years. The shortfall in appointments began to occur in the last months of the previous government.

We want to highlight the devastating impact of the government's failure to appoint members on refugees and people waiting for an appeal on family sponsorship. Claimants are waiting longer and longer for a hearing because there simply aren't enough board members to sit on hearings. This is very difficult for refugees who live in a constant state of anxiety while waiting to know whether Canada will protect them. For refugees separated from their immediate family members the wait is particularly excruciating.

Let me give you an example. An Iraqi fled persecution in his home country and arrived in Canada 10 months ago. He is still waiting for a date for his refugee hearing. His wife and baby daughter remain in central Baghdad, where every day your life is at risk. If the IRB had its full member complement, this man would probably have had his hearing by now. As it is, who knows when he will have a hearing and, if accepted, begin the procedures to bring his wife and daughter to Canada.

There is a particular problem as a result of the refusal—

• (1135)

**The Chair:** I have to interrupt again. I think the translators want you to slow down a little bit.

**Ms. Janet Dench:** Sure.

**The Chair:** Thank you very much. I hate interrupting you when you're in full flight like that, but I have no choice when the translators ask me to do something like that.

**Ms. Janet Dench:** It's quite correct to do that.

There is a particular problem as a result of the refusal of the current government to make any but a very few reappointments. This has a devastating impact on the IRB in terms of the loss of skilled members and morale within the board, because it is clear that competence is not being recognized. There is also a significant impact on the credibility of the appointments process because the decision to not reappoint reinforces the old concerns that appointments are made based not on merit but on links to the party in power.

The CCR continues to have grave concerns about the quality of board members, appointed and reappointed. We have always recognized that there are many excellent board members. Unfortunately, there continue to be some members who do not have the skills and qualities necessary to make the extremely difficult life and death decisions that refugee determination requires.

Since June 2002, when decision-making panels were reduced from two to one, the impact of incompetent board members has been dramatically increased. A refugee claimant is heard by just one decision-maker. Given that the quality of board members varies widely, the system resembles a lottery, where the fate of a refugee can depend on which board member hears the case. Of course, because of the failure of the government to implement the refugee appeal provided in the law, bad decisions by bad board members go uncorrected.

In this context, the CCR could only be deeply dismayed at recommendation 5 of the Harrison report and the news that the government was accepting this recommendation. This pushes an appointments process with some problems in exactly the wrong direction, toward a more politicized and potentially ideologically driven process. Involving the minister in the appointment of

members of the selection panel undermines all the efforts made so far to achieve merit-based non-partisan appointments to the IRB.

We see the resignation of the IRB chairperson, Jean-Guy Fleury, as linked to the issue of appointments. Obviously we cannot speak for him or his reasons for resigning, but we were well aware that he was struggling to achieve adequate numbers of appointments to the board based on the merit principle. It is clear that he failed.

I would like to end with a recommendation on this topic that the CCR made in 1998. It remains equally valid today. A depoliticized appointments system should be created with a transparent, effective mechanism for ensuring that candidates are selected and mandates renewed on the basis of their competence for the job.

Thank you.

• (1140)

**The Chair:** Thank you, Ms. Dench.

Ms. Thomson, you have a statement as well.

**Ms. Tamra Thomson:** I think that concludes our opening statements. We welcome questions.

**The Chair:** Okay. Thank you very much.

We'll go to our first round of questioning of seven minutes, and we'll begin with Mr. Telegdi.

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

This is really a sad time in the history of the Immigration and Refugee Board. You all used the word "crisis", and I used that word on Tuesday.

The board makes life and death decisions; families are kept apart; because of incompetence, people are dying. And this is a crisis that is essentially created by the government by trying to reverse a slow evolution of a process that took a while to get there.

I really commend the former chair of the board, Mr. Fleury, for standing up on principle because I think it's critical that the whole process be depoliticized.

I'm also concerned with the security of Canadians, which is the case when those people who should not be in Canada remain in Canada until they get their hearings.

One of the issues that I have always been concerned about—You know, when we appoint people to the bench, they don't have to be reappointed. They serve during a period of good behaviour. I always felt uncomfortable with the reappointment unless you were going to do a probationary period, but after that, if you were appointed for 10 or 15 years or whatever, I think it would be a much better way to go, to keep the political aspects out of it.

When you look at the history, from the inception of the refugee board, I think it's quite well documented by Stevie Cameron as to the kinds of appointments that were made on the board. Stevie Cameron wrote the book *On the Take - Crime, Corruption and Greed in the Mulroneys Years*, and it showed how blatantly politicized the appointments were, where you had ex-wives appointed so that one wouldn't have to pay alimony down the road, and girlfriends were appointed.

I must say that it took a while for the Liberals, once they got in, to clean it up. But the fact of the matter is, it got cleaned up.

Having made those statements, I want you to comment even on the reappointment process. If you are a government—and what this government seems to be doing is trying to put a political stamp on this. If they see a member who is approving a greater percentage than they should be approving, they could very easily refuse to reappoint that member.

It seems to me, if we're going to appoint people, then we should minimize the reappointment process if we're going to make merit-based appointments. And we have to protect them, that they serve during a period of good tenure.

Can each of you comment on that?

**Mr. Stephen Green:** I'll just comment briefly.

I think there has to be a balance between merit and the ability to examine a person's ability to sit as a board member and the length of time they stay. People are trained. Some of them become experts in this area. They're needed to assist new or junior members, if we can use that word. So I think we have to examine that very closely and decide what is the proper balance between merit and the length of time someone stays.

Those would be my comments.

• (1145)

**Ms. Janet Dench:** The CCR shares the concerns around reappointments. It has to do with competent members not being reappointed. It is often said, when talking to people who seem to know what is going on, that under this government and under the previous government it can be whether persons have political connections that facilitate their reappointment.

There's also the concern around reappointment of members who have been extremely problematic. I have heard of occasions when it appears that people have really not been given approval in the board member evaluation process, but because individuals have strong political connections, they are reappointed despite misgivings of the leadership of the IRB that conducted the evaluation of their competence.

Certainly there is an argument to be made for not keeping board members for too long. It's a very difficult job and not something that people necessarily could or should do for many, many years. But having a large turnover is also very destructive, because of the acquired expertise. It takes quite a long time for someone to become knowledgeable, and new members also need competent and experienced members to mentor them as they begin. The current situation, where there are virtually no reappointments, is very damaging to the board.

**The Chair:** Thank you.

Is there anyone else who wishes to comment before we move along?

**Mr. Joseph Allen:** I have pleaded before the Immigration and Refugee Board, in all sections, since its inception in 1989, Mr. Telegdi, and I can assure you that renewal time was always a period of great reflection for board members—reflection, concern, and uncertainty. I do believe that their perception as being in line with policy was always a preoccupation for them, and maybe the weaker of the members would have a tendency to move in terms of complying with policy, notwithstanding my earlier comments with regard to their only responsibility being to apply the law, be damned with the rest of it.

I would also like to point out that although I believe that true independence rests with an indefinite appointment, I share Mrs. Dench's comment with regard to the burnout factor, particularly in the protection division. It is not an easy job. If some type of permanence were to be afforded board members working under that division, I would suggest that provisions be made for sabbaticals, for rest periods, because it is a difficult job.

**The Chair:** Thank you very much.

Madame Faille, please.

[*Translation*]

**Ms. Meili Faille (Vaudreuil-Soulanges, BQ):** First, I want to thank you for coming to testify on this question. For a number of years now, the issue of the qualifications of Board members has been raised on a number of occasions. Renewal of the terms of certain members was a particular problem. However, since 2004, a new system has been put in place, which has made it possible to obtain better candidates for member positions.

Last week, I attended the biennial convention of the Canadian Bar Association. Judging from what the Citizenship and Immigration representatives presented, the problem appears to be even more serious. We can expect that 57 of 140 positions will be vacant within a month. If the problem is not solved in the coming months, it will be even more acute.

My question is for the Canadian Bar Association, the Canadian Council for Refugees and the AQAADI. After speaking with a number of lawyers and jurists, I understand that hearings and interviews not set, required case preparation time and the status of your clients were having an impact on the practice of law. I know that our offices are receiving increasing numbers of files. The people who come to see us are desperate. These are both refugees and ordinary Canadians or permanent residents. They don't understand why they have to wait up to three years to bring in their spouses, family members or children. The case of children is particularly flagrant. One case from Africa has been pending for seven or eight years.

I'd like to hear what you have to say on that. Mr. Telegdi spoke precisely about the appointments issue. The problem, which has been going on for a number of years now, also has an impact on your field.

●(1150)

**Ms. Janet Dench:** The impact is definitely great. One lawyer told me this morning that she was constantly receiving calls from the IRB to cancel refugee claimants' hearings. As a result of a shortage of Board members, the IRB has no other choice but to postpone hearings. It's hard for the lawyers, who make every effort to prepare their clients and who must then set that aside, but it's obviously even worse for asylum seekers, who are hoping for an outcome, who are preparing mentally and psychologically for the hearing, then are told that it's postponed.

The issue of family separation is very dramatic. I'm going to tell you about the case of an Iraqi. He says that, every time he speaks by telephone with his wife in Baghdad, she cries and asks him when they can be reunited. His hearing hasn't yet been set; so it could be a long time. There's no answer to give him. I don't have an answer to give him either because, as a result of the shortage of Board members, who knows when he'll have a hearing?

**Mr. Joseph Allen:** Ms. Faillie, in my day-to-day practice, I meet clients who are in despair because they can't get a hearing. Some people, whom we don't meet every day, fortunately, appear in my office and tell me they're afraid their marriages won't survive. Spouses are questioning their fidelity or love as a result of the long case processing delays.

There's also the other side of the coin. I respectfully submit to you that the morale of Board members is declining as a result of an inability to cope with the workload. This situation is not desirable for people who ultimately have to make decisions on refugee claims.

[English]

**The Chair:** Thank you.

Any other comments before I move to Mr. Siksay?

Mr. Green, do you have a comment you want to make?

**Mr. Stephen Green:** I think it's important to point out how it's affecting Canadians' lives. I'll give you an example: parents. The department has taken the position that if you wish to bring your parents to Canada—and I'm sure many of your constituents have called you on this—it's going to be three to four years, because spouses are a priority; that's a decision that has been made. So imagine you're trying to bring your parents to Canada. It's three to four years, they finally get processed, and they're refused. You try to appeal it, and it's another three years. If it's allowed, it goes back and it takes another year. So it's seven years.

The immigration board cannot even schedule hearings. I go—

**Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.):** I have a point of order. I know Mr. Green is a competent lawyer, but I don't think the figures he's giving us are the reality. These figures getting into Hansard might be misleading. I'm just wondering if he wants to rephrase and/or even restate the number of years it takes for a parental application, from the time it starts to the time it's finished. In some cases, it's close to six to eight years.

Sir, you're a very competent lawyer, so saying these numbers out loud in this committee is certainly something that's misleading. I'm challenging you, sir, through the chair, if you want to restate your numbers.

●(1155)

**Mr. Stephen Green:** My understanding, from my practice and my experience with the majority of places my clients are coming from, is that it's taking three to four years. There may be certain offices that take six to seven years, I don't know. I'm talking from my own personal experience with respect to that, so I stand by that.

**The Chair:** Thank you, Mr. Green. I have to cut you off there because we're getting into eight minutes.

I want to go to Mr. Siksay.

Just for the record, there was no point of order there but a point of difference between two people. I guess it's been clarified, so now I'll go on to Mr. Siksay.

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

Mr. Green, did you want to finish your point, or were you finished your point?

**Mr. Stephen Green:** I had one other point I'd like to add. I've been at these hearings and been in the waiting rooms with people who are losing their permanent residency because they have criminal convictions. They say not to worry, they can play the system—one year, two years—they won't get to them. So I think it's important from a security standpoint that we appoint people so this process can work.

**Mr. Bill Siksay:** I want to thank all of you for your testimony this morning. I certainly agree that a merit-based, competent-based system of appointments is crucial, and patronage has no place in this system. I certainly agree with you about the terrible effects of the current crisis at the IRB.

The question I want to ask all of you is this. Are you aware of any suggestion that either the advisory panel or the chair of the IRB, Mr. Fleury, acted in a partisan way in how they exercised their responsibilities? Have you folks ever made that criticism of those individuals or that group, or have you heard of those kinds of criticisms of them?

**Mr. Joseph Allen:** It's a resounding no on my part.

**Ms. Janet Dench:** Absolutely not.

**Mr. Joseph Allen:** We applauded the move that was made by Mr. Fleury in creating this.

**Mr. Bill Siksay:** Ms. Dench, you said that in the reappointment process there was a problem around the reappointment of people who might not have been the most competent board members. Was that problem addressed by the work of the advisory panel? Since that system came in, have there been what you would consider questionable reappointments, in terms of competence? Was the system working to address that concern?

**Ms. Janet Dench:** The system did not address reappointments at all. That was one of the issues we raised in our letter to the minister, Judy Sgro, in April 2004. In her response she simply said that members would be evaluated by the board, and she would make the decision on their reappointment based on that evaluation. What we have heard since then is that the board presents an evaluation of the person to the minister and the minister makes the decision about whether or not the person is to be reappointed.

When pushed about whether people who have not been given positive evaluations are ever reappointed, there is not a clear denial of any such reappointments happening. For example, I heard of a case where the IRB seemed to have some serious concerns about somebody and managed to make the reappointment a short-term one. But the person was reappointed despite what seemed to be misgivings from the IRB, in terms of the evaluation of that person.

**Mr. Bill Siksay:** So the advisory panel just dealt with new appointments.

**Ms. Janet Dench:** That's right.

**Mr. Bill Siksay:** There has been some criticism, stemming from the Harrison report, that people who failed the test that was administered as part of their survey were recommended by the advisory panel. I think that's been used in some quarters as a way of discrediting the work of the advisory panel. I'm just wondering if folks have a response to the concern the Harrison report made about recommending someone for appointment who had failed that aspect of the screening process.

**Ms. Janet Dench:** I'd like to comment on that.

My understanding is that the committee was aware that it was bringing in a new screening process. The exam, as the Harrison report points out, was revised as a written test. So the panel members felt that they did not yet know whether this written test was an adequate evaluation of whether or not people had the necessary capacities. I believe they wanted an initial period so some people who didn't pass the test could go through to the later parts of the screening in order to see whether, in other methods of evaluation, they appeared to be stronger than some of the people who maybe had done better on the written exam.

I imagine it would be good to review the whole process and see to what extent the whole selection process, including the written exam, was giving the results required. In other words, what do we see in terms of the people who are appointed? One of my disappointments with the Harrison report—and perhaps that was not part of his mandate—is it doesn't get to the real question, in terms of the people who have been appointed and have gone through that process, as to what extent they are proving to be excellent members.

I'm optimistic that it is an improvement over the previous system; it certainly seems to be a more rigorous selection process. But we continue to have concerns about whether it is enough and whether we need to have a more rigorous screening process. Some of the appointments that have been made have caused great surprise and dismay in the milieu, because they're people whose reputations do not lead people to think they would be good board members.

• (1200)

**Mr. Bill Siksay:** Do others have comments on that issue?

**Mr. Joseph Allen:** I concur with Ms. Dench in regard to the weaknesses in the reappointment process. I think much work remains to be done at that level.

**Mr. Bill Siksay:** Ms. Dench, in 2004, when Minister Sgro introduced the process...you've alluded just now about the concerns you raised, the things it wasn't going to address. Could you expand on that a bit? Did you have any specific suggestions about how things should be changed to address the problems you flagged? I think you talked about the potential for patronage through the back

door and that it didn't address the reappointment and protection from partisan interests. Did you make any specific suggestions about how those two issues might be addressed in this process?

**Ms. Janet Dench:** I'd like to make a general comment. The Canadian Council for Refugees was not consulted by the minister, or the department, in advance of that announcement. Despite the fact that our organization has consistently raised our concerns on this matter and given input, we have never been consulted about what should be put in place. We were not part of the review process for the Harrison report.

We have looked at this process from the outside, and we have seen considerable problems. The impression we're given is that there continues to be such enthusiasm from the various governments to retain the powers to make appointments that they are reluctant to turn it over to a completely depoliticized appointment process. That's the explanation I give as to why they don't bring in interested organizations such as the CCR to discuss what would make sense as a process.

A number of people have commented. François Crépeau and other academics from Montreal have spent a lot of time giving their thought to this and looking at various different possibilities, but there never seems to have been any serious study given to those suggestions.

**The Chair:** I have to interrupt here. We're into eight minutes.

Mr. Komarnicki.

**Mr. Ed Komarnicki (Souris—Moose Mountain, CPC):** Thank you, Mr. Chair, and thank you, members, for presenting.

Certainly I noted the comments Ms. Dench made regarding the testing. I want to go to that. There are three issues that the Harrison report, as you call it, refer to. There was the objective written testing, the merging of the selection board and the advisory board, and the appointment of three of six members to the ultimate committee.

Firstly, with the testing, the report says, "The new test, per se, seems to us to represent a reasonable yardstick for screening candidates against the declared Member competencies." So he came to the conclusion that the test is good.

He went on to say, "Candidate performance, against each of the four competencies assessed at the test phase, is graded from an 'A' (this is the low rating, 3 points), to an 'E' (the high rating, 15 points). Applicants scoring only A's against the four competencies (12 points) are screened at the test phase." That's how it should be.

Then he looked at what was actually happening, and he said, "It's important to note that under present practice a large number of candidates (28% of the current batch of referrals to the minister)", who went through the advisory board and also through the selection board, "have failed to meet the agreed minimum competencies (i.e. at least 4 'Cs' and no grade less than C)". They were screened in after this process.

I'm asking Mr. Allen, specifically, would you agree with the Harrison report in the sense that an objective written test is a good thing? His recommendation was to actually set a passing mark and screen out anyone who doesn't pass, as opposed to having the 28% failing.

• (1205)

**Mr. Joseph Allen:** That's a difficult question. I honestly don't believe that a written exam should trump all other considerations with regard to the selection of a member, particularly if you have confidence in your six-member panel.

**Mr. Ed Komarnicki:** Let me ask you this. Putting partisanship aside for the moment, if there were a particular job to do, I would expect someone to at least meet a certain bottom-line standard, regardless of the politics of the situation. It seems to me that this report is saying that you establish a minimum pass mark—as you would in any given venue—and if you didn't pass, you shouldn't even get before the advisory board or the selection board. Does that seem unreasonable?

**Mr. Joseph Allen:** No, particularly if you're getting a large volume of applicants.

**Mr. Ed Komarnicki:** Fair enough, but if you're going to get a fair amount of applicants, at least you want them to pass a minimal standard test. Agreed?

**Mr. Joseph Allen:** Sure.

**Mr. Ed Komarnicki:** Yes.

The other point he makes is that, “A further weakness of the present system is that, at present, few candidates are screened out after the [advisory panel] referral is made to the [selection board]”. He said, “114 attended the [selection board] interview and 104 were recommended to the Minister (i.e. [the greatest percentage] make it through the [board]”.

What I think he's saying is that if you set up a high enough initial objective standard by the written test, you might be able to use the one board, because the selection board was just about processing everything that came to them from the advisory panel. Would you agree with his conclusion?

**Mr. Joseph Allen:** I don't know what decisions were made on a case-by-case basis. It's very difficult to come to conclusions on the basis of those statistics. You have to rely—

**Mr. Ed Komarnicki:** You have to agree that screening out 22% of those referred to you, before they get referred to the minister, is not a high number.

**Mr. Joseph Allen:** But I don't know what the quality of the applicants was.

**Mr. Ed Komarnicki:** We know at least 20% of them didn't make the grade.

**Mr. Joseph Allen:** If my math is correct, 78% did, and we're still stuck with our crisis.

**Mr. Ed Komarnicki:** But you would agree that it's good to have an objective written test that they have to pass.

**Mr. Joseph Allen:** Absolutely.

**Mr. Ed Komarnicki:** That was one recommendation.

Regarding the other recommendation, he talked about the selection process itself. In 2004, initially the announcement stated that “The advisory panel will be independent and representative of Canadians. Nominated by the IRB Chairperson and the Minister—”

In the end, he said that if you have one panel, you would have three members appointed by the minister, three appointed by the IRB chair, and the IRB chair would chair the whole group.

So it seems to be giving the minister input as to who might sit on the committee. But the decisions that are ultimately made by the advisory panel are still in the hands of the IRB chair. Is that not correct?

**Mr. Joseph Allen:** If that's your position, I presume they would advise the minister, if they were his appointees.

**Mr. Ed Komarnicki:** Even if you made that presumption, there are only three of them, and the chair appoints the other three and sits with respect to that committee and chairs.

**Mr. Joseph Allen:** What's the advantage to the advisory committee in its function of selecting candidates for reference to the minister? What's the advantage?

**Mr. Ed Komarnicki:** What's wrong with the minister appointing three people?

**Mr. Joseph Allen:** I've tried to explain it from my perception. I'm afraid there's a political tainting to the selection process.

**Mr. Ed Komarnicki:** In terms of the present selection board, some of those appointed were academics, former public servants, civil servants, community people, and people with human resource backgrounds.

Why do you think the minister is not as easily able to appoint those categories as the IRB chair, who is appointed by someone?

• (1210)

**Mr. Joseph Allen:** Simply because it is the minister who is appointing them. That's the position we're taking.

**The Chair:** There are too many conversations. I would like this conversation to be between Mr. Komarnicki and the witness.

When the time rolls around, you'll be given an opportunity to question.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** So what you're saying is that any prerogative that a minister would have should be totally avoided and given to the IRB chair, who is appointed. Yes?

**Mr. Joseph Allen:** I said in my submission that I do not believe it is inappropriate for the chair of the board to have a good working relationship, an intimate relationship, with the minister. I don't think there's anything wrong with that.

**Mr. Ed Komarnicki:** But if the people who go to the advisory panel or new panel have already been determined to be competent to serve in the position by virtue of the testing, why would you have difficulty with three ministerial representatives on the committee?

**The Chair:** It's 7:15, so there's time for a brief response from whoever might want to.

**Mr. Joseph Allen:** I think it's simply the perception and the potential for continued patronage.

We've lived with it, sir, since 1989.

**The Chair:** I will cut it off there and go to our next questioner.

Mr. Karygiannis.

**Hon. Jim Karygiannis:** Good morning.

Thank you to the witnesses for coming in.

I have a couple of questions, and certainly I want to get some timelines.

If somebody failed an immigration application and they go in front of the board, they have a choice of going the ADR way or through an IRB member. What's the timeline for an ADR?

**Mr. Stephen Green:** It varies from province to province and city to city. In Toronto it is approximately six months.

**Hon. Jim Karygiannis:** What's the time to go in front of an IRB member?

**Mr. Stephen Green:** The way it works—for people who aren't familiar with it—is that you go to this ADR generally for spousal applications that have been refused. That takes six months. If you lose at that point, then it takes about a year and a half.

**Hon. Jim Karygiannis:** How many cases have to go to an IRB full member, if you have any statistics, Mr. Green? How many spousal cases have to proceed to an IRB member?

**Mr. Stephen Green:** I wouldn't know how many fail.

**Hon. Jim Karygiannis:** What I mean is, in your experience, your office having dealt with thousands of them, how many would you say have to go to an IRB full-member hearing? Would it be 60%, roughly?

**Mr. Stephen Green:** I'm not sure. That's sort of a loaded question, because it depends on your clientele. If you have a poor clientele and a poor base, then more will go. It depends on how the lawyer would select those who come to him.

In my particular practice, I would say only 10% go. But perhaps another counsel who doesn't screen as well, maybe, as I do may have 30%, 40%, 50%. I don't know what the pool is.

**Hon. Jim Karygiannis:** If we were to guesstimate through your experience, at least from the spousal applications, would 50%, throughout the whole system caseload, have to go to an IRB full hearing?

**Mr. Stephen Green:** Really, I wouldn't know. I can talk just about my practice.

**Mr. Joseph Allen:** I can tell you with regard to Montreal. I sit on the regional IRB committee as an Acadie representative. The statistics in Montreal are that approximately 60% go to a full hearing from ADR, and time delays in Montreal are probably the same with regard to ADR, and slightly less with regard to a full hearing, 12 months.

**Hon. Jim Karygiannis:** So we do have spousal cases from start to finish, from the time an applicant puts his application in to sponsor his wife until the wife is here, where should a bad judgment be made at the post, it could take about three to four years.

**Mr. Stephen Green:** Yes, and as I indicated, there are eight cases now before the Federal Court that are at least two and a half years waiting to get to the board. So they've had their ADR and lost, and they've waited already approximately two to two and a half years, absolutely.

**Hon. Jim Karygiannis:** We're separating families for up to four years.

**Mr. Stephen Green:** Yes.

**Hon. Jim Karygiannis:** Those are individuals who might have gone to an interview, and because of language skills or probably having felt a little bit intimidated by the way the questions were asked by the immigration officer—Until the spouse in Canada has his full day and brings his wife over here, we are talking about four years, and then the process has to go back again into the post for new clearances, new medicals. So we are separating—

**Mr. Joseph Allen:** And sometimes refusals, second-time refusals.

**Hon. Jim Karygiannis:** I've seen those. We could have up to five years by the time a spouse—I'm not talking about parents, but a spouse—can come. Has that length of time—up to five years—increased over the last two years, versus before 2005?

**Mr. Stephen Green:** Absolutely, and as I indicated, in Toronto you can't get hearing dates because they're too far ahead, and no one has a calendar that far ahead.

**Hon. Jim Karygiannis:** Then it's fair to say that under Canada's new government, it certainly has failed the Canadian public.

• (1215)

**Mr. Stephen Green:** I won't comment on that, but I'll just indicate that the lineups have become long for whatever reason, and that is because we do not have enough board members.

**Hon. Jim Karygiannis:** Okay. Then I will make the assumption that you are telling us, sir, that Canada's new government certainly is failing its people.

**Mr. Stephen Green:** Well, I didn't say that.

**Hon. Jim Karygiannis:** I said I would assume.

**A voice:** [*Inaudible—Editor*]

**Hon. Jim Karygiannis:** I just want the clock stopped right there until...

**The Chair:** No, there will be no stopping of the clock. I ask you to continue your conversation with the witnesses and not back and forth, please. We ran into that before. The chair had to adjourn the meeting because it got a little bit out of hand, so I'm not going to tolerate that today.

Mr. Karygiannis, talk to the witnesses, please.

**Hon. Jim Karygiannis:** My next question to the board members would be the following. Was the system working before 2005, and if it was working and it's not working now, would you want to see the system that was working back then be reinstated today—the appointment system, the selection criteria, the reappointment system?

**Mr. Stephen Green:** As my friend indicated, I believe it started to slow down and didn't work too well prior to the present government's coming in. There were lots of vacancies at that time. It certainly has gotten worse.

That's my opinion of that.

**Hon. Jim Karygiannis:** The shortage right now is probably one-third of the judges, if you want to call them that, versus what was then about 2%, if I'm not mistaken.

The other question I have is, can we not appoint panel members as we appoint judges or JPs, so that they sit as a judge for the duration of their life? These people are certainly similar to judges.

**Mr. Joseph Allen:** I think that's a GIC policy that runs across all administrative tribunals, not just the IRB, and that's an issue that goes well beyond the particular sphere of—

**Hon. Jim Karygiannis:** The IRB is not any more a political appointee system.

**Mr. Joseph Allen:** It shouldn't be.

**Hon. Jim Karygiannis:** And it isn't, the same way that judges are not any longer under a political appointee system.

So would it serve us well for this committee to even recommend or to think about IRB panel members getting appointed if they are qualified and they do good work?

**Mr. Joseph Allen:** If they're qualified. We've been in situations where we're praying that mandates will come to an end.

**Mr. Stephen Green:** I think you have to look at this very carefully with respect to the appeal provisions in judicial systems, the law, and with respect to criminality. There are tremendous more levels of appeal. In the particular system that we're looking at, it's very limited. So we have to look at that carefully, because 10 years may be okay. We may want to get rid of someone. We don't know, but I'm saying at least in the criminal justice system you have many more levels of appeal where you can correct a wrong. We don't have that.

**Hon. Jim Karygiannis:** This is my last question. Certainly any one of you can answer it.

**The Chair:** You have 10 seconds, please.

**Hon. Jim Karygiannis:** Would you disagree or agree that Mr. Fleury had had enough and he said, "It's time for me to go, time to walk into the sunset, because this is not working, and certainly I've been put under the gun by the government in order to do their bidding," and he said no?

**Mr. Joseph Allen:** I'm not privy to his decision, but I suspect that's the case.

**Hon. Jim Karygiannis:** Thank you.

**The Chair:** Next on my speaking list is Mr. Siksay.

Do we have anyone from the Bloc? Okay, Mr. Gravel.

I think I'll stop for a moment and clarify something, because I see eyebrows being raised by members here.

We did have a ruling some time ago, as you know, that we were alternating back and forth on the second round. I would imagine this is why we have eyebrows raised for my going to the Bloc party.

I'm informed by the clerk that there was a ruling, the most recent ruling, on May 17, 2006, which said, and Mr. Wilson moved:

That witnesses from an organization be given ten (10) minutes to make their opening statement; and that, at the discretion of the Chair, during the questioning of witnesses, there be allocated seven (7) minutes for the first questioner of each party and that thereafter five (5) minutes be allocated to each subsequent questioner of each party until all Members have had a chance to participate, after which, if time permits, a new round will commence.

The motion, apparently, that had the questions alternating back and forth was an old one. This is the most recent one we have. So I have to go with this one until I am informed that there are any changes to be made.

Mr. Gravel.

• (1220)

[Translation]

**Mr. Raymond Gravel (Repentigny, BQ):** Earlier you said that there was a shortage of some 40 Board members and that there were qualified Board members whose terms had not been extended. Why weren't the terms of those Board members extended, if they were qualified, since there's currently a shortage of them? Was it for political reasons?

**Mr. Joseph Allen:** To be fair to the IRB in Montreal, a few Board members were recalled, in view of the existing shortage. Why weren't those who were qualified reappointed? I don't know, apart from the 10 years—

**Mme Janet Dench:** I would point out that it's not the IRB that extends the terms of Board members. It's the minister or Cabinet that does it. We've observed that term renewals did not depend solely on the members' competencies. If they had useful political contacts that could further their appointment, they had much greater chances of having their terms renewed. According to the rumours that have been circulating since the present government was elected, those who could make contacts with the party in power could hope to have their terms renewed. Some individuals whose terms were not extended told me that, without any contacts with the party in power, they could forget the idea of having their terms extend.

**Mr. Raymond Gravel:** Here's my other question. They're short 40, and they're going to be short even more in the next few years. It's more than 40? It's 57? Let's say it's political reasons. Why doesn't the present government appoint other members who would be friends of the party in power?

[English]

**The Chair:** Order, please.

If something needs to be straightened out about what I just said, I would prefer that it be done after this meeting is over, because witnesses are here to make their case. We have people talking and sidebars going on all over the place. I would ask for your attention and respect for the witnesses who are here. We can straighten out any problems that might have arisen out of this motion after the meeting is over.

[Translation]

**Mme Janet Dench:** That's a good question, but we can't find an answer. We know that a lot of names have been put forward.

[English]

**Hon. Jim Karygiannis:** A point of order, Mr. Chair. With respect to what you've said, can I ask the parliamentary secretary to sidebar the conversation?

**The Chair:** That's the chair's responsibility, and the chair has already indicated that.

Please continue.

[Translation]

**Mme Janet Dench:** A lot of names have been put forward to the minister for the selection process. Names had previously been put forward in the spring of last year, when the government was elected. Then a number of other names were proposed in response to the call made last year. So we know there are a lot of names of candidates on the minister's desk. Why have so few appointments been made? That's the big question. Everyone agrees that there's a real need, and the IRB constantly repeats it. The Chair, Jean-Guy Fleury, said it before your committee in September of last year. He stated very clearly that there is a crisis, but there are no appointments. Why? No one's answered that question.

[English]

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

Mr. Siksay.

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

I have just one question.

Ms. Dench, you mentioned that some academics, like François Crépeau and others, had talked about other models of appointment and this kind of circumstance. I wonder if you can tell us any more about that, or if you can maybe in the future direct us to where we might see some of that information. It sounded as though there were some interesting considerations going on there.

• (1225)

**Ms. Janet Dench:** I have a copy of the paper here that was presented by François Crépeau, professor of law then at the University of Quebec in Montreal, and Professor Houle, professor of law, Université de Montréal. This was on October 2, 2000. This is directed to the minister, but I believe at that time they also made a presentation to this standing committee. I remember, as I was there on the same day. It was in the context of the review of the legislation that eventually became the Immigration and Refugee Protection Act.

**Mr. Bill Siksay:** Chair, I wonder if the analyst might track those down for us and distribute those to the committee. It sounds as though that might be helpful information.

That's all for this round.

Thank you.

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

**Mr. Dave Batters (Palliser, CPC):** You can go to Mr. Devolin. That's fine.

**The Chair:** We had Mr. Batters on the table, but go ahead, Mr. Devolin.

**Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC):** I'd like to ask what's appropriate political involvement versus,

I'll call it, bureaucratic or competence-based involvement in terms of appointments. I think this is an interesting subject area.

Before I go there, I have to say this to my Liberal colleagues on the committee. When we're talking about the inappropriate use of political appointments, I think people who live in glass houses shouldn't throw stones. Two members of your caucus had their husbands appointed to this committee.

**Hon. Jim Karygiannis:** A point of order, Mr. Chair. Is there a question here or is this a preaching session?

**Mrs. Nina Grewal (Fleetwood—Port Kells, CPC):** It's his time.

**The Chair:** You're out of order.

Order, please.

Mr. Devolin has five minutes.

Mr. Devolin, I would ask you to address your comments through the chair to the witnesses and not back and forth. The meeting has a tendency to deteriorate when there's too much back and forth. Please, go through the chair to the witnesses.

**Mr. Barry Devolin:** Okay, through the chair to the witnesses, my question is this. In our government lots of appointment decisions are made without any political involvement, and other appointment decisions are made completely based on a completely political decision, from deputy ministers, to ambassadors, to heads of crown corporations, and judges. Members of the IRB are, at the end of the day, political appointments. What I find frustrating is that "political appointment" has become a pejorative term. Somehow, any political involvement in this appointment decision-making is inappropriate. I think everyone would agree that someone who is incompetent being appointed to anything is inappropriate.

As I understand the proposed plan, there would be testing to establish whether potential candidates have some basic qualification or some basic core competencies. If that test determined those who could be considered competent or incompetent, then all the candidates going before this advisory committee would be considered competent. So at that point the committee is making recommendations to the minister from a pool of candidates who are deemed competent, as to which ones they are suggesting ought to be considered for the appointments, recognizing that at the end of the day the minister still has the prerogative to make that decision. I think the advisory panel strives to provide more options than the minister has to fill positions. I appreciate that in the current context there's an urgency to get people appointed. I'm trying to think in the longer term in terms of a sustainable and functional model.

There is an inherently political aspect to this process, I think we all agree. What I do not understand is why having members on the advisory panel who were put there by the minister directly rather than by the IRB chair, who we've already said would be put there by the minister...I don't understand this concern that's saying in the past we've had problems with partisanship, so we want to be above reproach. We don't even want the appearance of a problem. I don't think that's a reasonable position to say we don't think there is a problem, but we're concerned there may be an appearance of a problem.

At the end of the day, the minister will still make a decision from that list. I don't understand how, in the advisory process somehow, it's inappropriate for it to have some political aspect when at the end of the day the decisions are political.

•(1230)

**Ms. Janet Dench:** I want to emphasize. You talk about the appearance of a problem. We're not talking about the appearance of a problem. We're talking about a real problem that has dogged the Immigration and Refugee Board since its inception. There has been no time in the life of the Immigration and Refugee Board where political patronage at one level or another was not impeding the integrity of the Immigration and Refugee Board.

**Mr. Barry Devolin:** Under previous structures, but you're saying that you're looking into the future, saying this new structure, which hasn't existed before, will have the same problem. Is that not a matter of opinion rather than a matter of historical fact?

**Ms. Janet Dench:** The future is the opinion of all of us. Nobody can speak about the historical fact of the future.

But I want to get to your question about the political interest in it and refer you to the conclusion of the Harrison report, where he says the proposed changes would also better reflect the interest of the Governor in Council. My question to you would be, what is the interest of the Governor in Council? Why is it political? When you speak about the legitimate political interest, what is that legitimate political interest? How is it that it needs to be exercised in this way rather than being part of the selection process, which would be geared toward finding the best, most competent?

**The Chair:** We've gone past 5:30, so thank you very much.

Mr. Alhabra.

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

Thank you all for coming here today. Let's be clear. I think we're talking about two different situations that are relevant, but both are important to the integrity of the IRB. First is the political involvement in making appointments. Second is the paralysis in appointing IRB judges. I have a couple of questions.

Mr. Green, I'll direct them to you. Do you feel, in comparing the proposed new process of appointing IRB judges to the previous one, that the new one is an improvement?

**Mr. Stephen Green:** No.

**Mr. Omar Alhabra:** Why not?

**Mr. Stephen Green:** Again, as my colleagues have all stated, it's got to be a totally merit-based system. I would even refer to a statement made by the former chair, Mr. Showler, who was dealing with these issues. His prescription for IRB reform, detailed in his new book, argues that cabinet should totally remove itself from the selection process, leaving the task to a neutral body to develop a binding short list using merit as the sole criterion—merit, merit, merit.

**Mr. Omar Alhabra:** So your concern is that with the new proposed process there is significant political interference and involvement in making that decision?

**Mr. Stephen Green:** Yes.

**Mr. Omar Alhabra:** If you'll allow me to make just a short statement, it's quite bewildering to many Canadians that this so-called new government and the Prime Minister have made accountability and transparency as their number one priority. In fact, it was this Prime Minister who made so-called "political appointment" a pejorative term. It's quite ironic to hear anybody defending political involvement and patronage appointment in government roles.

You also spoke about the impact of paralysis in making appointments and how not only does it affect refugees—and that's the perception as well, that this is only impacting refugees. You eloquently explained that it has a significant impact on refugees, for sure, and the fairness of the treatment of refugees, but also on family reunification, on immigrants who have appeal in front of the IRB, and also on the security of our country. So this is a very serious problem.

What I would ask you is, what do you think the consequences of significant political interference in these appointments would be?

**Mr. Stephen Green:** I think it would create Canadians' questioning whether these are appropriate decision-makers. We just don't want that. We want a system that's based on merit.

Again, I always question if the CBC has it accurately, but at one point, Ms. Diane Ablonczy indicated that she was disappointed in Ms. Sgro's statement, back in 2004, with regard to the new system. She stated, "I really can't see how this would stop the PMO, for example, simply telling the chosen head of the IRB we want these people to be appointed." So she also indicates she wants a merit-based system.

•(1235)

**Mr. Omar Alhabra:** How much time do I have?

**The Chair:** You have about a minute and a half.

I'm going to try to get all members in who didn't have a chance to speak. So after Mr. Alhabra, I will go over to Mr. Batters and back to Mr. Wilson, and maybe to Ms. Grewal, if she feels so inclined.

**Mr. Omar Alhabra:** I'm going to continue asking Mr. Green these questions.

Why do you think there's reluctance right now to appoint IRB judges?

**Mr. Stephen Green:** I can't comment. I don't know what's in the mind. I don't know. I'd be guessing.

**Mr. Omar Alhabra:** It's really an interesting question. Even putting aside the fact that there is an attempt to manipulate the appointment process, why are we stopping? Why aren't we making appointments?

**Mr. Stephen Green:** I don't know, but it would be interesting also to examine—I know it's not before this committee—the citizenship appointments. It's the same issue. There's a lack of citizenship judges. I don't know the answer.

**Mr. Omar Alhabra:** That's all I have.

Thank you.

**The Chair:** Thank you very much, Mr. Green.

Now, Mr. Batters. Then back to you, Mr. Wilson.

**Mr. Dave Batters:** Thank you very much, Mr. Chair.

It's a great honour for me to be sitting in on this committee. It's my first time at this committee. I find this quite fascinating.

I have just a couple of comments, and then some questions for the witnesses.

Thank you all very much for appearing today.

First of all, I'd like to say, regarding Mr. Fleury, who has nearly 42 years in public service, as I read here, that I congratulate him on all his years in public service. I understand that he indicated a desire to spend more time with his family and to pursue new endeavours. So certainly he's well entitled to that, and I wish him all the best.

Mr. Chair, I find it more than passing strange to hear Liberal members opposite talking about the need to depoliticize the IRB, or, frankly, any other board for that matter.

**The Chair:** Order.

**Mr. Dave Batters:** Prior to 2004, the minister appointed every IRB member.

My first question, Mr. Green, is a short question, and I only have five minutes. I want to clarify—clarify and reconfirm—something you said in your exchange with Mr. Karygiannis. You said that the current review backlog started to happen under the previous government. Correct?

**Mr. Stephen Green:** Yes—

**Mr. Dave Batters:** Thank you.

**Mr. Stephen Green:** —as a result of the non-appointment of people at that time.

**Mr. Dave Batters:** Thank you, sir.

My second question is for Ms. Dench.

About your comments today, I have to say that I really sympathize. I understand that all of you simply want to see the best process put in place to serve individuals and to reunite families. So with regard to your statements, I do very much sympathize and empathize. But I would ask, what is the fear here with a revised process? There does seem to be some amount of paranoia.

Minister Finley and certainly Minister Solberg before her have had a great interest in seeing that the IRB works well and carries out its very important role. Certainly that can be best achieved with a balanced selection process between the chair of the board and the minister, following a testing process that absolutely must be adhered to.

Ms. Dench, what is the fear with this revised process, given that the ministers, as you do, clearly want the system to work well for individuals?

**Ms. Janet Dench:** I wouldn't say we're afraid of revision. In fact, as I've said, we have some problems with the previously existing system, so we would like revisions. Our concern is with re-politicizing the process. In our view, we need to go in the opposite direction, which is *depoliticizing*.

You speak about Minister Finley's commitment. I'm not questioning any individual's commitment, but we look at the future and think, what is the process that's in place? How might it, either under this minister or under a future minister, influence the process and the legitimacy?

What has not ever been explained—not in the Harrison report and not in what you've said today—is what is the interest in the government? Why do you want to go in this direction? In fact, the Harrison report seems to me to be a bit contradictory in the sense that, from the outset, it talks about the reason for the reform of the process: “One objective of the new selection process”—they're talking about the 2004 one—“was to address the perception of patronage—”

They acknowledge that this is one of the things you're trying to address. So what is the purpose in going in this opposite direction?

• (1240)

**Mr. Dave Batters:** I understand your question. Couldn't one equally argue, though, that it's conceivable that we could end up, down the road, with a chair of the IRB who ends up making appointments that are very politicized? I'm not suggesting that has been the case, but I'm saying that is certainly conceivable. Just as there may be a fear that a minister could politicize the process, we could end up with a chair who would be very political and appoint not just golfing buddies but donors to certain political parties.

Is that not a legitimate fear?

**Ms. Janet Dench:** Certainly that's a concern. As I said, we'd be very happy to discuss ways in which the process could be revised so that it is in the future, and guaranteed to be, completely independent and merit-based. That is our objective.

**Mr. Dave Batters:** Excellent. And that's the objective of this government as well. Let's be very clear: the report accepted by the minister sets the bar higher and not lower in terms of accountability, transparency, and credibility. Our goal is to have a more open, transparent, and accountable system. That's why we commissioned this report and that's why we're following through on its recommendations.

Mr. Chair, the members opposite won't like to hear this, but it's been said many times, with a great deal of truth, that under the current government, we are appointing competent people, some of whom are Conservatives; under the previous Liberal government, Liberals were appointed, some of whom were competent people.

Thank you. That's all I have, Mr. Chair.

**The Chair:** Thank you, Mr. Batters. You're right on—you're right on time. I can't say on “message”, I'll say on “time”; the chair is impartial in all these things.

Mr. Wilson.

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

Thank you, witnesses, and thank you for your testimony today. I have just a few questions.

The thing that strikes me is what are we here to try to solve? What's the problem that's before us? Well, there's a glaring problem before us, a glaring crisis that wasn't before us 15 months ago, when we first took our seats here. When we first sat down here 15 months ago, there were five vacancies—five vacancies—on the IRB. Now there are 54 vacancies, soon to go to 57 vacancies.

That tells me that—and we've had two ministers, first Minister Solberg and now Minister Finley, in the last 15 months. Both of them have been unable or unwilling to do their job. Clearly they're not doing their job if they can't reappoint judges, can't reappoint people to the board, to deal with this major backlog.

For my first question, then, why is the minister not doing her job right now?

Second, why is the minister, and why is this Conservative government, trying to change the system and re-politicize—I'll agree with my colleague, it is re-politicizing—the entire system of appointments? To take us from a merit-based system that we've gradually moved into—I'll grant them that, but in 2004 we had a merit-based system that was working, and was working well. Now it's trying to roll back the clock to the prior era of Mulroney, to re-politicize the process.

**The Chair:** Order.

**Mr. Blair Wilson:** Those are the two big issues.

And what are they creating out of this? There are two crises they're creating. Obviously one that was discussed here is the social problems and the lack of family reunification and the other issues that individuals have to deal with on a day-to-day basis. But the bigger problem, which I think Conservatives would understand, is the security crisis they've created. We have people, as the testimony was today, who have been found guilty of crimes and can't be deported from Canada because we don't have judges to hear their cases.

So if they can't understand it from a social and compassionate point of view, they must be able to understand it from a law and order point of view and realize that the minister is not doing her job.

**Hon. Jim Karygiannis:** They don't get it, period.

**Mr. Blair Wilson:** So the question I have to ask is this. Is the minister being irresponsible in her duties? Or is she doing this on purpose to try to jam up the immigration system?

**The Chair:** Not that I need to inform witnesses, but from time to time we'll get partisan questions from both sides. Witnesses, please feel free to ignore those questions. We don't expect you here today to say the minister is incompetent or this or that. These are totally—

**Hon. Jim Karygiannis:** I'd like to challenge the chair. Mr. Chair, I'd like to challenge you—

•(1245)

**The Chair:** Order, please.

**Hon. Jim Karygiannis:** No, I'd like to—

**The Chair:** Order, order.

**Hon. Jim Karygiannis:** Mr. Chair, I'd like to challenge you on that statement that you gave—

**The Chair:** You will wait until the chair—

**Hon. Jim Karygiannis:** —to the witnesses. Let the witnesses answer themselves.

**The Chair:** You will wait—

**Hon. Jim Karygiannis:** Stop being partisan. You were voted there to be non-partisan and you were voted there to guide the committee. You certainly have failed to demonstrate that time and time and time again.

**The Chair:** Again, I would say to the witnesses, feel free to answer the questions in whatever way you deem that you want to, but—

**Mr. Bill Siksay:** A point of order, Chair.

I have to agree with Mr. Karygiannis. I think your instructions to the witnesses were inappropriate and that witnesses have the ability to determine which questions they want to answer and how. Your instructions to them I think were inappropriate in this case, and I hope you would reconsider those instructions.

**The Chair:** Well, it wasn't a command to the witnesses or a direction. I was simply saying to the witnesses what their leeway is on this. They can, if they wish. If they don't wish, they don't have to answer those sorts of questions.

**Hon. Jim Karygiannis:** Mr. Chair, I would like to challenge that. I would like to challenge what you said. You can either have a choice of retracting what you did and issue an apology or I'd like to challenge the chair.

**The Chair:** You can challenge the chair all you want, and I'm sure there's a process by which you can do that. I was just making witnesses aware that it is not our intention here to try to engage them in political banter back and forth with various members.

The witnesses can take that in whatever way they want to.

Do you want to—?

**Mr. Joseph Allen:** I'd like to make a comment. Unfortunately, I can't answer your question, but I would like to forewarn of another concern I have, and I'm sure my colleagues do as well.

We're faced with a looming election. That could lead to more paralysis in the appointment process if in fact we move into that phase. The situation will just deteriorate more and more as we go along. We are in a crisis.

**Mr. Stephen Green:** I don't think I can comment on the intentions of the minister, but really, the matter is before the Federal Court, and they will decide.

**The Chair:** You have about one minute.

**Mr. Blair Wilson:** I think the problem we're facing here in the IRB is something the government is facing on a number of fronts. I just mention the passport backlog, which is another huge debacle that this government saw coming 12, 13 months ago and chose to sit on their hands and do absolutely nothing about. I think the Canadian people have to realize that by inaction they're actually creating problems for the Canadian people and for Canadian society.

**The Chair:** Okay, good. You've gone over.

And the last speaker, who didn't get on the list was—

**Hon. Jim Karygiannis:** I'd like to challenge the chair on that ruling that he has gone over. How could he go over? When the challenge between you and I started, that clock should have been stopped. You never stop the clock when it's to the left of you; you always stop the clock when it's to the right of you.

**The Chair:** Order, please.

That is not a point of order.

Ms. Grewal.

**Mrs. Nina Grewal:** Thank you, Mr. Chair.

Thank you to all for your time and your presentations. My question goes to Ms. Dench.

Ms. Dench, in a September 2005 submission to the Human Rights Committee of the United Nations, your organization said, in reference to the Immigration and Refugee Board, and I quote:

Its independence and competence has historically been undermined by practices of political patronage appointments. These concerns persist, despite some reforms introduced through the appointment process in 2004.

Can you please expand upon these concerns about political patronage following the 2004 response?

**Ms. Janet Dench:** As I said, we welcomed the 2004 reforms as a step in the right direction. There was created a more methodical, transparent process to evaluate the competencies of candidates. However, the experience proved that when names would go forward to the minister in the cabinet at the time—and this was applying under the previous government as well as apparently under the current government—appointments would not necessarily be made, even though competent candidates were put forward. Some people say three candidates for every position is a suitable ratio; however, I would wonder why. If you've got three candidates and one is clearly the best, why isn't it clear that the best person would be appointed?

As long as a selection is going on independently of and separately from the committee that is doing its merit-based appointments, the political aspect comes in. We have seen it in the delays in making appointments, when it is supposed that the reason for the delay is that the minister doesn't see the names he or she is looking for on the list of candidates that has been put forward. I've also mentioned the issue of reappointments, another area in which we persistently hear that political connections determine whether someone is reappointed or not.

• (1250)

**The Chair:** I think that concludes the number of people we have. I do want to thank you for your presence here today. Of course, you'll be hearing more on this in the future. Thank you.

Mr. Siksay has a motion he would like to present. It seeks unanimous consent to have the standing committee express its appreciation to Ms. Trupati Patel for her service to the standing committee and to wish her all the best in the future. This is her last day; she's leaving us to go to the justice department.

We want to thank you on behalf of the committee for all of your service to the committee and to wish you well in the future. Of course, that's the motion put forward—

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

**The Chair:** —and I think we'll get unanimous consent on that—no objections.

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

**The Chair:** Thank you very much, Ms. Patel, for that.

**Mr. Ed Komarnicki:** I will briefly comment, Mr. Chair, that sometimes the procedural wrangling that you might have witnessed in this committee may have gone sideways, but overall it's legitimate debate that needs to take place to be sure that the very rights we want to protect are protected. Although it can be seen in a negative light, it's also a very positive thing. When you leave here, I want you to know it's a committee that works pretty hard in terms of putting their points across, even if we don't agree with those points sometimes.

**The Chair:** Thank you.

We have a second motion. It is from Ms. Faille. The motion is that on Thursday, April 19, 2007, the committee conduct clause-by-clause study on Bill C-280.

Go ahead, Ms. Faille.

[*Translation*]

**Ms. Meili Faille:** I introduced this motion last Tuesday, having regard to the fact that no amendment had been moved to Bill C-280, to have us use our remaining time to proceed with the clause-by-clause consideration. I move that motion.

[*English*]

**The Chair:** Are there any further comments?

Go ahead, Mr. Komarnicki.

**Mr. Ed Komarnicki:** When we had the last meeting on Bill C-280 there were two witnesses who testified. One was Mr. Gallagher, and I forget the other one. I expressly asked this committee if we could call witnesses on Bill C-280. I think it was in the form of a motion. Remarkably, the motion passed for the witnesses to be called to testify. The names were given to the clerk, who arranged for the witnesses to be here. I'm not sure if they were going to appear as separate panels. Were they kept together? Their presentations weren't particularly lengthy, but they certainly had a perspective on that issue. It seems that we already decided it was okay.

I would suggest a friendly amendment to Ms. Faille's motion, to the effect that the clause-by-clause proceed at the next scheduled hearing date—which I understand is Tuesday of next week—with the opportunity to hear from the witness. I know it's a moderate delay, but it's not an overly lengthy one.

We're almost at one o'clock in any event. I'm not sure how urgently the committee wants to try to put through this motion today. Maybe you want to hear further on the motion, but as we have it—

**The Chair:** We'd have to hear the amendment first.

**Mr. Ed Komarnicki:** The amendment would be that we proceed clause-by-clause at the next scheduled meeting, whenever that will be—I suggest Tuesday of next week—after having heard from a witness. I don't know if our witness is available, but certainly if Mr. Gallagher is not available we could have a substitute witness arranged for that time. It seems to be fairly short notice, but nonetheless we could do whatever was needed for that to happen. So I move that the motion be amended to change the date from today to —

• (1255)

**The Chair:** Do you have the amendment? Are you presenting the amendment?

**Mr. Ed Komarnicki:** I can give it verbally, I suppose: that the date be changed from Thursday, April 19, to Tuesday, April 24, and that the witness, Stephen Gallagher, or in his absence another witness, be allowed to testify before the clause-by-clause.

I think that's the extent of it.

**The Chair:** Okay, to the amendment—

**Hon. Jim Karygiannis:** I had put a motion in, but unfortunately due to family circumstances I was not able to be here on Monday to have it addressed. We had invited Mr. Jean-Guy Fleury to come to give testimony.

**The Chair:** You're free to present that motion after we deal with this one.

[Translation]

**Ms. Meili Faille:** I wanted to finish my comments on the amendment. It's interesting to see the request of—

[English]

**The Chair:** I think there might be a problem here, in that Mr. Karygiannis' motion was also for April 24.

**Hon. Jim Karygiannis:** That is what I want to address, Mr. Chair.

**The Chair:** Okay. Let's just hear what Madam Faille has to say.

[Translation]

**Ms. Meili Faille:** Yes. In fact, that's the reason for—

[English]

**The Chair:** And then we'll try to deal with both of them simultaneously, in view of the fact that the same dates are involved.

[Translation]

**Ms. Meili Faille:** I hesitate to accept this motion because the work we did last time we dealt with the bill was very disappointing. The clerk told me that no amendments to Bill C-280 had been tabled and that no motion had been introduced last Tuesday for us to hear new witnesses on this bill. From what I could understand, the meeting was interrupted and the witnesses who were to appear at that meeting were not summoned to a subsequent meeting. So I don't see the need to adopt this amendment, in view of the fact that no amendment has been introduced. In my view, it should be possible to do the clause-by-clause consideration in five minutes, since no amendments have been tabled.

[English]

**The Chair:** Mr. Siksay.

**Mr. Bill Siksay:** Chair, maybe the clerk can help, but I believe we have witnesses arranged for next Tuesday already, and I believe there are also international witnesses, someone who is coming from outside of Canada as well. So I think it is a huge problem—to delay—and I do support Madam Faille's original motion. I don't support the amendment in light of that.

**The Chair:** Okay, so the question then would be on the amendment.

**Mr. Ed Komarnicki:** Can I make another point?

**The Chair:** To the amendment? Briefly.

**Mr. Ed Komarnicki:** Yes.

It seems unusual to go into clause-by-clause before finishing hearing the witnesses. We had agreed to hear them. They were scheduled to go. We're short-circuiting that, and I think that's inappropriate.

**The Chair:** Mr. Siksay.

**Mr. Bill Siksay:** Mr. Chair, I'd just like to say that indeed, perhaps the full hearing of witnesses was short-circuited, but it did not happen because of any action of Madam Faille or the Bloc or the New Democrat members on this committee, and we want to get on with this important piece of legislation. As Madam Faille says, there have been no amendments proposed. There has been no hint of an amendment being proposed, and I think we need to get on with that important work.

• (1300)

**The Chair:** Mr. Telegdi.

**Hon. Andrew Telegdi:** Yes, I would include the Liberals in that category as well, Mr. Siksay.

**The Chair:** Thank you.

So the question would be on the amendment.

(Amendment negatived)

**The Chair:** On the main motion.

**A voice:** It's important that we speak on the motion.

**The Chair:** Yes, well, please feel free.

**Hon. Jim Karygiannis:** Mr. Chair, can I ask that the clock be stopped at one o'clock?

**The Chair:** Is it agreed to stop the clock at one o'clock?

**Some hon. members:** Agreed.

**The Chair:** Okay.

Mr. Devolin.

**Mr. Barry Devolin:** I don't agree with the decision of the committee that because of unusual circumstances we didn't get a chance to hear the witnesses we wanted to hear on this bill. I think we should hear them, and I've said this in the past, that this is a very unusual situation with the RAD, that it's a piece of legislation that was passed, and for some reason the government of the day chose not to proclaim the one part of the bill. That is unusual.

Secondly, when Bill C-280 went before the House of Commons a few weeks ago, I have said there is one current minister for this portfolio and four former ministers for the portfolio in the House. None of them voted to support it, and in fact, in terms of the three former Liberal ministers, one voted against it and two abstained, which is in some ways maybe even a stronger statement than voting against it.

I have said this in the past, and I accept the fact that some of my colleagues believe the RAD should be proclaimed and implemented and this is the right part of the process, but with all due respect to that point of view, I also find it interesting that people who are more familiar with the department and are familiar with processes and ought to have a good sense of what it will mean obviously have some problem with it. That's why, quite frankly, I found it irresponsible that we decided not to call some of the former ministers before us and just ask them: "You're familiar with this. It was your government that passed it. Why do you even today still not support implementing it?"

Secondly, if there are actually people from outside government, who are outside witnesses, who also have reservations about the RAD...this morning we heard so many compelling stories about how long it takes to get stuff done. There seems an incongruity to me between us wanting to make the system better and fairer, which is the argument for the RAD, but at the same time we want to make it faster, and the way we're going to do that is by introducing another layer and that somehow that's supposed to solve either of those problems.

It's 1:05 p.m. now. To try to jam this through in the next few minutes is irresponsible on the part of this committee.

**The Chair:** I have quite a number of people who want to speak on this.

Thank you, Mr. Devolin.

Mr. Telegdi.

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

Just for the record, we have already dealt with the motion to bring in the former ministers and it was defeated.

I do take exception with you saying that the previous ministers were more familiar with the issue than members of the committee—if I quoted right, more familiar with the department. I can tell you that you have greater minds around this table to consult on the issue, if you want to consult on this particular issue.

The other issue is that Parliament passed an act, and we have been after this and after this to get it implemented. The time for implementation is now, and we have heard all sorts of evidence that this would indeed expedite the system.

I might also refer members of the committee to the letter we received from the Canadian Bar Association, where it points out that the quality of decision, just by the very nature of not having the RAD, has really been devalued.

Surely to God, all members want to make sure there's an integrity to the decision-making process, but be that as it may, we dealt with

the issue about inviting the former ministers in and that was defeated.

• (1305)

**The Chair:** Mr. Karygiannis.

**Hon. Jim Karygiannis:** Mr. Chair, with all due respect, this thing has come to an impasse. There is a motion on the floor. I think overwhelmingly you will find that there is a lot of support for Mrs. Faille's motion, and trying to introduce or reinvent the wheel in order to sidebar this and invite this or that....

This government has been in power for a year plus. Whether they want to call themselves the new Government of Canada or the Conservative Government of Canada is immaterial. Certainly we heard witnesses today who stated irrevocably that there is a failure here, and we have to move on in order to make sure we put the RAD.

We have had speakers on both sides. I propose that you call the question now, sir.

**The Chair:** Mr. Siksay.

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

I just wanted to respond to the notion that somehow we're not doing due diligence to this issue of the RAD by proceeding in this way. I don't think anything could be further from the truth. If Mr. Devolin is interested in finding out why former ministers don't support the RAD, the reasons are clearly on the public record any number of times. In fact, probably every single time one of those ministers appeared before this committee they were questioned by at least one member, if not more than one, of the committee.

This committee itself in this Parliament has also held hearings on refugee issues and specifically on the RAD. We've heard from a number of witnesses, and all parties had the opportunity to present witnesses as part of that discussion in our study of refugee issues in this Parliament. I remind you that we've completed the process of hearing witnesses on that and are now working on the draft report on refugee issues. So I don't accept the fact that somehow we've not done due diligence on the issue of RAD.

That information is clearly on the public record. If you want to do the research, it's there. I'm sure the analyst could help you track it down if you're having trouble doing that. There is no question about the issues that have come forward. They haven't changed. The new government makes the same arguments that we've heard for years on this issue.

I, for one, am frustrated with the delay on this particular issue and would like to see us move forward as quickly as possible on the motion of Madam Faille and on consideration of the private member's bill.

**The Chair:** Mr. Wilson.

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

I'm just trying to understand why the parliamentary secretary is trying so hard to stonewall us on this issue. The RAD has been discussed ad infinitum, and I agree with Mr. Siksay—you can go back and do the research and see the comments from all the former ministers and from former members of this committee, many of whom are his own colleagues who go on for pages and pages on why they want the RAD introduced, why they want the government to say, “Look, we have this law. It's on the books. We're not even introducing any new legislation. We're just trying to compel the government to live up to the commitment of what Parliament has already said it wants and wishes to have.”

It is unfortunate for the parliamentary secretary that he could not be briefed by the former Liberal cabinet ministers, but if he needs to be briefed on other files as well, be they on the environment or be they on the military, we have a lot of former cabinet ministers who have a lot of knowledge as well who could impart some wisdom to the parliamentary secretary.

I would say let's get moving forward. Let's put the question forward.

**The Chair:** We have two more people. I'm going to hear these people and then we will call the question.

Madam Faillie.

[*Translation*]

**Ms. Meili Faillie:** Mr. Chairman, would it be possible to move on to the vote? I think we've heard witnesses from each side. What concerns me right now is the fact that animosity is creeping into the committee. It would be unfortunate for us to find ourselves in a situation like the one prevailing the last time we studied the bill. The question of the appeal section has been largely studied. I'd like to propose that we vote on this motion immediately. I think we've covered the question.

•(1310)

[*English*]

**The Chair:** I have one more person and then I'm calling the question.

**Hon. Jim Karygiannis:** On a point of order, Mr. Chair, if the person who puts the motion forward calls for the question—

**The Chair:** No, that's out of order. That's not true. The chair is free to hear as many points of order as it wishes and then it will call the motion.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** I just want to make a couple of remarks.

One, we're talking about a few days, and in fairness, this committee did authorize a witness to be called. It's now saying we don't need to call the witness, even though we thought it was the right thing to do at one point.

The second point, which Mr. Devolin has indicated, is that as recently as within the last two or three weeks, we had three former ministers who either didn't vote to support the bill or opposed it. We do have their comments from the past on the record, which state that when the RAD was envisioned there was a backlog. The backlog went down. They were concerned about the fact that adding another

layer—just as was indicated today—would add additional time to a system that's not functioning as well as it should. The reason they didn't implement, they said in the past, was because of the very issue that had concerned them: passing it without regard to the rest of the system.

There may be other reasons, but certainly people who were in the department saw how it worked and went through the history of it. It is not inappropriate to have one of them, at least, who opposed the bill indicate why they would oppose RAD when some of your members are supporting it. They may have some valid reasons that are recent. I appreciate the history of it, but the history of it would indicate an opposition. Presently they are opposing it, as we speak. It would not be out of order to have them appear at this committee and ask them why they oppose it at this late date, given their past positions.

I would certainly amend the motion to allow for any one or three of those previous ministers to appear before this committee to deal specifically with why they voted as they did on this particular bill in either abstention or opposition.

**Hon. Jim Karygiannis:** Mr. Chair, haven't we dealt with that matter?

**The Chair:** It would be a new amendment.

**Mr. Ed Komarnicki:** That would be the amendment. This is a different one. This has to do with the current tense, not the past tense.

**The Chair:** Are you proposing another amendment here?

**Mr. Ed Komarnicki:** Yes.

**Hon. Jim Karygiannis:** On a point of order, Mr. Chair, at this point in time I would like, besides the point of order, to also challenge the chair, because his rulings today have certainly been out whack.

We dealt with this subamendment that Mr. Komarnicki wants to add. You have a motion on the floor. You are asking for people to go back and forth on this motion; you are not asking for new motions. So either call the question or I will challenge you, and then we will hear the challenge.

**The Chair:** You can challenge—

**Hon. Jim Karygiannis:** Fine. I would like to challenge the credibility of the chair, as well as the competence of the chair. Put that to a vote, sir.

**The Chair:** I'm not putting that to a vote until I hear the amendment again, and then we will go to the main motion and we will—

**Hon. Jim Karygiannis:** Mr. Chair, you are duty-bound, once somebody challenges your credibility, sir, as a motion you are ruling—You are duty-bound to ask for a vote.

**The Chair:** No.

**Mr. Ed Komarnicki:** Yes, you are.

**The Chair:** I will hear the amendment, and if you don't come to order, Mr. Karygiannis, I will adjourn the meeting.

I will adjourn the meeting if you don't calm down.

•(1315)

**Hon. Jim Karygiannis:** Mr. Chair, you do have a vote of confidence in yourself, right on the floor.

**The Chair:** If you don't calm down, Mr. Karygiannis, I will adjourn the meeting, and that will achieve nothing. I am now going to hear the amendment again. We will vote on it, and then we will go to a vote on the motion.

I will ask you to do it very quickly, Mr. Komarnicki.

**Mr. Ed Komarnicki:** It is that one or more of the members from Eglinton, York West, or Bourassa be called before this committee as a witness to indicate to this committee why they either opposed or abstained from supporting Bill C-280.

**The Chair:** You have heard the amendment. All in—?

On a point of order, Mr. Siksay.

**Mr. Bill Siksay:** I would question whether the amendment is in order. The main motion is to proceed immediately to consideration of clause-by-clause. This amendment clearly would delay that, and I think it runs counter to the intention of the original motion.

Mr. Chair, I would also submit that we have already dealt with that issue here at the committee. We have had essentially the same motion. We disposed of it by disagreeing with it. So we have already dealt with that issue; therefore, I would also submit that it's out of order on that basis as well.

**The Chair:** I'm advised by the clerk that the amendment would be out of order because it doesn't deal with the main motion, which is to proceed today.

Is there any more debate on the main motion?

I will call for a vote on the main motion.

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

**The Chair:** Do you want to proceed to clause-by-clause consideration?

**Hon. Jim Karygiannis:** Mr. Chair, since there are no amendments to the bill, I move that we adopt the bill and send it forward.

**The Chair:** I guess we'll go clause-by-clause, first of all.

You all have the bill before you, do you?

(Clause 1 agreed to)

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill carry?

**Some hon. members:** Agreed.

**The Chair:** Shall I report the bill to the House?

**Some hon. members:** Agreed.

**The Chair:** Okay. We're done.

Mr. Telegdi.

**Hon. Andrew Telegdi:** Mr. Chair, I think we should perhaps deal with the whole issue of the way the questioning goes when we have witnesses.

My understanding and my reading of the motion means that until everybody has a chance to speak, we don't start a new round.

One of the things we as a committee always try to do is to make sure that every member on the committee gets to speak at least once. That doesn't happen if we allow other members to speak more than once.

**Hon. Jim Karygiannis:** Mr. Chair, I'd like you to deal with the motion you have on the floor. I don't think we dealt with that motion. There's another motion on the floor.

**The Chair:** Okay. The other motion we have on the floor is that the committee summon Jean-Guy Fleury, former chair of the Immigration and Refugee Board, to testify before—

Pardon me?

**Hon. Jim Karygiannis:** I would like to amend that, Mr. Chair. I would like to say that we invite Mr. Fleury, and if he refuses, that automatically becomes a summons. We give him another opportunity to be invited.

**The Chair:** You can't amend your own motion.

[*Translation*]

**Ms. Meili Faille:** I'd like to table an amendment to the motion, for us to reinvoke Mr. Fleury. In the event he refuses to appear before the committee, I would like him to be summoned to appear.

•(1320)

[*English*]

**The Chair:** Okay, could you repeat that, Madame Faille, so the clerk can get the full motion?

[*Translation*]

**Ms. Meili Faille:** The motion reads as follows:

That the Committee summon Mr. Jean-Guy Fleury, former Chair of the Immigration and Refugee Board (IRB), to testify on April 24, 2007 in regards to the Committee's study on the IRB appointment process.

[*English*]

**Hon. Jim Karygiannis:** Mr. Chair, I'd like to accept that amendment.

**The Chair:** Is there any further discussion on that motion?

We will have to vote on the amendment first.

**Mr. Blair Wilson:** Could I discuss it first?

**The Chair:** Well, I called for discussion on it and nobody raised a hand at the time.

Mr. Wilson, I'm reluctant to do it, but—

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

I just had a question for discussion. The original wording was that the committee would summon the former chair. Now one of the amendments is to say that we are going to invite him, and if he refuses, we'll summon him. How much of a difference is there between asking someone to appear and saying we're going to invite him, and if he says no, he'll be summoned? What choice does the individual have?

**The Chair:** It seems rather redundant.

**Mr. Blair Wilson:** It does.

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

**Hon. Jim Karygiannis:** Mr. Chair, I have discussion on that. I think it also gives the opportunity to the individual to come willingly versus being forced to come. On second thought, if he notices that he's forced to come, then he accepts the invitation. I think for an individual who's been there serving the country, it's due diligence to give him that opportunity.

**The Chair:** I think Mr. Wilson makes a good point. If we're going to invite him, we should invite him and then summon him.

**Mr. Blair Wilson:** If we invite him and he denies or says he doesn't want to come, then we have the opportunity to discuss again if we should summon him.

**The Chair:** Exactly. I agree.

Is there any further discussion?

We'll go to Mr. Siksay.

**Mr. Bill Siksay:** Mr. Chair, my understanding—and I could be wrong about this, and maybe the clerk or the analyst could confirm for us—is that the meaning of summons has particular legal implications that involve a legal process and forcing an appearance here. From my perspective, I believe that Monsieur Fleury has important information to add to the discussion we've been having about the IRB, the situation there, and the Harrison report.

I know he declined our original invitation, but I think we should give him the opportunity to accept our invitation again and make it clear to him that it's very important that he come. I think we shouldn't quibble about, or we shouldn't hide, our intention to get him here one way or the other. So I like the amendment that's been proposed by Madame Faille, and I will support it.

**The Chair:** Okay.

(Amendment negated)

**The Chair:** Now we'll go to the main motion.

**Mr. Bill Siksay:** Can I propose an amendment to the main motion?

**The Chair:** Mr. Siksay has an amendment.

**Mr. Bill Siksay:** I believe the main motion says that he be summoned, and I would like to say that he be re-invited by direct invitation by the chair.

**The Chair:** Okay.

(Amendment agreed to)

(Motion as amended agreed to)

**The Chair:** It was amended to invite him.

**Hon. Jim Karygiannis:** Mr. Chair, we asked for an amendment, took a vote on it, and you went back to the main motion. The main motion clearly says “that we summons”.

**The Chair:** I broke the tie on that. There was a tie on the original motion, which was broken by the chair.

**Hon. Jim Karygiannis:** It was amended. You broke the amendment tie.

**Mr. Dave Batters:** And then we went back to the main motion.

**The Chair:** Let's vote on the motion as amended by Mr. Siksay.

And that was, “That the Committee”—

**The Clerk of the Committee (Mr. Samy Agha):** It reads:

That the Committee re-invite Mr. Jean-Guy Fleury, former Chair of the Immigration and Refugee Board (IRB), to testify on April 24, 2007 in regards to the Committee's study on the IRB appointment process.

**Mr. Bill Siksay:** Sorry, Chair, it was re-invite “by direct invitation from the Chair”.

●(1325)

**Hon. Jim Karygiannis:** And since that was carried, the main motion does not have to be voted upon.

**An hon. member:** That's not true.

**The Clerk:** That was the amendment that was agreed to, and the main motion becomes, “That the Committee re-invite by direct invitation from the Chair”—

**The Chair:** That has been voted upon and passed.

The meeting is adjourned.





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