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—
Chair

Mr. Norman Doyle

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• (1535)

[English]

The Chair (Mr. Norman Doyle (St. John's East, CPC)): The meeting will now come to order.

I want to welcome all of you here today. We have two hours to deal with Iraqi war resisters. We have two groups of people.

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

I had a motion on the floor that folks who are war resisters should not have any criminal and/or war records, or something along those lines. I'd like to strike out—

The Chair: First of all, let me ask members—

Hon. Jim Karygiannis: May I finish, Mr. Chair?

The Chair: Okay. Get to your point of order, please.

Hon. Jim Karygiannis: Thank you.

I would like to strike out—and certainly you can see if you have unanimous consent: “and/or there has been no criminal or military warrants issued against them.”

I would like to take that phrase out, so that it states:

The committee recommends that the government immediately implement a program to allow conscientious objectors and their immediate family members (partners and dependents), who have refused or left military service related to the war in Iraq and do not have a criminal record, apply for permanent resident status and remain in Canada; and that the government should immediately cease any removal or deportation actions that may have already commenced against such individuals.

I'm seeking unanimous consent to move that. I think you will find that a lot of people in this room will be very happy.

The Chair: I don't want to give the impression that I don't want to entertain that motion, because it's an important motion, but it's not a point of order.

I'll put it back into the hands of the committee. We came here today with an agenda to hear from Iraqi war resisters, Citizenship people, and the Mennonite Central Committee. I was going to deal with motions at the end of the agenda, but I get the impression from the committee that they wish to deal with these two motions before the committee hears from officials, the Mennonite Central Committee, and the War Resisters' Support Campaign.

Is there a desire to deal with these motions at the beginning of our meeting, or do we want to go as per agenda items and deal with these two motions at the end? Let's not have a long debate on this, because

time is a-wasting, and people are here today to hear from the various people who have come before our committee.

Madam Faille.

[Translation]

Ms. Meili Faille (Vaudreuil-Soulanges, BQ): I would be tempted to deal with the motion at the very end of the meeting. We have two motions before us. One motion was introduced by Mr. Karygiannis and the other by Ms. Chow. The two motions are substantially different. I don't know what the intention of the committee is. Do we want to merge the two motions into one, debate them right away and then hear the witnesses? Do we want to deal with the two motions at the end, one after the other? I don't understand exactly. We have our schedule, we have witnesses to hear and there is a desire to vote on the motion before hearing the witnesses.

[English]

The Chair: You would like to hear from the witnesses first.

Madame Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): To expedite matters, I have no problem withdrawing my motion in support of Mr. Karygiannis' motion, as long as the one or two motions are dealt with today before the bells ring.

The Chair: I don't have any control over the bells. When the bells ring we have to go for votes.

Ms. Olivia Chow: If other members of Parliament want to listen to the witnesses, we can do so, and cut off all witnesses by five at the latest so we can deal with the motions.

The Chair: That's fine with me.

Mr. Batters.

Mr. Dave Batters (Palliser, CPC): I'm going to support what Ms. Chow just said. It makes much more sense to hear the witnesses first and deal with the motion afterwards. We know that the bells are going to ring at 5:15 today, and to cut off witnesses at 5 or 5:05 makes perfect sense.

The Chair: Okay.

Madame Beaumier.

Ms. Colleen Beaumier (Brampton West, Lib.): I'm not sure if we can determine now if we can cut off witnesses at 5 o'clock, but I certainly want to hear witnesses first.

The Chair: We'll try.

Thank you. Consensus is that we will hear our witnesses first and try to condense it as much as possible.

Ms. Olivia Chow: Because the agenda says 5:30, can I amend it so that each witness has 45 minutes instead of an hour? That would save you some time.

The Chair: That's the intent. I thought I told the committee about that. We will condense it as much as possible and cut it off at 5:15.

I want to welcome today Mr. Les Linklater, director general, immigration branch, and Micheline Aucoin, director general, refugee branch.

Welcome to our committee hearing today. I think you know the procedure. You'll begin with an opening statement, so I'll pass it right over to you. Then of course we'll get into discussion and questions.

Mr. Linklater.

• (1540)

Mr. Les Linklater (Director General, Immigration Branch, Department of Citizenship and Immigration): Thank you, Mr. Chair.

[*Translation*]

I am happy to be here today and I thank the honourable members of the committee for their interest in this issue. With me today is Micheline Aucoin, Director General of the Refugees Branch, also with Citizenship and Immigration Canada.

I will begin today with some general comments and then address the events and considerations concerning the Hinzman and Hughey litigation. Finally, I will note some of the existing provisions within the Immigration and Refugee Protection Act, the IRPA, or LIPR in French, which support the integrity of the immigration and refugee programs. We will then be happy to answer your questions.

[*English*]

First let me say that Canada has a fair, internationally recognized system for providing refuge to those fleeing persecution.

Refugee claims made in Canada, including those made by U.S. servicemen and women, are heard by the Refugee Protection Division of the Immigration and Refugee Board, or the IRB. The IRB assesses each claim on its merits with regard to risk of persecution, torture, risk to life, or cruel and unusual treatment or punishment.

The board has reported that 37 claims have been made by U.S. citizens on the basis of objection to military service. I should note that while waiting for a decision on their claims, refugee claimants who pass medical screening are entitled to work permits that allow them to be employed in Canada. Those who cannot find work may apply for social assistance.

Let me turn to the cases of Jeremy Hinzman and Brandon Hughey. The Federal Court of Appeal summarized the facts in the cases of Mr. Hinzman and Mr. Hughey as follows:

The two men voluntarily enlisted to serve the United States military. During their time in the military, they developed an objection to the war in Iraq. After learning that their units would be deployed to Iraq, they deserted the military and came to Canada, where they made claims for refugee status.

In January 2004, Mr. Hinzman came to Canada with his wife and their son, where they made inland refugee claims. Mr. Hughey made a similar refugee claim in January 2005.

The Immigration and Refugee Board found that the applicants were not convention refugees or persons in need of protection. The Federal Court of Canada reviewed the IRB decision and later dismissed the applicants' applications for judicial review. The Federal Court of Appeal dismissed their subsequent appeals.

Mr. Hinzman and Mr. Hughey sought leave to appeal the decision to the Supreme Court of Canada.

Hon. Jim Karygiannis: A point of order, Mr. Chair.

The Chair: Mr. Karygiannis.

Hon. Jim Karygiannis: I'm just wondering if the department has consent from the applicant to reveal their personal information.

Mr. Les Linklater: This information is in the public domain.

The Chair: I realize that, Mr. Linklater. Please continue.

It's not a point of order.

Mr. Les Linklater: The Supreme Court dismissed the application for leave to appeal on November 15, 2007. As the Supreme Court of Canada has declined to hear Mr. Hinzman and Mr. Hughey's appeal, this means that the Federal Court of Appeal's decision stands, as does the decision of the IRB.

In its decision, the Federal Court of Appeal stated that it saw no reason to depart from the conclusions of the board and that the appellants were not entitled to refugee status.

Mr. Chair, I should note that recent reports about these cases have compared them to those involving so-called "draft dodgers" who travelled to Canada during the Vietnam War. It is worth noting, however, that the individuals coming from the U.S. now are volunteers in the United States armed forces or reserve forces. These individuals were not the subject of military conscription, as was the case for many of those who came to Canada during the Vietnam War.

While it would be inappropriate for me to comment more on these specific cases, I will say that Canada has a fair, internationally recognized system for providing refugee status for those fleeing persecution in their home country.

Under IRPA, failed claimants may request, prior to removal, a pre-removal risk assessment, or PRRA. This is to assess, after an IRB decision, any new evidence that might arise concerning risks to refugee claimants.

A PRRA would evaluate whether a person would face risk of persecution or torture, risk to life, or risk of cruel and unusual treatment or punishment if the claimant was returned to their country of origin.

• (1545)

[*Translation*]

Mr. Chair, foreign nationals who wish to apply for permanent residence from within Canada may do so as a member of one of the in-Canada classes. These classes include spouses or common-law partners in Canada, live-in caregivers, permit holders, and protected persons.

In addition, Mr. Chair, failed refugee claimants or other foreign nationals in Canada who do not satisfy the criteria of any of the in-Canada immigrant categories may apply for permanent residence on humanitarian and compassionate grounds.

The purpose of the humanitarian and compassionate provision is to provide the flexibility to approve exceptional and compelling cases not anticipated in the legislation.

[*English*]

This is a tool intended to uphold Canada's humanitarian tradition. Under it, each case is assessed on its own merits, taking into consideration several factors: the individual's establishment and family ties to Canada, for example; the best interests of any children involved; risk upon return; the hardship of having to apply for permanent residence from abroad, as well as any other issues raised by the applicant.

Mr. Chair, CIC is aware that this committee has tabled a motion calling on the government to immediately implement an in-Canada program to allow these individuals to apply to remain and work in Canada and be eligible for permanent resident status. However, this motion runs counter to having an immigration policy that is both fair and consistent in its application. By adopting it, the committee would be calling for a unique benefit for some foreign nationals, proposing that they be allowed to apply for permanent residence outside of normal immigration channels.

The Department of Citizenship and Immigration is committed to ensuring that all immigration and refugee claimants have access to the full process outlined by IRPA and that all cases are resolved fairly.

Thank you, Mr. Chair

The Chair: Thank you, Mr. Linklater.

Do you have any comments you wish to make at this time, Ms. Aucoin?

If not, we will proceed immediately to questions with seven-minute rounds.

I'll go first of all to Mr. Telegdi.

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

I have a couple of questions.

There's such a thing as an internationally recognized conflict that people are engaged in and that has come under the auspices of the United Nations, or under the auspices of NATO or one of the organizations that we belong to. This, in particular, seems more akin to Vietnam, which was done in the absence of any one of those umbrellas. Do you care to comment on that?

The Chair: One of you may answer.

Ms. Micheline Aucoin (Director General, Refugees Branch, Department of Citizenship and Immigration): I think Mr. Linklater mentioned in his opening statement that a parallel was made with the Vietnam War and the difference in the immigration rules. The Americans who came to Canada during the Vietnam War did not come as refugees. They were admitted to Canada as visitors and then applied for permanent residence from within Canada in accordance with the immigration legislation at the time.

Hon. Andrew Telegdi: I have another question on that.

Given that we have the International Criminal Court, and the court is supposed to respond to atrocities and what have you that take place abroad, here we have.... Now, the United States is not a signatory to that, but it seems to me that if you look at some of our citizenship revocation cases, we're revoking citizenship from people for having served as interpreters in war. So what do you do when you're into an illegal war? What do you do when you have war crimes taking place on a large enough scale that it has to trigger some kind of review mechanism on the whole campaign?

A person who signs up to be in the military has reasonable expectations that they're going to be partaking in campaigns that come under some kind of umbrella. The thing that is so very troubling about these cases is that they don't.

The coalition of the willing is getting to be less willing every day. The alliance has pretty well fallen apart. If you're a young person and you sign up to serve in the national guard—first of all, to protect the homeland, and secondly, to take part in conflict—you really expect to have some kind of legitimacy for the campaign you're undertaking.

How do you cover conflicts that don't have any legitimacy?

• (1550)

The Chair: To the officials, I realize the problems you're having here. You're being asked really to decide upon the legitimacy or lack of legitimacy of the war when of course these things haven't been decided in the public domain. Everyone has their political opinions on whether the Iraq War is legal and whether the Vietnam War was legal or legitimate.

So I realize the problem the officials would have, and they seem to be demonstrating that they have some problems answering these questions.

I'm not going to direct you, and I shouldn't direct you, on how to answer the questions, but you're free to answer the questions in whatever way you feel is appropriate.

Mr. Les Linklater: Mr. Chair, I believe the question around the legitimacy of the conflict in Iraq is beyond the purview of officials of Citizenship and Immigration Canada.

The Chair: That's what I thought you might say.

Hon. Andrew Telegdi: No, I understand that. I just wanted to raise the difficulty that comes along these lines.

This is something the world community is struggling with, trying to put conflicts on some kind of legal basis, and this conflict really doesn't seem to have one. Any justification used to go into Iraq has been pretty well eroded. American public opinion is very much against it.

I could see somebody saying, "We're going to sign up to defend our homeland. We're going to sign up to defend just interventions in the world." But when all the rationale that one signs up for disappears, that leaves the individual with a very strong dilemma in terms of what they are able to do.

I guess I don't see that much difference between this and Vietnam.

The Chair: Again, I can see the officials are having a hard time.

Hon. Andrew Telegdi: I'm going to pass over to Mr. Karygiannis.

The Chair: Yes, okay.

You have one minute and nine seconds.

Hon. Jim Karygiannis: Mr. Chair, within the department is there any recollection of or any notes on what happened back when the Vietnam War was going on? Did the department at that time have the same agenda as it has right now, saying, "No, we don't want them", and it was forced on them by the politicians? Were the bureaucrats resisting at the time of the Vietnam War, as we see the resistance today?

Mr. Les Linklater: Mr. Chair, from what we understand, looking back, most of the Americans who came to Canada during the Vietnam War did not come as refugees or as individuals seeking protection or status as convention refugees. Rather, they came as visitors, as conscientious objectors. Under the Immigration Act and regulations in place at the time, they were able, by and large, to apply for permanent residence from within Canada based on their personal attributes—their skills, their language ability, their education.

Hon. Jim Karygiannis: Mr. Chair, I find that hard to believe. Pre-1976, legislation was not as it is today. There were no education points. There were no points for family in Canada or anything else. So I find that very hard to believe. I think those people applied for refugee status at the time, and we gave it to them.

The Chair: A very brief reply because we've gone over into eight and a half minutes.

Mr. Les Linklater: Mr. Chair, from what I understand, most of these individuals were treated by the act that was enforced prior to 1978, and at that point there were opportunities for personal assessments to be made, based on professional attributes.

•(1555)

The Chair: Thank you.

Thank you, Mr. Telegdi, Mr. Karygiannis.

I will now go to Madame Faille.

[Translation]

Ms. Meili Faille: Thank you, Mr. Chair.

Mr. Telegdi has raised the question of legal or illegal wars, but I understand that it may be difficult to answer that, given the weight that the United States carries on some international committees.

On the other hand, I would like to know your opinion on paragraph 171 of the United Nations High Commission for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status*. I think this is where my colleague was going.

171. Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to the basic rules of human conduct, punishment for desertion or draft evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.

In order for that section to be applied, is it essential that there be a United Nations resolution or a large enough number of countries that do not agree with the occupation, in the case of the war in Iraq, for example?

Ms. Micheline Aucoin: Mr. Chair, the Immigration and Refugee Board of Canada, the IRB, has heard argument on paragraph 171 of the United Nations guide, for example in the public cases of Mr. Hinzman and Mr. Hughey. It has held that the paragraph applied to underground military actions, in other words, things done during war, and not the legality or illegality of the conflict as a whole.

In the judicial review of the IRB's decision, the Federal Court judge examined the question of paragraph 171 and concluded that in fact the IRB had not erred in its judgment, and that in the case of a foot soldier the legality of the war was not in issue.

Ms. Meili Faille: When you refer to a foot soldier, you are talking about the infantry?

Ms. Micheline Aucoin: Yes.

•(1600)

Ms. Meili Faille: Are you concerned about the fact that soldiers might circumvent the chain of command or the political decisions made by a country in time of war?

Has the IRB decided not to grant refugee status to foot soldiers because they have a specific role to play in time of war? Is it because they have a military contract and you don't want to set a precedent? It would mean that anyone at all could decide not to go to war because he or she didn't agree with the government's policies.

Ms. Micheline Aucoin: First, it is not the job of senior government officials to interfere in or comment on the decisions of the IRB or the Federal Court. We can only report the IRB's decision, which was public in this case. The same is true of the decision of the Federal Court and the Federal Court of Appeal, in this particular case.

The IRB's decision was actually based on something else: the fact that in its view there was state protection in the United States and the claimants had not sought the protection afforded in the United States.

Ms. Meili Faille: Iraqis who have lost their refugee determination cases have the benefit of a provision that allows them to remain here indefinitely, as long as Iraq is on the moratorium list. Is there a potential avenue for people who might come from the United States? The list is restrictive. There is a certain number of countries on the list. Iraqis who have lost their refugee determination cases are still here.

Ms. Micheline Aucoin: Mr. Chair, Ms. Faille is alluding to the list of countries for which there is a temporary stay of removals. In fact, that list is prepared by the Department of Public Safety and not the Department of Citizenship and Immigration. There are currently eight countries on the list. Certain criteria have to be met in order to be on the list. The countries on it are countries where there is a generalized risk of violence everywhere in the country. The United States is not on that list.

Ms. Meili Faille: Are there Iraqis who participated in Saddam Hussein's war, who have come to Canada, who have claimed refugee status and to whom you have granted that status? These would be people who have come here and said they opposed what happened and had seen atrocities.

Ms. Micheline Aucoin: There is no policy on what kinds of claims are and are not acceptable. The IRB considers and examines each case. I do not have statistics with me on the IRB's acceptance rate for Iraqis, but in any event it considers each case on its own merits.

Ms. Meili Faille: Thank you.

[English]

The Chair: That's seven minutes, and I barely have time for two more speakers of seven minutes each.

Pardon me?

[Translation]

Ms. Meili Faille: I have 10 seconds left?

[English]

The Chair: No.

[Translation]

Ms. Meili Faille: Did I have a little time left? It's over?

[English]

The Chair: Did you want to finish up?

[Translation]

Ms. Meili Faille: This question is somewhat general. What guarantee is there, when people make their application for humanitarian consideration, that Canada will not deport them even before their application is examined? At present, an unsuccessful refugee claimant may apply for humanitarian consideration. When the person makes the application, he or she has no guarantee that Canada will not deport him or her.

[English]

The Chair: Do you have a response?

Mr. Les Linklater: Yes, Mr. Chair. When a humanitarian and compassionate application is made, there is no stay on the removal, and should a person come to the attention of CBSA, they may in fact be removed.

The Chair: Thank you, Madame Faille.

Ms. Chow, go ahead, please, for seven minutes.

Ms. Olivia Chow: Between 1969 and 1972, people in Canada as visitors could apply within Canada. That's no longer the case. You cannot apply within Canada. Also at that time you could apply at the border. That's also no longer the case. So if someone here in Canada would like to apply within Canada, they cannot do so, no matter whether it's through the point system, through family class, or independently. You just cannot do so. You cannot apply within Canada. Since we have had the safe third country agreement, even though it was struck down in the Federal Court, someone who is coming across can't apply in the United States either, so what possible route would there be?

You cannot compare apples and oranges, because at that time the immigration system was completely different from what we have now. How could someone in Canada now apply as an independent person in Canada? You can't. Am I correct?

Mr. Les Linklater: Mr. Chair, under the current act, an individual who is in Canada can apply for humanitarian and compassionate reasons to remain in Canada as a permanent resident without leaving the country. If an individual is here and would like to apply as a skilled worker, for example, or as a provincial nominee, their application would normally need to be processed by one of our missions overseas.

• (1605)

Ms. Olivia Chow: That means the war resisters would have to go back to the U.S. and face the military. It's a vicious loop. While they apply on humanitarian and compassionate grounds, they could get deported, as you just said when you answered Madam Faille's question.

My understanding is that a program was offered to adjust the status of those who have been in the country, but not landed, before November 1972. There was an amnesty program to allow those who didn't quite fit the criteria to stay in Canada. In total, for the period from April 1965 to November 1972, we are looking at something like 19,846 females and 25,865 males. In total, close to 50,000 Americans landed in Canada and became citizens of Canada through a combination of programs, and that venue is not available to the war resisters today.

My question is whether you would recommend a regularization program to adjust the status of those who have been in this country, just like the department and the minister did in November 1972.

Mr. Les Linklater: Mr. Chair, I think under the current provisions of the act the ability to apply for permanent residence on humanitarian and compassionate grounds exists. It is meant as a category to provide an avenue for permanent residence for people who do not necessarily fit into any of the other categories outlined in the act or the regulations. As my colleague has mentioned, each applicant is assessed on their own merit, given the relative weight of the circumstances of the case, which would allow them to make a case for permanent residence in Canada.

Ms. Olivia Chow: I'm saving you some time, Mr. Chair.

The Chair: Thank you, Ms. Chow.

I will now go to Mr. Batters for seven minutes.

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

I thank you, Mr. Linklater and Ms. Aucoin, for appearing before our committee today. We appreciate your bringing your expertise on immigration and refugee policy to this committee.

Mr. Linklater, you spoke in your remarks about the need for fair and consistent application of our immigration and refugee policies. Frankly, I think this goes beyond a need. We in government should always strive for fairness, prudence, and consistency in our policies.

Canada's refugee system is among the most highly regarded and respected in the world. We care about maintaining the integrity of our system through due process, fairness, and consistency. We believe in these things and we're committed to them.

I don't think Canadians support creating a special loophole for a small group of people who are running from their voluntary—and I highlight “voluntary”—commitments and who our own independent expert in judicial systems has said are not legitimate refugees. These people don't fall under internationally accepted definitions of people in need of protection. Creating a special class or loophole for them is not fair. It's not fair to real refugees who face persecution and the threat of torture and death. It's not fair to people who are truly in need of protection and who are in desperate situations. It's not fair to people who have been in camps for over a decade.

We've helped out the Karen refugees and refugees from Bhutan. We're working with the UN—

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

The Chair: I'm going to hear a point of order from Mr. Telegdi.

Hon. Andrew Telegdi: Mr. Chair, number one, I was wondering if there was a question. Second, I wonder if Mr. Batters would be assisted if we got him a teleprompter.

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

Let me point out to all members that the member can use his seven minutes to either ask a question or talk out his time or make a statement, whatever he wishes to do. It's totally up to him.

• (1610)

Mr. Dave Batters: Thank you, Mr. Chair.

Mr. Chair, we'll be talking about our help for refugees from Iraq next week. These people are true refugees. Creating a special class would vault these deserters to the front of the line with their very own category. These deserters are no more deserving of special treatment than anyone else. That sort of special, unequal treatment is not right, especially when we have many more legitimate refugees waiting for our help. It's not fair to the people who follow the rules and who apply to come to our country under the normal immigration system. It's not fair or consistent.

It doesn't seem to me that creating these loopholes will maintain the fairness and integrity of our system.

Can either one of you explain to us further why you maintain that we should change our fair standards to create loopholes and special classes for these people?

The Chair: Mr. Linklater or Ms. Aucoin, please answer.

Mr. Les Linklater: As I mentioned earlier, we do have the provisions for humanitarian and compassionate consideration, which is a class that is available to those who don't fit under any other application type and where the merits of their application are weighed on an individual case-by-case basis.

The Chair: You have three and a half minutes, Mr. Batters.

Mr. Dave Batters: Thank you.

These resisters' cases, specifically Mr. Hinzman's and Mr. Hughey's, have gone through four levels of review now. They've been turned down by the IRB; the IRB said they were not convention refugees. These claimants then asked for a judicial review, and the Federal Court reviewed the IRB decision but dismissed their application. The Federal Court of Appeal then dismissed their appeal of the Federal Court decision, and finally, the Supreme Court of Canada dismissed their application for leave to appeal as well. That means that all four of the decisions from our judicial bodies in this country have gone against these individuals. The initial IRB decision has been upheld.

I have a number of questions. I'm going to ask them all together and I'll let you respond at the end. On top of that, these claimants still have other avenues available to them, don't they? Is that not the case? They even still have access to a humanitarian and compassionate grounds application for permanent residency, and they will also have access to a pre-removal risk assessment. They've really lucked out, since our courts found that they didn't even seek to use the protections available in their own country for objectors before they deserted to our country.

Is that not all true? Would you agree that our process has shown a remarkable degree of fairness and consistency on this issue and demonstrated our commitment to due process, justice, and the rule of law? Is that not all factual?

The Chair: You have two minutes to answer.

Mr. Les Linklater: Mr. Chair, to our understanding, that is factual information.

The Chair: Ms. Aucoin?

Ms. Micheline Aucoin: Yes.

The Chair: Okay.

You have one minute and forty-eight seconds to pursue your time if you wish.

Mr. Dave Batters: Thank you, Mr. Chair.

The Immigration and Refugee Protection Act, or IRPA, provides that refugee protection may be granted in cases where a penalty for desertion is not legally sanctioned or is imposed in disregard of accepted international standards. The U.S. military's uniform code of military justice regulations, for example, recognizes the validity of conscientious objection, offers alternatives and protections to objectors, including hearing and appeal rights, and objectors are usually transferred to noncombat duty. Their punishment, should their claims be denied, is overwhelmingly administrative. It is my understanding that most, almost 95%, receive administrative punishment and less than honourable discharges from their voluntary military service. I also understand that most haven't even been court martialled.

I think it's clear that the U.S. military policy on desertion is fair, it follows due process, and, frankly, I think it is generous, given that most deserters are simply kicked out of the military. Have the courts and the IRB provided an opinion as to whether the United States military, in its desertion policies, follows accepted international standards and due process of law? Have they determined that the protections in the U.S. are fair and that these deserters should have taken advantage of them?

The Chair: Fifteen seconds.

Ms. Micheline Aucoin: Yes. The IRB, the Federal Court, and the Federal Court of Appeal have looked at these arguments and made a decision that there were options for Mr. Hinzman and Mr. Hughey to pursue in the U.S.

• (1615)

The Chair: Thank you.

I want to thank you for coming to our committee meeting today. I wish we had more time to really get into a full line of questioning. I'm sure other members had questions they wanted to ask, but we have another group coming. So I would say to members, you can save your questions for the next group of people.

Thank you. I appreciate it very much.

We'll give witnesses a moment to get away from the table, and we will call upon the Mennonite Central Committee to come to the table, Mr. William Janzen, director of the Ottawa office, and the War Resisters' Support Campaign, Mr. Phillip McDowell. Also Mr. Jeffrey House, if he's here, can come to the table. He's here as an individual, not representing any particular group of people. I would ask him to come to the table as well.

We can get going in a moment, when you're ready.

Please come to the table, Ms. Gay Anne Broughton, program coordinator. I don't have your name here, but welcome.

Welcome to all of you.

I'm sure you know the drill we go through, Mr. Janzen, Mr. McDowell, and Mr. House. Welcome to the committee. You have approximately ten minutes to make some opening statements. If you could shorten it maybe to seven minutes or so, that would give our committee members a little bit more time to ask questions, because we have to get going on new business at 5 o'clock.

Go ahead, Mr. Janzen.

Mr. William Janzen (Director, Ottawa Office, Mennonite Central Committee Canada): Thank you.

First of all, I did hand out a three-page paper. Unfortunately, it's only in English. I hope it is at your place.

I'd like to make four points in these opening remarks. The first three are very brief.

The first point is simply that our organization represents a majority of the Mennonite churches of Canada, and the reason we feel compelled to speak on this issue is that over the last two centuries, or a little more, Mennonites in Canada have benefited from the conscientious objector provisions in Canada. Out of gratitude for that, we feel we must advocate so that those benefits can be extended to others.

The second is just a very brief word. Something was demonstrated in World War II. There was a conscription law in force for over four years, but it wasn't only a conscription law. The conscription law carried with it exemption provisions, so that there wasn't only an exemption, there was also an alternative service program. Approximately 11,000 young men—two-thirds of the Mennonites who got conscientious objector status—were assigned to this alternative service program and rendered a service over the years, which, by the end, was recognized as being of very considerable national value. The point is that conscientious objection is not only a matter of being exempted from something. It can be—indeed, I would say it should be—accompanied by a willingness to serve in a different capacity.

My third point is that the conscientious objector concept has evolved over the years, and one key development in that evolution is that there are now provisions in the military departments, the defence departments, in Canada, the United States, and Britain, whereby people who are in the military and who develop conscientious objector convictions can apply to be discharged on those grounds. A very key question is whether those provisions and those mechanisms are accessible and whether they are impartial. There are very major questions about whether that was the case in relation to these people from the United States, but I will let other people speak to that more directly.

My last point—and here I would like to read a few paragraphs from the submission I made—deals not so much with American draft dodgers as simply with conscientious objection.

The case of a young Ottawa man we are trying to assist illustrates even more strongly the need for Canada's immigration structures to deal with conscientious objectors in a better way.

This person, a Muslim, came to Canada in 2001 and applied for refugee status. However, the IRB, in a December 2003 decision, rejected his claim, as did the Federal Court some time later. These bodies agreed that this man's conscientious objector convictions were genuine, but they held that the conscription laws in his home country could not be described as persecutory or discriminatory since they were of general application. One judge dismissed his claim by comparing conscientious objector beliefs to a belief that the state does not have a right to levy taxes; since the latter cannot be honoured, neither should the former.

This man's home country has universal military service requirements without any provisions for conscientious objectors or alternative service, and the evidence shows that it has dealt with people who claimed to be conscientious objectors by sentencing them to repeated two-year prison terms, even up to a total of twenty years. To force him home to that situation cannot be reconciled with Canada's very positive history regarding conscientious objection and with the current requirements of international law.

At present this man is being helped by several legal aid lawyers and us. The lawyers have presented well-documented appeals under the pre-removal risk assessment and the humanitarian and compassionate provisions. We hope these will yield a positive result, but we also ask for the creation of better conscientious objector safeguards in the law itself. Protection of this long and well-established right should not have to depend on such limited appeals at the very end of the legal process.

Thank you for your consideration.

• (1620)

Hon. Jim Karygiannis: Would the witness be able to tell us what country he was referring to?

Mr. William Janzen: It is Turkey.

The Chair: Thank you, Mr. Janzen. I must say, you stayed well within the limits. You only took four minutes.

Mr. McDowell, you have an opening statement. Please don't feel that you have to hurry through it now. Take your time.

Mr. Phillip McDowell (War Resisters' Support Campaign): Thank you.

My name is Phillip McDowell. I'm a former sergeant in the United States Army. I volunteered for the army the month after September 11 because I felt that my country was under attack and, as did many Americans, I wanted to do something positive for my country in terms of defending it. Being a senior in college, a graduate, I thought I would be a good asset to the military.

Less than a year later, or about a year later, I didn't wind up fighting al-Qaeda anywhere; I wound up in Iraq. At that time, I still believed, as many Americans did, that there were stockpiles of weapons of mass destruction, that they were making chemical weapons, and that they intended to use them against the United States. I believed them when they said there were ties between Saddam Hussein and al-Qaeda. They were saying that Saddam Hussein had UAVs that could possibly attack the east coast of the United States and deliver chemical weapons. I believed this.

Throughout my tour over in Iraq, I figured out, just through reading the news and talking to people, that these claims were false. I joined the military to defend my country. I didn't join or volunteer to take part in an illegal war or a war of aggression. I view the war at that time as unjust. To me, there has to be a threat from the country you're invading, and clearly there wasn't. The injustices you're getting rid of have to be replaced with better justice. However, throughout my tour, I was told to run civilian cars off the road if they got in the way. I saw the mistreatment of Iraqi civilians or detainees who, I found out later, had done nothing wrong at all. I saw more evil being brought to the country that we were supposed to be liberating.

When I came back from Iraq, I was determined not to have any part in this at all. I determined that when my contract was up with the military, when my volunteer service was over, I was going to separate and not be in the military anymore. However, after I did that in June 2006, I was called back into service involuntarily under the army's Stop Loss policy. I was told that I was going to have a 15-month tour in Iraq. I told my chain of command that I disagreed with the war and that I didn't want to go. I said I would be in the military and do something in the States, as long as I didn't go to Iraq. They said I didn't have a choice; I was going to Iraq. I tried to contact my elected officials to explain to them how I felt about that. They said, sorry, there were a lot of people in the same situation, that I didn't have a choice, and that I was going to Iraq.

Now, knowing that Canada did not participate in the Iraq War and that it made that decision because the United Nations didn't approve of it, and knowing, myself, that the UN Secretary-General, Kofi Annan, in 2004, declared the war illegal, I felt it was right for me to move to Canada to take this decision.

There are many other resisters here in Canada. Patrick Hart is an army sergeant with nine years in the service. He served one year in Kuwait and became disillusioned with the war when his subordinates were asking him why they were there.

Chuck Wylie, who was a chief petty officer with 17 years of service, learned that his ship's actions were in contravention of the Geneva Convention and said he couldn't take part anymore.

Dean Walcott was a field marine deployed in the initial invasion of Iraq. He went to Iraq again, served in a military hospital, and learned, through his discussions with wounded soldiers, what was really going on there. Because of his disgust with the war, he also came to Canada.

Kim Rivera, a mother of two, was told by her recruiter that women were rarely deployed to combat zones. Less than a year later, she was in Iraq, unable to cope with the abuse and indiscriminate violence she witnessed.

And of course Jeremy Hinzman applied for conscientious objector status. He asked for non-combat duty and was denied. He is now here in Canada.

There are many other people here who have moved to Canada. We all have unique stories, but through different means and experiences, we have come to the same conclusion. We believe that the invasion of Iraq was unjust and that the resulting humanitarian situation has had a massive impact.

In regard to the Supreme Court decision, I and many resisters didn't come here to have an argument with the Canadian government. We respect the Supreme Court's decision, but we also believe, as do tens of thousands of Canadians, that there can be a political solution to this.

•(1625)

On the issue of volunteers versus draft dodgers, not all the Americans who were accepted in the 1960s and 1970s were draft dodgers. Many of those people were deserters who had volunteered for service, and some of those people are in this room.

Some of the soldiers who have moved here to Canada joined before the Iraq invasion, and as I said before, like me, they volunteered to defend their country, not take part in wars of aggression. Many soldiers who have come here are in the reserves or the National Guard, and they're facing multiple deployments that are beyond the contractual agreement they volunteered for.

In the United States military, if a U.S. soldier develops a conscientious objection to a particular war, there is no avenue for him to seek reassignment or transfer to some other place.

In terms of how deserters are being treated and how they're being prosecuted in the army, many people say there are no deserters doing time. Many people say they receive less than honourable discharges. However, a quick search on the Internet will show you that Sergeant Kevin Benderman deserted and served 15 months, bad conduct discharge; Staff Sergeant Camilo Mejia was sentenced to one year, bad conduct discharge; Stephen Funk was sentenced to six months, bad conduct discharge; Ivan Brobeck was sentenced to eight months, bad conduct discharge; Mark Wilkerson was sentenced to seven months, bad conduct discharge.

The difference between a bad conduct discharge and a less than honourable discharge is that a bad conduct discharge is a felony conviction, on your record for the rest of your life because you didn't want to take part in a war that you believed was illegal.

I'm here today to ask the government to immediately implement a provision to allow conscientious objectors and immediate family members, who have refused or left military service related to the war in Iraq, to apply for permanent residence status and remain in Canada.

Thank you.

•(1630)

The Chair: Thank you, Mr. McDowell. You're right smack on seven minutes.

Mr. House.

Mr. Jeffrey A. House (As an Individual): Thank you very much, Mr. Chair and members, for allowing me to speak to you today.

I want to be brief, but I think Phillip McDowell has been very compelling in what he had to say to you.

I would simply say the fact that the courts have decided that these people are technically not convention refugees doesn't end the matter. The Canadian people have the right to amend their legislation or otherwise change procedures in such a way as to allow conscientious people, conscientious objectors, as most of them were found to be by the courts, to remain in this country.

The war in Iraq was initiated in violation of international law. It was not defensive in nature and it did not have UN Security Council approval. As well, we know that torture is widespread in Iraq, and we know as well that the Military Commissions Act of 2006, the U. S. legislation, essentially made it impossible for anyone to be convicted for applying torture to Iraqi civilians. Applying torture or ordering torture is not illegal pursuant to that act. There are many solid reasons for not wanting to be associated with a policy like this.

Mr. McDowell and other people in this room, ladies and gentlemen, were betrayed. They were betrayed by the President of the United States, who lied to them about the basis for the war, lied to them about what supposedly were the threats to their country, and used them as pawns in an illegal war.

I say to you that you have the opportunity and, with respect, you have the obligation to ensure that for people of good conscience—Phillip McDowell, who went to a Catholic university and is quoting Catholic doctrine of just wars to you, or the Quakers in the room, or others—you not just apply a technical understanding and say since they're not convention refugees, to heck with them.

I say to you that the Canadian public will not accept this. I ask you in all conscience to ensure, to the best of your abilities, that these people are allowed to remain in Canada.

I will add one thing. Section 25 of the Immigration and Refugee Protection Act, IRPA, says that people can make applications on humanitarian and compassionate grounds. It includes the consideration of public policy—for reasons of public policy.

I understand the two witnesses who were here before don't want the law changed in any way, and they don't even want this committee to tell them that as a matter of public policy nobody should be removed while their humanitarian and compassionate applications are being considered. Take into account the fact that these people are conscientious objectors to an illegal war.

Thank you.

The Chair: Thank you, Mr. House.

Ms. Broughton, do you have anything you want to say?

Ms. Gay Anne Broughton (Program Coordinator, Canadian Friends Service Committee): Thank you. It's a wonderful privilege to address you today.

The general secretary of Canadian Friends Service Committee is the one who looks after this theme within our organization. She is unable to be here today because of illness, so I beg your pardon for having to read word for word what is before me.

I'm a program coordinator for Canadian Friends Service Committee, which is the peace and service arm of the Religious Society of Friends in Canada, commonly called the Quakers.

In addition to the points I'm about to present, we have a written brief that was submitted by email yesterday, and I have hard copies here. That brief includes information on Quakers, textual quotations of international law concerning the rights of conscience, and a proposed definition of conscientious objection based on international standards.

The right to conscientious objection to military service derives from the right to freedom of thought, conscience, and religion. It can be based on religious, ethical, moral, philosophical, humanitarian, or related motives. These rights are captured in the Universal Declaration of Human Rights, article 18, and in the International Covenant on Civil and Political Rights, also article 18. Canada is a signatory to both and includes these rights in its Constitution.

These instruments assert that these rights apply to everyone. Conscientious objection to military service is a legitimate exercise of this right, and a decision by the UN Human Rights Committee in 2006 in favour of two conscientious objectors from the Republic of Korea put to rest any question of that.

Military personnel, whether volunteer or conscript, can develop a conscientious objection. Resolution 1998/77 of the UN human rights commission recognized this. That resolution puts no limits on whether the objection is to all war or to a particular war. Indeed, it is most often through experience itself that many basic human attributes, including conscience, are developed.

Many states clearly recognize that members of the voluntary army may develop conscientious objection, because they have provisions to allow such objectors to seek discharge. Sadly, policy and practice in the United States often do not align. Soldiers who are uninformed of their rights and do not have access to an independent assessment process are left with the choice to desert or to violate their conscience, which is perhaps the most sacred aspect of being human.

The war resisters have unqualified, "non-derogable" rights as conscientious objectors to military service, but are they refugees? We believe they qualify as refugees under the UN High Commission for Refugees handbook, paragraph 170, and I quote:

There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.

The published record and testimony given in hearings in courts show that these young men and women meet this requirement. That said, according to paragraph 171 of the handbook, their right to asylum hinges on the military action they are objecting to being condemned by the international community. The witness just before me explained how, in this case, the Iraq War has shown to be condemned by the international community.

So are Americans disqualified as refugees on the basis of nationality? Given the outcomes of the military trials related to the abuses at Abu Ghraib prison in Iraq, how can it be asserted that mere foot soldiers are not in need of protection if they squelch conscience and follow orders? We are left questioning the rationale of the court. Given the weight of their case, the rights of conscientious objectors, and Canada's history of accommodating people with a conscientious objection to war, there is a compelling argument for conscientious objectors to the Iraq War to be able to stay in Canada.

● (1635)

An in-Canada application process should be a modification of existing immigration procedures. All applicants should be subject to most of the same requirements applied to other immigrants: police checks; collection of personal information, including information on their family members and places of residence; letters of support regarding their application; medical examination, etc. A caveat would be that any outstanding warrants that are related to their desertion should not pre-empt qualification for permanent residency.

The applications would need to provide a detailed narrative, as spousal sponsorship applications do at the present time. In this case, the narrative would chronicle the development of their conscientious objection, including efforts they made to seek a discharge from the military or a rationale as to why they did not take such action, their decision to go absent without leave, and their decision to come to Canada. Letters of support should provide information to support the credibility and sincerity of the applicant's conscientious objection and their suitability to become permanent residents of Canada.

The point system, which is biased to the very well educated, should not be applied. In addition, the requirements for a particular level of financial means should be waived because they may well have limited financial means, and they would not have a sponsor such as a spouse or other type that a refugee would have.

Accommodations such as these are available through humanitarian and compassionate applications currently, so this should be an acceptable modification.

Some staff within Immigration Canada would need to be trained in rights of conscience pertaining to conscientious objection to military service in order to be able to adjudicate such applications.

These modifications of existing procedures would not seem to be onerous upon the government to implement.

Thank you.

● (1640)

The Chair: Ms. Broughton, thank you very much. I'd like to be able to give you more time, but it's one of those days when we have votes in the House of Commons, so we're going to have to be out of here fairly soon.

Since we have only twenty minutes, I'm going to try to have each of the various parties have at least five minutes to question our witnesses.

Could I first of all go to Mr. Telegdi? He's on the list here for five minutes, and then we'll go to Madam Faillie.

Hon. Andrew Telegdi: Thank you very much, Mr. Chair. I think in some ways, as we've had debate here or questions here, it really underlines how proud I was to be with Jean Chrétien when we debated this whole issue on the war in Iraq, and it really was one of my proudest moments as a member of Parliament when the Prime Minister said no to joining the war in Iraq. When I listened to Mr. Batters' rationale or presentation, it really reinforced that whole timeframe in which we made the decision.

I said the last time we dealt with this issue that I had lived through the Vietnam War experience in Canada, with many war resisters coming to Canada. I met many—not the 50,000 all told—on the west coast, in Vancouver and British Columbia, and when I was at the University of Waterloo I had many instructors and teachers who had fled the war in Vietnam. The poster child for that was Kim Phuc. If you remember, she was the young girl, nine years old, running from Napalm with her clothes burned off. Clearly that was an unjust war.

Mr. McDowell, I took your testimony...and that's what I was concerned about: people joining up for what they believed to be a just cause and finding out that it isn't a just cause. When one looks at what's happening at the International Criminal Court in The Hague, there are many people who are now being tried for war crimes who wish they had deserted or had said no, they weren't going to fight anymore.

The Chair: There are far too many conversations in the room, and I'd like to concentrate a little bit on what Mr. Telegdi is saying. I'm sure the witnesses would like that as well. So could we please have a little bit more of your attention?

Hon. Andrew Telegdi: I want to go back to Mr. McDowell.

Could you expand on at what point you came to the decision? How was it for you personally, and how was it for fellow soldiers who were facing that decision? It was not an easy decision to come to, I take it. How did you manage to cope with it?

Mr. Phillip McDowell: Growing up as an American, I just had this feeling, as many people do, that what my country was doing was representing goodness. I came to the conclusion that what we were doing at that point was representing what, to me, the United States doesn't represent. During my tour I saw the things that were happening and realized that we were there for an unjust cause, that the reasons for the invasion never happened, were never factual.

I felt very connected to it all at one moment, and it's when I was transferred to a small base just north of the city of Baghdad. I was the communications sergeant, so it was my communications team with an infantry battalion. The battalion would go out and patrol the surrounding areas and bring back detainees. These people would be tied up, hooded, and on the ground of the building in front of the battalion commander's office for a day or longer. The soldiers were required to let them use the washroom. However, they would refuse to untie their hands or take the hood off their heads.

I didn't hang around to see what the result of that was. However, at that moment I felt very connected to those crimes because that commander couldn't do that without my job. If I hadn't supplied the communications, it wouldn't have happened.

•(1645)

Hon. Andrew Telegdi: Thank you.

The Chair: One minute, Mr. Karygiannis.

Hon. Jim Karygiannis: Mr. Janzen, you said something about somebody from a Muslim country, I believe from Turkey...?

Mr. William Janzen: Yes, a person from Turkey.

Hon. Jim Karygiannis: He is a Kurd, correct?

Mr. William Janzen: I think he is...

Hon. Jim Karygiannis: Okay. So he would have a conscientious objection to going to serve in north Cypress?

Mr. William Janzen: His objections are in principle. It's not only—

Hon. Jim Karygiannis: Since Turkey is invading, and is the military occupant of north Cypress, I would say that he'd probably have a military objection to that, and that's why he's in Canada.

Mr. William Janzen: He has objections to killing—period.

Hon. Jim Karygiannis: This is why, sir, and I want to let you know this, I opened it up to others besides just the United States folks. There are others who are conscientious objectors who object to going to *any* war.

The Chair: Thank you.

Madame Faillie, five minutes.

[*Translation*]

Ms. Meili Faillie: I have a question...

[*English*]

The Chair: Was it not you, Madame Faillie?

[*Translation*]

Ms. Meili Faillie: It's my turn.

Mr. Karygiannis's question caught my attention and I didn't remember exactly what the question was that I wanted to ask, but it has come back to me.

Mr. House, you are the lawyer for a number of these conscientious objectors. You can probably enlighten the committee. Do you have specific legislative changes to propose to us concerning immigration or refugee claims?

[*English*]

Mr. Jeffrey A. House: Thank you very much for that question.

I believe it would be quite easy to write an amendment to section 25 of IRPA. The amendment would simply instruct the person making a decision with respect to humanitarian and compassionate considerations to take into account the status as a conscientious objector to war.

What we have now in section 25 is simply that for various humanitarian reasons, including reasons of public policy, a person may establish humanitarian grounds, but we don't have any clarity as to what public policies the Parliament of Canada wants to further.

For example, I did write, only as a suggestion, the amendment or motion that the fact that a foreign national has refused to serve in the present war in Iraq shall be deemed a highly important public policy consideration, under section 25, favouring the application.

Something like that, in my view, would be a very important step toward recognizing the validity of claims of—

• (1650)

Hon. Jim Karygiannis: What about other wars?

Mr. Jeffrey A. House: Well, that's fine. It could be broadened or not; I'm here in terms of American soldiers who have deserted the Iraq War.

There are many possible amendments or resolutions that could get this point across. Obviously, though, the present policy is that you make a humanitarian and compassionate application and then you're scooted out of the country while it's being considered. That doesn't make very much sense to me, and I don't even think it's humanitarian or compassionate.

The Chair: Madam Faillie, you have two minutes.

[Translation]

Ms. Meili Faillie: In fact, what you want in the short term is a stay of removal for people who have been rejected as refugees. Is that it?

[English]

Mr. Jeffrey A. House: A halt in removal?

Ms. Meili Faillie: Yes, a stay of removal, to be able to stay here until such time as their agency application has been—

Mr. Jeffrey A. House: Yes, well, that's a first step.

But as well, I would like there to be some instruction from this committee or from the Parliament that represents the Canadian people that conscientious objection to the Iraq War is a positive circumstance that suggests that the people who have done this would appropriately become residents of Canada, so that it's not taken against them.

Mr. Karygiannis asked this question before, and I think it's an important one. It used to be, until November 1969, that desertion was held against people who applied from inside Canada. That's what Mr. Trudeau did when he said Canada should be a refuge from militarism, and that element of the law was removed. So it should be removed and reversed when we're now talking about internal applications.

The Chair: Thank you, Madam Faillie.

Mr. Atamanenko.

Mr. Alex Atamanenko (British Columbia Southern Interior, NDP): Thank you.

Colleagues, I'd like to say that I have met a number of these folks, and they all have really gut-wrenching stories.

My question will be quick. In the *Ottawa Citizen*, Joshua Key says he witnessed U.S. soldiers carrying out beatings, robberies, even fatal shootings against unarmed Iraqi civilians—men, women, and children—when he served in the U.S. Army. He doesn't want to do this anymore; he doesn't want to carry this out. Does that mean it's

safe to assume that when he returns, if he were sent back to the U.S. A., he would then go to jail and have a criminal record?

That's my question to Phillip or Jeffrey.

Mr. Phillip McDowell: That is true. If he were to go back, he would have a prosecution, serve a period of time in prison, and then he would have that bad conduct discharge, which is a permanent conviction on your record.

Mr. Alex Atamanenko: So it's contrary to what we've been told here by others, that it may be just a simple jail sentence and everything will be fine afterwards?

Mr. Phillip McDowell: Yes, you have a bad conduct discharge, which is a conviction.

Mr. Alex Atamanenko: Okay. Thank you.

The Chair: Okay.

Four or five minutes go to Mr. Batters, and then I'm going to allow Madam Beaumier to have a question at the end, because somehow we inadvertently missed her hand going up. I apologize for that, so I'm going to give her the last question at the end.

Mr. Dave Batters: Thank you, Mr. Chair.

I'll share my time with Mr. Trost.

First of all, I'd like to say to Mr. McDowell—and I know I speak for everyone in this room—we're very thankful that you came back from Iraq safe and sound.

I do have one question for the witnesses, and any one of you can respond.

Do you really think that deserters who come from a prosperous, developed, democratic country that respects human rights, due process, and the rule of law are more deserving of special treatment from our country than the thousands upon thousands of legitimate refugees who we are trying to help, refugees who are living in camps, many in squalor, in danger, in fear for their lives, in fear for their families' lives, facing potential torture—I could go on and on—many of whom have lived in these camps for decades? Are deserters truly more deserving of special rights and privileges?

Mr. Jeffrey A. House: If I could answer that, I think deserters are deserving of assistance. That doesn't mean I think that others aren't also deserving of assistance. Canada is a large country, and if we're talking about 50 or 100 people, I doubt very much whether there is a zero-sum game, where if we bring in Iraqis who are suffering from the effects of the U.S. invasion, therefore American deserters who are also opposed to the invasion.... In my view, it's not a zero-sum game.

What we should be doing is looking at whether it is deserved—as I believe it is—that there be some accommodation made. If it is deserved, that should be the end of the story. We shouldn't look around the world and say, "They're only getting two years in custody, and if they were in the Soviet Union they would be getting 12, so let's not worry about it." I don't think that's the appropriate way to think about the question.

• (1655)

Mr. Dave Batters: I will defer now to Mr. Trost, Mr. Chair.

Mr. Phillip McDowell: May I comment on this?

The Chair: Very briefly.

Mr. Phillip McDowell: I personally believe that Canada should do as much as it can to help those people too. In terms of what Mr. Karygiannis was saying about soldiers coming from different wars or soldiers who are from a different country that is also participating in Iraq, I think they deserve the same treatment that I'm trying to get for myself and the others—any other country, just like Mr. Karygiannis is saying.

I do believe it should do as much as it can to help these people, and I would like to think this is one step along the way.

Mr. Dave Batters: I'm going to defer to Mr. Trost.

The Chair: Mr. Trost.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): Thank you, Mr. Chair.

I just want to make a couple comments here in the last two minutes.

I very much appreciate the witnesses' remarks today. I particularly understand where Mr. Janzen is coming from, because some of those 21,000 Mennonites included my Great Grandpa Dyck, a conscientious objector who served in the medical corps of the Russian army, as did my great uncle, Peter Dyck, who served in the medical corps of the Canadian army. He volunteered as a conscientious objector.

So I have very strong feelings about it. But I want to make a couple points here, and maybe the witnesses could respond. While I continue to support the whole concept of conscientious objection, one of the things I always find problematic is when people object to specific wars and not to war overall or war in general. That's not a problem for Mr. Janzen, but I want to put that out.

I did appreciate the gentleman's remarks about pushing for alternative service, because I have absolutely no respect for anyone who volunteered to serve and then, even if they did have a conscientious change, were not willing to provide alternative service. As I said, my Great Uncle Pete volunteered to do body recovery in World War II. He wasn't drafted by the Canadian military; he volunteered, and he took the toughest of tough assignments.

Third, the other thing I appreciate from my Mennonite history is that we Mennonites have always been willing to take the consequences of our religious faith, wherever it was. The Catholics, the Protestants, the Dutch Reformed, the Lutherans, they all killed us for what we stood for—for our objections.

Those three elements are the minimum requirements for conscientious objection that I would respect. But without those elements, I have a hard time accepting where people really come from. The witnesses can comment on that.

I also want to make one last point here.

The Chair: Just one last point.

Mr. Bradley Trost: How in the world do we deal with the possibility of abuse? People can say they conscientiously object, and they may be very, very sincere about it, but how do we deal with those who are not sincere?

The Chair: It will have to be a brief response, so I can go to Ms. Beaumier.

Mr. Jeffrey A. House: I would simply say that the distinction between the objection to specific wars versus general objection is an important point. However, the reality on the ground may well be a specific war that is just totally unacceptable. To say, well, I'm being asked to kill civilians but I won't object if the United States were invaded and I would still volunteer, to me, that is a coherent theory that makes perfect sense. It's the same thing as the general law of assault: you don't always have to object to assaulting people if you simply don't want to assault people who are not assaulting you.

With respect to how we deal with false cases, that's done simply through winnowing them out, and that's done all the time. It's done all the time only in connection with the question, do you object to all wars? It could also perfectly well be done on the question, do you have a conscientious objection to this specific war?

The Chair: Thank you.

Ms. Beaumier.

Ms. Colleen Beaumier: Thank you.

I have a couple of things to say. First of all, when we listened to the IRB, I knew they were wrong about draft dodgers during the Vietnam War. If they had been right then, we wouldn't have had safe houses and RCMP officers in our parking lots looking to catch draft dodgers as they came from these safe houses after spending a couple of nights there before being rushed off to God only knows where. We didn't know these kids' names and we didn't know where they were going to end up, because it was no different at the time. They weren't allowed to come in as visitors and to apply, with everybody living happily ever after.

The one question I have.... There was nobody more opposed in this country than I was to the war in Iraq; I was Baghdad Beaumier. The Reform Party wanted to know why I didn't stay to be Saddam Hussein's mistress. It was pretty ugly. Well, he didn't ask me! So I have very, very strong feelings about this.

I would like to hear from both of you. We are at war. I don't think our war is any more justified than any other right now; I think there are other ways of dealing with these issues. I want somebody to differentiate between conscientious objectors to the war in Iraq and our soldiers coming home and saying they're conscientious objectors.

How do we deal with that?

• (1700)

Mr. Phillip McDowell: I would like to comment on that.

There is definitely a difference between the Iraq War and the Afghanistan War. If I had been stopped, lost, and brought back into the military, and they said, you're going to Iraq rather than Afghanistan, I wouldn't have gone wilfully or happily, but I would have gone because I believe that's a justified war—to me. Many people don't, and I respect that.

In terms of what you do when Canadian soldiers come back and they want to refuse to fight in the war on Afghanistan, from my small research, I did find out from talking to people that there is a method in the Canadian Forces that allows you to say, "I'm opposed to this war", and they can reassign you or transfer you to a different unit. That's my understanding.

Ms. Colleen Beaumier: In Canada?

Mr. Phillip McDowell: That's my understanding.

Mr. Jeffrey A. House: Yes, I understand that as well. There are administrative ways, where soldiers who oppose the Afghan War can do alternate service within the military. Obviously, the difference between the Iraq War and Afghanistan is, as Mr. Telegdi was saying, that it's carried out under a military umbrella, and there was, I believe, an actual attack against the United States that originated in Afghanistan, which gives rise legally to a right of self-defence. To me, there is no similar argument in the case of Iraq. The war is a totally unjustified invasion, in the same way if Canada decided to overthrow the Government of Paraguay.

Ms. Colleen Beaumier: The lies are lies; they're just bigger in Iraq than they are in Afghanistan.

The Chair: Ms. Beaumier, are you finished?

Ms. Colleen Beaumier: Do you mean have I stopped having my hissy fit? I think I've calmed down.

The Chair: No, according to the clock, I could allow you 60 seconds more, but thank you.

I want to thank members and witnesses for coming today to be part of this study that we're undertaking, and hopefully we'll be able to make some good recommendations to the ministers when we've heard the various witnesses who will be coming in to talk to us.

Thank you. I wish we had more time, because I'm sure people wanted to get on who didn't, and I apologize for that, but that's all we can do.

Thank you very much.

We will allow a moment for the witnesses to leave the table.

We are going to the motions. You all have the motion before you by Mr. Karygiannis, which was circulated to the committee some time ago, and which is scheduled today for discussion.

There are a couple of changes in that motion Mr. Karygiannis is putting forth, and if you have the motion in front of you, what he's saying here is:

The committee recommends that the government immediately implement a program to allow conscientious objectors and their immediate family members (partners and dependents), who have refused or left military service related to the war in Iraq...

Hon. Jim Karygiannis: Mr. Chair, can I read it?

• (1705)

The Chair: Yes, please, help me out here.

Hon. Jim Karygiannis: It reads:

The committee recommends that the government immediately implement a program to allow conscientious objectors and their immediate family members (partners and dependents), who have refused or left military service related to a war not sanctioned by the United Nations and do not have a criminal record, apply for permanent resident status and remain in Canada; and that the government

should immediately cease any removal for deportation actions that may have already commenced against such individuals.

The Chair: Okay. In order to present the motion in this particular form, the member would require unanimous consent of the committee.

Hon. Jim Karygiannis: Or you can have somebody amend it.

The Chair: We will have somebody move it.

Do we have unanimous consent to move it in this way?

Some hon. members: Agreed.

An hon. member: Amend it.

The Chair: Okay. Unanimous consent is given.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): No, there's no unanimous consent.

The Chair: You could have made it known when I asked if there was unanimous consent.

Mr. Ed Komarnicki: It was unanimous.

The Chair: Is there unanimous consent?

Some hon. members: No.

An hon. member: Amend it.

The Chair: I will leave it to somebody to amend the motion if it's going to be done in that way.

You heard the amendment.

Ms. Olivia Chow: I will amend it if you need further amendments. I will make that amendment.

The Chair: Any discussion on the amendment, first of all?

All in favour of the amendment?

Hon. Jim Karygiannis: A recorded vote, Mr. Chair.

Some hon. members: A recorded vote.

The Chair: Okay, a recorded vote on the amendment.

Mr. Clerk, take the vote, please.

(Amendment agreed to: yeas 7; nays 4)

The Chair: The question is on the motion as amended.

Is there any discussion on the motion as amended?

Mr. Trost.

Mr. Bradley Trost: Thank you, Mr. Chair.

I realize I'm fairly new to this committee as a substitute for someone else, so I don't completely understand the history of this. But one of the things I'm very curious about is the implications this would have for the Canadian Forces, particularly when we talk about wars not served with the United Nations.

Since this is essentially a discussion of the Iraq War, a lot of people forget that Canadian soldiers have served in the Iraq War. We have had—and maybe the Liberal members should listen to this since Canadian soldiers served in the Iraq War when they were in government. They did it in officer exchange programs with the British and with the American forces. In fact, we had a Canadian brigadier general who, to my understanding, was a senior commanding officer in Baghdad for a considerable length of time. I remember hearing the news clip of a Canadian army engineer who served with the British in the south during the invasion.

If we begin to imply, either implicitly or explicitly, that these wars are somewhat illegal, that these wars deserve conscientious objector status, that people from these wars that are not sanctioned by the... are we not implicitly condemning Canadian soldiers who served?

The Chair: Mr. Karygiannis, you're next on the list.

Mr. Bradley Trost: I'm making my point. This point is relevant.

Canadian soldiers who served.... I would have a problem if we started to give conscientious objector status to people who served in military actions that Canadian soldiers also served in, particularly if they didn't object to it in the beginning.

So we should be careful not to condemn, in any of our actions here, Canadian servicemen and women who have cross-served in officer exchange programs.

The Chair: Good. Thank you.

Mr. Karygiannis.

Hon. Jim Karygiannis: Mr. Chair—

The Chair: Oh, I'm sorry, Madame Faillie, and then Mr. Karygiannis.

[*Translation*]

Ms. Meili Faillie: Thank you, Mr. Chair.

I wanted to move an amendment to the motion, but I won't do it. Mr. Karygiannis has persuaded me that the motion as it is worded would cover stay of removals and the possibility of people staying here while their applications are being considered, more broadly. I will therefore not be moving an amendment, but I want to speak to the present amendment.

I think that the proposal made by Mr. House, the lawyer who appeared before us, is reasonable. We cannot deny the fact that in Quebec, hundreds of thousands of people have opposed the war on numerous occasions. At that time, I was not an M.P., but I marched against the war in Iraq three times, in -34°C weather. Considerations regarding conscientious objectors should be included in the criteria when applications for humanitarian consideration are being examined. I support the motion as amended.

• (1710)

[*English*]

The Chair: Thank you.

Mr. Karygiannis.

Hon. Jim Karygiannis: Mr. Chair, to be clear, to my knowledge, Canadian Forces have not participated in a war that was not sanctioned by the United Nations. Some of our soldiers might be in an exchange program with another country and would therefore have to go into Iraq. Our soldiers did not participate in a war that was not sanctioned by NATO. This war in Iraq—

An hon. member: [*Inaudible—Editor*]

Hon. Jim Karygiannis: Mr. Trost, if you have something to say, put your name on the list and say it. Until then, give me the courtesy.

The Chair: Order, please. I will go to the next speaker, Mr. Karygiannis.

Hon. Jim Karygiannis: Mr. Chair, this motion clearly states the war is not sanctioned by the United Nations.

The Chair: We'll go to Ms. Chow and then Mr. Telegdi.

Ms. Olivia Chow: Mr. Chair, may I call the question?

The Chair: You may not until I feel full discussion has taken place on it.

Ms. Olivia Chow: But do I not have the right to call the question at a committee?

The Chair: Yes, you do.

Ms. Olivia Chow: Then I am calling the question.

The Chair: Well, you'll answer to your colleague afterwards. He wished to speak.

Ms. Olivia Chow: Perhaps you can then ask for a vote on calling the question?

Hon. Jim Karygiannis: Could we have a recorded vote, Mr. Chair?

The Chair: The question is on the amended motion.

A point of order, Mr. Trost.

Mr. Bradley Trost: Mr. Karygiannis criticized me publicly, on the record. For the record, I did not say anything that was loud, in the mike, or disruptive. Mr. Karygiannis was making a disturbance when I was doing it. My remarks were very low. I gave Mr. Karygiannis respect during his remarks, and I wish he would have done the same and not gone off—

The Chair: That is a point of debate; it is not a point of order.

Hon. Jim Karygiannis: Mr. Chair, I would like to answer that. If I did say anything to the member to offend him, I apologize.

As you can understand, this is an issue that has a lot of folks—

The Chair: Reconciliation is just wonderful. I could sit here all day listening to people apologizing to each other, but the question is on the amended motion.

All in favour of the amended motion? This is a recorded vote.

(Motion as amended agreed to: yeas 7; nays 4)

The Chair: There being no further business, the meeting is adjourned.

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