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Thursday, May 7, 2009

Chair

Mr. David Tilson

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● (0905)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Ladies and gentlemen, this is the Standing Committee on Citizenship and Immigration, meeting number 15.

The orders of the day, pursuant to the order of reference of Wednesday, April 22, 2009, are that we consider Bill C-291, an act to amend the Immigration and Refugee Protection Act, in particular the coming into force of sections 110, 111, and 171. This is a private member's bill of Monsieur St-Cyr.

We have before us ministry officials. The deputy minister is here, Richard Fadden, who has distributed his presentation to you. I will let him introduce his colleagues, if he wishes to.

Members, the procedure would be that Monsieur St-Cyr would start the proceedings for ten minutes and Mr. Fadden would continue for another ten minutes. Then we would have questions up until ten o'clock at most, when questions would end and we would start clause-by-clause consideration of the bill. If I don't hear any objection to that, it will be the procedure.

Monsieur St-Cyr, you have the floor.

[*Translation*]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): Thank you, Mr. Chairman.

I am pleased to examine the bill I have introduced, Bill C-291, An Act to amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171).

At the outset, I would like to recall the text of the motion.

> Whereas:
>
> The Refugee Appeal Division is included in the Immigration and Refugee Protection Act;
>
> Parliament has passed the Immigration and Refugee Protection Act and can therefore expect that it be implemented; and
>
> The House of Commons and parliamentarians have a right to expect that the Government of Canada will honour its commitments;
>
> The Standing Committee on Citizenship and Immigration requests that the Minister of Citizenship and Immigration implement the Refugee Appeal Division without delay.

That motion was unanimously agreed to by this committee, the House of Commons Standing Committee on Citizenship and Immigration, on December 14, 2004. Nearly five years ago, the four political parties around the table believed that the Refugee Appeal Division should be implemented without delay. I am convinced—and this is my greatest wish—that the same political parties meeting here today will consider that five years of waiting is much too long when they believe that something should be implemented without delay. Bill C-291 must be passed soon.

In the House, I have had occasion to name a number of organizations that formally supported this bill. I won't name them all again, but I would like to single out a number of organizations that themselves represent a number more, or that represent a number of people. They are as follows: Amnesty International, the Quebec Immigration Lawyers Association, the Barreau du Québec, the Canadian Bar Association, the Canadian Council for Refugees, the Fédération des femmes du Québec and the Table de concertation des organismes au service des personnes réfugiées et immigrantes.

Bill C-291 has received the widespread, not to say unanimous approval of the organizations involved in the advocacy of immigrant and refugee rights and from the legal community.

The reasons for this bill are very simple and can be divided into two categories. The first category concerns natural justice. The second is important for reasons of efficiency.

I'll start with the issue of natural justice. As you are no doubt aware, Mr. Chairman, in our Canadian legal system, it is still possible to appeal from court decisions. The same is true in the case of crimes and much less serious disputes, that is to say the consequences of which for individuals are much less significant than the consequences related to deportation to the country of origin of a person who seeks asylum in Canada because his life is in danger.

And yet there is currently no opportunity to file an appeal on the merits with the Refugee Appeal Division. These are decisions that may have serious consequences for the lives of individuals. These individuals may be sent to torture or even death. If provision is made for appeals to be instituted in cases where the lives of individuals are not threatened, it should be possible to do the same in these cases.

This is a matter of natural justice, and there must be an end to the arbitrary attitude that currently reigns. Arbitrariness arises in any organization composed of human beings. Human beings inevitably make mistakes and are not perfect. That is why our justice system provides for the possibility of appeal.

Although this is not true of the majority of board members, there are some who are simply incompetent. This may be seen from the refusal rates of some, which approach 100%. One seriously wonders whether some are not simply racist.

● (0910)

I would like to encourage members to do the following simulation in their heads. Imagine you are appearing before a judge—and I hope you never will—because a charge has been laid against you, and you learn that this judge convicts 98% of the individuals who appear before him. You inevitably think that this is all a masquerade, that you have no chance. And yet we tolerate that for refugees.

At the other extreme, some board members have acceptance rates of nearly 100%. As a result, individuals who are not refugees within the meaning of the act file claims and are lucky to be dealing with a fairly easy-going member who allows their claims and lets them enter the country as refugees.

Mr. Chairman, I would like to recall that there is no possibility of appeal on the merits. Of course there are a number of other mechanisms based on related matters, but none of them makes it possible to institute a genuine appeal on the merits. The pre-removal risk assessment (PRRA), enables a claimant whose claim has been refused to present new evidence before being deported. However, if the work has been done well at the time the refugee claim is filed, if all evidence has been submitted and there is no new evidence to provide, the PRRA provides no remedy.

As to the possibility of seeking a judicial review in Federal Court, first, it must be emphasized that this procedure is rarely allowed and, second, even where it is, it can only concern the formal aspect, the legality of the decision. In no case can a refused claimant or even the minister—because the Refugee Appeal Division could be used by the minister—ask the Federal Court to rule on the merits of the case.

Lastly, the permanent residence application on compassionate grounds is not a viable avenue either. By its very nature, it is a purely discretionary option, and thus just as arbitrary, and those who file such an application may always be deported before the decision is even rendered.

Mr. Chairman, with respect to natural justice, the Refugee Appeal Division will permit coherence among decisions. There's currently no way to know from the outset, in a definitely reasonable manner, what the board members' decisions will be. We have the example of two Palestinian brothers who were in the same situation and who filed identical claims. The claim of one of them was allowed by one board member, while that of the other was refused by another. This makes the system completely inefficient.

I now come to the question of efficiency. One may think that there will be fewer applications for judicial review with a Refugee Appeal Division. Lawyers currently use this mechanism, this option, somewhat out of despair, because they feel that their client has been a victim of an error. This is virtually the only method they see, but it does not work very well. Judicial review is a very costly method. These are very busy, unspecialized courts, unlike what a Refugee Appeal Division would be.

Lastly, the enhanced predictability of board members' decisions should result in fewer frivolous claims being received at the outset, since the minister would also be able to appeal from decisions. As a result, the lawyers of individuals whose claims have no chance of being allowed will no doubt be advised not to file them, since that would be pointless. We currently hear more and more about the board member “lottery”: you file a claim, you throw the dice and, if you are lucky, you get a good board member and your claim will be allowed, whereas if you're dealing with a bad board member, it will be refused. This is what must be stopped.

In conclusion, Mr. Chairman, I would like to recall that Parliament has ruled on this matter on a number of occasions. It did so for the first time in 2001 by passing the Immigration and Refugee Protection Act. Then, in 2004, it unanimously supported a motion introduced by the four parties requesting that the Refugee Appeal Division be implemented, and immediately, as I recall.

● (0915)

In the last Parliament, Bill C-280, the intent of which was exactly the same, passed through all stages in the House of Commons. It was also passed in the Senate. Unfortunately, as you know, Mr. Chairman, the bill died on the Order Paper, because the House of Commons lacked the time to adopt the Senate's amendments.

I encourage all members of this committee to be consistent with the position they adopted in 2004 and to give their unanimous support to Bill C-291.

[*English*]

The Chair: Thank you, Monsieur St-Cyr.

Mr. Fadden and your colleagues, welcome to the committee.

Monsieur St-Cyr took ten minutes, right on the button, so hopefully you can do the same.

Mr. Richard Fadden (Deputy Minister, Department of Citizenship and Immigration): I'll try to do that.

Thank you, Mr. Chairman.

May I start by introducing my two colleagues?

Micheline Aucoin is the director general of refugee affairs in the department, and Luke Morton is senior counsel in our legal services unit.

Let me start by thanking you for the opportunity to appear before the committee to discuss Bill C-291.

As members of this committee are aware, the Government of Canada is a firm supporter of the humanitarian dimensions of our immigration program. However, it does not support this proposed legislation. Although a lot of time and a lot of words have been expended so far on the proposed refugee appeal division, the government's position can be articulated quite simply. If Bill C-291 is passed into law, it will not help address the challenges facing the refugee status determination system, and in fact it will likely hinder the system.

As I will argue below, a system with multiple review and appeal points does not need another one. Indeed, the excessive delays found in the current system may to some extent seem to benefit individual applicants. In point of fact, I do not think this is the case, as the system spends far too much time dealing with applicants with little or no claim, to the detriment of those who have a real claim to make and who we have a responsibility to deal with in a reasonable timeframe.

[*Translation*]

Every year, Canada takes in nearly 250,000 new permanent residents who adopt the Canadian values of freedom, democracy, respect for human rights and the rule of law. They include thousands of refugees attracted by our values and the chance to start new lives. In the past three years alone, more than 80,000 refugees from around the world have been accepted through the Refugee Resettlement Program and Canada's refugee system. In fact, Canada is one of the three countries in the western world that admits the most refugees for resettlement purposes. We also know that the number of refugee claimants in Canada has risen at a higher rate than in most other countries of the world.

● (0920)

[*English*]

In 2008 there were almost 37,000 new refugee claims, as compared to over 28,500 in 2007. This represents an almost 29% increase in refugee claims. A recent United Nations report indicated that the percentage increase of refugee claims for Canada is almost three times the average of the 51 countries they studied. The welcome we extend has given us an international reputation as a champion of human dignity. Nevertheless, Mr. Chairman, this is a system under serious pressure. It is becoming clear that our refugee protection system, while recognized internationally as one of the fairest and most generous in the world, faces a number of challenges.

We know our in-Canada refugee status determination system is complex and can be slow. At the moment, even the most straightforward refugee claim takes far too long to be resolved. But it is the large and growing number of unfounded claims that is putting an incredible strain on our system. For instance, lately there's been a sharp increase in the number of asylum seekers from other countries with relatively low acceptance rates at the Immigration and Refugee Board. Mexico is a good example: almost 90% of claims from Mexican nationals were not accepted by the IRB last year. In fact, and it's important to remember this, last year only 42% of all refugee claims were found by the board to be valid.

We need to consider whether this is an efficient use of resources, or if unfounded claims are bogging down the system and slowing the process for those who truly need Canada's protection. In this context, I want to stress that even without Monsieur St-Cyr's proposed refugee appeal division, Canada's refugee status determination system meets all the requirements of the charter and all of Canada's international legal obligations.

Mr. Chairman, the government has maintained it is committed to exploring options to improve the refugee status determination process so it can better assist the people it was designed to protect and who Canadians want to protect. The question is whether Bill C-291 is the way to go.

Failed refugee claimants already have access to three recourse mechanisms that ensure no one is removed from Canada before all aspects of their case have been thoroughly reviewed. These failed refugee claimants can apply for leave to the Federal Court for judicial review, they can apply for pre-removal risk assessment, and they can apply for permanent residence on humanitarian and compassionate grounds. Indeed, these recourses are often available to applicants two, three, or more times.

I'd like to say a couple of words on the comprehensiveness of the judicial review available to failed claimants. You'll remember that Monsieur St-Cyr emphasized this aspect as well. It is sometimes asserted that the Federal Court does not review the decisions of the refugee protection division on the basis of errors of fact. This contention is not supported by the law, or by Federal Court jurisprudence. Parliament has given the Federal Court legislative authority to overturn a tribunal decision on several grounds, including an erroneous finding of fact that is made in a perverse or capricious manner without regard to the material before it. There are numerous examples in the jurisprudence where the Federal Court has remitted a matter to the refugee protection division on the basis of an erroneous finding of fact.

The point I'm trying to make here, Mr. Chairman, is that the Federal Court is a comprehensive appeal body from the refugee protection division. The Federal Court can review matters of law, matters of fact, and mixed matters of fact in law. It is in fact the appeal body Mr. St-Cyr is talking about in a different mode.

[*Translation*]

Implementation of the proposed bill would add an additional review stage that would further extend the process. In addition, Bill C-291 proposes only a paper review of refugee claims refused on questions of fact and law. It provides for neither the introduction of new evidence nor a hearing in person.

However, it will no doubt have the effect of increasing costs and further slowing an already overloaded system. The cost associated with the implementation of the Refugee Appeal Division is estimated at some tens of millions of dollars in addition to permanent annual costs that will have to borne by the federal government and provincial governments. In addition, it would extend the processing time for the files of refused claimants by at least five months.

Mr. Chairman, the fact that many refugee claimants are not genuine refugees offers food for thought. This means that we are devoting a large portion of our time to processing claims filed by individuals who are not genuine refugees and who are ultimately refused. As I've already said, our ability to assist individuals who are genuinely in need of help is thereby further reduced.

● (0925)

[*English*]

Minister Kenney has stated that he wants to look at changing the system as a whole. We submit that implementing the refugee appeal division at this time would complicate efforts to improve the efficiency and effectiveness of the refugee status determination system and would make the existing system more cumbersome. I would therefore ask members of this committee not to proceed with Bill C-291.

Mr. Chairman, thank you. I would be pleased to try to answer any questions the committee might have.

The Chair: Thank you very much.

As agreed, each caucus will have up to seven minutes for questions or statements. That would include you, Mr. St-Cyr, as part of the Bloc.

Mr. Karygiannis.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): Mr. Fadden, good morning, and welcome once again to the committee.

Your minister says that this thing works. Sir, I have two cases in front of the minister, and these are cases of people from mainland China. Families came here and claimed refugee status. One individual got married. She has a kid about five months old, and your department, sir, is looking to deport her. PRA said to her, "Get a passport for little Kevin, because we're going to deport you." So here we've got a mother, Ms. Guo, who's breastfeeding a young individual, and they're about to deport her. The system does not work, sir. It's broken.

If the mother chooses not to take the young individual with her because the father might not sign the passport, where does that put the mother and child relationship? We are not looking at the child's interests, but what we're saying is "Go." The officer from PRA said, "Get me the passport of the child quickly so we can deport you."

Tell me, sir, how the system works. Tell me where the rights of this young individual are, a five-month-old Canadian. The father is a landed immigrant and he has a business and he has people he employs. How is this family going to be kept together and how is this family going to be looked upon when they're separated for a year?

I have another case where the mother is a Canadian citizen, she had a child, and after she had the child she had difficulties and was put into a situation where she has to be in a clinic that provides for her and her well-being. We're saying to the father that we're going to deport him. He has to make a choice of leaving his family and his wife in the hospital while he's in China. We said that maybe his wife can bring him back to Canada, but because she doesn't work and she is in a mental institution, a clinic, she won't be able to provide for him.

The system does not work.

So tell me, sir, what I am supposed to tell these two families?

Mr. Richard Fadden: Thank you.

Well, first of all, Mr. Kenney and I certainly do not think this is a perfect system. The question before the committee today, though, is whether Bill C-291 will make it a better system. I would argue it will not.

The individuals you referred to have the right of appeal to the Federal Court, which can have a more comprehensive look at their cases than the refugee appeal division can. I don't know about the PRA decision in this particular case, but I do know that under the rules, if they had applied for humanitarian and compassionate stay in Canada, the rules provide that the best interests of the child are to be taken into account.

I'm sorry, I can't talk about the individual cases because I don't know the details. I concede your point, this system is not perfect. I would simply note that I do not think the RAD will make it materially better.

Hon. Jim Karygiannis: Mr. Fadden, you're saying to me that they have the right to appeal, they have the right to go to the Federal Court. That means they have to hire a lawyer, and that means they have to come up with anywhere between $3,000 and $6,000 for a lawyer. You tell me that under H and C, the humanitarian and compassionate application, they will take the rights of the young individual, young Kevin.... H and C, sir, takes up to four years to be seen in your department. They're deporting people as fast as a year, a year and a half, even sooner.

Now, I see, sir, that you're shaking your head. That means you're agreeing with me. The system does not work. This thing in front of us will fix the system. This thing in front of us will take care of the young woman who wants to have a review of her case and does not want to pay legal fees because her young family might not be able to afford it. So I say to you, sir, why don't we just move on? Why doesn't the minister agree that this will work?

● (0930)

Mr. Richard Fadden: As I said in the answer to your first question, I don't think the system is perfect, but I don't think the RAD is going to make it any better. Clearly, there are costs in going to the Federal Court. As it turns out, I'm now in negotiations with a number of provinces about making additional funds available to them for legal aid purposes, for purposes of the refugee act. There are provisions to help people do that.

I fail to see, Mr. Chairman, how a paper-based review by the RAD is going to be any better than the system we have now. The Federal Court can review these individual cases more fulsomely than could the RAD, which can only have a paper review; the people cannot appear before them.

Hon. Jim Karygiannis: Mr. Chair, I'd like to share my time with Ms. Alexandra Mendes.

[*Translation*]

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Good morning, Mr. Fadden. Thank you for your presentation.

The problem I see from the outset—and God knows I've worked in the field for a long time—is the very arbitrary power of board members when they make decisions. The fact that we don't have an appeal system makes the process very precarious for individuals waiting for decisions on their status. This system is provided for under the act, but it is not yet in effect. I don't know how to resolve the situation and I don't know whether this is the only solution, but the problem definitely stems from the commissioners and the very arbitrary manner in which they make decisions. If we don't put a more structured and firm appeal system in place, we will not solve this problem. That is why it is necessary and important to put this appeal mechanism in place.

Mr. Richard Fadden: Thank you, Mr. Chairman.

I think we have to be reasonable. There is an arbitrary aspect to the commission and there is even one, to a certain degree, in the judgments of the various Federal Court judges. That is simply one thing we have to deal with.

In response to your concern, I would like to say two things. First, the Federal Court's judgments are binding on the commissioners, which has the actual effect of bringing about a level of coherence among their various decisions. In addition, the courts have recognized the guidelines issued by the commission chairperson as a reasonable measure to encourage board members to handle similar cases in a similar manner.

I've been in my position for three years, and one of the things that very much surprises me is that the decisions superficially seem arbitrary, but every case has special and particular aspects. It's not as arbitrary as it appears. You have to examine each case in detail. I acknowledge that there is an arbitrary aspect, but Federal Court decisions have the same practical effect as those the Refugee Appeal Division would have.

The Chair: Thank you.

Mr. Paillé, go ahead, please.

Mr. Pascal-Pierre Paillé (Louis-Hébert, BQ): Mr. St-Cyr, since your remarks aren't consistent with those of Mr. Fadden, what do you think about his comments?

Mr. Thierry St-Cyr: You probably saw me jump a number of times during his presentation. I'm pleased to have the opportunity you've afforded me to react to some comments with which I don't agree.

In fact, I'll first react to something I do agree with. Mr. Fadden emphasized that we recently observed a sudden increase in the number of refugee claimants from countries whose acceptance rate at the Immigration and Refugee Board is relatively low. The example he cited was Mexico, and he added that, ultimately, only 42% of all refugee claimants are processed and found to be valid. That's true.

In my opinion, that shows just how dysfunctional the system is. Is there another government system that has such a low success rate? Imagine if only 42% of passport applications were accepted! Someone would say that something's not working somewhere.

How have we come to this point? Contrary to what Mr. Fadden said, the Refugee Appeal Division is not only for refused claimants. Subsection 110(1) of the Immigration and Refugee Protection Act states: “A person or the Minister may appeal [...].”

What happens now? Since it's arbitrary, since there's no case law and the system operates like a lottery—the “board member lottery”—a lot of people file claims hoping they'll wind up with a sympathetic board member. If we had a system with good, well-settled case law, an effective appeal division, if people knew from the outset that they had no chance, because even if they wound up with board member X, the minister would appeal and they would lose, these people would not file. As a result, the success rate would not be so low.

There was another comment I wanted to react to. It concerns the possibility of filing an appeal. There is currently no opportunity to file an appeal on the merits. I moreover noted in my text that when we talk about other mechanisms, we prudently talk about recourse mechanisms, but we never talk about real appeal mechanisms. The reason for that is very simple.

First, very few applications for judicial review are accepted by the Federal Court of Canada. And when they are dismissed, no reasons are given. We can't know whether the court has dismissed them because it does not want to examine the issue on the merits or because of procedural issues: it does not give reasons for its decisions. Consequently, I do not understand how Mr. Fadden can come to the conclusion that the court engages in appeals on the merits: it does not give reasons for its decisions to dismiss.

Then—this time correctly—he recalled that the Federal Courts Act enables the Federal Court to overturn a decision based on “an erroneous finding of fact... made in a perverse or capricious manner”. It is these criteria that rule out the majority of cases. Obviously, in an extreme case where a decision has been made in a perverse or capricious manner, someone might have a chance to make his point in Federal Court. The fact nevertheless remains that, in the majority of cases—the Federal Court has said so in judgments—there is no opportunity for appeal on the merits.

I am not the only person to think this. There's the Canadian Bar Association, which knows the law quite well. There's the Quebec Immigration Lawyers Association, which also knows the law quite well.

In December 1997, the Legislative Review Advisory Group, appointed by the Minister of Citizenship and Immigration, published a report entitled, “Not Just Numbers: A Canadian Framework for Future Immigration.” According to page 94 of the report, that working group, appointed by the minister, felt that the system of judicial review of decisions concerning refugees was too restrictive because of the requirement that leave be obtained to appeal and the fact that the grounds of appeal were limited to the legality of the decision.

In concluding, I'll give you a brief report on the discussion that took place before this committee on Tuesday, February 10, 2009. Mr. Thierry St-Cyr said: “However, the Refugee Board is the only tribunal in the Canadian justice system that does not provide for appeals on the merits. Am I correct in saying it is not possible to appeal on the merits?” In response, the Honourable Jason Kenny said: “Technically, you're correct, Mr. St-Cyr [...].”

● (0935)

In my opinion, when you make the laws, you make them so they will work. You can't say that, technically, there's no appeal on the merits, but, in certain cases, the courts may have the necessary discretion to provide for one.

Although it has to be admitted that there are other mechanisms, other remedies, there is no appeal on the merits, and that's a major fault in the justice system. In Canada, refugees are the only ones who do not have access to this elementary legal procedure.

[*English*]

The Chair: You have a minute.

[*Translation*]

Mr. Pascal-Pierre Paillé: Mr. Fadden, you say you've been in your position for three years. Apart from the increase in the number of claims, have you noticed any major changes in the course of your duties?

● (0940)

Mr. Richard Fadden: I think there's been an increase.

I'm going to take this opportunity to make a comment on what Mr. St-Cyr just said. He's a bit put off by the fact that the acceptance rate is only 42%. However, in the department where I work, we believe that we mustn't accept or reject people arbitrarily, but that we have to enforce the law. In Canada, a very large number of refugee claimants should not be accepted. The act is designed in such a way that it is very easy for a person arriving in Canada to file a claim. In view of these circumstances, we don't consider an acceptance rate of 42% unreasonable.

In addition, we're starting to receive increasing numbers of claims from countries such as Mexico. Honestly, the Government of Canada does not believe that the way in which the Mexican government deals with its citizens is consistent with what is defined in the Refugee Convention. What is very different now is that increasing numbers of claimants should not be accepted. These are in fact economic refugees, not convention refugees.

Mr. Pascal-Pierre Paillé: Apart from—

[*English*]

The Chair: That's it.

Ms. Chow, please.

Ms. Olivia Chow (Trinity—Spadina, NDP): Mr. Chairman, UNHCR considers an appeal procedure to be a fundamental, necessary part of any refugee status determination process. It allows errors to be corrected, and can also help to ensure consistency in decision-making. Canada, Italy, and Portugal are the only industrialized countries that do not allow rejected asylum seekers the possibility to have first-instance decisions reviewed on points of fact as well as points of law.

This was written in 2002. I find it quite shameful that after six years, Canada still has not implemented the refugee appeal division, even though Parliament several times has debated this issue, several times has approved it, and said yes, we should implement the division.

In fact, we are violating an international legal obligation. We signed onto the 1951 convention relating to the status of refugees to protect them. Yet we do not have any appeal. What is the consequence? Well, to a person being sent back, a wrong decision could mean torture, persecution, sometimes even death.

In 2002 Parliament reduced the number of board members. There used to be three board members and then it was reduced to two and in 2002 it became one board member. So one single person makes a decision on life or death for some of these refugee claimants. I find it inexcusable to say that the only process one can follow is to go to court.

The court is not set up to deal with failings of the refugee determination process, because it's really expensive to go to Federal Court. It's expensive for the taxpayers of Canada, and it's expensive for the refugee claimants. By and large, refugee claimants don't have a lot of money. I don't know why we would end up pushing all these people into Federal Court. I've seen an explosion in the number of cases that go in front of the Federal Court.

In many ways the appointment process is flawed, in that there are no appointment committees, no appointment commissioners. Even though the Conservative government said they would do that, it hasn't happened. So you have board members who have publicly declared that homosexuality is a sin, and this board member could easily be dealing with sexual orientation cases in front of the refugee board.

I see no reason why we do not implement the refugee appeal division. I hope our committee will quickly adopt this and bring it back to the House of Commons.

It looks as if I still have one minute left. I don't know if Monsieur St-Cyr would know how much it has cost the Federal Court, or whether there would be any reduction of cost if the refugee appeal division could be implemented so that the Federal Court would not be clogged up with refugee cases.

● (0945)

[*Translation*]

Mr. Thierry St-Cyr: In all our justice systems, there are opportunities for appeal. However, lawyers do not systematically appeal. A lawyer appeals if he thinks he has a reasonable chance of winning or that he has been a victim of injustice at the trial level. Currently, the large number of appeals in the Federal Court of Canada is due to the lack of an appeal division. It is therefore reasonable to think that, with an appeal division, that number of cases would decline sharply.

If you want to calculate the costs associated with the Immigration and Refugee Protection Act, the IRPA, you have to consider the fact that we've gone from two to one commissioner, which represents a saving of approximately 50%. Of course, introducing the Refugee Appeal Division would use up part of that saving, but, in net terms, there would still be a real saving.

Having said that, I would like to emphasize that we're talking about the lives of human beings and that if a party refuses to support this bill because it thinks it would be too costly, I would like that party to tell us from what price it would be prepared to implement the Refugee Appeal Division. What is the value of an appeal division that could prevent us from sending an individual back to torture and death? If a political party at this table is able to answer that question, I hail it; it's very strong. I wouldn't be able to do it.

I want to be very clear about the 42% rate, I didn't mean that we should accept people who aren't refugees within the meaning of the act. I'm saying that this is a symptom of a problem. In the case of employment insurance, allowed claims do not represent just 42% of the claims that are filed. Why is that the case? That's the way it is because people look at the criteria and see whether they are eligible or not. If they have a job or if they haven't accumulated enough hours, they don't file a claim; that's it.

Why do we accept only 42% of claims? Of course, Mr. Fadden is right, some people who file claims are not refugees. Why do they file claims then? Because there is no refugee case law. Consequently, they feel that, if they're lucky, they'll be dealing with a good board member and that, if their claim is allowed, the minister will have no opportunity to appeal it. If an easy-going commissioner grants refugee status to anyone, the minister's hands are tied. He has no opportunity to appeal from those decisions or to correct the situation.

[*English*]

Ms. Olivia Chow: Ten percent of the Federal Court—

The Chair: You're going to have to be very quick, because your time is up.

Ms. Olivia Chow: Okay. Ten percent of the Federal Court applications get granted leave, but no decisions are given for the 90% that are rejected. As a result, claimants have no idea, whereas the RAD would at least give you a reason, and it's a much more efficient way to go.

The Chair: Very briefly, because we're right at the time.

Ms. Olivia Chow: And PRA only get 3%.

[*Translation*]

Mr. Thierry St-Cyr: Once again, there is no case law in 90% of cases because the Federal Court of Canada simply gives no reasons for its decisions.

[*English*]

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Mr. Chair.

I want to go back and get from Mr. Fadden his response to Mr. St-Cyr's comments.

One of the foundations that Mr. St-Cyr builds his case on is the inadequate success rate of our current system. It would seem to me that the success rate, quite frankly, has nothing to do with whether a process is working or not working. Some would argue that the less success we have, the better a particular system is working. Some argue that the more successful the system is and the higher the percentage of acceptance, the better the system is. This is not, as I understand it, why this....

The whole process that we have put in place as a federal government does not in any way, shape, or form, in any piece of the legislation that pertains to it, or any of the regulations, speak to some sort of informal or formal success rate of the applicants being a reason or what would justify an additional appeal mechanism for our system.

I would like to get your comments on that, just to really speak to that in itself as to where the ministry determines whether it's been successful or not.

And second, as a government we obviously are going to be bringing changes forward in fact to address some of the issues Mr. St-Cyr has brought forward. Perhaps you could indicate, or at least reinforce, that we realize there are issues within the system itself that we do want to change to make this process a much stronger and more formidable one.

● (0950)

Mr. Richard Fadden: Thank you.

I agree with Mr. St-Cyr on one thing, which is on the point that you've made. There's nothing magical about a particular percentage of acceptance or rejection. He can argue that 42% is too low; I can argue it's too high. That's not the issue.

I'm sorry Ms. Chow left. The United Nations High Commissioner for Refugees has said that Canada has the best refugee determination system on the planet. I sat opposite the high commissioner a year and a half ago and was told, “Sure, we're never going to say publicly that an appeal division isn't a good thing, but I'm telling you that if most of the countries on this planet had a system that was half as good as Canada's, we would be ecstatic.”

So the percentage of acceptance rates I think are not particularly important. What is important, though, is that our current system is being overburdened by an excess of applications that are not really sustainable in law. The addition of the refugee appeal division will add five months. It means that provinces will have to pay for education, for health, for welfare, by and large, for people who will not be held to be refugees. But because they have been enabled to stay in Canada longer, they will probably be allowed to stay for humanitarian and compassionate reasons. The practical effect of this additional five months will mean that non-refugees will be allowed to stay in Canada even though they should not be allowed to stay.

Mr. Dykstra asked if I could comment a little bit on the minister's proposals for making change. I can't talk about that in a great deal of detail. Mr. Kenney himself said on a number of occasions that we recognize the current system isn't working. It is devoting far too much time to cases where there's patently no basis in law for the person being made a refugee. I think we have to look that through.

The government has been quite successful in increasing the number of commissioners. That's been very helpful. But one way or the other, we have to find a way to deal with the increase in applications. With the world economic crisis it's going to get worse before it gets better. Adding an additional five months in a way that we believe will not substantively help the resolution of individual cases is not the way to go.

Mr. Rick Dykstra: There are two things, just based on your comments.

I would like for you to reinforce the issue that we face in terms of systemic change to the system versus this additional layer of an appeal mechanism, which in itself seems to be a pretty reasonable thing. Could you comment further on that? What we need to do, and all parties agree, is get at this list so people do not have to wait years and years, especially those who are in camps right now, who are legitimate refugees coming with their applications to get into this country. Could you just reinforce for us that the fact that this mechanism is in place will do nothing but add to the system, versus what we're trying to do?

Mr. Richard Fadden: I think that's the case. The government has been very clear that it wants to welcome to Canada genuine refugees. That has been the case for this government; I believe it was the case with previous governments. That's not a matter for debate.

We are unable to see how the addition of the RAD is going to help this process. If Canada accepts a large number of refugees from abroad, we select them ourselves; they are actually taken from UN camps. If Parliament were to make some systemic improvements to IRPA and the refugee determination system, we believe that Canada could accept far more genuine refugees from abroad. Many of the people who make their way to Canada are not refugees. Many are, and they're accepted.

The point that is central to all of this is that we have probably the most liberal refugee determination system in the world. That is neither good nor bad except if you look at it in the context of what we're trying to deal with. Monsieur St-Cyr mentioned on a number of occasions the frightful thought of—he implied, he didn't say it—dozens of people being sent abroad to torture and death. Well, I defy anybody to give us a list of people for whom that's happened. In the three years that I've dealt with this file there was one mistake made. We brought the person back to Canada and we're going through the system again. Our system is very good. This RAD, which is a paper-based review—no testimony, no new evidence—is not going to materially help.

I'd take advantage of the opportunity to say something else. Mr. St-Cyr argued that the Federal Court isn't specialized. Of the cases before the Federal Court, 70% deal with immigration and refugee issues. If the Federal Court isn't specialized in refugee and immigration issues, I don't know what it is. Its jurisprudence binds the IRB in all of its components and it does guide the decisions of the IRB and the refugee protection division. To say that another body, which itself will be still subject to Federal Court review, is going to improve this process.... I'm not sure. It's going to add more time and effort.

● (0955)

The Chair: Thank you.

Members, originally we said that questions would end at ten o'clock. I've now been approached by several members to extend questions. I don't see any opposition to that.

Do you have opposition to that?

Hon. Jim Karygiannis: Let's get it over and done with.

The Chair: Okay. You know what? We agreed to this. It was a consensus before. I'm going to ask for a vote on whether we continue with questions. I've had several members approach me for questions. All those in favour of continuing with questions?

Some hon. members: Agreed.

The Chair: It is carried, so we will continue with Mr. Bevilacqua.

We're now into five-minute rounds, Mr. Bevilacqua.

Hon. Maurizio Bevilacqua (Vaughan, Lib.): Thank you very much.

Mr. St-Cyr, it is often the case that points are made that don't coincide with your point of view on this particular issue, and obviously I'm referring to comments made by the deputy minister. I'm going to give you my four and a half minutes to express that or to rebut the points raised by the deputy minister.

[*Translation*]

Mr. Thierry St-Cyr: First, we're going to go back to the matter of the 42% acceptance rate. I know that Mr. Fadden is a public servant and not a politician. However, I would like to make sure I'm not misquoted or that my remarks aren't twisted.

My claim is not that that rate shows that we don't accept enough refugees. I don't believe we should accept a refugee who doesn't meet the legal definition. The problem is not that 42% of people are accepted; it's that 58% of people file a refugee claim without being refugees.

The question we must ask ourselves as a committee is why do those people, who apparently aren't refugees, file a claim? I respectfully submit to committee members the fact that we don't see these kinds of results in any other area of the federal government.

If one day we had come to the conclusion that only 42% of employment insurance claims are allowed, we would say to ourselves that 58% of claimants don't understand that they aren't eligible. If the same was true of passports, we would wonder why people are applying for passports if they aren't eligible.

So why do 58% of people who file refugee claims do so without being eligible? It's quite simple. It's because they don't know. There is no body of well-settled case law. Furthermore, while it is currently possible for refused refugees to appeal in Federal Court, it is still impossible for the minister to appeal, since section 73 isn't in effect either.

Currently, quite sympathetic board members—perhaps overly sympathetic—who almost automatically allow claims, make it so that people want to try their luck by filing a refugee claim, knowing that they probably don't meet the definition.

If we had a Refugee Appeal Division and it was genuinely possible for the minister to appeal in incorrect cases, decisions granting refugee status to people who clearly are not refugees, a fairly sound body of case law would be established to enable lawyers to tell their clients that, even if they win at the first level, they will lose on appeal.

Obviously, it's said that the Federal Court renders judgments on the merits, and that there is a possibility of developing case law. However, I would respectfully submit that this is relatively anecdotic, since only 10% of applications are allowed. Consequently, there is no case law in 90% of cases. There are no reasons. Even in the remaining 10%, most of the cases—I unfortunately don't have the figures to provide you, but all the lawyers in the Barreau will confirm it for you—concern procedural matters. On the rare occasions when the court rules on the merits, these are cases in which decisions were arbitrary or capricious. So that's not enough.

I would like to continue on concerning the alleged five additional months for the processing of refused claimants' files. Personally, I don't believe any of it. It is a management principle that an effective, coherent and efficient system costs less than an ineffective, incoherent and inefficient one. I don't see how the lack of a body of case law can make our system more effective and save us money.

● (1000)

[*English*]

The Chair: You're out of time, but Mr. Paillé has the floor, so maybe he'll let you continue.

[*Translation*]

Mr. Pascal-Pierre Paillé: Before letting my colleague continue, I must say I don't understand Mr. Fadden. Everyone seems to support this proposal. The Chairman of the IRB at the time, Mr. Peter Showler, told us in a brief that the fact that decisions would be made by a single board member would raise concerns, but the appeal process would have to resolve that situation.

Mr. St-Cyr could repeat the names of the international organizations that have offered their support; I'm thinking, among others, of Amnesty International. In addition, the four political parties voted in favour of this measure.

Mr. St-Cyr, can you continue with what you were saying and give us your explanation?

Mr. Thierry St-Cyr: You're entirely right, Mr. Paillé. I would add, however, that there is a matter of fundamental respect for democracy behind that. Parliament has spoken. It passed the Immigration and Refugee Protection Act in 2001. That act contained 275 sections. It didn't contain 272 or 250; it contained 275.

In our opinion, in our democratic British parliamentary system, once Parliament has spoken, the government has a duty to abide by Parliament's decision and will. When you study a part of the act such as, for example, the Refugee Appeal Division, you have to study it as a whole. So you can't say, on the one hand, that the Refugee Appeal Division would cost so many millions of dollars more and extend deadlines by so much, without considering the fact that it was adopted in the context of a reduction in the number of board members from two to one. I could very well say to Mr. Fadden that I agree that we should throw the IRPA in the waste bin: we'll have two board members to review claims, and waiting times will double. That's a coherent whole.

That's why you rightly point out that the assistant deputy minister at the time said that the Refugee Appeal Division was necessary. The minister at the time, Eleanor Caplan, also said that the appeal division was necessary to establish a balance. So there has to be a certain overall vision of the matter. We can't simply say that this particular measure will cost us a certain amount of money, since it was put in place to enable us to save money.

I'm going to draw a parallel. Some of us around the table are business men or women or have already worked in the business world. If you buy equipment and you record the value of that investment, you record the savings that you make as a result of that equipment. It's somewhat the same thing. If you consider the Refugee Appeal Division, you have to say to yourself that that is what enables us to go from two commissioners to one.

I maintain that this tribunal would increase the efficiency of our system. By having more consistency among decisions and the opportunity for the minister to appeal, which is not currently the case, far fewer claimants would file frivolous claims, knowing that they would have no chance of getting through the net. The acceptance rate would therefore increase not because there would be more favourable decisions, but because there would simply be fewer inappropriate claims.

Even if that were not the case, apart from this entire debate, are we going to gain five months, as I claim, or waste time? Is it a net real saving, when you take all parameters into account, or is it an expense, if you only consider the Refugee Appeal Division? I think this is a quite incidental issue.

For generations, civilized societies, western and otherwise, have fought against arbitrariness, have developed systems of justice based on the law and have established principles of natural justice that, apart from all the differences that may exist in the world, are universal. Among the basic principles is the possibility of appealing from a decision.

However, there is no real opportunity to appeal on the merits. I remind you of the comments made by the minister on February 10, 2009 in response to my question as to whether I was right in saying that is not possible to appeal on the merits. The Honourable Jason Kenney answered that, technically, I was right. I believe that in a progressive and modern society, even if it had the best immigration system in the world, that situation is unacceptable. I recall that Portugal and Italy are the only civilized countries that do not have a refugee appeal system.

● (1005)

[*English*]

The Chair: Mr. Shory.

Mr. Devinder Shory (Calgary Northeast, CPC): Thank you, Mr. Chair.

Thank you, everyone.

This question will be to the officials this morning. The way I understand it, the number of refugee claims in Canada has been increasing at a higher rate than in most other countries. In 2008 there were almost 37,000 new refugee claims, compared to over 28,000 in the year 2007. This represents an almost 29% increase in refugee claims. It is also an established fact in our Canadian system that quite a few of these claims failed. As Mr. St-Cyr also recognized, not all claims are genuine.

Before I ask my question, the way I understand the proposed legislation or amendment Mr. St-Cyr is bringing out, this will be another layer in the immigration system itself and is basically an appeal to reason and a paper-based appeal, as is the case in most Federal Court appeals as well.

Mr. Richard Fadden: It will add another layer and the RAD would be a paper appeal. I would note that before the Federal Court it is not a paper appeal if you are granted leave.

I'd like to correct an incorrect impression that Ms. Chow left with the committee. It's not 10% of leave applications that are granted; it is 16%. It is almost twice what she was suggesting.

I wonder if we could just take advantage of the opportunity to make a small point. I think Mr. St-Cyr is taking the committee down the garden path on one particular point. To compare the determination of refugee status with a grant of passports or of EI is, to my mind, stretching credulity. The granting of a passport is a mechanical function in 98% of the cases. The determination of refugee status in every single case merits careful consideration of jurisdiction, law, and fact. So to compare this with passports or EI I think is underestimating the seriousness of the refugee determination system.

He also makes the point that way back when the law was passed, two commissioners determined most cases. At the time a decision was made that we wouldn't put the RAD into effect because there were two commissioners. In the end, the previous government didn't put it into effect because only 1% of the two-commissioner panels ever disagreed. So a conscious decision was made that we don't need this additional layer because we went from two to one commissioners.

In direct answer to your question, it is an additional layer. It is a paper layer. No new evidence can be introduced. We would not agree with Mr. St-Cyr with the view that just because you have a RAD, people will not go to the Federal Court. If people believe strongly in their files, they will keep going to the Federal Court.

● (1010)

Mr. Devinder Shory: I wasn't finished, but thank you very much for the input.

The way I understand it, again, is that board members who determine any claim give written reasoning as well, whereas in the most of the federal cases, I guess specifically for the leave, no reason is given. My question here is, if the system remains the way it is and Minister Kenney does not bring any legislative changes, is it fair to say, Mr. Fadden, that if we expand the appeal process, as Mr. St-Cyr is looking at, and looking at the refugee system, our refugee system would become more attractive to non-refugees seeking an immigration process in Canada?

Mr. Richard Fadden: That's a difficult question to answer, Mr. Chairman. We're generally viewed today as a country to which it is exceedingly easy to apply for refugee status. I think if Mr. St-Cyr's bill is approved, that is not fundamentally going to change. The way the law is currently set out, all you have to do is to touch Canada and you can apply for refugee status. We believe that the addition of the refugee appeal division will lengthen the process and will mean that more people potentially will apply because they will have a longer period of time in Canada before their cases are resolved. The longer they stay in Canada, the greater are the chances that they will be granted humanitarian and compassionate status, despite the fact they're not real refugees.

The Chair: Time's up.

Ms. Wong.

Mrs. Alice Wong (Richmond, CPC): Thank you very much.

Thank you very much for coming to our committee to present your view. I definitely agree with your report. This is exactly what I presented to the House when I was given the opportunity to comment on Bill C-291. On one hand, we agree that Canada has the most liberal refugee system. Therefore we have attracted many refugee claimants, whether they're genuine or not. That is the major challenge.

I agree with what you've just said, that Mr. St-Cyr's comparison of the passport success rate with the success rate of processing our refugee claimants is actually not an adequate comparison. The EI success rate should not be used as a comparison with the refugee success rate either.

I think we all agree, all of my constituents agree, and all of the other people I've been meeting agree, that there have been a lot of challenges in the refugee system, and therefore we do need reforms. We do need to change some of the things we have been doing so that we won't deter the legitimate refugees who, because of the present system, have to wait for a very long period of time.

In your view, will Bill C-291 actually be a solution to...? For example, as soon as people get on the plane, they eat their passports or they flush them down the toilet. Then, because they've landed, they have to go through the whole system.

Thanks to our government and Mr. Jason Kenney, the last 25 Vietnamese refugees staying in the Philippines will finally be arriving in Canada. The Vietnamese community thanks the government for doing that. Those are legitimate refugees who have been waiting there for so many years because of a system that needs reform and because of illegitimate claimants who came in a boat just off the coast of British Columbia. As soon as the boat enters our waters, they say “We're refugees.”

Those are the actual challenges. They even come in, again talking about Mexico....

I would like Mr. Fadden to comment on whether Bill C-291 would really improve the system.

● (1015)

Mr. Richard Fadden: Thank you.

You won't be surprised to hear me say that I do not think that it will. There are broad and deep systemic problems with the Canadian refugee determination system. Mr. Kenney has said that, and I think most members of this committee believe that is the case. This is the addition of one more level of review—a fairly limited review, I would point out. It's a paper review with no new evidence and no attendance before the refugee appeal division.

We do not believe this will solve any of the systemic problems either of you referred to, or any other of the systemic problems Mr. Kenney is now actively working on to put in measures to bring before Parliament.

Mrs. Alice Wong: Do I have more time?

The Chair: You have a minute.

Mrs. Alice Wong: My question is about people who came in from Mexico. Ninety percent of them are not genuine refugees. Now, with this addition of Bill C-291, they will be able to stay a much longer period of time. At the end of the day, they're not legitimate; therefore they should not really enjoy the same kinds of benefits in staying here. But with the present system, yes.

I'll give you the example of Mr. Lai. If you tell people about Mr. Lai's situation.... He's been here for ten years. With this Bill C-291, he will have access to another appeal system and maybe he'll stay for another ten years. Of course, we're not here to comment on individual cases. I'm just giving you the amount of time this case has already taken Canada, and it's still sitting there.

So if you could, shed some light and explain what we are going to do to improve the system and if Bill C-291 will again add even more years.

Mr. Richard Fadden: We believe—

The Chair: Your time is up, Ms. Wong.

Ms. Mendes is next.

Mrs. Alexandra Mendes: He hasn't answered her question yet.

The Chair: Well, if you'll let him. She took a minute to ask the question.

Go ahead, Mr. Fadden. The committee would like to hear what you have to say.

Mr. Richard Fadden: We don't think this is going to solve it. The practical effect of having the refugee appeal division will be, I think, that most people who are refused at the refugee protection division will go to the RAD. They will go relatively automatically, and it's not going to cost them a lot of money.

I agree with Mr. St-Cyr when he says that the Federal Court is a bit expensive. The RAD is not. So virtually everybody is going to go to the RAD. That means that whether it's five months or four months or six months, it's going to take time. You need to look at their papers, you need to review things. So to a process that already takes 17 months, without going to the Federal Court, we're going to add five more months.

If, in the end, they are refused, the fact that they have been in this country for an additional five months will mean that their chances of getting a humanitarian and compassionate grant are increased, not because they're refugees, but because they have a boyfriend or a girlfriend, they have children, they've put down roots in Canada. There's nothing wrong with that, except that's not the way we're supposed to deal with refugees.

The longer people stay in Canada, the greater the chance that they're going to go around our system and acquire the capacity to stay in Canada, in practice disregarding our believe that we should treat refugees in a special way.

The Chair: Okay.

We have Ms. Mendes.

Mrs. Alexandra Mendes: If I may, Mr. Fadden, what I'm taking exception to is precisely the fact that we went from two commissioners to one commissioner. When we did that you said it was because there were only 1% of cases where they weren't in agreement. If you have two people in the same room, with back and forth and discussion or whatever, they may come to a consensus. One person alone can decide, on a whim, what decision that person will come to without ever having actually put his arguments or his reasons to test with another person. So when we took that second commissioner out of the process, we didn't provide anything else for the case to be actually debated on. That is my problem, and I keep returning to it, because it remains my problem.

If you don't have an appeals division, then get the second commissioner back into that room. It's either/or, but one needs some kind of security for the applicant that his or her case is going to be fairly treated. That is my point in this.

● (1020)

Hon. Maurizio Bevilacqua: That's a good point.

[*Translation*]

Mr. Thierry St-Cyr: With your permission, I'll add something.

Ms. Mendes' point is very good. I don't think that the arguments about duration, deadlines and opportunities for appeal, which could benefit people who aren't genuine refugees, can be allowed in a system of law. I would point out that criminals and murderers remain at liberty longer because they can file appeals and use a host of remedies. We're not saying we want to get rid of appellate courts and the Supreme Court. We're not doing that because we are in a system of law and justice, and these are values that society has taken centuries to establish. We have to continue fighting to maintain them.

I would like to take this opportunity to raise another point. Earlier I was criticized for drawing comparisons between the acceptance rates of employment insurance services and those of Passport Canada. I would like to recall that the point in making comparisons is to highlight the characteristics of one system that make its behaviour different from that of another.

Why then do the employment insurance services and those of Passport Canada work, and why are their acceptance rates very high? It's because their criteria are well established. When you file a claim, you know in advance whether or not it will be accepted. I willingly admit that the definition of refugee status greatly complicates the handling of cases. I admit it and I'm saying that this is another reason to have a body of well-settled case law.

A number of lawyers, more particularly the vice-president of the Quebec Association of Immigration Lawyers, have previously confirmed to me that they had had no answer for clients who came to see them at their office to ask whether they had any chance of being accepted. They couldn't tell them whether they had a 10%, 50% or 90% chance of being accepted. They were forced to say that it would depend on the board member who heard their case.

[*English*]

The Chair: Okay, Ms. Mendes, you have a couple of minutes.

[*Translation*]

Mrs. Alexandra Mendes: I would like to ask Mr. St-Cyr a question. I would like to know whether, in the event the appeal system is not adopted, he would agree to return to the system in which two board members examine cases. Would that be an acceptable alternative?

Mr. Thierry St-Cyr: What I believe is that the system provided for under the IRPA is better. However, I quite agree with you that it's one or the other: either we keep the system of two commissioners, who can discuss, reflect and exchange views and radically reduce the possibility of error, or we choose the more effective system which is provided for under the IRPA.

I won't back down: we can't go by half measures. We go from two commissioners to one, but we don't implement the Refugee Appeal Division. That's not acceptable, particularly since it's frankly contemptuous of Parliament, which voted based on the submissions of the deputy minister and minister of the time. If you look at the parliamentary debates of the time, you'll see that it was clear in everyone's mind that the compromise in order to move from two commissioners to one was the introduction of the Refugee Appeal Division, and that the IRPA makes no sense if that division is not in place.

We have to maintain a historical perspective and refrain from establishing a different justice system for refugees. I'm convinced that Canadians and Quebeckers would never agree to abolish the Court of Appeal and the Supreme Court on the ground that they are too costly, that criminals remain at liberty longer or that some people would institute more proceedings.

● (1025)

[*English*]

The Chair: That's it.

Mr. Calandra.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): Thank you, Mr. Chair.

An hon. member: Mr. Fadden wants to say something.

The Chair: Well, you know, if we want to continue.... The only problem is that you told me to watch the clock. But if you want to let him, that's fine.

Go ahead.

Mr. Richard Fadden: I appreciate it.

I understand, I think, the argument you're making, that at the time Parliament enacted the law initially, there was a bit of a compromise between one to two commissioners and the RAD. But I also think it's important to note that when the system went from two commissioners to one, the acceptance rate did not go down.

I think we have to also consider that just about every quasi-judicial or judicial body in Canada and Quebec, at the first level, is with a single person. Appeal divisions have two or more; UI umpires, one; reviews in Quebec on the health side, one person. I don't think there is anything intrinsically valuable to having two people.

In response to your direct point, though, the acceptance rate did not go down. Both the previous government and the current government considered that given the totality of the system, it didn't merit the RAD.

Mr. St-Cyr is arguing that nobody is going to go out and recommend the abolition of the court of appeal or the Supreme Court. That's not what he's suggesting. He's suggesting the addition of another layer. Nobody is suggesting the elimination of a layer. He is suggesting the addition of another one. So I think it's a rather different argument.

The Chair: You're next.

Mr. Paul Calandra: Mr. Fadden, now with the benefit of Ms. Chow being in the room, because I know you were disappointed that she was out earlier—

Hon. Jim Karygiannis: Point of order.

The Chair: No, Mr. Calandra, don't start something here.

Mr. Paul Calandra: Oh, sorry; I apologize. I didn't mean it that way.

The Chair: You're next, sir.

Hon. Jim Karygiannis: Mr. Chair, I have a point of order.

Mr. Paul Calandra: I apologize for that. I didn't mean that.

The Chair: See what you've done? Now we've got everybody all upset.

Mr. Karygiannis, on a point of order.

Hon. Jim Karygiannis: Mr. Chair, this is not the first time the honourable member has alluded to a member not being in the room. He's done it before. He did so when I had to take a phone call and was outside the room.

I would ask you, sir, to caution Mr. Calandra to follow—although he's new—the proper procedure. This is not the first time, and it should be the last time, that an honourable member's presence in the room has been mentioned.

You have to follow procedure.

The Chair: That is a point of order.

Mr. Calandra, you may ask your questions.

Mr. Paul Calandra: You had mentioned a discussion with the UNHCR. There was some discussion earlier about an appeals division. I was wondering if you might just elaborate a little bit more on those discussions. I thought that was a very interesting point. It would be helpful, I think, if all members heard that yet again.

Mr. Richard Fadden: Thank you.

As Mr. St-Cyr said, this has been a topic that has been of interest for some time. Not Mr. Kenney, but one of the previous ministers I worked with in CIC, had the high commissioner in Ottawa to talk about refugees generally and the Canadian system in particular. He basically said, as I stated earlier, that the UNHCR has no complaint to make about the Canadian system. He said that from their perspective we have the best one in the world. One of us who was at the meeting—I can't remember who—asked him, “What do you think about an appeal division?” I'm probably breaking a confidence, for which I'll have to suffer the pain, but he said, “Somebody in my position can never say that an appeal division is a bad thing, but in our view we stick with what I said earlier: you have virtually a perfect system; people are not thrown out of Canada arbitrarily and we really have no complaints.” As a matter of fact, the UNHCR regularly peddles—if that's the right word—the Canadian system around the world. They do that systematically.

We in our ministry have gone around the world explaining our system, because it is the best one that we have. At one level there's no perfect system. I'll be the first one to admit that. Putting in the RAD is not going to make it perfect. We could put in two RADs and it still wouldn't be perfect.

Mr. St-Cyr argues that a greater jurisprudence developed by the RAD would help materially in the management of the system. Well, I'm not so sure. The Federal Court's jurisprudence on refugee issues is quite comprehensive. There are a lot of cases that bind the refugee protection division. I would also note that the refugee protection division does not deliver reasons in writing, except in negative cases. So we have a system already that I think is quite significantly tilted in favour of those who might not get refugee status. We don't think this is going to help.

● (1030)

Mr. Paul Calandra: It's clear that what you're saying is that our system is pretty much an example for the entire world, but we should always look for ways of improving. It's an example for the rest of the world. It's an example that I'm sure the UNHCR would like to see in virtually every other country in the world.

Mr. Richard Fadden: That's right.

Mr. Paul Calandra: Again, recapping a bit, it's safe to say that the addition of an appeals division would simply make the system more cumbersome, slower, and perhaps even less effective for those who are true refugee claimants.

Mr. Richard Fadden: I think that's absolutely right.

Mr. Paul Calandra: The RAD has been on the books, as such, for how long?

Mr. Richard Fadden: Since IRPA was enacted by Parliament, in the first instance, in 2002.

Mr. Paul Calandra: And again, why was it...? It was simply never enacted as such because of how well the system was working, would you say?

Mr. Richard Fadden: At the time, Parliament provided the government with the capacity to decide the proclamation dates of various parts of the statute. Large parts were put into effect, and the decision was made at the time.... As I understand it, there was already a huge backlog. There were already beginning to be problems with the system, and the view of the day was that the system did not require the RAD in order to be effective. As I think Ms. Mendes said, at the time there was a fair bit of discussion on whether there was a direct link between one or two commissioners on the one hand and the RAD on the other.

I wasn't there. I understand that there was a debate and that there were a variety of views on this issue. In the end, the main reason the government of the day, which I believe they publicly stated, would not put the RAD in operation immediately when they went from two to one was because a comprehensive analysis of the decision-making by the two-commissioner method was made, and there was only disagreement in 1% of the cases. A judgment was made that 1% of the cases did not merit the installation of this not insignificant appeal process.

As I mentioned a moment ago, subsequent to that we've been able to ascertain—I was saying this to Ms. Mendes—the acceptance rate did not drop when we went from two commissioners to one. I think the government of the day, and I believe the bureaucracy, was of the view that taking the system in its totality, people were getting fair and reasonable treatment and that a RAD was not necessary.

The Chair: That's it. You went way over, so we have Ms. Grewal next.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): I would like to say that we know that there are those who would like to take advantage of our generosity and take a place away from those who are genuinely in need of our protection. So would the RAD cause more of our resources to be taken away by processing applications from people not in need of our protection? Could you comment on that?

Mr. Richard Fadden: In the end, if we have a RAD, we're going to have to ask the government and then Parliament for more money. People who are now spending their time and effort on the first level of determination are now going to have to spend it on appeals to the RAD. We think it's simply just going to add a layer of bureaucracy. The RAD is not going to be a court, so the amount of deference given to it by the RPD will be relatively limited as compared to the Federal Court.

I have to be honest with Mr. St-Cyr: the RAD is not going to grind the entire system to a stop, but it is going to add time, money, and burden. In the end, we don't think that individual cases are going to be materially better dealt with, because it's a paper review, there are no attendants, and there is no new evidence. If you take it to the Federal Court, you have all of those possibilities.

Mr. St-Cyr has argued on a number of occasions that the Federal Court cannot review *sur le fond*, as he says. I'm not here to act as a lawyer, but before the courts you have questions of law, of fact, of mixed fact and law, and jurisdiction, and nothing else. If that's not *sur le fond*, I don't know what it is. The Federal Court has systematically said that it can look at any aspect of RPD decisions. I agree with Mr. St-Cyr that the way the law is constructed, it doesn't appear that it can do that, but this happens all the time. Parliament says one thing and the courts take a different tack, and since they're the ones doing the judgments, they win.

● (1035)

The Chair: Mr. Karygiannis.

Hon. Jim Karygiannis: Thank you, Mr. Chair.

Mr. Fadden, you stated something that irked me. You said that if these people are given an extra five months, it will add to the cost of the health care system, welfare, and you went on. You made it sound like these people are here as freeloaders.

Mr. Richard Fadden: A lot of them are.

Hon. Jim Karygiannis: I respectfully put it to you, sir, that a lot of people who are here seeking refuge have work permits. When people are called in to have their PRA, they're asked to bring their work permits. Their kids are going to school, and sometimes we have to stop their schooling in order to take them out.

You just stated again that a lot of them are. However, there is something about “true or false” on the CIC website. There's an e-mail circulating that says not to apply as a pensioner, apply as a refugee. You are overwhelmingly trying to diffuse it and say no, that's not the case.

I'm just wondering, sir, if you want to clear up what you're saying, that a lot of the people here are freeloaders. As an individual who came to this country seeking a better life and had to seek refuge at the airport, I take great exception when a deputy minister of the crown says that people in this country are freeloaders. So sir, I'm going to give you an opportunity to withdraw that remark.

Mr. Richard Fadden: Thank you.

Freeloader was your word, not mine. There are many people in this country who apply for refugee status and who, after going through the entire system that we have, are held not to be refugees. While they are in this country, prior to either removing themselves or being removed, my department pays for their health care, the provinces pay for housing in many instances and for social costs. You're absolutely right, some of them work. But a lot of them don't. It is a significant cost.

I want to be very clear: I'm neither for nor against an individual being a refugee. I'm for the systematic and reasonable application of the law. The statistics that we see clearly show us that not everybody who applies for refugee status is a refugee. That's my only point.

Hon. Jim Karygiannis: Mr. Chair, I'd like to remind the deputy minister that it's not his department. It's a department of the government, a department of this country, so it's not his sole jurisdiction. He just happens to be the individual filling the chair at this moment.

I did not use the word “freeloader”. I said, sir, that you are alluding to them as freeloaders, and you agreed with me.

I take exception to that, sir, because a lot of people who have come to this country are seeking a better life. They're fleeing at the point of a gun. I'm seeing what is happening in Sri Lanka right now. People are fleeing. When this country overwhelmingly supports and accepts people who are refugees, having you, sir, bashing them in this forum is totally unacceptable.

The Chair: I don't think he said that.

Mr. Richard Fadden: Mr. Chairman, I am not bashing them; I'm bashing those who come to this country who are not refugees.

I agree with you absolutely. Whether I'm here or in another job six months from now, my department will be of the view that this country should continue to accept real refugees. Our problem is that a lot of them come to Canada and apply for status, and they aren't refugees. They apply for refugee status because we have a huge backlog on the other side, and we can't process people fast enough.

I want to be clear: I am not suggesting that this country should not accept genuine refugees. What I'm talking about are those who are not real refugees. There is a distinction, Mr. Chairman, I would submit.

Hon. Jim Karygiannis: Mr. Chair, in all departments we have a level of appeal, be it for the Canada Pension Plan or the disability plan. You apply, you have the first appeal, you go in front of the referees, and then after that you can go in front of the umpire. It is the same thing with EI: you apply, you can go in front of the referees, and then you have the umpire. Even in WCB, the Workers' Compensation Board, in all the provinces you have the right to appeal.

Why in this instance are we taking the right of appeal from the people who want to appeal? Is it because they're not landed immigrants? Is it because they're not Canadians? Or is it that we don't want to have the Charter of Rights and Freedoms, as we enjoy it, the rest of us, also apply to them? In every other department we do. What is the problem if we also allow it here?

You're saying to me that you don't have resources and that you're going to have to take resources from everywhere else to put there. I say to you, Mr. Fadden, that your resources right now.... If you do an in-Canada spousal sponsorship, it takes four years. Well, your resources, sir, are not well managed to begin with anyway.

● (1040)

The Chair: I don't know whether that was a question, but the time's up.

We'll go to Monsieur Paillé.

[*Translation*]

Mr. Pascal-Pierre Paillé: Mr. Chairman, I would propose that we stop here, in view of the time and the turn the discussion is taking.

[*English*]

The Chair: I have names on the list, Mr. Paillé, so....

[*Translation*]

Mr. Pascal-Pierre Paillé: If you have any other names, I agree.

[*English*]

The Chair: We agreed. We had a vote, and it was agreed to continue with questions. I'm doing as the committee asked, and I have a list of people who want to speak.

[*Translation*]

Mr. Pascal-Pierre Paillé: All right. In that case, I'm going to take my time to ask a question.

Mr. Thierry St-Cyr: Mr. Chairman, perhaps one round was enough. When we held a vote to continue, it wasn't to do so indefinitely, but to continue the round.

[*English*]

The Chair: Well, you know, you're here as a witness. If you want to come back and start talking on points of order, go sit over there. We're here to hear about your bill. You can submit that, but if you want to get into how the committee's going to operate, I would prefer that you come back. You can't do both.

[*Translation*]

Mr. Thierry St-Cyr: I invite you to consult the clerk on that point. Being seated at this end of the table, I am still a member of the committee.

[*English*]

The Chair: Do you have any more questions, Monsieur Paillé?

[*Translation*]

Mr. Pascal-Pierre Paillé: Yes. Before asking my question, I would like to know whether it is possible in this case to vote again to determine whether committee members want to continue the discussion.

Mr. Thierry St-Cyr: Yes, well done.

[*English*]

The Chair: Do you have a question?

Mr. Rick Dykstra: I'm prepared to move a motion, if Mr. Paillé wants to. I know what his preference is and what my preference is. Rather than continue with questions, I have a motion I am prepared to put on the floor. It's a motion to refer, but I'll be under your jurisdiction, Mr. Chair, as to when I can move that motion.

The Chair: Madam Chow, do you want to ask a question?

Ms. Olivia Chow: No, I don't have any questions.

The Chair: You don't have any questions.

Make your motion.

Mr. Rick Dykstra: Okay.

Mr. Chair, it's pretty obvious that we have a lot more questions. There are a lot more concerns related to this private member's bill. I appreciate the work and effort Mr. St-Cyr put into his presentation today. I certainly appreciate the work the deputy minister has done, as well. I think you've come well prepared.

There's a significant difference of opinion on the direction we want to take—the direction the government would like to take and obviously the direction some of the members of the opposition, including Mr. St-Cyr, have moved with the bill.

There are a lot more questions here than there are answers. I'm recommending that we refer this back to our steering committee and that the steering committee be given an opportunity to review how we move forward with this bill, Bill C-291.

The Chair: That's a motion. Do you wish to speak to that motion?

Mr. Rick Dykstra: I just did, sir.

The Chair: We'll have Ms. Chow and then Monsieur St-Cyr.

Ms. Olivia Chow: I will amend that to refer it to the meeting on May 26 instead of to the steering committee. Or we could deal with it now.

The Chair: I don't know what you're doing. Are you making an amendment to the motion? You've made several suggestions. It's not multiple choice here.

Mr. Rick Dykstra: As I understand it, a motion to refer is not debatable or amendable, but you could clarify that for me, Mr. Chair.

Ms. Olivia Chow: I thought a motion to refer can be amended.

Mr. Rick Dykstra: If we move this to the steering committee, I'm prepared to take into consideration, when we have this discussion, Ms. Chow, that May 26 would be the day, but I think we should make that determination at the steering committee.

The Chair: Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Mr. Chairman, I don't think there's any reason to amend the agenda. Following the appearance of the witnesses, the clause-by-clause consideration is scheduled. That's what we had agreed on together. We have spoken informally with Mr. Fadden. I believe we have indeed considered all aspects of the question. We could continue asking questions for 10 hours, but as we have seen, there are two sides. That's obvious. We won't convince each other. I don't see how any dilatory measures would be appropriate. I think the only solution is to do what's on the agenda. Let's proceed with the vote; committee members will then be able to move on to something else.

We've just adopted an agenda, but Mr. Dykstra's motion has the effect of immediately undoing it. I don't think that's appropriate. Let's proceed as planned.

● (1045)

[*English*]

The Chair: I have ruled the motion is in order. I guess the question I'm trying to get some assistance on is whether Ms. Chow can amend it. If you'll give me a minute, I'll rule on that.

Ms. Olivia Chow: Mr. Chair, on a point of order, I looked at the third report. The third report gives a work plan. Should we go right into this work plan and make sure we adopt or change it right now? If we change this, it will then obviously deal with it, because that's what that motion does, it's to change this work plan. We should bring forward the third report, decide how we plan for the next few weeks, between now and June 2, so once we deal with it, we will either come to a vote or not come to a vote on this Immigration and Refugee Protection Act.

The Chair: Ms. Chow, are you suggesting a specific...? You were saying this matter should be referred to a subcommittee. You're not suggesting that at all.

Ms. Olivia Chow: No, no, that was just a suggestion.

The Chair: But you were going to amend that to be at a certain time.

Ms. Olivia Chow: Mr. Chair, I was simply noting that we are starting to debate the third report. I thought we should either finish this item, or not, and I thought that—

The Chair: We're going to debate the third report in camera. Meanwhile, we have a motion on the floor.

Ms. Olivia Chow: That motion uses the third report.

The Chair: Well, it doesn't, not really.

Is there any further debate on this motion?

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

The Chair: We will now adjourn and go in camera.

[*Proceedings continue in camera*]

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