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The Honourable Robert Nault

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● (1530)

[*English*]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, I'm going to bring this meeting to order. Pursuant to Standing Order 108 (2), we are proceeding on our study of the provision of assistance to Canadians in difficulty abroad, consular affairs.

Before us on video this afternoon is Gary Caroline.

Then we have Dean Peroff.

We're missing Chris Macleod, He may come in later. I think he's in front of some board.

We're going to start right off the bat with our two witnesses. We have a good hour ahead of us. Chris will join in if he gets back from his board meeting.

Gary, please go ahead.

Mr. Gary Caroline (President, The Ofelas Group, As an Individual): Thank you, Mr. Nault, and thank you to everyone on the standing committee for the opportunity to appear before you to address some of the concerns we have encountered in our representation and advocacy on behalf of Canadians imprisoned or detained abroad in violation of their human rights.

Dean Peroff, Chris Macleod—who unfortunately may not be joining us—and I have been working over the past several years on various initiatives aimed at improving the consular services and support delivered to such Canadians. As concerned individuals, or in conjunction with others, we've produced a proposed protection charter.

I believe you heard from Alex Neve and Mohamed Fahmy this week, who have been involved in proposing a new officer of Parliament as outlined in a document called “The Office of the Consular Advocate General”, which was produced by the National Council for the Protection of Canadians Abroad and me in 2016.

We've also produced a process aimed at improving consular services to Canadians, which we put together in conjunction with Amnesty and the National Council for the Protection of Canadians Abroad, also in 2016. That last document suggested a process whereby department officials and experienced advocates would be able to work together to develop ways of improving Canada's response to the most difficult consular cases.

These initiatives, I must say, have been met with interest and openness from department officials, but little more. Dean, Chris, and I are all lawyers who have years of experience representing or advocating for Canadians subjected to serious human rights abuses abroad. We have represented or continue to represent many of the most challenging cases, such as that of Michael Kapoustin, who is represented by Dean Peroff; Huseyin Celil, who is represented by Chris Macleod; and Mohamed Fahmy, by me.

While the protection charter and “Canadians abroad” documents represent some of our public work aimed at stimulating interest in and support for consular services reform, most of our efforts have gone into confidential exchanges with government and the department, including with the director general of consular policy and the office of the inspector general.

Despite approaching the issues with different professional experiences involving a variety of state actors, we are of one mind on the need to enhance the government's role in obtaining the release of Canadians imprisoned or detained abroad in violation of their human rights. While such cases are not numerous, they often provoke outrage from Canadians about the ill treatment suffered by their fellow citizens. In other instances, cases that lack notoriety or strong public advocacy may pass unnoticed except for the anguish felt by the families of such Canadians. In every one of these cases it is our duty to better their conditions of detention and ultimately obtain their release and repatriation to Canada.

It is our common view that Canada needs to change its approach to intervening in these cases. From an outdated, narrow view of its duty to provide consular services, Canada must move to ground its advocacy on behalf of Canadians abroad in a legally enforceable obligation to do so. Not only would the absence of a legal right to consular services come as a shock to most Canadians, if they actually knew that was the state of affairs, but in our opinion, seeing the provision of consular services as discretionary has helped contribute to an historically passive approach to the department's work on difficult consular cases.

While most consular cases are handled very well by the dedicated consular services staff of Global Affairs Canada, there continue to be a few extremely serious or complicated cases in which Canada doesn't do as well as we might expect.

● (1535)

These cases have occurred irrespective of the government or party in power. We say this based on the insights we've gained through our representation of some of these Canadians, as well as our efforts to synthesize our experiences into a common analysis of how Canada delivers its consular assistance. We are not privy to the views of government or consular staff involved in such cases, but imagine that their internal assessments vary from ours. It cannot be otherwise, given the friction that often develops between what the department does and what advocates believe it should do to free a Canadian trapped in a foreign prison for some imagined crime against that state.

From the perspective of many Canadians, advocates in the area, and even retired consular services officers, the department's work on behalf of Canadians facing grave human rights violations abroad needs to be improved. In this area of change we should break with the culture that says consular work must be conducted away from prying eyes and start to see the benefit of working more closely with families and legal counsel. Collectively, we should develop a common analysis of how well Canada does in providing consular services to citizens finding themselves in difficult circumstances, and suggest ways of enhancing government and private co-operation to reach our goals.

Today we would like to put forward five specific points for your consideration.

From our discussions with Global Affairs' officials, there is a gulf between the internal assessment of its work and the opinions of it “clients”. Without an objective assessment of how well consular services are delivered, any changes will be particular and limited. We believe that the key to improving consular services is for the department to conduct a thorough review of its work, culture, structures, and leadership. Soliciting the observations and experience of those outside the department would be essential to attaining real change. Our efforts in trying to convince the department of this have been unsuccessful to date.

Despite the rapid development and strengthening of international human rights, as well as the explosion in international work and travel, it appears that the culture within consular services is still very much grounded in state-to-state relations. It has been our experience that leadership within the department places more restrictions on themselves in dealing with foreign governments than is necessary or helpful. Consular officials should see themselves more as advocates and less like the classic diplomats of old. While each case has its own particularities, there is a common approach or culture applied to difficult consular cases by the department, which must be scrutinized.

Perhaps flowing from what we see as a somewhat antiquated approach to consular work is the almost universal cloak of secrecy consular officers place over their work. This includes an unwillingness to explain the efforts being taken, and the inappropriate use of privacy laws to justify withholding crucial information from family and counsel. In some cases there has been a resistance to even working with legal counsel. While we have experienced a much more open and collaborative approach over the past few years, more work needs to be done.

There is often a significant lag in prioritizing cases involving serious human rights abuses. Time is almost always of the essence in solving or ameliorating a prisoner's condition. This may reflect the need for increased and focused training of officers and a review of internal processes and organization at the department.

Finally, at one time or another we have all been frustrated by our inability to mobilize government to be more directly involved in consular cases.

● (1540)

While what a government decides to do or not do is largely discretionary, we believe there's an important role for Global Affairs to play in identifying when direct government involvement is necessary and advising government on the appropriate steps that should be taken with the other state.

As is hopefully obvious from these remarks, we strongly believe that increasing Canada's success in difficult consular cases will depend on the department's willingness to examine its systemic approach to such cases and its openness to the views of its clients.

Further, we suggest that this committee examine the implications of Parliament's creating a legally enforceable right to consular services.

Thank you.

The Chair: Thank you, Mr. Caroline.

We'll go to Mr. Peroff, please.

Mr. Dean Peroff (Lawyer, Peroff Professional Corporation, As an Individual): Thank you, Mr. Chairman.

I have taken the opportunity to listen to the presenters who have previously spoken to the committee and have found doing so very informative. I've listened to Mr. Pardy's words, Alex Neve's words, and Mr. Fahmy's words, and those of the representative of consular affairs.

I would like to offer up four points for the committee's consideration to put things in the perspective that I suggest should be taken with regard to the cases that involve what I call wrongful detention of Canadians abroad. I would also then like to very quickly go through my experience in a very specific case that I think is quite illustrative of the points I'd like to make.

Point one is that as a general rule, I suggest that consular affairs takes the wrong approach to wrongful detention cases.

My second point is that consular affairs should adopt a practice that's an across-the-board system for advocating in wrongful detention cases. I'll go into depth about what I mean by advocacy, but it certainly means more than engaging in diplomacy, as Mr. Caroline has said, or seeking consular access, which I've heard time and again from consular officials.

The third point is that consular affairs should abandon the mistaken impression that it has no right to protest about the treatment of Canadians in a foreign jurisdiction or the legal process that they're subjected to in a foreign jurisdiction.

My final point is that consular official representatives should be trained to be good advocates; by that, I mean not just to go through the motions of sending *démarches*, but to do much more.

Let me elaborate.

Going to my first point about taking the wrong approach, I want to make it clear that I'm not speaking, nor are my colleagues speaking, to the other kinds of cases you've heard about: the kidnapping and child abduction cases, the evacuation cases. My impression as an outsider in all of that is that consular affairs does a stellar job in those situations, and I have nothing to add or criticize.

When we're talking about the wrong approach on these kinds of cases, however, we're talking about a systemic problem that I suggest exists with regard to the attitude and the outlook about what these wrongful detention cases are all about. These are the politically motivated cases, the human rights-related cases that we're all familiar with.

I suggest that Canadians should and Parliament should view wrongful detention cases abroad in a way similar to the way it views wrongful conviction cases in Canada. We have a stellar history here in Canada about recognizing how a wrongful conviction can undermine the criminal justice system. I suggest, as Mr. Caroline has suggested, that we have to be outraged as Canadians when there's a wrongful detention abroad. We have to treat those kinds of cases with the same kind of concern with which we treat wrongful conviction cases.

The final point I'd like to make here with regard to taking the wrong approach is that advocacy is so central to these kinds of cases that I would be fearful if ultimately a duty were imposed on consular affairs to protect Canadians abroad without specifying that consular affairs must advocate to fulfil that duty. I am not convinced, and I believe my colleagues are not convinced, that this is clearly understood and associated with the whole idea of assisting Canadians in these kinds of cases.

● (1545)

To come to my second point, I suggest that consular affairs should adopt the practice of advocating. By that I mean that a distinction has to be drawn between diplomacy and advocacy.

I thought Mr. Pardy drew a very useful distinction between state-to-state relations in normal foreign affairs situations and representation of a Canadian national abroad in the kinds of cases we're speaking about. Those are two very distinct kinds of situations, and I suggest that the distinction has to be kept in mind.

Because it's not diplomacy, it's not just about exchanging views and seeking peaceful relations with another state; it's about developing a position on behalf of a Canadian, making arguments in support of that position based on human rights treaties and other laws that apply, and putting that position forward in a forceful way to the foreign government.

The other distinction I'd like to draw here to illustrate what I'm saying about advocacy versus something else is that consular access is not the be-all and end-all of assisting Canadians abroad, although I'd suggest to you that if you listen again to the testimony of the officials from the government, what you hear time and again is that it's all about access and that we fight for access.

Think of it this way. If as a lawyer I have access to my client, at least I have an ability to speak to him, and that's paramount. I have to go forward, however, and come up with a strategy. I also have to advocate; I can't just say, “Well, I've fulfilled my obligations: I've consulted with the detained person abroad.”

My point three is that there is a mistaken impression, I suggest, at consular affairs that Canada has no right to criticize the legal process of the treatment of Canadians abroad. In my submission, this is a misunderstanding about international law. Canada has the right to intervene under international law on behalf of Canadians, when there is a Canadian national who has been denied justice—that's the expression, “denial of justice”—or subjected to mistreatment in a foreign country. Think of it as an exception to the sovereign immunity principle.

In my career as an international business lawyer, in most countries in the world, outside of a few mature democracies, there is no rule of law or a very weak rule of law. There is rampant corruption, which means corruption of the judiciary; there is rampant political manipulation of the judiciary, which means there are political problems left and right that have to be dealt with. You don't have to take my word for it, of course. There are all sorts of human rights reports from esteemed organizations. Indeed, the O'Connor commission, way back in time, pointed this out.

Canada has, in my submission, a duty to exercise this right to intervene. It's not just a moral duty, although I think that should be enough; it's actually, I would argue, a legal duty under international law. I'd be happy to talk about that further, if the panel is interested.

My last point is that consular affairs representatives should be trained to advocate and should learn the basics of how to do so. I thought Mr. Neve made very insightful points about the importance of imaginative and innovative advocacy, but let me give you concrete examples. Indeed, Mr. Neve alluded to some of the ones I'm going to allude to. I will explain how those were central to the case that I will talk about at the end.

The first and paramount thing that Mr. Fahmy referred to is that there must be high-level representation in the most severe cases. Here I'm talking about a government minister, a senator, an esteemed parliamentarian, perhaps a human rights expert, and sometimes the Prime Minister of Canada. It's a situation in which consular affairs should push for that internally and urge it upon the ministers, not sit back and wait for it to happen when there is political or media pressure.

The second way to be creative is to collaborate with legal counsel. I have never yet had a case—and I've had many—in which the department is willing to collaborate with me. I know I have an obnoxious personality from time to time, but I am told by my colleagues that they have the same experience.

● (1550)

There are two more points I'd like to make here.

Don't rule out public statements. Think about the Fahmy case. Think about how the Prime Minister of Australia spoke out strongly and got his Aussie out a lot faster than Mr. Fahmy got out. I suggest to you that this kind of advocacy, in certain situations, has worked.

The final thing is to build alliances, as Mr. Neve said. Look for third party involvement. Find allies and collaborate with them. Let me give you very quickly my personal experience with regard to the case of Michael Kapoustin. He was 10 years in the Bulgarian prison system when I first interacted with him in 2005. His family appealed to me to help.

Based on principle, I decided to, because I was concerned about the way government works in these kinds of cases, and also because it was such a hardship case. Gar Pardy was involved. Even though he was no longer head of consular affairs, he took it seriously. He did a yeoman's job of trying to help. I met right away with Mr. Pardy and asked for his advice. He always gives me good advice. He said, “There's no way you will break the logjam unless you get the Prime Minister involved.”

I went to the parliamentary secretary to the Prime Minister at the time, Jason Kenney, who was good enough to give me an audience. He said he'd give me 20 minutes, and he ended up giving me a lot longer. I argued vigorously to him that there was no due process in the case, that there were human rights violations, that Canada had virtually forgotten the man after 10 years, and that something had to be done. He said that he was willing to take it up with the Prime Minister and asked me what we should do. I recommended that the Prime Minister personally intervene, and I told him about how Mr. Pardy, based on his experience, thought that was paramount.

Ultimately, Mr. Kenney was appointed as special envoy on behalf of the Prime Minister. As soon as he was, he reached out to me and discussed with me what would be the best way to proceed. He collaborated with me. We agreed that we would collaborate along the way to do what was best for Mr. Kapoustin.

I suggested that we meet with the prosecutor general of Bulgaria, the highest-level official in the justice system, and insist on the delivery back of Mr. Kapoustin. Mr. Kenney agreed. He went there personally. He invited me to join in the sessions, which is virtually unprecedented. I have tremendous respect for his willingness to do that. In the session, the prosecutor general apologized profusely for the way Mr. Kapoustin had been treated and made an astounding admission: he said that keeping Mr. Kapoustin in the Bulgarian prison system for that long was like a form of torture.

Well, of course, if you know what goes on in these kinds of countries, that doesn't really mean much, because after that nothing happened. There was no release. I then recommended to Mr. Kenney that we trigger the mediation provision under the transfer treaty between Bulgaria and Canada. It's a Council of Europe treaty. The Council of Europe will intervene in such cases. At that point, this had never been contemplated by consular affairs.

Mr. Kenney accepted the recommendation and ultimately went to Strasbourg, inviting me to join him. We met with the highest levels of officials. We persuaded them, I believe because based on past actions it seemed that a lot of pressure had been exerted on Bulgaria to do something about it and take it up. I lost involvement in it at that point, because it involved government-to-government relations.

Ultimately, we were able to secure Mr. Kapoustin's release after about two and a half years. I have no doubt that the high-level intervention of Mr. Kenney, his willingness to take up these creative steps, and to work with me collaboratively had a lot to do with it—a tremendous amount—but let me tell you one more thing before I stop. I'm sorry that I'm going over the time.

● (1555)

Throughout this process, the consular affairs officials refused to deal with me. They refused to trigger the mediation process at the Council of Europe. I believe that Mr. Kenney, although I can't speak for him, managed to persuade the consular affairs officials to trigger it. Whatever happened, it didn't happen because of my appeal. Ultimately, the ambassador to the Council of Europe, even after the mediation process was triggered, didn't want to go and advocate on behalf of Mr. Kapoustin, so I went back to Strasbourg and met with her.

I took with me Peter Leuprecht, an esteemed human rights activist and former deputy head of the Council of Europe. I believe he was the dean of the Faculty of Law at McGill at the time, or the Université de Montréal. I asked Mr. Leuprecht to explain to the Canadian ambassador to the Council of Europe what her job really was in this situation, which was that she should consider seriously advocating for Mr. Kenney, that it really was her duty. Throughout all of the interaction, I can tell you quite honestly that the ambassador was most concerned about offending the Bulgarian government. Just imagine that: offending the Bulgarian government.

Anyway, ultimately, as I say, the release was secured, and I'm eternally grateful to Mr. Kenney for his involvement.

I want to wrap up by simply saying thank you so much for giving me the time. I'm sorry that I've been so direct. I mean no disrespect to any of the consular officials, who I know work so hard and so well, but I suggest to you that there's a leadership problem in the department, and there is a cultural problem, and there's no other way to deal with this without getting it out in the open and talking about it.

Thank you.

● (1600)

The Chair: Thank you very much, Mr. Peroff and Mr. Caroline.

Colleagues, we'll go straight to questions. We'll try to keep it tight at six minutes for all of us.

I'll start with Mr. O'Toole, please.

Hon. Erin O'Toole (Durham, CPC): I thank both of our witnesses for their very interesting testimony.

I'll start with you, Mr. Caroline. In one of your quotes, you said that for these negotiations that are happening away from “prying eyes”, it's time to make them more formalized. I'm wondering whether that also adds complications in some cases where an arrangement for release might be achieved because of the lack of profile of a case. I think of the William Sampson case under the previous Liberal government. Ultimately, his release, it appears, was secured by a prisoner exchange, but obviously there wasn't discussion about that at the time.

Would you care to comment on how making it too public could complicate the negotiations?

Mr. Gary Caroline: I think the degree to which a particular case is made public or not depends on the circumstances. When Dean and I and others advocate at times for more direct government involvement or more pressure being brought to bear by the department on a foreign state, it doesn't necessarily mean that it has to be done in public. In most instances, I don't think a public position, other than a general statement, would be required, but it doesn't mean that we take a soft approach to dealing with governments that, as Dean has described, quite often are fundamentally different from ours in terms of how they treat people.

In all the cases I've been involved with, the thing that I have experienced universally is the reluctance to offend a foreign government. You can offend a foreign government by making public statements that are unhelpful, but at times you have to offend a foreign government that's mistreating a Canadian citizen. That can be done privately, and that can be done effectively. I think that's what Dean and I and others are concerned about: the absolute reluctance to push the point beyond a certain diplomatic line in the sand.

Hon. Erin O'Toole: Let me interject there, because what you're saying—and this is your own testimony—is that sometimes no public position is required, but at times it might seem that having no public position is viewed by some people to be reluctance. I think this is the challenge: the fact that sometimes a public position is not taken does not mean that there's inaction on the file. Would you agree with that?

Mr. Gary Caroline: Absolutely, but in cases where there's no advocate—no private advocate, no lawyer, no representative dealing with consular affairs of the government—then basically it's totally up to consular affairs to do what they're going to do, because there's really no experienced scrutiny being exercised.

In the cases that involve experienced advocates, we still run into the difficulty of convincing consular affairs to take steps that they do not want to take or to communicate what they are actually doing. In some cases more recently, I think it's fair to say that there is a slight change in the culture at the department, which means there has been more openness with counsel on behalf of Canadians detained abroad. It's—

Hon. Erin O'Toole: Thank you. Now I have some questions for Mr. Peroff. I'm mindful of the time.

Mr. Peroff, it struck me when you said that we should equate wrongful detention with how we handle wrongful conviction in Canada. What happens in cases where there's not a wrongful detention?

One of the concerns I had with the Liberal government's settlement in the Omar Khadr case, leaving aside concerns with regard to Guantanamo, is that no one, I think, would suggest that it was a simple wrongful detention case. There had certainly been conduct and action of a terrorist nature. What do you do in cases where you have concerns about the detention but it's not a wrongful detention and we have maybe concerns about treatment?

How do you treat those cases? I don't think it would be simple to equate them to a wrongful conviction such as the Milgaard case. What are your comments on that?

● (1605)

Mr. Dean Peroff: I overstated the point. I completely agree with you. I did allude a couple times in my testimony to the fact that human rights abuses are a concern, and not simply wrongful detention, which is a form of human rights abuse. Absolutely, to the extent that I created the impression that what I was calling, for the sake of simplicity, “wrongful detention cases” was a narrower subset of this category of politically motivated, human rights-related cases where there's mistreatment of a Canadian, either in the legal system or outside of it, that's the time for intervention, and that's the time for advocacy. I apologize if I—

Hon. Erin O'Toole: No, no. I wanted clarity on that.

Mr. Dean Peroff: Okay.

Hon. Erin O'Toole: We can look at the William Sampson case, where Canadian officials—I'm not sure if it was Minister Dion who was the minister at the time in the Chrétien government or who it was—were attending his interrogation in Saudi Arabia, where he had been mistreated or tortured.

Mr. Dean Peroff: Yes.

Hon. Erin O'Toole: He eventually gained his release. His appears to be a wrongful detention case, but he was not, to my knowledge, compensated in any way for wrongful detention, unlike a case of wrongful conviction. Is that the type of case that should be treated like a wrongful conviction because we had problems with the underlying detention?

Mr. Dean Peroff: My contention is that the class of cases we're talking about involve two subsets. One is cases where there's a lack of due process, and that was the basis upon which Mr. Kenney intervened in the case I cited. In fact, he said publicly that it was the basis of his intervention. Also, there are cases that involve that lack, or not necessarily that, and a human rights abuse. Both categories of cases are equally egregious, in my view, and equally invite intervention on the part of the Canadian government.

The Chair: Thank you.

We'll go to Mr. Levitt, please.

Mr. Michael Levitt (York Centre, Lib.): Thank you very much, gentlemen, for being here and providing testimony.

Mr. Chair, if I may, before I ask the witnesses some questions, I want to clarify for the record a point that the previous witnesses made regarding the consular services fee.

The consular services fees collected and the costs of the consular program are publicly disclosed in the departmental result reports, which are published publicly and annually. These tables—and I can provide the analysts or the clerk the tables—show that for the past four fiscal years consular services provided have consistently and substantially outstripped the fees collected. I'd ask the analysts to please note that point because, as I say, I know that it had come up previously.

The Chair: Do you have questions, Mr. Levitt?

Mr. Michael Levitt: Yes, thank you, gentlemen.

A large part of the testimony we heard talked about the lack of modern international legal mechanisms concerning consular affairs, really the only comprehensive treaty being the Vienna convention, which has almost 60 chapters, of which only one outlines obligations in terms of consular services; namely, timely information and access.

There are clearly issues that arise that the framers of the Vienna convention couldn't have foreseen. Are there any other mechanisms, legal or otherwise, that you would suggest we look at in this regard? I'd appreciate any comments or thoughts on this. Whichever order you wish to go in would be great.

Mr. Dean Peroff: All right, I'll go first.

That's why we harp on political advocacy, political intervention; it's because there are no other effective mechanisms.

International law is a terrible area of the law when it comes to the individual. There are all sorts of human rights treaties that protect individuals in theory, but in reality the mechanisms for protecting them are abysmal. Even the UN mechanisms, which I have invoked many times on behalf of clients all around the world, are difficult to enforce even when I get a favourable ruling; so that is all the more reason why I'm so passionate about advocacy: Canadians are sitting there abandoned and forgotten over diplomatic protocol, and we're not advocating for them.

● (1610)

Mr. Gary Caroline: I might add a couple of things. Obviously we don't have much control over the development of international instruments. We have somewhat more control over what Canada does internally, and I think the point both Dean and I are trying to communicate is that, if there is criticism of the department, it's intended to be constructive criticism. However, as long as the department acts in this insular fashion and is not open to communicating with people in the area who advocate for Canadians who are involved in these situations, it's difficult to see that there's much fundamental progress that's going to be made in Canada.

The other thing that strikes us collectively, at least on the advocate side, is that Canada has control of its own laws. Parliament is supreme. We do not have a law of Parliament that guarantees or at least provides the legal obligation on the department or the government to provide consular services. Some may say—the department would say, I'm sure—“Well, we work as hard as we can for every Canadians who is caught in this type of situation”, but I think the way things work is that, when there are competing forces and concerns, things move forward and that's how you achieve change, but as long as everything is dealt with in-house in an insular fashion, it's difficult to see how we can move things forward.

Mr. Michael Levitt: Thank you.

I just want to follow up on that question. You've both been involved in complex and non-complex cases for a number of years. Over the last 15 years, let's say, what changes—geopolitical or technological—have occurred in the system, and how have they shaped or made things more challenging as they relate to these consular cases? How has the ground shifted in terms of what we have to deal with, as these cases arise?

Mr. Gary Caroline: I defer to my senior colleague.

Mr. Dean Peroff: I don't like to be referred to as “senior”.

I'm sorry, but I'm not sure I understand the question. You talked about geopolitical developments.

Mr. Michael Levitt: Yes, basically if you think about the context of increasing international travel by Canadians, the rise of non-state actors, and the rapid technological changes we have seen over the last 15 years, how has it become more challenging in the context of consular cases?

Mr. Dean Peroff: I was involved in the Kapoustin case back in 2005 to 2008. I've always been sensitive to this because I've been part of the globalization process, working on many cases globally over the years. To me, it's just an incremental development. Things are just getting more and more global, along the lines you just said, and by “global” I mean for all the reasons you just said.

All that means then—and I totally agree with the consular officials who have spoken—is that this explosion in all dimensions with respect to globalization has increased the frequency of the problem. However, I suggest that there's a deeper problem than this, which is the failure of many governments—not just the Canadian government —to stand up for their own abroad because of state-to-state relations. That emboldens corrupt governments. It seriously emboldens them.

I'm concerned that it is actually a kind of complicity. It's unintended complicity on the part of governments to fail to intervene on behalf of their nationals, but it's seen by a foreign government as being a sign of weakness that they can take advantage of. It's no coincidence that it takes forceful advocacy of the highest order from the highest level to change things in an entrenched case.

● (1615)

The Chair: Thank you.

We've going to go to Madame Laverdière.

[*Translation*]

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): Thank you very much, Mr. Chair.

I would like to thank you both very much for being with us today and for your presentations.

I was struck by two comments.

Mr. Peroff, you mentioned that, at Global Affairs Canada, you often run into a refusal to work with legal counsel. At first glance, this seems completely counterproductive. If two entities are working on a file, it would be logical for them to cooperate. Mr. Caroline, you also talked about a culture of secrecy.

Could you give us the reasons that consular affairs gave for not working with legal counsel? Can you comment on what you call, in a sense, excessive secrecy and an abuse of privacy?

[*English*]

Mr. Dean Peroff: As for the reasons given, I'm sorry; we rarely get an explanation of why there's a refusal to co-operate, but let me make it clear that the problem starts at the authorization stage. What I mean by that is that this is a formalistic position that Consular Affairs takes—to show you how tragic the situation is.

Quite often, you will have an abused Canadian abroad who is unable to tell Consular Affairs that his family has retained me or Mr. Caroline, so the government will refuse to talk to me even though the family in Canada will say, “The guy can't talk to you; the lady can't talk to you. They're in distress, but we want the help. Please deal with Mr. Peroff, or deal with Mr. Caroline.” We get a technical response that they can't deal with us.

Now, let me give you, please, if I could, an extraordinary example. I'm dealing with a case involving a Chinese national who is also a Canadian citizen, the worst kind of case in China. This poor chap was on the run in China. He couldn't give a formal authorization. Consular Affairs refused to talk to me. I involved Mr. Pardy in this.

I finally had to orchestrate the highest-level officials at Consular Affairs to coordinate a call from Ottawa with their consulate in a certain region in China. I had to get my client to go to that consulate so that the people in Ottawa could hear the client in China, who was in distress, tell them to talk to me. That's what I had to do.

Days went by in this emergency situation before that formality was overcome, and then after that, nothing happened anyway, so it really didn't matter.

I'm taking up all the time. I'm sorry.

Ms. Hélène Laverdière: No, that's fine, no problem.

[*Translation*]

Mr. Caroline, do you have any comments on this culture of secrecy?

[*English*]

And what do you call inappropriate use of privacy laws?

Mr. Gary Caroline: It is such a bizarre misuse. It's a cover. It's basically an interpretation that exists, and that's why we're trying to approach this as a cultural, systemic issue. All the things we're talking about, they're not about the magnificent people who work in the department. It's the heavy influence of history, basically, that prevents people from doing what I think they would like to do if left to their own devices. They're great people there.

For example, on the privacy thing, it's uniform: “The law will not allow us to discuss issues that affect the privacy of the individual, our client”. Well, it's our client as well. Dean's talked about getting permission. I've run into the same thing. What I must say—and this is why again it's a cultural or systemic issue—that you find that there are crazy things asked of you the more direct the consular officer is in touch with the problem. I mean people who are consular officers in an embassy have much less discretion, or feel that they have very little power to deal with things, and therefore they ask for things to be signed by Canadians who are imprisoned and have no access, meaning they are in solitary confinement or they can't sign a paper that the embassy wants them to sign.

If you go higher—I'd say in the food chain of the department—where people have more experience and are more willing to take a risk because they're acting based on not only their own feelings about how to advance a case forward but their own experience about how far they can go, you don't have that many problems.

Then when you get to the top—and I know there have been changes lately, so I'm dramatically generalizing—you find that the top of the institution is there to maintain the culture as it has been. I have not seen a leadership from the top that aims at identifying, “What are the things we need to do to provide a more efficient, more thorough, more successful service to Canadians in this difficult situation?”

Again, the cases vary from person to person, but also within the department. People act differently at different stages. Then we're leaving aside what government itself does in these difficult cases.

● (1620)

The Chair: Thank you.

We'll go to Mr. Saini, please.

Mr. Raj Saini (Kitchener Centre, Lib.): Good afternoon, gentlemen. I'm very pleased that you're here.

I'm just going to start off with what you said, Mr. Caroline, about the privacy situation. I also sit on the access to privacy and information committee here in Ottawa, and we just recently reviewed the Privacy Act. I just want to get an idea from you. In specific cases, there is a public override for the public benefit, whether that's in critical cases or issues of public health or national security; but we're overriding someone's individual right to privacy. What do you guys think about that override clause? Is that something you would advocate for? Is that something you think is necessary, that public override should land on this one? You mentioned sometimes the reticence about providing information from consular affairs.

Mr. Gary Caroline: On the issue of privacy, obviously, the legislation doesn't just apply to the department we're concerned with. As lawyers, we deal with it all the time. There are exceptions within the privacy legislation, both federally and in different provinces, that permit the exchange of information in the situations we're talking about. For me personally, it's a matter of interpretation. If it could be clearer in the legislation, then fine, but I don't even think we need legislative change. I think it's a matter of how the department—and the government as a whole, because I don't think it's just foreign affairs where this is an issue—has a very narrow view of sharing personal information with advocates.

Mr. Dean Peroff: I would just add that, in my opinion, in most cases there is no need for an override. It's the client's privacy. The client in most of the cases I've been involved in would happily give consent for the government to speak, especially because the client will see it in his or her best interest.

It's quite a simple exercise, which is why I suggest to you that this privacy concern is raised as a cover, and I think it is particularly so when it comes to this kind of review we are conducting now. When consular officials come before the committee and say that they are not going to talk about specific cases, if I may say so, who are they to say that?

How else are we going to get to the bottom of what we say is the problem if there isn't discussion about specific cases? I guarantee you that there will be a whole slew of Canadians who have had bad experiences abroad and would be happy to give all sorts of waivers on privacy and have their files opened up, just so that we could have a fair hearing of the situation.

● (1625)

The Chair: So would—

Hon. Erin O'Toole: On a point of order, just because I'm cognizant of us running out of time on our schedule, if the witnesses would indulge—because we have two of the most prominent members of the bar who work on these cases—might we be able to extend to a second round, to have another half hour with the witnesses?

I've consulted for the second part on the report we're going to discuss, and the Conservatives don't have too much to add. Mr. Aboultaif only has a little. I would love to have another round with these great witnesses if we could extend.

The Chair: It's very much up to the committee. Is it the wish of the committee to extend the witnesses for another round, for a little less than half an hour?

Okay, seeing no—

Ms. Hélène Laverdière: I have somebody who is here for the next part, and I think it would be good to finish, to make sure that the DFI study is finished today, so my tendency would be to stay on the safest ground and keep the current timetable.

The Chair: We don't have unanimous support to extend the hearing, so we'll stick to our schedule.

Thank you, Mr. O'Toole.

We'll go on to Mr. Saini, please.

Mr. Raj Saini: Do you think that if the Privacy Commissioner had some sort of powers to adjudicate certain individual cases—because you're talking about an area where each case is pretty well unique—that would be helpful in some way?

Mr. Dean Peroff: Gary.

Mr. Gary Caroline: I'm not sure that it would. Any outside scrutiny or intervention by an officer of Parliament would be helpful, but that's speaking generally.

Frankly, if someone is unrepresented in dealing with these situations—and again, I'm speaking as an advocate—the situation would be very different, but ultimately, in most cases I've found myself involved with, I've been able to work things out with the department officials. I have 30 years of experience as a lawyer, however, so it's easier for me to try to convince somebody than it is perhaps for someone who is unrepresented, for sure.

Your idea may be a good one. Having an option for somebody who isn't represented to have assistance, for example by going to a commissioner, may be helpful.

Mr. Raj Saini: I have just one final question. You mentioned you had 30 years of experience, and Mr. Peroff probably has lots of experience. I won't guess the time.

My question is this. You probably have an understanding of how other regimes, other countries handle their consular affairs. Are there any countries you think we should be looking at? Have there been any decisions by the International Criminal Court that we should be analyzing, any kind of steps going forward? More importantly—you have these years of experience—are there countries that we should maybe be following, looking at, or studying in more depth?

Mr. Gary Caroline: Go ahead, Dean.

Mr. Dean Peroff: I would say that, when a Canadian appears to be in distress abroad, either because of human rights abuse or wrongful detention, nothing else really matters.

I suggest that this could happen in almost any country outside of.... It's easier to tell you what countries are probably okay than tell you what countries are a problem, because most countries are a problem. Once you get outside of Canada, the United States, Great Britain, the U.K., parts of western Europe, and Australia, it could happen any time, anywhere, in any jurisdiction.

I had a case recently in Barbados, which Canada has a tax treaty with, involving a Canadian businessman. It was a very serious wrongful detention case. I know of another case that I was brought into after the fact, which involved one of the Caribbean islands where somebody was having a wedding party and got into all sorts of wrongful detention scenarios; so it can happen anywhere because almost all these other countries have very weak rule of law or no rule of law.

● (1630)

Mr. Raj Saini: Thank you very much.

The Chair: Colleagues, that wraps up our hour.

I want to thank Mr. Caroline and Mr. Peroff very much for this important discussion. It has been just that, and we're looking forward to further discussion.

Colleagues, I'll suspend for a couple of minutes and set up for the in-camera session on DFI.

[*Proceedings continue in camera*]

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