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—
Chair

The Honourable Robert Nault

Standing Committee on Foreign Affairs and International Development

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• (1640)

[English]

The Vice-Chair (Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP)): As we unfortunately have a short time, I'll be stricter with the clock; I will make sure we finish right at 5:30 so we can go to the votes.

[Translation]

We have the pleasure of welcoming Patricia Fortier, a former Canadian diplomat, who was also the Assistant Deputy Minister of the Consular, Security and Emergency Management Branch, and Daniel Livermore, who was the Director General of the Security and Intelligence Bureau at the Department of Foreign Affairs and International Trade from 2002 to 2006, after a long and distinguished career in policy planning.

Ms. Fortier, Mr. Livermore, the floor is yours for your brief presentation.

[English]

Mr. Daniel Livermore (Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual): Thank you very much, Madam Chair.

I made a written submission to the committee a couple of weeks ago, and possibly it has been shared with everyone, so I will just repeat very quickly the three points I tried to make.

First, we need to reject the mantra that Canada does not negotiate with kidnappers. It's not helpful and it's not true. Replace that slogan with a clear commitment to the safety and security of Canadians abroad. That's a better starting point for better consular service.

Second, legislation may not be the most promising approach to getting good consular service. A broad legislation that frames the problem is fine. That's probably a good idea, and it would help to straighten out the legal ambiguity of where consular services reside.

The real issue is how to mandate Global Affairs Canada with the authority to deal with all consular cases, including ones that have an interdepartmental aspect to them.

In the case of kidnappings, as I mentioned in my brief, the RCMP should be removed from line responsibility—and possibly from all involvement in kidnappings abroad—if for no other reason than its inherent conflict of interest, given its law enforcement mandate.

Third, I urge that Canada's diplomatic representatives be given more latitude to have a full range of contacts abroad, with minimal

inhibitions, especially with organizations that on the face of it could have links to problems abroad, ranging from insurgencies to kidnappings. When issues arise, contacts are part of the solution. Without those contacts, we are disarming ourselves to no particular advantage.

Having made those points in the written part, a couple of other points are also worth emphasizing. It's remarkable how many of the difficult consular cases arise as a result of the issue of dual nationality. This concept needs to be communicated much more effectively to Canadians, especially to Canadians who have a second nationality and who travel to the state of their other nationality on a regular basis, sometimes using the passport of their other nationality.

It should be emphasized that the Canadian government of course has a responsibility to all Canadians abroad, including those with a second nationality. The simple realities of international politics mean that the government—the Canadian government, that is—may be limited in its practical ability to act in some situations where dual nationality is either not accepted by other states or is accepted only to a limited extent.

The warnings in Global Affairs consular materials aren't enough. Much more should be done through outreach and communications, including in ethnic newspapers.

I'm also dubious about an approach to consular services that can be described as rights-based. Asserting that someone has a right to consular service may be valid as a starting point, and I don't doubt that it's true, but it doesn't get very far when other countries in which Canadians are in trouble don't co-operate or don't read international law the same way.

Instead, I'm attracted to greater policy codification that establishes what Canadian embassies can offer in the way of consular services and what the respective rights and responsibilities of Canada, the person affected, and the host country are likely to be in practical terms.

The discussion on consular issues then shifts to service standards, or how to offer to all Canadians an approach to consular services that meets expectations. At the present time, there is a lack of clarity across the board on many of these issues. The starting point should be a new corporate mantra in Global Affairs, which is more or less “service to Canada at home and abroad”. This would emphasize the expectations that Canadians have for good consular service.

At the top of the list of problems to be addressed is having a foreign service with experience in consular issues. Most Canadians with problems abroad will be served initially at Canadian embassies by locally engaged staff members. They are mainly the nationals of the host country, hired by the Canadian government to serve in Canadian embassies. The LES, as they are called in the local jargon of Global Affairs, are the backbone of consular affairs. We boast some of the finest LES consular officers in the world.

Staff reductions have taken their toll, training is not where it should be, and some embassies don't give the LES the latitude, respect, and support they deserve. I hope the committee emphasizes the centrality of locally engaged staff to getting the consular job done abroad.

What of Canadians who serve Canada abroad? There was once a tradition when virtually all foreign service officers, on their first few postings, shared consular duties. That has been lost in the current configuration of Global Affairs, with consular affairs now part of a specialized consular administration stream of the department. That specialization is warranted. It builds capacity, expertise, and leadership, but it also has a tendency to limit latitude and experience in Global Affairs. I would hope the department would review how Canadians' missions abroad assist the consular function so that greater numbers of foreign service personnel share consular duties and understand the work and its importance.

This would have a spillover effect in the long term as those foreign service officers come back to Ottawa and gradually move up the line into more responsible positions.

Related to this issue, of course, is the broader question about Canada's foreign service, which is now in a state of crisis. I have blogged a few times on this issue, yet it bears repeating that Canada is now losing its foreign service. If we keep going on the current suicidal course, minimal recruitment, few promotions, no emphasis on experience, languages, or international law, lateral entries blocking the promotion path, etc., the Canadian foreign service will be gone within a decade.

We will then be left with few people within the Government of Canada who understand the international system and how to make it work for Canada. There are obvious implications here for consular affairs, but they apply across the board to other international activities from Arctic legal claims to responding to the challenges of security in eastern Europe.

The committee may also wish to look at this issue, given the centrality of a vital foreign service in providing the type of international service that Canadians need and that Canadians expect when consular issues hit.

Thank you very much.

●(1645)

The Vice-Chair (Ms. Hélène Laverdière): Madam Fortier.

Ms. Patricia Fortier (Fellow, Canadian Global Affairs Institute): I want to thank you very much for inviting me here today. This is something that I am passionate about. I've had 10 postings abroad, and in each one consular issues were, to put it mildly, challenging.

This includes post-9/11 Washington, D.C., where I was the Head of the Political Section and we grappled with the cases of Mr. Arar and Mr. Khadr. Then I was ambassador to the Dominican Republic, Peru, and Bolivia, where there were also a lot of consular cases. As Director General of Consular Operations in 2009-11, we dealt with Haiti's and Japan's earthquakes and the Arab Spring. As the chairwoman has noted, I ended my career as Assistant Deputy Minister for Consular Security and Legal, which saw the proliferation of terrorist attacks, civil war in South Sudan, and the attempted coup in Turkey.

I've been involved in many high-profile complex cases, some of them with a colleague who is here today. Some have been resolved. Some linger.

I have really deep admiration for the extraordinary people who do this work. I wrote a short article in *The Hill Times* that described consular officers as negotiators, confessors, daredevils, and family stand-ins. I think all the people around this table might identify with that profile, since you are also, as legislators, drafted into consular work. At least one of you, I know, has even done consular work in Foreign Affairs. We're all passionate about this, so how do we make it better?

I've read what other witnesses have said. I'll give my take very quickly and then make some suggestions.

On legislation, consular situations are as different as the people in them. Canadian consular workers compare their service to others. Canadian service to their consular clients is consistently among the best, even compared to those that have legislation—for example, the U.S. and Germany.

One thing to keep in mind is that legislation and regulation go hand in hand. There is the potential to turn creative consular officers into form-filling bureaucrats.

For example, under legislation, some of the time now devoted to case management and support could be diverted to preparing, appearing, and evaluating sessions with the new administrative law tribunal that would be created. As we have seen, the charter works. Canadians, including consular officers and politicians, have learned the lessons of post-9/11.

Also, legislation suggests service standards. While being interviewed across Canada on CBC Radio in the midst of the Caribbean and Florida hurricane, I was quite surprised by the idea that Canadian citizens had the right to be evacuated on a government plane immediately. The Canadian government should and does work with a network of international and private sector partners to do whatever is most efficient, effective, and safe.

In that particular case, most Canadians flew back on the airlines that had flown them down. This makes sense. The airlines knew where they were, the airlines knew what the security conditions were, and they had the responsibility. My understanding is that they worked closely with Global Affairs, particularly with the emergency watch and response centre and with something called the “standing rapid deployment team”, which is quite amazing and which facilitated the movement of citizens whose documents had gone with the wind.

On the ombudsman issue, this is a curious proposition. There does not seem to be an actual citizen demand for an ombudsman, nor does it take into account privacy, real-time exigencies, or how the Canadian government actually does its business.

• (1650)

Moving on to privacy, this is serious: the Canadian who is receiving consular services abroad decides what will be shared. When helping a Canadian citizen, this can put the government, or a parliamentarian, at a disadvantage, particularly in the media. There may be awkward conversations with a client's closest family, their friends, and sometimes with lawyers. That is the price. It is the choice of the citizen.

What can we do to improve? As my colleague Dan mentioned, we can do education; outreach. It is the single easiest way to prevent terrible or even irritating situations. Risk is part of the allure of travel, but the risk and the limitations need to be understood better by our citizens. Consular and emergency management tools have to be continuously modernized to educate and to provide this information. In this, agility is key. We go to social media, which now is under consideration, and to whatever we need in order to contact citizens abroad.

We need deeper international discussion. A globalized world needs global responses. The Global Consular Forum exists, but it really needs to be strengthened. The Five Eyes colloque has found a rhythm, but there's always more to be done. Bilateral consular dialogues need to be open, closed, shifted; they need to be flexible.

A colleague of ours, Bill Crosbie, was Assistant Deputy Minister for consular for a long period. He actually created these international bodies. He put forward the interesting idea of an international consular code to create international norms—not a binding treaty, as right now there's not a lot of appetite for that in this world—that could have an impact domestically across the world. High-profile

issues for international discussion include multiple nationalities, children, crisis management, and the intersection of human rights and consular.

Canadians with multiple nationalities, as my colleague said, are at particular risk. There are competing pressures. Ethnonationalism is rising along with globalization. For children, this requires a long-term commitment. Any case will be slow and difficult, because it involves parenting, culture, national law, and family dysfunction. The Hague convention is a step forward, but it does need consistent application. There is also the Malta process, which brings together Muslim and western family law experts. For permanent residents, given how difficult it is to advocate for dual or triple citizens in the country of their other nationality, the level of difficulty soars when it comes to non-citizens. This is very much a question of human rights and resources.

My last two points are with regard to work and resources. Consular work should be rightly valued. It is getting better, but those who do this difficult work should be recognized and rewarded. The good news is that there is a consular cadre, a group of highly trained professionals called management consular officers, or MCOs, who are now rotational foreign service officers. As Dan mentioned, there are also dedicated non-rotational experts in Ottawa and amazing locally engaged consular officers. There is, however, a constant shortage of all these experts.

That brings us to resources.

• (1655)

Adequate, dependable funding is required to hire good people, maintain training, initiate and enlarge partnerships, and deal with emerging issues such as mental health or provincial liaison while continuing to station officers abroad where Canadians are travelling.

Thank you very much for listening.

The Vice-Chair (Ms. Hélène Laverdière): Thank you very much, and I'm not being rude, but we really need to finish at 5:30 to go to the votes.

Mr. O'Toole, please.

Hon. Erin O'Toole (Durham, CPC): Thank you very much, Madam Chair. It's nice to see you in the chair.

Thank you very much for your appearance today and for your service to Canada over the course of your careers.

Mr. Livermore, I'm going to start with you because you spent several opportunities in your presentation here today on the concept of second nationality, dual nationality. There are a million Canadian citizens who have dual nationality, and I notice that it causes particularly acute consular challenges in some cases.

In the case of Mohamed Fahmy, he appeared himself as an example of a journalist who is a dual citizen. What is the best route in those cases, and does renunciation or elimination of the second nationality, if possible, allow for speedier consular support?

Mr. Daniel Livermore: This is an extremely difficult type of case, and I don't think there are any magic solutions, and there are lots of countries that do not allow renunciation.

When I served in Chile, for example, one of the problems we had with Chileans who had left Chile, mainly after the coup of the 1970s, and then wanted to return, was that they were not allowed to renounce their Chilean citizenship. They were Chileans for life, so there isn't any quick solution.

My hope and expectation would be that there would be much more publicity attached to the issue so that Canadians who want to travel and have a second or a third nationality can make a more informed decision on the risks they take if they decide to go back to their country of another nationality, and this might include, for example, compulsory military service that—

Hon. Erin O'Toole: Yes, I know, I've raised this issue in the House. I'm sorry to cut you off, but I don't have a lot of time. Education and publicity, I think, are good things, because we have a Prime Minister now who says a Canadian is a Canadian is a Canadian. That's not true. Some Canadians have additional rights and responsibilities, and half the world doesn't allow dual citizenship at all.

Have there been successful cases where renunciation allowed someone to be released from jail or that sort of thing? Has that worked as a solution?

Mr. Daniel Livermore: Sure. Lots of things work in practice, even though the dual nationality situation remains. I can recall, for example, again a case that I dealt with in Chile, when a dual national had been imprisoned. Technically we had no access to that prison, but because we had a good relationship with the Chilean government and because we had a good relationship with the prison authorities—which sounds peculiar, but that's what you have to do, maintain good relationships—we were able to gain access to her and to effect her release within a matter of days, but it's all based upon good relationships.

Hon. Erin O'Toole: Absolutely. For either of you, over the course of your time with Global Affairs, DFAIT, and the various names over the years, has the concept of eliminating dual citizenship come up? Not that I'm advocating for that at all, but perhaps the Liberals are with this Canadian is a Canadian is a Canadian suggestion. Has that ever been examined?

Mr. Daniel Livermore: Go ahead.

• (1700)

Ms. Patricia Fortier: Dan gives me the tough ones.

I think that it has roamed around in people's minds, but I think that in this world it's just not practical. The concept of dual citizenship and triple citizenship sometimes can work both for and against people.

Certainly, for one of the cases that was recently in Iran, the fact that the person involved had triple citizenship allowed triangulation. I think that most consular officers and the people who deal with them

understand that this is just the way of the world. It's not going to get easier.

Hon. Erin O'Toole: That's fair. I might add that the two largest countries in the world, India and China, do not allow dual citizenship, so when somebody becomes naturalized in Canada, they lose their Indian status. Has that led to the discussion at all, and has that complicated cases in those jurisdictions?

Ms. Patricia Fortier: I think it's quite complex in India. My experience has been that even when a citizen is the son, daughter, or granddaughter of the citizen, they can be seen as an Indian citizen—up to the fourth generation. These things are not easily—

Hon. Erin O'Toole: The remaining time I have left is slight. Part of the education piece, the publicity you talked about, would be to talk more frankly about the challenges and risks of dual nationality. Statements like “Canadians are Canadians are Canadians” probably don't help that education piece.

The other comment I'd like to make is on unequivocal statements like “Canadians will never negotiate with terrorists”. Isn't it more prudent to just not talk about acute, high-risk consular cases rather than have blanket public statements?

Mr. Daniel Livermore: That would be my view, yes.

Hon. Erin O'Toole: And yours as well?

Ms. Patricia Fortier: Yes.

Hon. Erin O'Toole: Thank you very much.

The Vice-Chair (Ms. Hélène Laverdière): Mr. Levitt.

Mr. Michael Levitt: Actually, I'm going to give my time to Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you.

I'd like to come back to a comment you made, Mr. Livermore, about the RCMP being removed from negotiations, especially in the difficult, let's say, kidnapping cases, because of an inherent conflict of interest.

Were you referencing the fact that, as law enforcement officers, their primary goal, their training, is to capture the lawbreaker as opposed to the safety of the victims and negotiating on behalf of the victims? Is that what you were getting at there?

Mr. Daniel Livermore: Yes, that, basically, is it. They have a law enforcement mandate. In theory, they are negotiating with somebody who should be arrested, or they should be pursuing and filing criminal charges against them. To me, it's an inherent conflict of interest, which seems to be primordial. I would argue that the security and safety of Canadians is the principle objective of the exercise.

Mr. Borys Wrzesnewskyj: It absolutely makes sense. Law enforcement officers may not be the best people to negotiate with criminals. There's an inherent tension in there.

I'd like to turn to Madame Fortier. We have diplomats who are incredibly skilful. Do you think it would be a benefit to perhaps put together a unit that would specialize in negotiations in that sort of particular case? We know it's happened in the past. It'll happen again. Canadian lives are at stake. A unit in the consular section of government would be specialists in negotiating those sorts of cases.

•(1705)

Ms. Patricia Fortier: Things have shifted over the past few years as these kidnapping cases have come to the fore. During my time we split the kidnapping cases between commercial and political, although we maintained contact with each other.

My understanding is there is a unit that actually focuses on these cases. They work closely with the consular side. In terms of a cadre who do hostage negotiations, my feeling is that negotiation, particularly with some consular background, is a valuable skill. People who have done consular work or have been on the security side and have an understanding of consular are well qualified to do this.

I would suggest, also, that any hostage situation goes quickly up the chain, including to the political level. There is, without doubt, every time, a pulling together of resources to best address—

Mr. Borys Wrzesnewskyj: In cases of natural disasters—earthquakes, tsunamis—we have a rapid response unit that we can turn to.

Ms. Patricia Fortier: We do.

Mr. Borys Wrzesnewskyj: A rapid response unit in those sorts of situations where Canadians' lives are at risk—whether it's terrorist groups or it could be warlordism—that could be immediately turned to and sent to take on that task, would you be supportive of that sort of unit?

Ms. Patricia Fortier: My understanding is that there is actually such a unit. It works closely with the consular function, but it is not part of the consular function. That's because it straddles some lines. The intelligence that goes into any difficult situation is going to have to be carefully handled. I think it is clear that you do need a point of contact and you need somebody to be responsible. My understanding is that there is actually such a point of contact and there is such a responsibility within Global Affairs.

The other point, as to whether you should create a cadre of people who just focus on this aspect, I think is a more difficult one and it obviously relates to resources. It relates to the question that Mr. Livermore put on the table. You have to have experience. You have to have experience in Ottawa and you have to have experience abroad in order to manage these cases that are complex, of any type.

Mr. Borys Wrzesnewskyj: I have one final point because the comment was raised a couple of times that a Canadian is a Canadian is a Canadian. The context was quite different. It was an understanding that every Canadian, whether born in Canada or abroad, has the same rights. It had nothing to do with what is being discussed here. It was an unfortunate misrepresentation during a very serious committee meeting.

The Vice-Chair (Ms. Hélène Lavergère): Thank you very much.

[*Translation*]

Questions and comments will have to be very brief. It seems that we actually have to adjourn the meeting in six minutes.

Mr. Livermore, you said this:

[*English*]

“contacts are part of the solution.”

[*Translation*]

Ms. Fortier, you said that foreign experience was also necessary.

Many witnesses have said that, in any given country, difficult cases often require a good understanding of situations on the ground. Pardon my bias, but I believe that the people from Global Affairs Canada or even from certain NGOs are those who best understand the reality on the ground and the best networks there.

Nevertheless, we have heard about cases where the Royal Canadian Mounted Police essentially controlled the operations, and where Global Affairs Canada didn't seem to participate much, at least on the surface.

Could you talk a bit about these situations and about intergovernmental coordination, especially with regard to kidnappings?

•(1710)

[*English*]

Mr. Daniel Livermore: Could I just speak to one aspect of that, namely, contacts abroad? This is perhaps a controversial point in the sense that what very often happens abroad is that Canadian embassies have contacts with individuals who are actively involved in insurgencies in other countries, and this is not an unusual situation. We would have, for example, contacts with the FARC in Colombia. We would have contacts with Hezbollah, with Hamas, that some might regard as terrorist organizations or that might be listed by the Canadian government as terrorist organizations.

You might ask what the point is of having some of these contacts. Having the contacts enables you to contact them when something bad happens. When something bad happens and you suspect their involvement, you can't create the contact out of the air. You have to have an established contact.

To me, foreign affairs has gone a bit too far, trying to be a bit too pure in the past—and possibly at the present time—in saying we won't have contact with certain organizations. I think, at the head of mission level, it may be appropriate to say that there are no official contacts. But the reality is that no serious country in the world goes without having those contacts—not the United States, not Great Britain, not France. They all have contacts.

A subsidiary point, if I could just be brief, is that in many countries, the Canadian negotiators won't be dealing with the person who has the Canadians; they will be dealing with a mediator, somebody who knows what's going on, on the ground, and whose services are then brought into play.

It's important that Canadian embassies understand what needs to be done, who the mediators are, who people with good offices are, so that when something bad happens, everybody understands what needs to be done.

Ms. Patricia Fortier: I think the points Dan has made are good. We should also recognize that we do work closely with the RCMP on many matters. Certainly I appreciated them in the transfer of Canadians who had died abroad, particularly in the Haiti earthquake. They were amazing.

When you're moving into an international realm, you do need experience, and the chairwoman has made that point. An ambassador is responsible for what happens in his or her country in terms of Canadian issues.

There is a point to be made in terms of better communication—good communication with the consular side—so it's understood what the consular aspect is. If there are points that are firmly on the security side, which have a different connotation, then some communication on that side should be made without basically giving the store away. Really, the issue here is working together in a way that respects the capacity and capabilities of each.

I am very pleased to hear that the assistant commissioner of the RCMP has recently said that they would not prosecute Canadians who pay a ransom through an intermediary. That is a good step.

The question of ransoms, of course, presents a moral hazard. On one hand, you don't want to give resources to somebody who's going to use those resources for bad. On the other hand, you really want to have that Canadian citizen back safe and sound.

The Vice-Chair (Ms. Hélène Laverdière): Thank you both very much to both of you. It was a pleasure to see you, from a personal point of view. Thank you also for your testimony here today. That will certainly help us produce a good result and good recommendations for the government.

The meeting is adjourned.

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