

• (1140)

Mr. Dan Heap (Spadina): Mr. Speaker, I rise to support this motion because, as the Hon. Member for York West (Mr. Marchi) said, it has the support of the great majority of witnesses who came before the committee. One of the most important of those was the representative and legal advisor of the UNHCR. The UNHCR reminded us that the Convention we signed asks that when a claim is heard and the decision is to reject it, the person shall have a chance for a review. It used the word "review" in a very general sense because it is dealing with 100 or more signatory countries and it is not trying to fit in with the precise technical terms of any one of those countries.

However, the main element in any refugee case is not a point of law, it is a point of fact: did certain things happen to that person; are certain things in danger of happening if they return to their country, and so on. Those are questions of fact, not law. Therefore, when the Convention asks for a review it does not mean just a technical review on points of law, which is all that the present Bill provides.

I want to refer to what the UNHCR said on this point. First, it credits some of the points that the Hon. Member for Calgary West (Mr. Hawkes) and the Hon. Parliamentary Secretary have made. It said:

UNHCR notes with appreciation that unanimity is required for negative decisions on admissibility. The Office nevertheless again recalls Executive Committee Conclusion No. 30(XXXIV) in which the substantive element in screening processes was recognized; it was there recommended that unsuccessful applicants be enabled to obtain review, even if in a simplified procedure, before rejection at the frontier or removal from the territory.

That means review by a body authorized for that special purpose as explained elsewhere, such as a review of the decision by the refugee board. That is, if the refugee division's decision were reviewed. It also points out:

The Office recognizes that this is compensated for to a degree by the requirement of unanimity for negative decisions, and by the availability of judicial review, at least in respect of those claimants who, having reached the Refugee Division stage, may remain in Canada pending a final determination.

It continues:

The Office observes that decentralization of the refugee process and increased resources should expedite decision-making. Yet, in the absence of some central review, these advantageous developments may be dissipated through loss of consistency and uniformity, with an increased possibility of erroneous decisions.

For these practical reasons, UNHCR would urge that further attention be given to ways and means of institutionalizing central review, for example, by drawing on current practices in the Immigration Appeal Board and other tribunals.

In other words, a mere review on points of law is not enough when we are going to have decision makers spread all across this country, each one doing the best he or she can but with no mechanism for ensuring conformity and therefore equity in their decisions.

This question was raised not only by the UNHCR but by a great many witnesses before the committee. There was a

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rather disconcerting moment in committee when it was considering another amendment relating to this section which would have deleted certain words that restrict the scope of the hearing, words relating to a capricious decision. If there was an error in fact caused by a capricious decision, I asked that the court be allowed to review it. The Government refused to accept that amendment and in explaining the refusal the Hon. Parliamentary Secretary referred to the section which deals with a decision based on an erroneous finding of fact that the refugee board made in a perverse or capricious manner or without regard to the material before it. The Parliamentary Secretary said:

This particular section is lifted right out of the Federal Court Act, and if you took away the phrase Mr. Heap wants us to delete then it would change the parameters.

Whatever that means.

Whether intentionally or unintentionally, I do not know, the remark by the Parliamentary Secretary, no doubt on the advice of Mr. Gerrard and Ms. Beaupré, the department staff present, was misleading because the words he refers to in the Federal Court Act are words for judicial review. Yet the Government is calling this an appeal. Judicial review is limited, yes, by the Federal Court Act to points of law and to a point of fact that becomes a point of law. Yet when I asked for further explanation, Ms. Beaupré could not tell me all that was in the Act. She said that the words I wanted to take out are definitely in the section dealing with judicial review, and to quote:

I am not aware that the provision on appeals to the Federal Court of Appeal from trial division decisions has those words.

The Government makes a statement which turns out to be inaccurate, and when we ask the staff the Government brings to the hearing, the experts, Mr. Gerrard and Ms. Beaupré, to give us the details, they say they do not know. That is not a very fair way to argue.

I appeal to the Government to reconsider its position on this point. The UNHCR has asked that we have a review. The Government turned down all requests for a system of review on the grounds that it would lengthen the process. We heard a speech many times from the Hon. Member for Calgary West about how such a change would open the door to thousands of bogus refugees who would delay the whole process for weeks and months and years and cause it to break down again. By his own words that is not true. He has told us that about 80 per cent of the applicants would be found to be bogus at the screening stage, not at the end. Only a relatively small number of applicants will get to the refugee division. Of those, some will be found to be genuine and they will not appeal. Some may accept a negative decision. There will not be a huge number appealing.

I am asking that they be given a fair appeal, not one chopped, changed and turned into a mere judicial review by the legalities introduced by the staff and defended by the Hon. Parliamentary Secretary. I am asking that the Government