

*Immigration Act, 1976*

There is no guarantee in the clause as it is written that the person will be accepted by that country either allowing him to stay as a permanent resident, which would have an effect similar to being accepted as a refugee, or allowing him to make a refugee claim.

I have tried several ways of dealing with this question, and two of them are reflected in Motions Nos. 23 and 24, and there is a slightly different way reflected in Motion No. 30.

• (1140)

Before going to that, I wish to deal with the fact that the Government appears to want to reduce its obligation under the United Nations Convention regarding the protection of refugees. At the beginning of the committee clause by clause debate the Government introduced something like the present clause on page 14 of the Bill, Section 48.01(1)(b). It said that the claimant would be returned to a country:

—that has been prescribed as a country that complies with Article 33 of the Convention—

Later in the day the Government changed that and only wanted to concern itself with whether the country complies with Article 33 of the Convention. I have explained this point previously in another connection but the point is important. Allowing a person protection means essentially and basically not forcing him to go back to the country in which he is being persecuted in the case of a refugee, and not doing so to a person who claims to be a refugee unless the claimant is allowed to state his claim and is found to be not a refugee. In the case of a refugee or a possible refugee, the rule is not to send him back to his country.

The most obvious way of sending him back to his country is to handcuff him, put him under guard and compel him to depart or in some way legally compel him to depart. A less obvious way of sending a claimant back to his country is to make sure that he lives in such miserable conditions in the country in which he has sought protection that he is indirectly forced to return; for instance, if he is not allowed to earn a living, if he is not allowed liberty and kept in detention for no reason other than that he claimed refugee status or for other trivial reasons. In other words, if a person is not allowed to live something like a normal life—he does not have to live like a prince—then he is not really receiving the protection of the country.

I have already listed Articles of the Convention which ensure a person protection under the law, liberty of movement, the right to earn a living and other normal rights of residence in such a country that are also supposed by the same Convention to be assured. But our Government has very carefully said, “We don’t care whether the person can really live in that country so long as we can dump his body back inside those other borders and we can wash our hands of him”. That is why in Motion No. 22 I proposed that we change line 25 so that it reads, “a country” that has been prescribed as “a country that complies with the Convention”—the whole Convention, not just one Article of it.

Clause 23 and Clause 24 attempt more positively to get at the same point. In Clause 23 I propose that a person “would be allowed to return to that country, if removed from Canada, and has the right to have the claim determined therein”.

I do not think we should send a person back. I know all of the witnesses who spoke to our committee were concerned with this. We should not send a person back to a country unless we know positively that he will be accepted and either allowed to remain or allowed to have his claim determined there, preferably allowed to return and have his claim determined. That is what I asked for in Clause 23.

In other words, if somebody comes from the United States to Canada and says, “I am a refugee from El Salvador”, we will be sending him back to the United States. The Government has never assured us that it will not, but the Government ought to be responsible for knowing that the United States will either let him live in the U.S. or have his claim determined there. We know that the Americans’ way of determining a Salvadoran’s claim is very different from determining a claim of someone from say a country like Poland. At least our Government should be held responsible for making sure that the person has that minimal right even in the United States. There has been some legal amelioration of that practice in the United States. I hope the Americans will give more just treatment to Salvadoran claimants in the future, although that remains to be seen.

I wish to speak about Clause 30 in particular, Mr. Speaker. This would amend the matter, I think, adequately. I still do not think the safe third country system is a workable one in the way it is being used. When the adjudicator and the refugee division member have examined a person and decided that he should be returned, say to the country from which he came, which may not be the country of his persecution, they should make sure, as it says here, that they send him to that country and not leave it up to some immigration officer or enforcement officer to figure out what country they might send that person to. Motion No. 30 reads:

The adjudicator and member of the Refugee Division who determines a claimant to be ineligible under paragraph 48.01(1)(b) shall also during that same inquiry specify the prescribed country to which the claimant may be removed.

There is a small typographical error in line 2. The word determines should be the word “determined” since it applies to the adjudicator and member of the refugee division collectively. Their decision that a person is ineligible would have to be made by the two of them together. It could not be made by either of them without concurrence of the other, according to the Bill. That is quite agreeable to this side of the House.

They should also then have this responsibility so that if a person is returned to a country where he is not safe, at least it is the adjudicator and the member of the refugee division who have taken that responsibility. Better still, if when they announce that a person is to be returned to country x, the claimant and the claimant’s lawyer, if he has one present,