Canada. Parliament.
Special Joint Committee
on Immigration, 1967/68.
Minutes of proceedings
and evidence.

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HOUSE OF COMMONS
Second Session—Twenty-seventh Parliament
1968

THE SPECIAL JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS ON

IMMIGRATION

Appointed to examine and report upon the White Paper on Immigration tabled in the House of Commons by the Minister of Manpower and Immigration on October 14, 1966, and tabled in the Senate on October 18, 1966, and also to examine the Reports on immigration matters made to the Government of Canada by Mr. Joseph Sedgwick, Q.C., in 1964 and 1966.

Joint Chairmen:

Honourable Senator Léopold Langlois
and Mr. Milton L. Klein, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

TUESDAY, FEBRUARY 13, 1968
TUESDAY, FEBRUARY 20, 1968
THURSDAY, FEBRUARY 29, 1968

WITNESSES:

From the Department of Manpower and Immigration: Messrs. Tom Kent, Deputy Minister (Immigration), R. B. Curry, Assistant Deputy Minister (Immigration), E. P. Beasley, Director of Home Branch and Benoît Godbout, Director of Foreign Branch. *From the Immigration Appeal Board:* Miss Janet Scott, Chairman, Messrs. J. C. A. Campbell, Vice-Chairman and D. M. Sloan, Registrar.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

27010—1

MEMBERS OF THE COMMITTEE FOR THE SENATE

Honourable Senator Léopold Langlois, *Chairman*

and Honourable Senators:

Cameron
Croll
Desruisseaux
Fournier (*Madawaska-Restigouche*)
Hastings
Hnatyshyn
Macnaughton
Nichol
Pearson
Willis—12.

MEMBERS OF THE COMMITTEE FOR THE HOUSE OF COMMONS

Mr. Milton L. Klein, *Chairman*

and

Mr. Aiken
Mr. Badanai
Mr. Baldwin
Mr. Bell (*Carleton*)
Mr. Blouin
Mr. Brewin
Mr. Crossman
Mr. Deachman
Mr. Dinsdale
Mr. Enns
Mr. Haidasz
Mr. Laprise
Mr. Macaluso
Mr. Munro
Mr. Nasserden
Mr. Orlikow
Mr. Pelletier
Mr. Prud'homme
Mr. Régimbal
Mr. Roxburgh,
Mr. Ryan
Mr. Skoreyko
Mr. Watson (*Châteauguay-Huntingdon-Laprairie*)—24.

(Quorum 12)

Maxime Guitard,
Clerk of the Committee.

NOTE TO PROCEEDINGS

Special Joint Committee on
Immigration

This Committee did not present its final Report to the House of Commons.

Maxime Guitard,
Clerk of the Committee.

ORDER OF REFERENCE OF THE SENATE

TUESDAY, June 6, 1967.

That the Senate do unite with the House of Commons in the appointment of a Special Joint Committee of both Houses to examine and report upon the White Paper on Immigration tabled in the House of Commons on October 14, 1966, and tabled in the Senate on October 18, 1966, and the Reports on immigration matters made to the Government of Canada by Mr. Joseph Sedgwick, Q.C., in 1964 and 1966;

That the following Senators be appointed to act on behalf of the Senate on the Special Joint Committee, namely, the Honourable Senators Baird, Blois, Cameron, Croll, Desruisseaux, Fournier (*Madawaska-Restigouche*), Hastings, Langlois, Macnaughton, Nichol, Pearson and Willis; and that the quorum be fixed at twelve members provided that both Houses are represented;

That the Committee have power to call for persons, papers and records, to examine witnesses; to report from time to time; and to print such papers and evidence from day to day as may be ordered by the Committee;

That the minutes of proceedings and evidence of the Committee in the past Session be referred to the said Committee and be made a part of the records;

That the Committee have power to sit during sitting and adjournments of the Senate;

Attest:

J. F. MACNEILL,
Clerk of the Senate.

27010—1½

ORDERS OF REFERENCE OF THE HOUSE OF COMMONS

FRIDAY, May 19, 1967.

Resolved,—That a Special Joint Committee of the Senate and the House of Commons be appointed to examine and report upon the White Paper on Immigration tabled in the House of Commons on October 14, 1966, and the Reports on immigration matters made to the Government of Canada by Mr. Joseph Sedgwick, Q.C., in 1964 and 1966;

That twenty-four Members of the House of Commons, to be designated at a later date, be members of the said Committee; and that the quorum be fixed at twelve members provided both Houses are represented and that Standing Order 67 be suspended in relation thereto;

That the said Committee have power to call for persons, papers and records, to examine witnesses; to report from time to time; and to print such papers and evidence from day to day as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto;

That the minutes of the proceedings and evidence of the Committee in the past Session be referred to the said Committee and be made a part of the records thereof.

MONDAY, May 29, 1967.

Ordered,—That the Members of the House of Commons on the Special Joint Committee of the Senate and House of Commons to examine and report upon the White Paper on Immigration tabled in the House of Commons on October 14, 1966, and the Reports on immigration matters made to the Government of Canada by Mr. Joseph Sedgwick, Q.C., in 1964 and 1966 be Messrs: Aiken, Badanai, Baldwin, Bell (*Carleton*), Blouin, Brewin, Chatwood, Crossman, Dinsdale, Enns, Haidasz, Klein, Laprise, Leblanc (*Laurier*), Macaluso, Munro, Nasserden, Orlikow, Prud'homme, Régimbal, Roxburgh, Ryan, Skoreyko and Watson (*Châteauguay-Huntingdon-Laprairie*).

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

TUESDAY, February 13, 1968.

Ordered,—That the House of Commons section of the Special Joint Committee of the Senate and House of Commons on Immigration be granted leave to sit while the House is sitting.

Attest:

ALISTAIR FRASER,
The Clerk of the House of Commons.

REPORT TO THE HOUSE OF COMMONS

TUESDAY, February 13, 1968.

The Special Joint Committee of the Senate and House of Commons on Immigration has the honour to present its

FIRST REPORT

Your Committee recommends that the House of Commons section be granted leave to sit while the House is sitting.

Respectfully submitted,

MILTON L. KLEIN,
Joint Chairman.

(Concurred in on Tuesday, February 13, 1968.)

MINUTES OF PROCEEDINGS

TUESDAY, February 13, 1968.
(1)

The Special Joint Committee of the Senate and House of Commons on Immigration met at 10:15 o'clock a.m. this day, for the purpose of organization.

Members present:

Representing the Senate: Honourable Senators: Croll, Langlois (2).

Representing the House of Commons: Messrs. Bell (*Carleton*), Brewin, Chatwood, Enns, Haidasz, Klein, Laprise, Leblanc (*Laurier*), Munro, Nasserden, Prud'homme, Régimbal, Roxburgh (13).

The Clerk of the Committee presided over the election of the Joint Chairmen representing both the Senate and the House of Commons.

On motion of Honourable Senator Croll, seconded by Mr. Chatwood, it was

Resolved unanimously: That Honourable Senator Langlois be elected Joint Chairman of the Senate's section of this Committee.

On motion of Mr. Haidasz, seconded by Mr. Prud'homme, it was

Resolved unanimously: That Mr. Klein be elected Joint Chairman of the House of Commons' section of this Committee.

Then the Clerk of the Committee invited the Joint Chairmen-elect to come to the head table and Honourable Senator Langlois took the Chair.

On motion of Mr. Prud'homme, seconded by Mr. Leblanc (*Laurier*), it was

Resolved unanimously: That the House of Commons' section of this Committee seek permission to sit while the House is sitting.

On motion of Honourable Senator Croll, seconded by Mr. Chatwood, it was

Resolved unanimously: That the Subcommittee on Agenda and Procedure be comprised of the Joint Chairmen and eight other members appointed by the Joint Chairmen, after the usual consultations with the whips of the different parties.

The Chairman invited the Clerk to read the Order of Reference.

The Committee agreed unanimously to the following decisions:

1. Some officials of the Department of Manpower and Immigration will be invited to appear before the Committee on Tuesday, February 20, 1968.
2. It is to the Subcommittee to decide if the Committee should consider the briefs received during the last recess of the House.

3. The Committee also authorized the Subcommittee to specify the number of copies of the Committee's Minutes of Proceedings and Evidence to be printed after inquiring from the distribution office if the number printed last session was sufficient or excessive.

At 10:40 o'clock a.m. the Committee adjourned until 11:00 o'clock a.m. on Tuesday, February 20, 1968.

TUESDAY, February 20, 1968.
(2)

The Special Joint Committee of the Senate and House of Commons on Immigration met at 11:10 o'clock a.m. this day. The Joint Chairman of the House of Commons' section, Mr. Klein, presided.

Members present:

Representing the Senate: Honourable Senators Blois, Cameron, Desruisseaux, Fournier (*Madawaska-Restigouche*), Langlois, Pearson, Willis (7).

Representing the House of Commons: Messrs. Badanai, Brewin, Enns, Haidasz, Klein, Leblanc (*Laurier*), Nasserden, Orlikow, Prud'homme, Roxburgh, Skoreyko, Watson (*Châteauguay-Huntingdon-Laprairie*) (12).

In attendance: From the Department of Manpower and Immigration: Messrs. Tom Kent, Deputy Minister (Immigration); R. B. Curry, Assistant Deputy Minister (Immigration); E. P. Beasley, Director of Home Branch; Benoit Godbout, Director of Foreign Branch.

The Joint Chairman invited Mr. Kent to make an opening statement before being questioned thereon, assisted by his colleagues.

The witnesses' examination being completed, the Joint Chairman thanked them and they retired.

At 12:35 o'clock p.m. the Committee adjourned to the call of the Chair.

THURSDAY, February 29, 1968.
(3)

The Special Joint Committee of the Senate and House of Commons on Immigration met at 11:20 o'clock this day. The Joint Chairman of the House of Commons' section, Mr. Klein, presided.

Members present:

Representing the Senate: Honourable Senators Blois, Langlois (2).

Representing the House of Commons: Messrs. Badanai, Bell (*Carleton*), Brewin, Chatwood, Dinsdale, Enns, Haidasz, Klein, Laprise, Leblanc (*Laurier*), Munro, Nasserden, Orlikow, Roxburgh, Skoreyko (15).

In attendance: From the Immigration Appeal Board: Miss Janet Scott, Chairman, Messrs. J. C. A. Campbell, Vice-Chairman, J. P. Jeoffroy, Vice-Chairman and D. M. Sloan, Registrar.

The Joint Chairman asked the Committee for a motion to specify the quantity of the Committee's Minutes of Proceedings and Evidence to be printed.

On motion of Mr. Skoreyko, seconded by Mr. Bell (*Carleton*),

Resolved unanimously,—That the Committee print 850 copies in English and 350 copies in French of its Minutes of Proceedings and Evidence.

Miss Scott was then invited by the Chair to make an opening statement before being questioned thereon assisted by her colleagues. Miss Scott filed with the Clerk of the Committee a document intituled "Appeals to the Immigration Appeal Board by Sponsors whose Application has been refused", and in French "Appels à la Commission d'Appel de l'Immigration par des répondants dont la demande a été refusée".

The Committee having completed its examination of the witnesses, the Joint Chairman thanked them and they retired.

At 1:00 o'clock p.m., the Committee adjourned to the call of the Chair.

Maxime Guitard,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, February 20, 1968

• 1108

The Joint Chairman (Mr. Klein): Gentlemen, at the last meeting of the Committee it was decided to call the officials of the Department before the Committee so they might report the progress made since the meeting previous to the last one.

I now have the pleasure of calling upon the Deputy Minister, Mr. Kent, who will give us a short report. Mr. Kent?

Mr. Tom Kent (Deputy Minister, Department of Manpower and Immigration): Thank you, Mr. Chairman. Members of the Committee will recall the Minister's description of the fundamental changes he proposed in the selection methods for immigrants. I think it is fair to say that the spirit of those proposals was generally welcomed. Since that time, of course, the Department has been engaged in the complex task of translating the spirit into effective procedures and, we hope, enlightened practices. I believe the report which I can give to the Committee at this stage is one of substantial progress. When I say that I do not want to be taken to imply that we have done the job. There is a long way to go before all that we are striving for is accomplished.

While I have no wish to try to blow the Department's trumpet, I cannot help but be conscious of the fact that immigration officials have sometimes been represented as very rigid, unsympathetic people. Therefore I cannot take this opportunity of appearing before you without paying tribute to the devotion, the understanding and the effort which the officials of the Department have put into making this new policy effective. Nothing could have been further from the conventional idea of a bureaucracy which is so tied up in its own red tape that it cannot make changes. On the contrary, there has been a highly zealous, creative and effective response to the challenge of some new ideas. Thanks to that, which has been a most heartwarming experience for everyone concerned, I believe I am only expressing the deserved respect to my associates when I say that we have made substantial progress.

• 1110

The Minister expressed to you the belief that the proposed new policies and procedures would enable us to operate with both greater efficiency and greater compassion than has been possible in the past. Our ability to fulfil the second objective depends on the qualities of the officials at all levels who have to deal with the complex human and personal problems involved in many of the difficult individual cases with which Members of Parliament are particularly familiar. I think there has been a marked improvement in the compassion and humanity with which a more flexible immigration system takes individual circumstances into account. For that I hope our officers at all levels will be given the credit which I believe they deserve. I hope I may also be allowed to add, Mr. Chairman, that if we have made any progress it is certainly due in large part to the influence of this Committee, which did so much to bring out both the problems and the ideas that stimulated and encouraged the development of our new procedures. Perhaps I could briefly review what we have done.

Our first task was to express the principles that the Minister outlined to the Committee in the details of the new regulations. On that basis we had to develop new procedures and new forms to be used in applying the new selection system, and we had to introduce our staff at home and overseas to the new ideas and the different method of working. All of this was quite a major administrative undertaking. I must say there were days when I had doubts whether we could hit our target of getting the new regulations smoothly into operation by October 1 of last year. However, we did succeed in that respect.

The essence of the new regulations is that for the first time they spell out systematically and publicly the criteria by which we attempt to judge whether an applicant is likely to establish himself successfully in Canada. This, of course, is the essential first

step in making the selection system a fair and balanced one so that it operates efficiently, humanely and consistently. These criteria provide a more balanced assessment of the individual than those that were used in a more arbitrary way in the past, and they are applicable without distinction as to the applicant's country, race, colour, or creed.

The regulations provide for the sponsorship of dependent relatives as a matter of right. Dependents are admissible without regard to their own qualifications or the financial circumstances of the sponsor. They come because they are wanted, and they can normally expect their relatives to keep them.

The regulations also widen the classes of non-dependent relatives who can be nominated, and they eliminate the discrimination on geographical grounds that used to exist. At the same time, the admission of a non-dependent relative who will be entering the Canadian labour force is made partially sensitive to economic conditions in Canada. Compared with the unsponsored or independent applicant, the nominated relative enjoys a substantial preference. That is fair because he is promised assistance from his nominator. However, as he is not going to be dependent on his relative he must, at least in part, meet the standards for probable success in establishing himself in Canada. Whether he can do so will depend largely on the availability of jobs in the occupation for which he is qualified. This means in practice that the majority of nominated relatives will be accepted, but in the case of those not too strongly qualified for employment in Canada, their admission will as far as possible be timed to coincide with periods when employment is buoyant.

The regulations also introduce a new concept of when people may apply to be immigrants. In the past they were supposed to be outside the country, and theoretically at least they could not be considered as immigrants if they first came as visitors. Under the new regulations we make allowances for people who first come as visitors and then want to stay. They can be assessed on the same basis as if they had applied abroad. However, the regulations do not permit this provision to reach the point where it gives an advantage to people who can afford the risk of paying their fares and come as visitors. That would be unfair to the others. Therefore we require that a visitor's application can only be considered if it is made before his temporary status expires and provided he has not prejudged his acceptability as an immigrant by taking employment while ostensibly here as a visitor. Also, in the assessment he is not given any credit for arranged employment because that would place the normal applicant abroad at a disadvantage.

Finally, in listing the main features of the regulations, I should mention that for the first time they spell out the conditions under which students may enter and remain in Canada.

• 1115

To make this new policy completely meaningful, we have to arrange as far as possible that these people have a comparable opportunity to be examined as immigrants whatever their present country. There are practical limitations to this, depending on the governments of other countries, and on how far we can go in providing the necessary resources. However, as the Minister announced, our aim is to move as far as we can in a reasonable and practicable way.

Concretely, we have in the present fiscal year stationed offices for the first time in Belgrade, Yugoslavia; Beirut, Lebanon; Kingston, Jamaica, Port of Spain, Trinidad, Rawalpindi, Pakistan and Sydney, Australia. Area offices have been established to process applications from countries where permanent facilities are not available. For example, Beirut will be responsible for processing immigrants from the Middle East and Africa, Kingston will cover Central America and Port of Spain will cover South America. Early next month the first travelling team will visit parts of Africa and a team from Port of Spain will travel to South America.

A central processing office for immigrants in the United States is being established in Ottawa. A central processing office is also being established in Geneva to process applications from Iron Curtain countries. Some difficulties are being encountered but negotiations are proceeding to permit travelling teams to go to these countries and progressive extension of out activities is anticipated. Some bottlenecks have developed, particularly in Hong Kong and India, where the number of applications has increased substantially. We are endeavouring to cope with the situation by providing additional staff. During this fiscal year 36 additional officers have been trained and posted abroad, and we are planning for a further increase in the coming year.

It is, of course, too soon to judge the permanent impact of the new regulations but members of the Committee may be interested in some statistics for the last quarter of 1967, the first quarter in which the new regulations were applicable.

From October 1, the average monthly number of sponsored and nominated applications received in Canada was approximately 7,000, as compared with the monthly average for the previous nine months of 4,900. This was an increase of 43 per cent. The number of applications approved from October 1 was approximately 6,000 a month, compared with 4,000 a month during the first nine months of 1967. In other words an increase of 50 per cent. This means that refusals were at a somewhat lower proportion than previously.

As it was expected, applications for relatives from Asian and Eastern European countries showed the highest percentage increase. There was a bottled-up demand because of the previous differences in sponsorship provisions and therefore some of the increase will probably prove to be temporary. It is equally difficult at this time to judge the impact of the regulations on independent applications at posts abroad, but the monthly average of new applications received during the last three months of 1967 was just over 39,000, a slight increase of about 2 per cent when compared with the first nine months of the year. Approvals constituted 44 per cent of the applications dealt with, compared to 39 per cent previously.

Before referring to the future I should mention the other important legislative changes of which the Committee is aware. The Immigration Appeal Board Act, which established a completely independent party with full jurisdiction to consider all appeals against deportation, was proclaimed last November and is now fully operational. I understand that as of February 7, 113 appeals against deportation orders have been received. There have as yet been no appeals involving refusal to approve an application for a sponsored dependent. The Board has actually heard 42 cases. It has reserved its decision in 7 cases, directed the execution of the deportation order in 21 cases and suspended or quashed the order in 14 cases.

Legislation designed to establish more effective consultative machinery, the Canada Manpower and Immigration Council Act, was passed on December 21 last. It provides for the establishment of a Canada Manpower and Immigration Council and Advisory Boards, including one on the adjustment of immigrants. It will be the function of the Council to advise the Minister on all matters related to the effective use and development of manpower resources in Canada, including immigrants and their adjustment to Canadian life. A secretariat has been established within the department and consultations on memberships of the councils and boards are under way with many of the appropriate organizations that are interested in manpower and immigration. We hope to subsequently establish regional and local committees to give us the benefit of community opinions on our work.

• 1120

The final legislative change which I might mention is the amendment to the Immigration Act regarding the Assisted Passage loan fund and the new Assisted Passage Loan Regulations. The White Paper proposed that loans be made available on a universal basis to reflect the non-discriminatory selection system. It was obviously not possible to implement this proposal if the statutory limitation on the revolving fund remained unchanged. Parliament agreed last May to increase the fund from $12 million to $20 million. Our objective is a gradual implementation of the principle of universality as our examination facilities are extended to additional countries. As a first step in this direction, assisted passage loans have been made available to immigrants from the West Indies. However, we cannot use this money well and fairly unless we can assure a high rate of repayment. For this reason we are now charging interest at the rate of 6 per cent. The major legislative action still pending, of course, is the new Immigration Act. Work on the drafting instructions for that is well advanced.

Before concluding, perhaps I should comment briefly on the 1967 immigration program and our plans for 1968. In 1967, 209,840 immigrants came to Canada compared with 194,000 in 1966; in other words, there was an expansion of about 8 per cent. In addition, landed immigrant status was granted to 13,000 persons already in Canada. Britain and Italy remain the major source countries followed by the United States, Germany, Greece and Portugal, but immigration from France has almost doubled in the past two years and for the first time last year exceeded 10,000.

Over 50 per cent of the immigrants were destined to Ontario, 20 per cent to Quebec and 12 per cent to British Columbia. It might be noted, however, that the number of immigrants destined to Manitoba increased by 81 per cent, to Alberta by 49 per cent and to Quebec by 17 per cent. The percentage increase for Ontario was 9 per cent. Thus there was a somewhat more even distribution of immigrants.

In 1968, of course, the full force of the new regulations will be felt. An increase in applications can be expected from many parts of the world and in any given economic circumstance the new selection methods can be expected to produce somewhat more immigrants, especially relatives, than the former system did. However, the needs of the Canadian economy and especially its ability to absorb workers, will be reflected more automatically and precisely.

The extent to which the 1968 movement is greater or less than the 1967 movement will, therefore, depend primarily on employment conditions. I emphasize that I am not referring to what is called a tap-on tap-off policy. I mean that a basically expansionist policy involves modestly upward and downward waves according to economic circumstances.

We do believe that with the new regulations and procedures we have made considerable progress in putting immigration on a basis that can operate soundly and steadily in the interest of Canadian development. But if that belief is correct, Mr. Chairman, then as I said earlier it is a success to which your Committee has made a large contribution.

The Joint Chairman (Mr. Klein): Thank you, Mr. Kent. Mr. Badanai?

Mr. Badanai: Mr. Chairman having in mind critics of the immigration policies of this and previous governments, I wish to express my personal gratification for the substantial progress which the new policy has made possible, resulting in the admission of a much larger number of immigrants during the past year. I want to congratulate the Minister, the Deputy Minister, his Assistant Deputy Minister, Mr. Curry, Mr. Beasley and Mr. Godbout, for their energy certainly has produced results that are gratifying to the people of Canada. I think we have a more realistic immigration policy now than we have ever had.

• 1125

The improvement of our personnel overseas, incidentally, has been responsible for the admission of a better class immigrant than we have received in the past. I think Mr. Godbout should be credited for the excellence of staff overseas, notably in Britain, France and Italy, some of whom I had the privilege of meeting last year.

I visited some of the offices, not in an official capacity but entirely unofficially and I was impressed by the calibre of the men that are now handling our immigration policies overseas and I want to express my deep appreciation and offer congratulations to the officers and members of the staff of the Immigration Department.

The Joint Chairman (Mr. Klein): Mr. Brewin?

Mr. Brewin: Mr. Chairman, I will just have to be forgiven for not being quite so eulogistic about the Department, although I would not like it to be thought that I do not appreciate the very excellent changes that have, in fact, been made.

However, I would like to ask one or two questions that arise out of the administration of the present regulations. One question is, if a nominated or an independent applicant is assessed by an immigration officer and his advisers or he himself want to know the basis of that assessment and the points awarded under this assessment, is this information available and have the immigration officers, who make these rulings instructions to make this information available?

Mr. Kent: Mr. Beasley, would you like to answer that? I can see that you have the relevant instruction ready.

Mr. E. P. Beasley (Director of Home Branch): The answer in the case of the independent immigrant is that he is not given the details of the assessment units. He simply is informed that all the factors relative to his selection have been taken into account and on the basis of these factors the examining officer has reached the conclusion that he would not establish himself successfully in Canada. The unit assessment points on each factor are not given to the independent applicant.

Mr. Brewin: I would like to ask, why not? I suggest that it is quite impossible for either the applicant or his advisers to see whether

he is close to the line, whether some factor may have been overlooked and to give proper advice. You have a system of special inquiry and appeal boards set up to deal with these matters so why should there be any concealment whatever about the results of the assessment?

Mr. Kent: I wonder whether Mr. Beasley should refer to the situation for nominated applicants before he answers that?

Mr. Beasley: In the case of a nominated immigrant, he also is informed that after assessment of his education and training, his personal qualities, his age and occupational skills and the demand for his occupation in Canada, notwithstanding the assistance available from the nominator, he is not likely to establish himself successfully in Canada. Again he is not provided with the unit assessment details, nor is he given the details of the assessment points on each factor taken into account.

Mr. Brewin: Do you want to say something, Mr. Kent?

Mr. Kent: Might I, Mr. Chairman, to clarify this? At the same time, if the short-fall is of a narrow extent, the nominated applicant is, of course, told that it would not be advisable for him to come forward at this time but that his application will be kept on hand and if the demand for his occupation improves within the next two years he will be informed automatically of this and his application reconsidered.

• 1130

All this refers to a process taking place abroad. It has nothing to do with the special enquiry procedure and so on. In the case of the independent applicant, while we do not give a precise score, if he is only just short of qualifying then, of course, the officer indicates to him that circumstances could change and if he remains interested certainly he should consider renewing his application in a year or two.

Mr. Roxburgh: I have a supplementary. For example, let us suppose it is education that makes the difference. That is it. He has everything else. Why would you not tell him, so the man could then have an opportunity to further his education? Why would you not tell him?

Mr. Kent: Yes, most certainly. The only thing we do not do is give a precise score, because I suppose on the principle that many people concerned with educational methods, for example, are in favour of broad bands of grades rather than precise marks, it creates a slightly artificial atmosphere.

Mr. Brewin: Is it public policy that a person whose admission to this country is based on a point system—a specific number of points for various things—should not be given if he asks for it—I appreciate that the may not want to ask for it—his exact score so he can judge not only whether there is something in which he could improve, but possibly whether through some oversight a mistake might have been made? Perhaps he misunderstood something when he produced the information. What public policy reason is there to conceal from the applicant and his advisers precisely how he made out? I am not talking about the broad educational aspects, I am talking about fairness to the individual.

Mr. Kent: I do not think there is any fundamental public policy reason and certainly, so far as the applicant in Canada is concerned, we have not attempted in any case which became very much a matter of dispute to conceal the precise score. Of course, if it becomes a matter of inquiry, then it is revealed. That is the stage where it certainly is made public.

However, the applicant abroad has never been dealt with on the basis that he has a right to come to Canada. He applies, he is assessed, and if he passes the assessment, fine; if he does not, then he does not come to Canada. The system we have described is the system as it applies to the applicant abroad. The applicant in Canada, of course, is in a different situation because even if he is refused he nonetheless has the right to not leave Canada. In such a case inquiry proceedings are instituted and eventually an appeal will follow, and if the matter becomes controversial the assessment is made known to him.

Mr. Brewin: May I ask one or two other questions?

The Joint Chairman (Mr. Klein): Before we leave this subject and as a follow-up to Mr. Brewin's question, may I ask how a person is able to determine, if he is not given the results, whether he should go to appeal or not?

Mr. Kent: He is given the results.

The Joint Chairman (Mr. Klein): No, I mean a breakdown of the results.

Mr. Kent: The people we were talking about when we described the general system were the applicants abroad.

The Joint Chairman (Mr. Klein): Oh, I see.

Mr. Kent: If we hold an inquiry, in Canada so that the issue of appeal arises, then of course he is given the detailed assessment.

The Joint Chairman (Mr. Klein): Only if he goes to appeal?

Mr. Kent: No, no, if there is an inquiry.

The Joint Chairman (Mr. Klein): At the end of the inquiry he would get the results?

Mr. Kent: That is part of the inquiry proceedings.

The Joint Chairman (Mr. Klein): And he can be told what the results are at the end of the inquiry?

Mr. Kent: He learns them at the inquiry, if I remember the procedure rightly.

Mr. E. P. Beasley (Director of Home Branch, Department of Manpower and Immigration): Yes, at the inquiry.

• 1135

Mr. Brewin: May I go back to that point for a moment? Let us suppose he has just been advised that he has not met the assessment and he is to leave by a certain date. I think this is the normal procedure. Then he has to make up his mind whether he will face an inquiry or not. He may get the advice of a lawyer, a Member of Parliament or some person knowledgeable in the field, but all he has is this general statement. Why at that stage, if he asks, should he not be given the information so that he can assess whether he ought to go through this procedure? If he goes through with an inquiry and it is ordered that he be deported as a result, he may be very seriously prejudiced. Once he is ordered to be deported he has another serious strike against him.

Mr. Kent: In the case of the applicant in Canada—I think the applicant abroad is in a different situation—to whom these legal rights ultimately apply, I think we recognize that this is a fair argument.

Mr. Brewin: I wish you would instruct your officers accordingly, because I have had letters in which they have not given me the information. I am not saying this is the case when I apply at headquarters.

Mr. Kent: There certainly are letters in which the information is given.

Mr. Beasley: But normally the initial advice does not give the reason.

Mr. Kent: Not the initial advice.

Mr. Brewin: I appreciate that, but I am talking about the second stage when a lawyer, or someone writes and says, "Mr. So-and-So has asked me to represent him. He was turned down. Will you give me the details?" I have had "yes" answers and "no" answers from some of your Toronto officers, and so on. I suggest that if this is your policy, you should inform your officials so they will carry out this policy.

Mr. Kent: We will look into this.

Mr. Brewin: I will ask one more question and then I will stop, although there are a number of questions I would like to ask.

Are there any instructions given to officers about the means by which they assess the 15 points? Are points given for personality, initiative and all these other things? I know it is "within their judgment", and I take it this is unappealable. There are 15 points and it may make a lot of difference to the individual. I would like to know if any instructions have been given to the officers as to how they are to make this personality assessment. I may say that in some cases I have found the results to be surprising, and for this reason I would like to get some light on it.

Mr. Kent: I guess in all circumstances the results will vary a good deal according to individual judgment. That is what is deliberately provided for in that element in the regulations. Initially and quite deliberately we gave only a very general sort of guidance to officers. We just pointed out the main factors—initiative, and so on—on which they were asked to make a judgment in assessing personal qualities and to do no more than that. We wanted to see how the system would work. However, we found that the concentration within the middle range was very strong—which was understandable—and stronger than perhaps would suggest that the importance of this was really being fully used in the absence of any guidelines.

Therefore at the moment we are considering—not any instructions or procedures because the whole essence of this assessment is that it is the man-to-man judgment—the virtue of trying to describe in a little more detail than we attempted before the sort of guidelines that seem sensible purely as a guide to the officers, not in the spirit of an instruction.

Mr. Brewin: Would it be possible, if this Committee is still in existence, to have these guidelines made available to us?

Mr. Kent: At the moment they are in sort of draft stages. They go to and fro between us. We are trying to get them suitably worded, but as soon as we have them in final form there is no reason why they could not be made available, sir.

Mr. Benoît Godbout (Director of Foreign Branch, Department of Manpower and Immigration): Our officers abroad have recognized the problem you raised and have asked for help in that direction.

Mr. Kent: This is why we are responding to it.

• 1140

Mr. Brewin: I raised the question because I happen to be familiar with a case in which a gentleman was given a score of seven from the officer. After speaking to him almost everyone else gave him—not in marks, but in general recommendations—a score of 15, and I wondered why the officer had given him only seven.

Mr. Kent: Frankly, this is a problem that we have considered. We have the feeling that, very understandably when first operating a new system, there is a little too much tendency to give the safe little mark, so to speak. In some cases it does look surprisingly low and in others surprisingly high. As Mr. Godbout said, in response to the request from many of our offices we are trying to lay down rather more detailed guidelines; but I would emphasize again, that they are not instructions.

Mr. Brewin: Mr. Chairman, I have two other questions, but I will pass if I may return to them when others have had an opportunity to ask questions.

The Joint Chairman (Mr. Klein): I have on my list Senator Fournier and Senator Pearson.

Senator Fournier (Madawaska-Restigouche): Mr. Chairman, I have one or two short questions. We were given earlier the number of immigrants to Ontario, Quebec and Manitoba. Do you have the number who went to the Maritime Provinces?

Mr. Kent: It is relatively very small. I do not have the figures. Perhaps Mr. Curry or Mr. Beasley has them. Mr. Beasley has the complete figures. I should explain that they may be slightly misleading in that they are the figures of the total number of persons technically landed; that is to say, they include people who, in fact, were in the country before July 1966, but only in 1967 were given immigrant status. Therefore, it adds up, not in actual arrivals, to 209,000, but to that must be added the 13,000 granted immigrant status. The figures are Newfoundland, 984; Prince Edward Island, 147; Nova Scotia, 2,400; New Brunswick, 1,300; Quebec, 45,700; Ontario, 116,800; Manitoba, 9,300; Saskatchewan, 3,700; Alberta, 15,000; British Columbia, 27,200; Yukon and the Northwest Territories, 164.

Senator Fournier (Madawaska-Restigouche): Thank you. You also mentioned earlier the number of immigrants we get from the United States. Have you the number of people who have left Canada...

Mr. Kent: We do not yet have a precise figure for that for this year. The United States will know the number who left Canada and entered the United States as immigrants. We do not keep a record or a control, on those.

I do not know what information we have for last year. Mr. Curry says that 35,000 is a pretty accurate estimate for the number last year.

Senator Fournier (Madawaska-Restigouche): Of Canadians who left Canada for the United States last year?

Mr. Kent: Yes.

Senator Fournier (Madawaska-Restigouche): And in return we got 8,000?

Mr. Kent: No; 19,000.

Senator Fournier (Madawaska-Restigouche): Nineteen thousand.

Mr. Kent: That is a better balance than there has been in many previous years.

Senator Fournier (Madawaska-Restigouche): Thank you, Mr. Chairman. That answers my questions.

The Joint Chairman (Mr. Klein): Senator Pearson?

Senator Pearson: Mr. Chairman, I had two questions. One of them which has been asked by Senator Fournier, was about the numbers that went to the different provinces. I am particularly interested in Manitoba with an 81 per cent increase. I just wanted to know what the exact figure was.

Mr. Kent: Nine thousand three hundred; and that was a very large increase compared with the number the previous year.

Senator Pearson: Have you any idea why there were so many more than the previous year?

• 1145

Mr. Kent: Yes; I think the main reason was a very considerable joint effort by the government of Manitoba and ourselves. During last year the government of Manitoba was very anxious to encourage immigration, even in advance of the new regulations which, of course, will help to produce better distribution when they become fully effective. In fact, one of the factors taken into account is the relative demand for workers in the areas to which they are going. Even in advance of that we made some special arrangements with the Manitoba government to help in the recruitment of workers for the garment industry, which was especially needful of them. They mounted a considerable recruiting campaign and sent people abroad looking for immigrants, using, of course the facilities of our offices as bases.

It was simply the result of an effort that had not really been made in the past by any province except Ontario, which has made it over many years. Manitoba began to make it quite intensively last year.

Mr. Roxburgh: Was there any special effort on mining?

Mr. Kent: There is, indeed, under the new regulations...

Mr. Roxburgh: I know that the government of Manitoba's brief to us contained many references to mining and the mining situation. You have just mentioned the garment industry...

Mr. Kent: Yes; I think there they have left it to the companies concerned to make the special effort.

Mr. Roxburgh: Did they have any luck?

Mr. Kent: I am not sure that we have figures for actual recruitment. A number of companies have, in the course of the last few months, sent recruiters to Germany and the United Kingdom. I think those were the two main countries.

Mr. Curry informs me that some arrangements are just now being made in Italy, so the companies are making this effort, which is comparable, of course, to the sort of effort that many big corporations in other industries have made in the past. This had not been practicable for the mining industry under the previous regulations, but now is, and some of the companies are taking advantage of it.

Senator Desruisseaux: I have a supplementary question: Will the arrangements being made by companies be on the contract, three-year basis, or is it for permanent immigration?

Mr. Kent: Permanent immigration.

Senator Desruisseaux: Thank you.

The Joint Chairman (Mr. Klein): Senator Pearson?

Senator Pearson: My other question is this: You said that 36 new officers were trained and sent abroad. To which particular countries did you send them? Did you concentrate on any particular area?

Mr. Kent: Needless to say, I do not want to try to define exactly where the new officers, went, because they are new and junior and tended to be sent to established offices. Our more experienced officers have gone to the new places.

The main utilization of the 36 new officers has, of course, been in the six newly opened offices that I mentioned: in Rawalpindi, Pakistan; Beirut; the two in the West Indies, in Port of Spain and in Kingston; Sydney, Australia; and Belgrade. The new officers went there, and the experienced officers were transferred and...

Senator Pearson: They went to the new offices?

Mr. Kent: Yes. We also increased the staffs in Hong Kong and New Delhi, because these were the two places where the most serious backlogs existed. We hope to make further increases in the coming year.

Mr. Badanai: How many immigrants did we get from Australia in 1967?

Mr. Kent: About 5,000.

Mr. Badanai: Five thousand; and Australia is making a great effort to attract immigrants.

The Joint Chairman (Mr. Klein): I have on my list Senator Desruisseaux, Mr. Haidasz, Senator Cameron and Mr. Skoreyko. Senator Desruisseaux?

Senator Desruisseaux: My questions have been partly answered.

You made reference to Hong Kong. I was there last summer. I was astonished by the number of applicants that remained unprocessed; and the number that had been accepted was extremely limited. Does a similar situation prevail now?

• 1150

Mr. Kent: There is no question at all that Hong Kong is the problem place. Mr. Godbout may have some of the details at his fingertips, but in essence the situation is that there had been a very substantial backlog in Hong Kong for a long time. We began 18 months or so ago to try very hard to get it down and we were beginning to make some progress until the troubles in Hong Kong last spring and, of course, that produced a really impossible volume of applications, to the point that the staff really could not get on with dealing with the cases they had waiting. Every day the office was so besieged with people who had to be dealt with, applications taken and so on, that more and more applications were being taken but there was less and less time to do anything about them. Frankly, the situation was that bad last spring and summer.

We tried to get more staff available as quickly as possible. We got new accommodation or expanded the accommodation and we are hopeful that with the present size staff we will certainly begin to reduce the problem.

Mr. Godbout, you may remember exactly what the change was and how many people are there now as compared with a year ago.

Mr. Godbout: We had on establishment last year seven officers while the present strength is six officers and we have provision for eight officers next year. But we are adding. We have three on the establishment at this moment because we have borrowed staff from other offices. We have what we call four Canadian support staff officers who perform clerical duties; they do no counselling but they help the counsellors. We had on the establishment 17 locally engaged staff members and this year we will have 25. As a matter of fact, the 25 are already there because we have borrowed from other posts.

Mr. Kent: Perhaps I should say that those "this year" figures were in themselves a considerable increase over the previous year.

Mr. Godbout: I do not have the 1966 figures here.

Senator Desruisseaux: Do you have, percentagewise, the number of applications that were processed?

Mr. Godbout: No. I could make the calculations but...

Senator Desruisseaux: Would you say it would be less than 1 per cent?

Mr. Kent: No, no, less than that. There was one period when the number of people coming to the office was so great that really the staff could do very little except to receive applications. But that was just the bad moment. It would certainly be much over the average.

Senator Fournier (Madawaska-Restigouche): All these are housed in the same building?

Mr. Kent: The new accommodation is an expansion in the same building.

Senator Pearson: There is no thought of increasing that to two buildings, two posts, in Hong Kong, instead of one?

Mr. Kent: We think there is plenty of room now.

Senator Pearson: It is not a question of room but rather a question of getting your people to the office.

Mr. Kent: We had not thought of that. Perhaps we do not dare to think of it because of the trouble we would have in obtaining the extra money to pay for two offices. The travelling distances are not very great.

Senator Pearson: They are not very great but still the people do not have very good access to transportation, either.

Mr. R. B. Curry (Assistant Deputy Minister, Department of Manpower and Immigration): Mr. Chairman, you might be interested in knowing that the actual movements from the office in Hong Kong last year were of the order of 6,400, as compared with 4,000 the previous year, which is an increase of more than 50 per cent in spite of the handicaps that Mr. Kent indicated about the fresh flood of new applicants. So it did go up very substantially.

Mr. Godbout: Mr. Chairman, I think I have the statistics. In 1966 we had 10,600 cases and in 1967 16,000 but in 1966 we had received 15,000 applications so we thought we had adjusted.

• 1155

Mr. Kent: We caught up with the old rate of applications.

Mr. Godbout: But in 1967 we received 28,000, so we have to readjust constantly.

Senator Desruisseaux: How many of those were admitted?

Mr. Kent: 6,400.

Senator Desruisseaux: Admitted?

Mr. Kent: That was the number actually admitted this year. There was a slight phasing but...

Senator Desruisseaux: Yes, thank you.

Mr. Skoreyko: You said that there were seven officers, now six. To answer that question fully how many officers are there in Hong Kong now who have the authority to process completely an application?

Mr. Godbout: Six.

Mr. Skoreyko: Just six?

Mr. Godbout: Yes.

Mr. Kent: Which we hope to increase to eight.

Mr. Skoreyko: To eight.

Mr. Kent: Perhaps we should say, though, and make it clear that the speed at which one can work when faced with a very large volume of applications does depend very greatly on adequate support staff; on both a certain number of Canadian support staff and also on adequate local staff. I think it would be fair to say, given the situation in this past year where the priority needed to be put on this increase of 36 in our Canadian officer staff, that in the coming year we hope to be able to increase substantially in a number of places, Hong Kong being the most important, the number of what we call locally engaged staff—secretarial-clerical staff—who, if we have adequate numbers and get the right ones, are really as important to speeding up the process as are the actual Canadian officers.

Mr. Skoreyko: But do you think the eight officers are adequate in that office in Hong Kong with the figure of 16,000 applications?

Mr. Kent: Yes, with the increase in support staff also which Mr. Godbout, mentioned, I think they will make a great deal of difference. They would not without the extra support staff too, but with that, yes.

Senator Desruisseaux: The situation in Hong Kong would be temporary. The pressure now being imposed on the department is temporary, in a way, because of the conditions there.

Mr. Kent: We hope so.

Mr. Haidasz: Mr. Chairman, I would like to ask the Deputy Minister what progress has been made in the plans which the Minister announced concerning the setting up of an immigration office in Warsaw, Poland, or in sending additional staff to help process the applications that are being received in Warsaw.

Mr. Kent: I would ask Mr. Curry to give the details of that. In general, as you will recall, the Minister's objective was to improve our ability to respond to applications, particularly, of course, from relatives from all the Iron Curtain Country areas, and we were successful in establishing one office behind the Iron Curtain for the first time, namely in Belgrade.

We have also set up a sort of special unit in Geneva to be a central point for applications from the Iron Curtain countries. We hope to make arrangements, and we think we are fairly well advanced in making arrangements, for a travelling team, so to speak, to go from that office to various Eastern European countries as applications for sponsored and nominated relatives are avail-

able, and process them on the spot by means of these visitors. We did hope to actually post permanent staff to Poland. We have not so far been able to arrange that but we do not despair. Mr. Curry might like to comment.

Mr. Curry: I think perhaps it would be of interest, particularly to Mr. Haidasz, that the negotiations that were carried out with the Polish Government were of a very delicate character. These negotiations were carried out by External Affairs naturally on our behalf with reference to immigration. We thought a year ago that those negotiations would be successful but we ran into a couple of difficulties. One difficulty was that from the point of view of immigration they required us to go outside the present chancery quarters, which are too small to admit even one more officer—they are just that tight—and the Polish Government showed a good deal of hesitation about our taking space outside the chancery, particularly if it was to be labelled in any way with a sort of immigration flavour and did not just include plain External Affairs staff. This resulted in a sort of an impasse a year ago and now that negotiations have been reopened I am afraid there is a slight tendency on the part of the Polish government to undertake some sort of a trade involving our representation in Warsaw, including immigration and their personnel who are permitted to be in Canada in one capacity or another.

• 1200

Mr. Haidasz: Negotiations have been resumed between the Department of External Affairs on your behalf and the Government of Poland?

Mr. Curry: They are being actively pursued right now.

Mr. Haidasz: Can you tell us, Mr. Curry, whether the special unit to be set up in Geneva will be allowed to travel to Warsaw, Poland?

Mr. Curry: This is also under negotiation.

Mr. Haidasz: I asked this question because the 1967 statistics on immigration to Canada show an increase from almost every country, and the increase is almost double from several countries in eastern and central Europe, but even though the new regulations came into effect on October, 1967, only 1,470 immigrants arrived in Canada from Poland, which is 208 less than in 1966. What is the explanation for this?

Mr. Kent: Not on our side.

Mr. Haidasz: We receive all kinds of assurances that things will be better, and then it turns out to be worse.

Mr. Skoreyko: They probably do not have any confidence in our government.

Mr. Haidasz: Is it because of the procedures and difficulties which these applicants encounter? Is anything being done to make it difficult for them just because they come from an Iron Curtain country.

Mr. Kent: I think the answer to that, of course, is the fact that, in most Iron Curtain countries, as well as the rest of the world, the trend if anything is somewhat better. We have been attempting to make the procedures much easier than they were as far as Iron Curtain countries are concerned. The problems are the same as in other parts of the world. Our ability to do immigration business in any country depends on the attitude of the government of that country; this is inescapable.

Mr. Haidasz: I have received representations that there are many Polish visitors or refugees who have somehow reached Vienna, Austria, who are finding it very, very difficult to have their applications processed in Vienna. Apparently there are many refugees or visitors from countries like Yugoslavia who find it easier to have their applications processed in Vienna than the refugees or visitors who go to Austria from Poland.

Mr. Kent: There is no doubt at all that because of the attitudes of the governments concerned entry from Yugoslavia is very much easier than from some other Iron Curtain countries. As far as we are concerned there is no need for anybody to go from Yugoslavia to Vienna in order to have an application dealt with. We now have an office right in Belgrade. Presumably these are people who anticipate problems with their own government. That would seem to be the only explanation in that case.

• 1205

Mr. Haidasz: I hope the situation existing in Vienna can be further investigated. I received some serious complaints during the past weekend. There are many professional men such as doctors and engineers—and we need doctors in Canada—who would like to

get to Canada. They are now in Vienna and they have been unsuccessful in getting anything done by our immigration officers in Vienna.

Mr. Curry: I do not recall this having been brought to our attention, Dr. Haidasz.

Mr. Haidasz: I would like to take this opportunity to bring it to your attention because it has been brought to my attention.

Mr. Kent: We will enquire into that right away.

Mr. Haidasz: I have another question, sir. I would like to find out from Mr. Curry if visitors coming to Canada receive any oral instructions from the immigration officer at the port of entry or are any instructions given in the language of the visitor with respect to what they can and cannot do when they arrive in Canada? For example, especially whether they can go to school or take employment, and so on.

Mr. Curry: We have certainly taken the position that they are being adequately warned against taking employment in this country.

Mr. Haidasz: How? At what place and through what means?

Mr. Kent: Right on the form which they receive when they enter.

Mr. Curry: And we are making that intimation even more common.

Mr. Haidasz: Everyone receives a form? In what language?

Mr. Kent: English and French.

Mr. Godbout: In the overseas offices we have a sheet which gives all the instructions to visitors. This explains what they can and cannot do during the period they are being permitted to remain in Canada.

Mr. Kent: And that is in the language of the country concerned?

Mr. Godbout: I cannot say for sure.

Mr. Haidasz: Can we get a copy of the instructions they receive in the country they are leaving and the instructions they receive at the port of entry in Canada?

Mr. Kent: Certainly, we can give you those right away.

Mr. Haidasz: Thank you.

Mr. Brewin: I wonder when we see the form if it will reveal whether they are told anything about their right under the regulations to apply for permanent admission within a certain period?

Mr. Kent: The people concerned come in as visitors. If they had the idea they were coming in as immigrants, presumably they would have applied as such. We now make full provision for a person who comes as a visitor and then changes his mind and wants to stay. This did not exist before but we now make full provision for it. However, when they apply as visitors and when they arrive as visitors we give them the information they require as visitors.

Mr. Brewin: They are not told that at any time, if they should want to stay they have to make their application under the regulations during the period of their visit?

Mr. Kent: They are told that the period of their admission as visitors is for the period specified on the form, and they have no right to stay any longer unless they apply for an extension. If they apply for an extension as visitors, normally they get it, but they have to apply.

Mr. Godbout: In certain countries this would be regarded as the promotion of illegal activity.

The Joint Chairman (Mr. Klein): May I ask one question supplementary to Mr. Brewin's. I understand when a person enters Canada as a visitor he has a specified period within which he is permitted to stay. If he makes application for permanent residence before the expiry of this period his application will be processed.

Mr. Kent: Yes.

The Joint Chairman (Mr. Klein): If, on the other hand, he allows the period to elapse, his application will not be processed. What is the reason for that?

Mr. Kent: Because his original entry as a visitor was for a specified period. If he wishes to stay longer as a visitor he is perfectly free to apply for an extension, and it is normally given if he has any reason at all. However, if he begins by not bothering sufficiently to re-apply—whether it be for an extension as a visitor or for entry as an

immigrant—within the specified time then we feel he is—what shall we say?—not taking a very active and conscientious interest in becoming an immigrant or staying on as a visitor, as the case may be. If we were not to adhere to that sort of time limit, frankly we would be encouraging a repetition of the situation which proved so unfortunate in the past, when very many people came as visitors and simply stayed and stayed without making any application. If you do nothing about such a situation it really makes a farce of any immigration system.

• 1210

The Chairman: But I understand that where a person is granted a specified period and then goes to the immigration offices and gets an extension, he is not permitted to make an application for permanent status during that extended period.

Mr. Kent: Oh, yes. Oh, he would be so long as he maintains official status in Canada.

The Joint Chairman (Mr. Klein): He may apply for permanent status within the period that he still has permission?

Mr. Kent: So long as he has official status we accept the application. The only people whose applications we do not accept are those who have allowed themselves to get into illegal status.

Mr. Brewin: May I ask a further supplementary? This rule seems to me to be applied with undue rigidity. I can see the force of what you say if a person just stays here and does not apply. But let us suppose that through ignorance or by some person they have gone to not forwarding the application for one reason or other they are a week or so over; that otherwise they are fully qualified, desirable people but they have some reasonable excuse, having formed the bona fide intention to apply within the period. Even courts that are fairly rigid will not insist upon the application of rigid time limits and yet, so far as I can make out, the Immigration Department is saying "no, it is the law and our regulations", no matter how good the excuse. For instance, they might go to a member of Parliament and ask him about it but he forgets to put in the application.

Mr. Kent: I think I can assure you, sir, that if anybody comes with as good an excuse as that we will be flexible about the rule.

Mr. Brewin: Then they may re-open a case.

Mr. Prud'homme: May I say that I forgot once; I just forgot, but it was Christmas time and difficult.

Senator Cameron: My question was partly answered. I would like to know the number of immigrants from Hong Kong.

Mr. Kent: It was to 6,400, if I remember rightly.

Senator Cameron: What about Japan, Yugoslavia, the Caribbean area and France?

Mr. Kent: The number from Japan was 930, which was an increase from 500 in the previous year.

Senator Cameron: And Yugoslavia? You just started last October, is that correct?

Mr. Kent: Yes.

Mr. Curry: Yugoslavia, just over 2,000, an increase from just over 1,500.

Mr. Kent: Well, 2,100, virtually, from just 1,500.

Senator Cameron: What about the Caribbean? That would be Jamaica, the Bahamas and Trinidad, particularly Trinidad-Tobago.

Mr. Kent: Let us give the main countries. Jamaica 3,400 compared with 1,400; Trinidad-Tobago 2,300 compared with 1,100.

Senator Cameron: Was it 2,300?

Mr. Kent: Yes, compared with 1,100. Barbados 1,200, virtually, compared with 700 and other West Indies, as a whole, a total of 1,400 compared with 700.

Senator Cameron: What about France?

Mr. Curry: France has doubled, just over 10,000.

Mr. Kent: Yes, 10,000 compared with 7,800 and that 7,800 in turn was a big increase from the previous year: the figures have been very low.

Senator Cameron: And supplementary to that, what kind of people came from Hong Kong and Japan; what are their principal trade qualifications?

• 1215

Mr. Kent: From Hong Kong, of course, the largest proportion was relatives who came in primarily as such. From Japan there are

relatively few sponsored cases and the majority are what you would call technicians.

The Joint Chairman (Mr. Klein): Mr. Skoreyko?

Mr. Skoreyko: Thank you, Mr. Chairman. First of all, may I congratulate the Department on their endeavour to eliminate discrimination as we saw it in the past. I do not quite agree with you, gentlemen, that discrimination has been completely eliminated because I...

Mr. Kent: We recognize that it is going to take time.

Mr. Skoreyko: I was going to say that if it has, I have a file in my office I would be glad to take to your office this afternoon and have it processed as quickly as it can be. It involves a case of a married woman in Alberta who has tried for two years to get two brothers here from Hong Kong with no success. However, that is an aside.

I want to get back to Hong Kong, gentlemen. Last year 6,400 people from Hong Kong were admitted to Canada and you had 28,000 new applications. What is the total number of applications from people in Hong Kong that are awaiting approval?

Mr. Kent: I think Mr. Godbout can give that figure.

Mr. Godbout: There are 15,099.

Mr. Skoreyko: That is the total number of applications from people in Hong Kong?

Mr. Godbout: Yes, that is the number of cases being processed at the end of 1967.

Mr. Skoreyko: Do you mean by "processed" that if somebody filed an application yesterday it is considered to be in process?

Mr. Godbout: Yes.

Mr. Skoreyko: Will you give me that figure again?

Mr. Godbout: It is 15,000 at the end of the year.

Mr. Kent: I think it is important, if I may say so sir, to recognize—as I am sure you are well aware—that the identity problems in relation to Chinese immigration which caused so much trouble in the past inevitably make the processing problems in Hong Kong much more difficult than almost anywhere else.

I will put it like this: The productivity per officer, in terms of number of immigrants where we can establish that the terms of the Canadian law are being complied with, is inevitably lower. This is the problem.

Mr. Skoreyko: Going back to this case in Edmonton, surely if a woman can produce bona fide receipts for so many hundreds or thousands of dollars she has sent during the last four or five years for the support of her two brothers in Hong Kong that must mean something to the Department, or do you think she would be throwing her money away or giving it to a stranger?

Mr. Curry: There is a point here; I think you said at the beginning that this person had been making an effort on behalf of these brothers for some two years.

Mr. Skoreyko: Yes.

Mr. Curry: Actually, until late last fall she could not have sponsored brothers from China.

Mr. Skoreyko: Oh, no, I realize that; this is the discrimination aspect. I have tried since and, of course, the identification problem comes up.

Mr. Kent: The actual time that application has been in process, affecting brothers, at this moment is only four months because we could not have dealt with it before.

Mr. Skoreyko: So there is still hope.

Mr. Curry: It is not as bad as two years.

Mr. Skoreyko: I see; thank you very much. Gentlemen, there is another point I want clarified. You said you are opening an office in Geneva. You call it an international office, is that correct?

Mr. Kent: For some two years we have had a Regional Office for Europe located in Geneva. As a part of that Regional Office for Europe we are now establishing a central processing unit for countries behind the Iron Curtain where we do not have officers permanently stationed but where we hope to deal with applications either on paper, when that can be done, or by sending teams to those countries to interview the people on a visiting basis.

Mr. Skoreyko: How would your officers make contact with these people?

Mr. Kent: We have the names and addresses. We write beforehand and ask them to come to the Canadian Embassy in Hungary, in Budapest or wherever it may be, at a certain time on a certain day.

Mr. Skoreyko: This has been in use now for two years, has it? It is in operation?

Mr. Kent: No, the setting up of a central processing unit has been in process for only a month or two.

Mr. Godbout: It has been authorized for the next establishment.

Mr. Kent: That is right. All this was new territory, so to speak. We opened the office in Belgrade by sending a very experienced member of the department, whom many of you know because he used to be executive assistant in my office, Mr. Cunliffe. He went to Belgrade, started the office there, and is now in Geneva to begin the establishment of this central unit for the iron curtain problem.

Mr. Skoreyko: Does our government have a dialogue with the communist governments to facilitate the processing of these applications as such? In the past it was necessary to get certain documents processed through Mr. Sphedko at the Russian Embassy, and this sort of thing. Is that a thing of the past?

Mr. Kent: I think perhaps "an agreement to facilitate" would be an overstatement. I think we find that negotiations are beginning to produce a better understanding.

Mr. Curry: Their attitude towards sponsored persons coming out is relatively liberal—and I repeat, "relatively".

Mr. Skoreyko: I have just one or two more points. I do not want to take too much of the Committee's time. During the Committee hearings last year there was considerable discussion about the need for agricultural help in Canada. Was there any emphasis, through the Geneva office or through the Belgrade office, to recruit agricultural help for Canada? If this was or could be done, what about the educational requirement or the point requirement for the admission of such people?

Mr. Kent: On the general question, undoubtedly the effect of the new regulations will be that an agricultural worker will have a good chance of entering Canada or being accepted under the regulations, which he did not have, of course, before, because the demand for the occupation will replace the previous emphasis on purely educational qualifications.

An hon. Member: Fourteen out of fifteen?

Mr. Kent: Yes, the mark is a very high as the need for agricultural workers is fully recognized in the system. However, I am afraid, as Mr. Curry indicated, that while we find we are getting a relatively relaxed attitude on the part of iron curtain countries toward our accepting relative-sponsored dependents as immigrants, and to some extent other relatives, we do not have relationships which enable us to try to recruit workers as such. They definitely would object very strongly to this, as indeed do other countries—not only the iron curtain countries.

• 1220

Mr. Skoreyko: Can an agricultural worker from any one of the iron curtain countries be sponsored?

Mr. Kent: Oh, yes.

Mr. Skoreyko: He can be sponsored?

Mr. Kent: Yes, if he comes within the sponsored classes.

Mr. Skoreyko: Only if he comes within the sponsored classes?

Mr. Kent: Yes.

Mr. Curry: An unrelated person can sponsor a desirable worker. I think that is what you were asking.

Mr. Skoreyko: I see.

Mr. Kent: Sponsorship refers purely to the relationship, not to the desire for a special worker.

Mr. Skoreyko: Then assuming that I sponsor someone from Russia as an agricultural worker, what assurances does the department require before they will allow this person to come to Canada? The reason I am posing this question is because it undoubtedly will happen that a sponsored immigrant will come to Canada, presumably to take on agricultural employment, and will end up working in a factory. What assurances do you want or do you want any at all?

Mr. Kent: We do not feel that it would be realistic for us to ask for guarantees. If a man is an agricultural worker and he comes

forward as that and is admissible as such, then he has that occupation to follow. If in practice he subsequently makes a free choice of another occupation, we would not feel we should attempt to control such a situation.

Mr. Skoreyko: One last point, gentlemen, and this deals with public relations. The other day—as a matter of fact, just shortly after Christmas—a reputable and very busy Chinese businessman who holds an interest in a number of fairly large companies in the city of Edmonton, and who also holds title to some farmland outside the city, made application with the Department in Edmonton to sponsor a cousin for admission to Canada to take over his farm.

Mr. Curry: He cannot, sir...

Mr. Skoreyko: That is fine. I realize that he cannot.

Mr. Curry: ... because of technical circumstances.

Mr. Skoreyko: My point has to do with public relations. A letter was written to this man asking him to come to the office. He was not told that the application could not be considered; he was told to come to the office. In his letter to me he pointed out that—as a busy man—he had to wait three quarters of an hour for somebody to come out of the back office to tell him that his application could not be considered. I need not tell you that he raised particular hell. This was a lack of public relations on the part of the Department and I think something could be done in that area to improve the Department's image.

• 1225

Mr. Kent: We apologize for the waste of his time in itself, quite apart from the public relations as such.

Mr. Skoreyko: He said that when he walked into the office he felt as if he had broken some kind of a law because of the way he had been treated. I assured him I would bring it to your attention.

Mr. Kent: Thank you.

The Joint Chairman (Mr. Klein): May I just ask one question? Does the officer who processes an application have the right to assess the bona fide character of the immigrant with respect to whether he really wants to be an immigrant or not?

Mr. Kent: The strength of his motivation, so to speak, is one of the factors that he includes in the personal assessment.

The Joint Chairman (Mr. Klein): I am not asking this question to embarrass the Department, but it concerns the disturbing number of American draft-dodgers who are in Canada. It is said that there are 10,000 draft-dodgers here. When you have the figure of 19,000 persons coming into the country as against 35,000 leaving the country, would that include some persons who might be American draft-dodgers?

Mr. Kent: It would certainly include some Americans of draft age who decided to come to Canada. We do not feel that we normally can judge how large a part—the fact that there is a draft in the United States and there is not one in Canada—this played in their motivation. Most of these people, of course, qualify quite readily under the assessment system, so that any judgment the officer might form about the strength of his motivations normally would not affect the issue anyway and they would not be taken into account. In a marginal case, of course, he is entitled to take it into account, but it is purely on that basis. There is nothing in the Canadian immigration law which makes a man's status in relation to a draft a consideration that in itself we can take into account at all. We may form judgments about motivations and personal characteristics, but that is its only relevance. We have no legal authority that would enable us to treat A and B differently simply because A is potentially liable to the draft and B is not.

The Joint Chairman (Mr. Klein): But you might say that many of the Greek shipjumpers are also in the same category. We are sending back the Greeks and we are not sending back the Americans.

Mr. Kent: Oh no. It is a different situation. Under the laws of all countries the seaman is breaking both his contract with his employer and his country and also the specific provisions of our law when he leaves his ship.

The Joint Chairman (Mr. Klein): May I ask whether any representations were made by the American government to the Canadian government, or to your Department, with respect to American draft-dodgers?

Mr. Kent: None whatever.

• 1230

Mr. Prud'homme: May I express the wish that they will not. May I also express another wish that we do not change our laws in case there might be draft-dodgers. I do not like to see our people judging the intention of people who come here to establish and, I strongly emphasize that point.

The Joint Chairman (Mr. Klein): Thank you very much. We will now adjourn to the call of the Chair.

Thursday, February 29, 1968

• 1119

The Joint Chairman (Mr. Klein): Ladies and gentlemen, I see a quorum.

May I have a mover and seconder for the suggestion that there be printed 850 copies in English and 350 copies in French of the Minutes of Proceedings and Evidence of this Committee.

Mr. Skoreyko: I so move.

Mr. Bell (Carleton): I second the motion.

Motion agreed to.

The Joint Chairman (Mr. Klein): We are very privileged to have with us this morning the Chairman, both Vice-Chairmen and the Registrar of the Immigration Appeal Board. I am sure we will wish to question these witnesses.

It is my pleasure to present to you the Chairman of the Immigration Appeal Board, Miss Janet Scott.

Do you have an opening statement, Miss Scott?

Miss J. Scott (Chairman, Immigration Appeal Board): As you like. Or I can describe what we do.

• 1120

The Joint Chairman (Mr. Klein): Yes. That might be the better way.

Miss Scott: It may be of interest to the members.

The Joint Chairman (Mr. Klein): If the Committee is in agreement, Miss Scott will describe how the Immigration Appeal Board operates. Miss Scott.

Miss Scott: As you know, the Immigration Appeal Board was set up by the Immigration Appeal Board Act which was proclaimed on the 13th of November, 1967.

Under the terms of the Act the Immigration Appeal Board is a superior court of record and it has been so set-up. We keep records and as far as we can we run it as a superior court. I thought the members of this Committee would be interested to hear what is involved in an appeal. We hear appeals from Deportation Orders and, to a certain limited degree at the moment, on sponsorship cases which have been refused. In the case of deportation appeals, which so far have been all our work, the record comes in from the Special Inquiry officer. So far as I know we have had no sponsorship appeals as yet, but the procedure would be the same. In a deportation appeal the record of the special inquiry comes in from the Special Inquiry Officer with the Notice of Appeal signed by the appellant. The record consists of the typescript of the inquiry before the Special Inquiry Officer, and this is served on the appellant. We then wait ten days for a reply from the Department of Manpower and Immigration. This is sent to the appellant. The date of the hearing is then set and any other documentation that comes in is recorded. Then there is a hearing. The quorum of the board, which is 3, almost invariably reserves its decision. We discuss it at a later appropriate time, make our decision and advise the appellant and the Department.

In every case we give Reasons for Judgment. These are provided on request, to both parties. I have with me our entry books which give a good idea of what is involved in an appeal. I notice one that was fairly complex both legally and from the point of view of our discussion. In the entry book there are some 22 entries. This covers everything that came in on the file, including correspondence, the date of the hearing and the final disposition of the appeal.

This is done in every case, and these books are permanent records. We will keep these for ever. It may be appropriate perhaps at this time to find out if anyone wishes to ask me anything.

An hon. Member: Yes, Mr. Chairman.

The Joint Chairman (Mr. Klein): I have Mr. Brewin first.

Mr. Brewin: Miss Scott, you said that the Reasons for Judgment of the Board are made available to the parties. Personally I think

this is excellent procedure and an improvement on the practice of the former board. Is there any form of publication of these reasons to other interested parties? I presume the Board is building up a sort of jurisprudence, laying down how it is to act. One of the great virtues of having a court of record is that those who perhaps come in anew and who have not had any cases before, benefit most from being able to read how the Board has handled other cases, because they do not, perhaps, repeat arguments that the Board has disposed of, and are able to take advantage of matters that the Board has dealt with to say, "This is exactly the same as the case the Board dealt with a little while ago". In other words, although there is no official report, as there is in the Law Reports...

• 1125

Miss Scott: We propose to do this, Mr. Brewin.

Mr. Brewin: You do?

Miss Scott: Yes. I already have a list of about eight reportable cases. These will be legal precedent and will form the first part of a series of printed reports which will be made available to anyone who is interested. Of course, we will report only the legal cases because these are the ones which form precedents.

Mr. Brewin: It is quite reasonable for you to say, Miss Scott, that it is the legal cases that are formally reported, but there is a discretionary power in the Board to deal with matters on compassionate and humanitarian grounds. These would not form precedents, because each case must necessarily be dealt with on its own merits, but it would still be very helpful to those making submissions before the Board to know the sort of case in which the Board felt it should exercise this discretion.

In other words, we do not want to freeze the discretion into an absolute legal rule, but it would still be a judicial discretion. It seems to me that those cases, too, should be reported, or made available.

Miss Scott: We have considered this, but we take the position that each case stands on its own merits, and that it is really impossible to say that, because we exercised our discretion in a prior case, we would necessarily exercise it again. The details could be different. For example, it could turn on the assessment of the credibility of a person.

Mr. Brewin: That might be a help.

Miss Scott: The position we are taking at the moment is that the humanitarian decisions will not, generally speaking, be made available in our series of reports.

Mr. Munro: May I ask a question supplementary to Mr. Brewin's?

Miss Scott, relative to what Mr. Brewin was saying, if the odd decision based on humanitarian and compassionate considerations were recorded I cannot help but feel that it would be helpful if for no other purpose than as advice to prospective appellants and their legal counsel on what were the attitudes of the present personnel of the Board in terms of the limits they were prepared to set on humanitarian and compassionate considerations. That is very indefinite now, in the minds of many people. If they had some indication of how far the Board was prepared to go they could determine first, whether to appeal and, second, if they did appeal, whether or not it would be worth their while to go to the expense of having legal counsel. It could be very helpful.

Have you thought of perhaps reporting some of these decisions once in a while or at least of giving a rough guide to lawyers who do appear before the Board? There are many in the country who have established sort of immigration practice as some type of specialty, and there are also in the country various ethnic communities and others who would be very interested.

Miss Scott: I do not really think it would be helpful. However, I would suggest that it would always be worthwhile to appeal, because the Immigration Appeal Board is the court of last resort except when there is a legal question which, of course, can be appealed to the Supreme Court. Each case, as I have already stated, stands on its own merits. In the case you are thinking of, for example, there may be a detail which was not present in the prior case and which may make all the difference.

• 1130

Mr. Bell (Carleton): May I just say on this point I would hope myself that the Board would not try to freeze the exercise of their discretion into any legal or judicial principles because I venture to suggest that the moment

they do so they will get away from what Parliament intended and will have a rigidity which is precisely what Parliament did not want. To set the limits of discretion would be to depart entirely from the very broad principles that certainly I had in mind when this legislation was passed. I hope that the Board would treat every case on its own as the Chairman has indicated and would in so doing encourage appeals on compassionate and humanitarian grounds and not try to set any limits.

Miss Scott: I entirely agree.

Mr. Brewin: Mr. Chairman, if I may comment on what Mr. Bell has said, I do not think either Mr. Munro or myself are in any way suggesting to the contrary. What I am suggesting, and still would suggest to the Board is that there may well be discretionary cases which, without tying their hands in any way, would illustrate the sort of problems that come up and the attitude they have in mind in dealing with these matters.

The Joint Chairman (Mr. Klein): But, Mr. Brewin, as I understand it, the Board has full and absolute discretion. I think Mr. Bell's point is well taken, if you are asking the Chair, because the Board has full discretion, and full discretion means absolute discretion as I understand it. Having absolute discretion they could simply ignore the law.

Mr. Brewin: I do not understand that to be so at all.

The Joint Chairman (Mr. Klein): Yes.

Mr. Brewin: They can ignore; they are given power under the statute to consider compassionate grounds, cases of hardship, humanitarian considerations and naturally they will consider those. The breadth of their considerations and the way they are applied is infinite. But their discretion is a judicial discretion to be exercised judicially, and once it is to be exercised judicially, I can see no reason why it should not be explained.

Mr. Bell (Carleton): That is where we disagree. I do not agree.

Miss Scott: I agree with Mr. Brewin, and all the members of the Board—I think I can speak for all of us—feel that way. The discretion, which is a very wide discretion, must be exercised judicially.

The Joint Chairman (Mr. Klein): Judiciously.

Miss Scott: No, judicially. Now, that does not mean that we set up a rigid precedent, in any sense of the word, but we must base our discretionary decisions on rational grounds.

An hon. Member: Oh, yes, that is true.

Miss Scott: In other words, it is not an administrative discretion, it is a judicial discretion.

Mr. Brewin: It is like the old courts of equity. Their jurisdiction used to be as long as the chancellor's foot but it eventually froze into a more rigid system. I do not think anybody wants that to happen here, to have this freeze into a rigid system. Still, the greater the light thrown on the methods of thinking of the Board by their publishing information about their operations, the easier it will be for people who come before them to understand their thinking; to adjust themselves to it and to explain why their case is quite different from another case, for example which the Board saw fit to turn down. I do not think the Board should be required to do anything like this but I throw the suggestion forth that there might well be discretionary and humanitarian cases when for the public interest there should be some knowledge of how the discretion is exercised.

Miss Scott: Mr. Campbell, have you any comments you would like to make on that?

• 1135

Mr. J. C. A. Campbell (Vice-Chairman, Immigration Appeal Board): Well I think it is a very persuasive argument but it would mean in effect that every case the Board had to hear would have to be reported. And I think having discussed this we decided we would be better off just to report the judicial decisions, the legal decisions, and not to report compassionate decisions at all.

Mr. Roxburgh: As a supplementary question, do you not think, in the present case of the South African boy that if he does not meet the standards, the people at large . . .

The Joint Chairman (Mr. Klein): I have to rule that question out of order, if it is sub judice; I do not know whether it is.

Mr. Campbell: It is and I am afraid I would have to refuse to answer.

The Joint Chairman (Mr. Klein): It is sub judice. In other words we cannot discuss a case that is under judicial consideration. Are you through Mr. Brewin?

Mr. Bell (Carleton): We got into a somewhat larger field here.

The Joint Chairman (Mr. Klein): Yes. I think we would be wasting a lot of time if we pursued this. The Board is new and I think for the moment it has to play a lot of these things by ear. I think we could lose a lot of time on this.

Mr. Bell (Carleton): You and I agree that it should be played by ear. If it were played by straight judicial principles, I venture to suggest that the Board would frustrate the will of Parliament. The will of Parliament, in my view, is complete independence of action on compassionate and humanitarian grounds. I personally have exercised precisely the discretion which was intended to be placed in this Board and if I had to say that these were the judicial principles upon which I exercised it I am sure there are a lot of people in this country today who would never have been admitted.

The Joint Chairman (Mr. Klein): If I remember correctly, it might have been Mr. Kent, someone from the Department stated very definitely that the discretion is absolute, not judicial but absolute.

The Joint Chairman (Mr. Klein): Pardon? You do not agree. I will find it.

Mr. Munro: I am not disagreeing with you.

Mr. Bell (Carleton): Miss Scott has said that their discretion is going to be on judicial principles and I want to take exception to.

Mr. Brewin: Surely Parliament has appointed a judicial board for that very reason. We passed the Act because, as much as we admire Mr. Bell and his predecessors and successors, Parliament thought there should be somebody with the powers and the method of approach of a judicial tribunal. That is precisely why we did that. I do not think this is limiting in any way and I do not think Mr. Munro intended his remarks to imply limiting powers.

Mr. Munro: No, I did not.

Mr. Brewin: But there is a difference in the way the powers are exercised.

Mr. Orlikow: Can they not be both judicial and judicious?

Mr. Brewin: Oh, indeed.

An hon. Member: And national?

Miss Scott: I hope so.

The Joint Chairman (Mr. Klein): Mr. Brewin are you through? I have Mr. Munro, Dr. Haidasz, Mr. Badanai and Mr. Bell on my list. Mr. Munro?

Mr. Munro: Just to clarify my thinking on this matter, speaking quite frankly, I can think of certain cases where, in my capacity as a lawyer, I would be inclined to say to a client "I do not think it is realistic for you to spend this type of money involving a retainer and so on. It would be quite expensive—if the lawyers come from long distances and so on—to pursue this further". I would like to be able at least to indicate, as a basis for that conclusion, what the feeling of the Board was. I do not mean limiting in any sense—I regret I used that term—but rather what the general thinking of the Board was in the exercise of this infinite power of discretion. Who knows there may be different personnel on the Board two or three years from now who may react in a different way. However, it is of assistance to have at least some rough guide to the way the present Board reaches its conclusions. We all know that people in a judicial capacity take different views on the same set of facts. This is true I think in the Supreme Court and the Court of Appeal. This is a judicial board as Mr. Brewin has pointed out. Some of these rational grounds on which you base your conclusion, some of these compassionate and humanitarian grounds, would be enlightening to people who are interested in the work of this Board. I do not mean that these reported decisions should be limiting in any way on the future power of the Board. In fact, I do not see how they could be because, as Miss Scott said, the Board can be composed of three people.

• 1140

Eventually, I understand, there will be nine on the Board, any three of which could constitute a Board for the hearing of a matter. I think in some circumstances even one can do so; I am not sure of that. They will be different personnel and they may react differently to even the same set of facts, let alone a different set of facts, so I do not see how this type of reporting could be limiting but it would be enlightening. That was the thing I was trying to aim for, whether in reporting these legal decisions, if I may use that term, you might also interpret once in a while even a reported decision on the basis of compassionate humanitarian considerations.

The Joint Chairman (Mr. Klein): May I just point out to you that this Committee could, in its report to Parliament, make certain recommendations and within those recommendations might well be the recommendation you are suggesting.

Mr. Munro: Well, that could be but, in fact, even if somebody did interpret a decision based on humanitarian and compassionate considerations as one that was limiting, anyone can argue on a different set of facts—and all facts are different—that it is not binding in any way so that I do not see how this could really be termed a device that would in any way limit the infinite power of this Board, but I do feel it would be helpful.

Having said that, actually by way of clarification, Mr. Chairman, there are two things that I wanted clarified and probably I should know from having studied the Act previously. As I understand it, there is no ministerial discretion left in deportation cases. Is that correct?

Miss Scott: That is correct. Once the Appeal Board has seized of the case.

Mr. Munro: Once the special inquiry has commenced and an order of deportation made from which a person may appeal, there is no room left, then, for ministerial discretion.

Miss Scott: On an order of deportation the appellant must appeal within 24 hours unless an extension of time is given for cause, so I would say that in almost all these cases there would be no time. In other words, the Appeal Board would be seized of it.

Mr. Munro: When is the Appeal Board seized of a case?

Miss Scott: As soon as we receive the Notice of Appeal.

Mr. Munro: As soon as you receive the Notice of Appeal?

Miss Scott: Actually, as soon as it is mailed because by our rules the service of documents is provided for by registered mail and service occurs when the mail is posted.

Mr. Munro: Just to get this clarified in my mind, from your knowledge of the present Act is there anything to prevent ministerial discretion being exercised after the inquiry where a deportation order is issued but before appeal?

Miss Scott: Not to my knowledge. There is nothing to prevent an approach to the Minister.

Mr. Munro: Yes, and there is nothing to prevent the Minister from exercising discretion at that time.

Miss Scott: By law, so far as I know, no.

Mr. Munro: You are saying, in effect, that after this special inquiry is held and, as is usual after a special inquiry, a deportation order is issued, the Minister can still exercise discretion, but the minute the person against whom the deportation order has been issued appeals, at that point the Minister can no longer exercise discretion.

Miss Scott: As I understand it, yes.

Mr. Munro: There is only a 24-hour hiatus there.

• 1145

Miss Scott: Yes, there is provision for a five-day period where the Chairman permits, and we have had one that was even longer. But I have taken the position—and I think we are all agreed—that we would never let an appeal bog down because of a technicality, so within reason we would accept a late Notice of Appeal.

The Joint Chairman (Mr. Klein): Before we leave that point, if an individual is ordered deported at an inquiry, does he not register his appeal orally to the inquiry officer?

Miss Scott: Invariably the inquiry officer, and you read this in the record of the inquiry, will explain to the person that he has the right of appeal and then produces the form of the Notice of Appeal which is one of our official forms. He assists the person to fill it out and quite often fills it out for him, has it translated if necessary and the man signs it. It is then sent to us with the transcript of the inquiry.

The Joint Chairman (Mr. Klein): That is usually the procedure, is it not?

Miss Scott: I would say this is the procedure 90 per cent of the time, or even more.

Mr. Munro: As I understand it, just because somebody wanted a little more time to think about whether they should appeal or not and exceeded the 24-hour limit for filing an appeal you would not bar them from filing their appeal on such a technicality.

Miss Scott: No; we would never bar a person on a technicality unless it was so late as to be ridiculous. We provided for this in our rules. They read as follows:

> Service of a Notice of Appeal should be effected within 24 hours of service of the deportation order or within such longer period not exceeding five days as the chairman in his discretion may allow.

Now, as I say, we did have one that was about eight days but there was sensible reason for this so we accepted it.

Mr. Munro: Is there any element of ministerial discretion or Order in Council or so on that can take place even on very limited grounds following your disposal of a case? In other words, after the hearing of the appeal, let us assume that the appeal is dismissed. Is there any even limited ground on which the appellant can take the case to the Minister or in some way endeavour to obtain an Order in Council for relief? I have a vague notion that when this Act went through Parliament—and again I say I wish I would refresh my memory—that there was some limited ground on which this can take place, but I am not sure.

Miss Scott: No; the only time this might occur would be if the person had left the country and wanted to come back. There still is the provision in the immigration Act "with the consent of the Minister" but there is no ministerial discretion by law...

Mr. Munro: Minister's permit, yes.

Miss Scott: ...once we have dealt with it.

Mr. Brewin: May I ask, is that subject to section 29 of the Act which enables a special inquiry officer to re-open and reverse or amend any decision previously rendered?

Miss Scott: I beg your pardon?

Mr. Brewin: I suggest, Miss Scott, that perhaps your answer is subject to section 29 of the Act which enables a special inquiry officer to start all over again.

Miss Scott: Section 29 of our Act, Mr. Brewin, the Immigration Appeal Board Act?

Mr. Brewin: No, it is section 28 of your Act, but it brings in a new version of section 29 of the old Immigration Act and gives a special inquiry officer a chance to hear further evidence and re-open the case. Presumably this part could be exercised even after your Board had dismissed an appeal.

Miss Scott: I do not see how.

Mr. Brewin: On the ground of hearing or receiving any additional evidence.

Miss Scott: Additional evidence would be new evidence and I should think the appropriate forum for the receipt of such new evidence would be the Appeal Board. In other words, a motion could be made to us stating that there was new evidence not available at the hearing of the appeal which, in effect, would be a motion for a new trial and we would consider it on that basis.

Mr. Brewin: Perhaps you will have to try it out some day.

Mr. Munro: To clarify this one last point then, do you mean that if the appellant left the country prior to the hearing of the appeal, through a Minister's permit he could be given a consent form to come back into the country?

• 1150

Miss Scott: That did happen in one case, where the man lived just across the border. I cannot say whether it was a formal document, but so that the man could attend the hearing of his appeal, arrangements were made to permit him to come across the border, which he did.

Mr. Munro: Let us say that in this particular case the appeal was dismissed and that deportation actually took place; he could then make application to come back to the country either in the normal way, or the Minister could arrange for a ministerial permit.

Miss Scott: There is no Minister's permit left. The only thing left is ministerial consent, under section 38 of the Immigration Act.

Mr. Munro: Yes. That is all, than you, Mr. Chairman.

Mr. Haidasz: Mr. Badanai would like to ask a question because he has to leave. I will follow him.

Mr. Badanai: Mr. Chairman, I would like to ask how long this Appeal Board has been functioning.

Miss Scott: The Immigration Appeal Board Act was proclaimed on November 13 because of the period of time required for the service of documents and reply to the ten days'

notice of hearing. The first notice of appeal was received on November 23 and the first appeal was heard on December 11.

Mr. Badanai: How many appeals have you heard so far?

Miss Scott: Mr. Sloan, perhaps you could assist us on that.

Mr. D. M. Sloan (Registrar, Immigration Appeal Board): There have been 88 appeals heard to date.

Mr. Badanai: I see. How many of the 88 appeals were rejected?

Mr. Sloan: There were 45 where deportation was ordered.

Mr. Badanai: I would like to ask, Miss Scott, in the event of reasonable doubt, in whose favour is the decision made? Is it in favour of the appellant or of the Department which ordered the deportation? That is, in the case of reasonable doubt?

Miss Scott: You are now directing your mind to the discretionary powers of the Board, and not the legal aspects of the situation.

Mr. Badanai: How do you handle this situation?

Miss Scott: First of all, speaking now of deportation appeals, we have to dispose of the appeal on legal grounds. This is the way the Act is worded. We therefore study and hear argument, if it is presented to us, on the legality of the order and this is sometimes very difficult law.

Mr. Badanai: That is where the result creeps in, and that is precisely what I would like to know.

Miss Scott: You see, because under the old system, the old Immigration Act, it was very difficult to go to court, and the courts would often reject certiorari or habeas corpus applications because it is a highly specialized form of law. There is very little reported law on the Immigration Act considering that it has been in substantially the same form since about 1906. We therefore are in the position of creating law, creating precedents in any case, and to date we have taken great pains with the appeals which were squarely on legal problems, and resolved them on the basis of existing analogous law, if there is any, on the study of the wording of the Immigration Act and of our own Act, and made a legal decision. And once we clear that out of the way, if we allow the appeal on law, that is the end of it. If we dismiss the appeal on law, we then swing into our discretionary powers under section 15, and this involves a consideration of the facts as presented to us. I would say that in exercising our discretionary powers, if there is a reasonable doubt which can be resolved in favour of the appellant, it is resolved in favour of the appellant.

Mr. Badanai: In favour of the appellant and not of the Department?

Miss Scott: The Department is just a party to the case, just like the appellant.

The Joint Chairman (Mr. Klein): I want to ask a supplementary question if you do not mind.

My question is this. In 44 or 45 cases you have maintained the appeal?

Miss Scott: Yes.

The Joint Chairman (Mr. Klein): You have allowed the appeal?

Miss Scott: Well, I cannot say that.

The Joint Chairman (Mr. Klein): Approximately?

Miss Scott: No, I would say that in most of these cases we probably dismissed the appeal, either quashed or stayed.

The Joint Chairman (Mr. Klein): You said you had about 88 appeals and that about 50 were rejected, as I understood it.

Miss Scott: That is to say they were ordered deported as soon as possible. But in the other cases, I would say from memory that we probably dismissed the appeal on law but used our discretionary powers to either stay or quash the order.

The Joint Chairman (Mr. Klein): I would like to ask you this, though. I am trying to get to the point of where, in your judgment, we could get the inquiry officer to have sufficient guidelines so that you would not be bothered with so many appeals. In other words, in the allowance of some of those appeals, would you say that the inquiry officer, had he been perhaps more diligent, or had he had the guidelines that you are now giving him, would have been able to maintain the case without having to...

• 1155

Miss Scott: Not under the law as it stands, Mr. Klein. The inquiry officer has very little discretion.

The Joint Chairman (Mr. Klein): Would you have any suggestions as to how we can word the Act in such a manner that the inquiry officer would be able to deal with it more efficiently so that you would not have the profusion of appeals that I foresee, as one of your statements could invite a lot of appeals and if this gets into the press you are going to have more appeals than you can handle.

Miss Scott: I think that you will find, and this is my own personal opinion at the moment, and our experience to date shows that when you are exercising discretionary power you are very much better to have more than one person. That is one of the reasons that in all cases we retain three members, a quorum, to discuss and exchange views, and to assess the people, especially when we see them; we like to see the people whenever we can. I think you would find that to give the special inquiry officer discretionary powers would be very difficult.

The Joint Chairman (Mr. Klein): No, I am not speaking of discretionary powers. Are there any cases in which you have maintained the appeal where you have felt that the inquiry officer could have admitted that person without forcing the appeal?

Miss Scott: Legal cases on occasion, yes. Discretionary cases...

The Joint Chairman (Mr. Klein): No, not discretion; I understand he has no discretion.

Miss Scott: He has no discretion.

The Joint Chairman (Mr. Klein): No, but I am speaking of purely legal grounds. Have there been cases where the inquiry officer might have admitted the applicant so as to avoid that he appeal in the first place?

Miss Scott: Very occasionally where there was a legal problem, I would say.

The Joint Chairman (Mr. Klein): It is not a large number of cases.

Miss Scott: No.

The Joint Chairman (Mr. Klein): Would you say that as a result of your judgment they may be better equipped now, or does the Act have to be...

Miss Scott: I am sure that some of our judgments will assist him.

The Joint Chairman (Mr. Klein): And the Act still has to be changed, in your opinion?

Miss Scott: Yes. Not perhaps in that direction but in other directions.

Mr. Munro: My supplementary question is very much along those lines, Mr. Chairman. In the situation which you have described where an appeal was not dismissed, it was either allowed or quashed in roughly 50 per cent of the cases. Is that correct?

Miss Scott: In 50 per cent of the cases we stayed or quashed the order, and there are some where we allowed the appeal, but the result was that the person remained in the country.

Mr. Munro: And of those 50 per cent, where you either stayed the order or quashed it or allowed the appeal, in almost all of them you did so by the exercise of your discretionary powers.

Miss Scott: Do we have figures on that, Mr. Sloan?

Mr. Sloan: I think perhaps the figures given may have been slightly misleading because there are certain decisions in the 88 case load, which have not yet been formed. So that there were 45 cases where deportation was ordered, there were 20 cases where deportation was stayed, with one case where landing was ordered and one case where the deportation order was quashed. This leaves a balance of 21 cases the decisions on which will be made known very shortly.

• 1200

Mr. Munro: We are talking mainly about those 20 cases where the decisions rendered were other than those where deportation was ordered. Would it be fair to say of almost all of those 20 that deportation was stayed on the basis of the exercise by the Board of their discretionary powers?

Miss Scott: That would be the case in all of them. We can only exercise our discretionary power after the appeal is dismissed. This is the way the Act is worded. If we allow the appeal, we allow it in law. You see, it is a peculiar split situation. We have no discretionary power unless the deportation order is legally valid and we must dismiss the appeal before we can use our discretionary powers.

Mr. Haidasz: Mr. Chairman, may I pursue this question a little further? My first question, I think, follows closely upon Mr. Munro's and deals with the decision of the Appeal Board. Is the decision taken only by the three members of the Board who are hearing the case or are the other four consulted?

Miss Scott: The actual decision is taken by the three members who hear the case. At the moment while we are building up our legal precedence, in important cases we often discuss the principle of the law involved and, of course, we discuss our cases casually in conversation and so on, but the actual decision is made by the people who hear the appeal. These quorums are shifted. We rotate. The Chairman or a Vice-Chairman must always sit, but we shift members and sometimes one or another of us will sit as a member.

Mr. Haidasz: My second question, Mr. Chairman, arises from my experience since this Appeal Board legislation has been in effct. In view of the representations or problems brought to me, I feel that section 15 (b)(iii) of the Act should be amended to add a third ground which would enable the Board also to hear cases which are presented to them based on personal merit. For example, there might not be any political hardship or other unusual hardships involved; there might not be any compassionate or humanitarian grounds, but there could be personal merit. The man could be a scientist or he could have done some great act in his life and saved millions of people or he could be a space scientist or a medical scientist—personal merit. Does the Board think that the law as it now stands could use such an amendment? I intend to introduce such an amendment to the Board.

Miss Scott: I think you would have to bear in mind the difficulty of proving this. The Board, while not rigid, likes to have the best evidence that it can get and sometimes this is a problem under the Act as it stands, particularly when there is no legal counsel. Sometimes it is difficult to get evidence out of the appellant that is acceptable evidence because you cannot impose the burden on a layman —often a poor stranger in the country—to produce evidence according to the best evidence rule. On the other hand, we have to have something more to go on than a letter written by anybody. We do not even know who they are sometimes. We have drafted up a blank form affidavit which is distributed to the special inquiry officers to give to these people so they can swear to the truth of anything they wish to submit to us in writing.

• 1205

Mr. Haidasz: In other words, you think the wording of section 15 of the Act is sufficient as far as the public and national interest is concerned? I still feel there might be cases where there are no compassionate grounds, humanitarian grounds, political, persecution or other hardships, but because of personal merit or in cases of national interest as an extraordinary scientist a man should be entered into Canada.

Miss Scott: Are you not thinking of admissions rather than deportations? The Board has no jurisdiction whatever over admissions.

Mr. Haidasz: I am talking about a scientist or a man of that kind who entered Canada as a visitor and who was told...

Mr. Enns: He has to establish credits.

Mr. Haidasz: He came just as a visitor but is told, "You cannot remain. You are just a visitor. You have to go back. You have not had an examination. You do not have a passport or a valid entry visa to Canada. Go back and re-apply."

The Joint Chairman (Mr. Klein): Dr. Haidasz, as I understand it, this would not be something for the Board to deal with, this would be something for inclusion in the law that would entitle the inquiry officer to grant admission. I do not see that this would have anything to do with the Immigration Appeal Board.

Miss Scott: It does indirectly, of course, if the man were deported. But at the moment, Dr. Haidasz, he can apply from Canada to be a landed immigrant. This provision was included in new regulations to the Immigration Act.

Mr. Brewin: Can I ask a supplementary question?

Mr. Haidasz: But he might be refused because he escaped from a communist country and possibly it could be shown that he had to belong to a committee of a communist party or something like that. Therefore the inquiry officer would immediately say, "You are deported".

The Joint Chairman (Mr. Klein): Then the case comes before the Appeal Board.

Miss Scott: We would have the case then.

Mr. Haidasz: But there would be no political grounds, unusual hardship or compassionate grounds. There might be some cases of personal merit.

Miss Scott: Is that not humanitarian? Could that not come under humanitarian grounds? It is a very wide term.

Mr. Haidasz: Let us say he is a scientist like Dr. Selye. Do you think you could publish that case under your discretionary powers?

Miss Scott: We are all agreed this is a very wide discretion and I think an assessment of the person's merits would enter into the evidence that would be presented to us and it often does.

Mr. Haidasz: My next question, Mr. Chairman, if I may ask it is...

The Joint Chairman (Mr. Klein): I am sorry, Mr. Brewin has a supplementary question.

Mr. Brewin: It is supplementary in relation to what is now being asked. Are you going into a new subject?

The Joint Chairman (Mr. Klein): Are you going into a new subject?

Mr. Haidasz: Yes.

Mr. Brewin: Apropos of what Dr. Haidasz has suggested, the present regulations rather than the Act, give the immigration or visa officer a discretion to admit people even though they do not meet the norm—they do not have their 50 per cent or their 30 per cent; they do not have enough units. The officers are given the power to set aside these standards and let people in if they think they are likely to be able to establish themselves successfully in Canada. But I take it that being a matter dealing with the opinion of the special inquiry officer, the immigration or visa officer that the Immigration Appeal Board has no authority under that section to say, "We do not think you exercised your discretion rightfully." Would it not be a good thing if that power could be reviewed by the Immigration Appeal Board? I suggest to Miss Scott that this is a discretion which is well bound within certain limits and I feel as Dr. Haidasz apparently does that there may be the exceptional case where this elaborate business of 10 points for so and so, 15 for personality, and so on, might possibly be set aside and the Immigration Appeal Board should have something to say about it.

• 1210

Miss Scott: If that person did not meet their points and was deported on various grounds, the case would come before an Immigration Appeal Board. If we could bring it in under one of the appropriate subsections of section 15, we could exercise our discretion. I think there is a considerable amount of confusion in the Immigration Act itself between the principles of admission and the principles of deportation. Admission and exclusion is one thing; deportation is another, but the Act at the moment is all mixed up.

The Joint Chairman (Mr. Klein): Can we clarify it?

Miss Scott: I think it could be clarified possibly by re-drafting two parts of the Act. The American Act is directed more to that kind of thing.

Mr. Haidasz: Mr. Chairman, I have tried to get a copy of an immigration application by a potential immigrant who was told he scored 64 points but he transgressed a certain regulation and has to be deported. I was unable to get a copy of his application or his point assessment. They said, "Well, really this man cannot be considered as an applicant because he transgressed a rule while he was a visitor". Do you have access to applications or to assessment points?

Miss Scott: This would be quite inappropriate, I think Dr. Haidasz, under the law as it now stands because our discretion is not as to admissibility. The way the regulations are worded we cannot substitute our opinion for the opinion of the assessing officer. We can sometimes give relief under section 15 if the appellant falls within one of those sections.

The Joint Chairman (Mr. Klein): But, Miss Scott, is not your judgment of maintaining an appeal against a deportation order equivalent to admission?

Miss Scott: It is indeed; the end result may be the same, but the way it is arrived at is different.

The Joint Chairman (Mr. Klein): Yes.

Mr. Munro: May I ask a supplementary, with Dr. Haidasz's permission?

Mr. Haidasz: Surely.

Mr. Munro: Let us suppose there were a visitor in the country who desired to remain —I think this is one of the cases that Dr. Haidasz was involved in—and the immigration officials checked him out in terms of points and so on, and he did not have the requisite number of points. So he over-stays his period and a special inquiry is held, following which he is ordered deported, and then he appeals. As I understand what you said, Miss Scott, he can then go before your Board, and if there are humanitarian and compassionate considerations your board considers valid, you can stay the order of deportation. Is that right?

Miss Scott: That is right.

Mr. Munro: Regardless of the the point system. That would not even come before you, would it? You would not even know about it.

Miss Scott: It might be mentioned and it might not be. It would depend on the type of order that was made.

Mr. Munro: In this particular case, if one of the reasons the prospective immigrant was ordered deported was that he worked while he was here as a visitor contrary to the regulations, if there were still valid compassionate and humanitarian considerations you could still stay the order?

Miss Scott: Yes.

The Joint Chairman (Mr. Klein): Could you re-assess the points?

Miss Scott: No, we take the position that we cannot because the regulations read "in the opinion of the assessing officer", and we have no power to substitute our opinion for his. In fact, we have no jurisdiction over admission whatever.

Mr. Haidasz: Would you like to have that power, to assess the...

Miss Scott: We would need a lot more than nine members, I can assure you of that.

Mr. Haidasz: My next question, Mr. Chairman...

The Joint Chairman (Mr. Klein): I would like to get this clear, and I think the members of the Committee would like to know, too. I do not understand this. If a person does not meet the standards for admission on the point system, let us say he gets 44 points, and his application is turned down, is he not ordered deported?

• 1215

Miss Scott: Yes, if he does not leave.

The Joint Chairman (Mr. Klein): Does that not come before you?

Miss Scott: Yes.

The Joint Chairman (Mr. Klein): Then at that point in a case of that nature it is only a case for discretion, because you cannot re-assess the points, you say.

Miss Scott: That is the position we have taken to date.

The Joint Chairman (Mr. Klein): Then it would always be a question of discretion.

Miss Scott: It would be a question of discretion under section 15.

Mr. Brewin: If I can put a further supplementary, Mr. Chairman, the Board may well look at the mode of assessment and say that the special inquiry officer or the immigration officer who made the assessment proceeded on some wrong principle; he did not really inquire into the matter he was asked to. For instance, let us suppose he said, "I am giving you no points for personality because I just do not like people with grey hair", or something like that. Obviously the Board could step in and say, "Well, he has not made a bona fide assessment".

Mr. Haidasz: The Board does not have that information.

Miss Scott: I think in that case it would be up to the appellant to produce proof of some kind.

An hon. Member: Yes, but the appellant does not know.

Miss Scott: He was there at the inquiry.

Mr. Roxburgh: But he is not given the assessment.

Mr. Enns: The appellant does not know, as Dr. Haidasz says, on what points he was marked low or high.

Mr. Brewin: Mr. Kent told us the other day that you could get the breakdown.

Mr. Haidasz: I can?

Mr. Brewin: He says you can; Mr. Kent says you can.

The Joint Chairman (Mr. Klein): Mr. Kent was here the other day and said the point system is available to the appellant.

Miss Scott: Mr. Campbell reminds me that in one case which I believe came before him. this was available to the appellant; he had it...

The Joint Chairman (Mr. Klein): Yes, but...

Miss Scott: ...before the inquiry.

The Joint Chairman (Mr. Klein): If an inquiry officer puts down two points for personality, and this person comes before you and you are convinced that he should have received 15 points for personality, you cannot do anything about it?

Miss Scott: No; we could. As Mr. Brewin points out, if the evidence showed that the assessing officer had acted improperly, had exercised his jurisdiction wrongly in some manner, then I think the Board could take that into account. But we cannot substitute our opinion for the assessing officer's opinion. If we like the man's personality, and the assessing officer did not, there is nothing the Board can do on that ground.

Mr. Dinsdale: Mr. Chairman, may I ask a supplementary to clarify this point? The Board does have the basis of the point assessment?

Miss Scott: You did in this particular case.

Mr. Dinsdale: This is available?

Mr. Campbell: It formed part of the record of the inquiry.

Mr. Roxburgh: Is there only one case where this has happened?

Mr. Campbell: As far as I am concerned, yes.

Mr. Roxburgh: Is that right, Dr. Haidasz?

Mr. Haidasz: Well, I will have to check that further. Mr. Chairman, may I continue my questioning?

The Joint Chairman (Mr. Klein): Yes, but we are at a very important point, I think you will agree, because if the Board does not have the power to reassess the point system...

Miss Scott: The Board has no power whatever as to admissibility.

The Joint Chairman (Mr. Klein): No, but you do have the power to decide on deportation. Therefore, the result is the same.

Miss Scott: Indirectly we may, in fact, admit somebody or allow him to enter.

The Joint Chairman (Mr. Klein): The intention, as I understood it, was that the Immigration Appeal Board would have the right to hear any appeal made against any deportation, which would include the reassessment of the point system.

An hon. Member: That is right.

The Joint Chairman (Mr. Klein): I always thought that.

Mr. Skoreyko: May I ask one supplementary?

The Joint Chairman (Mr. Klein): Yes.

Mr. Skoreyko: How would you look at the case, for example, of a student who is admitted to Canada for a two-year term and who, under existing regulations, is not allowed to go to work? The minute he takes a job, whether it be part-time or permanent employment, the inquiring officer or the Department notifies him immediately that he has broken a law and he is subject to deportation.

I really do not know what the responsibilities of the inquiring officer are, but I think they are bum boys for your Department, if you like...

Miss Scott: Not our Department!

Mr. Skoreyko: They have no responsibility at all, so far as I am concerned. But what is your attitude? You said that your Department is not concerned with admissibility. Is that right? Is that what you said?

Miss Scott: Not directly.

Mr. Skoreyko: Not directly. Then how would you deal with such a case? There would be no point in bringing an appeal before you, then, would there? Because the man had broken the law...

• 1220

Miss Scott: Oh, yes indeed there would.

You see, we are face to face now with this confusion in the Act between admissibility and deportation. The case comes before us

because the man has been deported for breaking a certain subsection of the Immigration Act. First of all, we would examine that case as to law, and then we would swing into our discretionary power under Section 15. If compassionate, humanitarian or other grounds under the appropriate subsection of Section 15 existed the Board would have the power to stay the order or even quash it in an appropriate case. In other words, at that stage we go right outside the Immigration Act.

Mr. Skoreyko: I understand.

The Joint Chairman (Mr. Klein): Miss Scott, may I just ask you this one question? Let us suppose that a person has not broken any law but gets only 44 points and has been ordered deported.

Miss Scott: Yes.

The Joint Chairman (Mr. Klein): He has not broken any law.

Miss Scott: That is right.

The Joint Chairman (Mr. Klein): So he does not come before you asking you to exercise discretion. He says: "I received 44 points. This is ridiculous. I should have had 60 points." Can you deal with that appeal?

Miss Scott: The way the law reads, we cannot examine or re-examine any assessment.

The Joint Chairman (Mr. Klein): When he comes before you on an appeal of that nature he is not coming before you on compassionate grounds. He says: "I have received 44 points." Would you say to him: "Your appeal is dismissed because you have not broken any laws. Go and break a law and then come before us and we will exercise our discretion."? That appears to me to be the case.

Miss Scott: In effect, that would be the answer if there were no discretionary grounds, unless the assessing officer had exercised his opinion like a court in a *certiorari* application we could say that he went outside the jurisdiction.

Mr. Munro: Wait a minute. Would not this man have broken a law because he did not have sufficient points, should have left at the expiration of his visitor's period, and he did not make the appeal before he was supposed to leave.

Miss Scott: He would be deported and he could appeal the deportation.

Mr. Haidasz: Mr. Chairman, how many cases, where a person considers himself a refugee and asks for political asylum in Canada, have been heard by the Appeal Board? Also, what is your definition of a refugee?

Miss Scott: The word "refugee" is not mentioned in our Act. If they were not permanent residents they would have to bring themselves within Section 15(b)(1). In other words, they would have to prove, and this is the wording in the Section, the existence of reasonable grounds, that if execution of the orders is carried out the person concerned will be punished for activities of a political character or will suffer unusual hardship. They would have to bring evidence to this effect before the Board.

Mr. Haidasz: And you would exercise your discretion of what unusual hardship would be in that particular case.

Miss Scott: Yes.

Mr. Haidasz: It might be economic hardship, domestic hardship, religious persecution, and so on.

Miss Scott: If the evidence was such as to convince the Board that unusual hardship would be suffered.

Mr. Haidasz: Do you have a sufficiently large backlog of appeal applications to necessitate extending your services to the nine judges as permitted by the Act or beyond nine by making an amendment to the Act, and would this also include hearing cases in Toronto and Montreal where I believe most of the applications for appeals come from?

Miss Scott: Mr. Sloan, perhaps you could give the information on that.

Mr. D. M. Sloan (Registrar, Immigration Appeal Board): At the moment, there is a backlog of 98 cases to be heard. As a matter of interest, I might mention that up until the end of January cases were received at the rate of 10 per week, in February this increased to 17 per week, so the number of cases that the Appeal Board is receiving is increasing steadily.

• 1225

Miss Scott: We are very handicapped at the moment by having only seven members. We definitely do need nine members. We are at a

slight disadvantage at the moment because of our small, crowded quarters. I think this backlog can be cleared off very quickly as soon as we move to our new quarters next week, where we will have two courtrooms and two panels sitting simultaneously.

Mr. Haidasz: Do you have the services of sufficient interpreters for cases that have been presented so far?

Miss Scott: Yes, always.

Mr. Haidasz: No complaints?

Miss Scott: We have been very fortunate and I do not think we have had any difficulty. The only problem is that sometimes people indicate they will not appear and on the day in question they do come and then we have to get an interpreter quickly. But we have been very fortunate.

Mr. Haidasz: And you cover the expense of the interpreter?

Miss Scott: Yes, we pay the interpreters.

Mr. Haidasz: How do you deal with cases where for some reason or other the enquiry officer or someone in the Department considers a person a security risk because he comes from a country behind the Iron Curtain? Do you take as a matter of fact everything that is handed to you by the representative of the Minister or do you have other ways of assessing whether or not a person is a security risk?

Miss Scott: If the Minister files a certificate under Section 21 of our Act we cannot go behind that in the exercise of our discretion under Section 15, but we still examine the order itself because it is a legal order.

Mr. Haidasz: Do you refer any of your problems to the Royal Commission now studying security cases or have they consulted you on this particular matter of security of prospective immigrants?

Miss Scott: They have not consulted me personally. Mr. Campbell, have you seen anybody with respect to security?

Mr. J. C. A. Campbell (Vice-Chairman, Immigration Appeal Board): Yes, I had a case one afternoon of a member from the Royal Commission on Security coming up and asking me when a certain case was to be heard because he or someone from his office wanted to be present for the hearing. I told him when the hearing would be. I have no knowledge whether he showed up for the hearing.

Mr. Haidasz: Thank you, Miss Scott. I believe that you have given us some valuable information. It seems as though we have to make some amendments to the Immigration Act and perhaps even to the Immigration Appeal Board Act.

The Joint Chairman (Mr. Klein): I have Mr. Dinsdale and then Mr. Skoreyko.

Mr. Dinsdale: I have a supplementary to Dr. Haidasz' question. In cases where the inadmissibility or the deportation order occurs because of security factors, health factors, criminal records and so on which in the past have been a major source of exclusion of intended immigrants or immigrants who have come in illegally, does the Appeal Board have access to the reason for exclusion or the basis for exclusion in these particular cases?

Miss Scott: If the deportation order is based on one or other of these grounds that fact, like any other fact, has to be proved.

The Joint Chairman (Mr. Klein): But you have discretion?

Miss Scott: We have to pronounce as to the legality of the order first.

The Joint Chairman (Mr. Klein): Let us assume the order is legal. Suppose a man has been convicted of an indictable offence.

Miss Scott: Yes.

The Joint Chairman (Mr. Klein): In such case you could exercise discretion and allow him to remain even though...

Miss Scott: We could still exercise our discretion unless the certificate was filed by the Minister and the Solicitor General.

Mr. Dinsdale: Do you have access to the grounds upon which a certificate is filed?

Miss Scott: No.

Miss Dinsdale: This is still confidential?

Miss Scott: Absolutely.

• 1230

Mr. Dinsdale: For example, if it was discovered that an immigrant or someone applying for landed immigrant status in Canada following a period as a visitor, had been men-

tally ill back in their own native country, could the Board take cognizance of this factor and operate on discretionary grounds, humanitarian grounds, or is this an absolute reason for turning down the application for landed immigrant status?

The Joint Chairman (Mr. Klein): Mr. Dinsdale, would you please speak into the microphone.

Mr. Dinsdale: The point I am getting at, Mr. Chairman, is that in the past, if mental illness were discovered, it has been the ground for absolute exclusion.

Miss Scott: It has been the ground for exclusion under the Immigration Act.

Mr. Dinsdale: Yes.

Miss Scott: In an appropriate case, it would depend on the merits of the case, whether we exercised our discretion or not.

Mr. Dinsdale: Let us see if we can be specific now. Someone having come to Canada on a visitor's visa applies for landed immigrant status and is turned down because insanity or mental illness is discovered in their past. Can they appeal to your Board on this basis?

Miss Scott: Oh yes, everybody has the right of appeal if they are ordered deported.

Mr. Dinsdale: Well they would be. Now, is this information confidential or do you have access to this information?

Miss Scott: You are referring to the proof of mental illness. Is that what you are thinking of?

Mr. Dinsdale: Yes.

Miss Scott: It would depend on the case and what evidence the Board found or thought it needed.

Mr. Dinsdale: Could you answer this question? Does the individual concerned know the grounds on which his application for landed immigrant status has been turned down?

Miss Scott: I cannot answer that, but he knows the grounds on which he was deported because that is right in the deportation order.

Mr. Dinsdale: I am asking these questions because in the past this information was so confidential that the person concerned was not even aware of it.

Miss Scott: He is always aware of what he is deported for. He knows why; the grounds for deportation are set out right in the order.

Mr. Dinsdale: All right, that being so he could apply to the Board and you could take it under consideration.

Miss Scott: That is the only time except the sponsorship...

Mr. Dinsdale: The same would apply to a criminal record?

Miss Scott: That is right. If an individual was deported on the ground of having committed a crime contrary say to one of the subsections of section 19 of the Immigration Act, it is right on the deportation order.

Mr. Dinsdale: Have there been any cases of this kind before the Board to date, where past mental illness has been discovered and an appeal has been made on that basis?

Miss Scott: Not to my knowledge. I do not know of any.

Mr. Brewin: May I ask a supplementary on what I think is a key issue here. I do not know whether Miss Scott can answer or would wish to answer. She has just stated that when an appeal comes before the Board that the reason for the deportation has to be stated. I think it is right in the Act that every appellant shall be advised by the Minister the grounds on which he has made his decision. Yet, for many, many years it has been the practice of the Immigration Department to say: "You cannot be admitted because you have not got an immigrant visa. We will not tell you why we refuse you an immigrant visa, you just have not got it." Similar grounds are still being advanced which means that the real reason for refusing the immigrant visa is never stated. I just wondered if the new Board had had to confront that particular problem. If the law is going to permit the Department to put forward a paper reason—it is just a paper reason because only they can give the immigrant visa—then in all of those cases the Immigration Appeal Board can only say, "Well, you have not got this piece of paper". A lot of these appeals I am afraid will be rather meaningless.

• 1235

Miss Scott: The Board certainly could not go behind that fact. If in fact—it is an appropriate case—they have no immigrant visa, that is the end of it. The reason they did not receive that visa is not within our jurisdiction.

Mr. Dinsdale: So, in other words, the old situation prevails that an immigrant visa can be refused to a person without stating specific grounds such as criminal record, health factors, mental illness, and so forth.

Miss Scott: Yes. You see you cannot mix the two things; admission and deportation. We could, of course, correct a situation where there were grounds on our discretionary powers, but legally the person is deportable.

Mr. Orlikow: I wonder if Miss Scott could tell us of the cases that were turned down. I think roughly half the cases you have dealt with were turned down. How many were turned down on the simple ground that not having a visa they were not eligible?

Miss Scott: In every case, whether they appear before us or not, we consider Section 15, discretionary power. This is sometimes very difficult because there is no evidence except such evidence as the special inquiry officer has managed to extract from the person. We, of course, like to see the people where possible, but in many of these cases they do not even bother to write us a letter.

Mr. Orlikow: Can I ask one more question, Mr. Chairman, which I think is important? Did I understand Miss Scott to say that where the Minister files a statement that a person is being deported or cannot stay in Canada because of security reasons, that as fas as you are concerned that is the end of the appeal?

Miss Scott: No, it blocks our jurisdiction. Under section 15 we cannot exercise our humanitarian and compassionate jurisdiction. We can allow the appeal if it is an illegal deportation.

Mr. Orlikow: Then the establishment of your Board has really done nothing to give another impartial look at cases where the applicant feels the judgment based on security reasons is faulty.

Miss Scott: The Board has no jurisdiction.

Mr. Munro: May I ask a supplementary, Mr. Chairman?

Mr. Orlikow: No, Mr. Chairman. It just seems to me if what Miss Scott says is correct, and I have to assume that she knows what authority and jurisdiction her Board has, then we are really no further ahead than before.

Mr. Munro: Well that is not the point though.

Mr. Orlikow: If there is some clarification I would like to hear it.

Miss Scott: Perhaps I could read Section 21 of the Immigration Appeal Board Act:

> (1) Notwithstanding anything in this Act, the Board shall not.
>
> (a) in the exercise of its discretion under section 15, stay the execution of a deportation order or thereafter continue or renew the stay, quash a deportation order, or direct the grant of entry or landing to any person...

Then there is a further subsection on sponsorship:

> if a certificate signed by the Minister and the Solicitor General is filed with the Board stating that in their opinion, based upon security or criminal intelligence...

That certificate is absolutely binding. We cannot go behind it. The existence of the certificate is evidence in itself.

The Joint Chairman (Mr. Klein): If there is a man who committed an indictable offence in Canada, could such a certificate be issued just on the criminal offence itself, not on security?

Miss Scott: No. It could if it is criminal intelligence.

The Joint Chairman (Mr. Klein): Yes.

Miss Scott: But the mere existence of a criminal offence, of a conviction under the Criminal Code, would not necessarily lead to that.

• 1240

Mr. Orlikow: Mr. Chairman, this really brings me back to the point with which I am sure I am not the only member who is concerned. In fact, I have said frequently that I have had very few of these cases. I suppose there is not a Member of Parliament who represents an urban constituency with relatively heavy ethnic representation who has not had cases of people with difficulties brought to his attention. Perhaps people whose relatives have had difficulty coming in because of political associations that go back sometimes 20 or 30 years. It seems to me to be completely wrong. I know the Act is there, but apparently we will have the same difficulties we have always had if on the recommendation of the security authorities, there is a

decision made by the Minister which cannot be questioned. And I do not mean just by the person involved.

I can understand the reluctance of the security authorities to disclose to people in difficulties their sources of information, but we should have some impartial body separate from the department and separate from the security organizations which can look at the evidence in private and, without disclosing it to the people concerned—I am trying to be realistic, Mr. Chairman...

The Joint Chairman (Mr. Klein): I do not wish to interrupt you, Mr. Orlikow, but there are two persons ahead of you. If you have a question to put I would ask you to try to be as brief as possible.

Mr. Orlikow: No; my question...

The Joint Chairman (Mr. Klein): On a supplementary, I mean.

Mr. Orlikow: I am not satisfied with the answer which Miss Scott has given but I am satisfied that Miss Scott has given it under the law as it is. It has indicated to me what further steps some of us will have to take.

Mr. Munro: Mr. Chairman, I have a supplementary for clarification of what Mr. Brewin was pointing out. If a person is in the country and is denied an immigrant visa and after special inquiry that, and that only, is given as the basis for the order of deportation, that person can still come before you on appeal? The reason given may be, and in many cases no doubt is, the valid reason for your rejection of their appeal on legal grounds, but, the situation now is very different in that the previous Board did not have discretionary remedies. You can overrule that in order to stay deportation. Therefore the situation has vastly improved from what it was prior to the new Board. Mr. Brewin mentioned that we are in exactly the same situation as we were before. We are anything but in that same position.

Mr. Brewin: If I may say so, I agree with Mr. Munro, except that the discretion of this Board is, after all, limited to humanitarian and compassionate grounds. They may not be present and yet perhaps the would-be appellant has an excellent case for admission.

Mr. Munro: If this order has been given against a person merely because of the fact that he has not got an immigration visa, and for no other reason, and he, as an appellant comes before this Board with its wide discretion—I think we all agreed, when this Bill came before Parliament, that humanitarian and compassionate considerations constitute a very wide discretion—in many cases he can mount a valid argument for the exercise of discretion by the Board.

Another clarification is that if a person has a criminal record and is ordered deported, if I correctly understand what Miss Scott said that is not the basis for a ministerial certificate on security grounds as an absolute bar.

The Joint Chairman (Mr. Klein): Unless it was intelligence.

Mr. Munro: Unless it was intelligence.

Miss Scott: No. We have had several where the deportation order was based on a conviction, let us say, under the Criminal Code. It is a legal order, under the subsections of the immigration act, but the circumstances may be such as to permit our exercising our discretion under section 15.

Mr. Dinsdale: Mr. Chairman, to go back to the point I was making, that the refusal of an immigration visa is sufficient ground to appeal the decision, if a person is to be deported because he has not been granted an immigration visa he can appeal.

• 1245

Miss Scott: They can appeal any deportation.

Mr. Dinsdale: But if the grounds for the refusal of an immigration visa are confidential, in the area that we have been discussing, what is the basis of their appeal to you? What arguments do they bring before you?

Miss Scott: They would have to base their appeal on the discretion contained in section 15.

Mr. Dinsdale: But they do not know why they have not been given an immigration visa?

Miss Scott: I do not think that has necessarily anything to do with it. They could come before us and produce evidence that would permit our exercising our discretion under section 15. The reasons for the refusal of the visa may be, and indeed sometimes are, irrelevant.

Mr. Dinsdale: But they are going to have difficulty arguing their case. Just as an example, I had an interesting case—it is history now, so I can refer to it—in which people had attended one of Hitler's strength-through-joy camps. They could not possibly argue that situation before the Appeal Board.

Miss Scott: No; but they could argue grounds for letting them remain in the country, and these which could be based on any evidence that was available to them.

The Joint Chairman (Mr. Klein): Providing no certificate...

Miss Scott: Providing there was no certificate.

Mr. Dinsdale: A certificate would have been...

Miss Scott: A certificate blocks that.

Mr. Dinsdale: They would be blocked completely. It is the same old problem.

Miss Scott: If there were no certificate then they would be at liberty to argue anything that would provide grounds for a compassionate and humanitarian decision.

The Joint Chairman (Mr. Klein): Have you finished Mr. Dinsdale?

Mr. Dinsdale: Yes.

Mr. Skoreyko: Do you feel that your powers under section 15 are broad enough, or that they should be broadened?

Miss Scott: I do not know that we have done enough to be able to answer that. So far we have been able to manoeuvre within section 15. I think it is fair to say that assessing the personal situation of the appellants who come before us is the most difficult part of our duties.

Mr. Skoreyko: Personally I do not think your powers are broad enough.

Miss Scott: I could not answer that yet. We have not functioned long enough to have a pattern emerge.

Mr. Skoreyko: Thank you.

The Joint Chairman (Mr. Klein): If a person is ordered deported in the first instance, is in custody and has been refused bail can application be made to your Board for the bail?

Miss Scott: Yes; they can apply to us for release from detention. Perhaps you have some figures there, Mr. Sloan.

Mr. Sloan: Yes; we have received 17 applications for release from detention. Of these nine have been granted and eight refused.

The Joint Chairman (Mr. Klein): And the application has been made in Ottawa?

Mr. Sloan: The application is filed with the Board in Ottawa.

Miss Scott: It is made in writing.

The Joint Chairman (Mr. Klein): May I ask you one more question, and it is my last. I find it a very disturbing factor that the Appeal Board cannot review the points system. Do you believe that in all fairness to an appellant the Appeal Board should have the right of reassessment?

Miss Scott: I do not know that it would be right for me to answer that. That is policy matter relating to amendment of the Immigration Act.

Mr. Munro: I cannot help but feel that a false impression is being left here.

This reassessment of points system and this other matter of refusal because a person does not have an immigrants visa are both now correctable situations. Previously they were not. With these discretionary remedies which the Board has and which the previous Board did not have, it can, in effect, order stay of deportation in both these cases. Previously it could not. Perhaps they cannot go into the original assessment but if that same person feels that he was unjustly treated in terms of receiving too few points and puts up a valid argument to justify a decision on compassionate and humanitarian considerations, he will win.

• 1250

The Joint Chairman (Mr. Klein): What you are saying is perfectly true but I am speaking of the case of an individual who comes here as a visitor, likes the surroundings, has no compassionate grounds, has been here only two weeks, makes an application, does not pass the points system, is ordered deported, comes before the Board and although there are no compassionate grounds, there are good and valid grounds for reassessment of his point

system. In such a case the Board cannot use its discretion. It has to order his deportation because there are no compassionate grounds.

Mr. Brewin: Mr. Chairman, may I point out that where a person is permanently landed in Canada and deported for some offence then the Board, under the Immigration Appeal Board Act, can consider any circumstances in determining whether or not the order should be stayed. They are given the broadest discretion under Section 15 (1). But in cases of persons not yet landed and applying for admission to Canada, whether sponsored or whether a visitor ordered to be deported, you have to fit yourself within what I think is a relatively narrow thing. After all, however kind the Board are they cannot act because the order was made without common sense. They have to find compassionate grounds. As you say although the assessment may be clearly a ridiculous one, it would be very difficult for them to act. I suggest that the proper way to deal with this is to enlarge their power so that they could act in exceptional circumstances—not that they have to review every single assessment and say that a certain person should get four points for education instead of five or something like that. There well may be cases where the assessment is out of kilter. Mr. Kent himself said that on this personality basis many of them just gave a medium figure, good or bad, that they never gave you 15 no matter how excellent you were, that they never gave you zero but somewhere around five, six or seven. Suppose a person has 47 points and something looks quite wrong. In such a case surely the Board should have a right, if it is to be an effective appellate tribunal, to use their discretion. I think it is up to us to recommend that the discretionary powers be enlarged.

Miss Scott: If you do that, Mr. Brewin, please provide for more members.

The Joint Chairman (Mr. Klein): If there are no further questions may I express on behalf of everyone present our delight in having you here.

Miss Scott: May I just say that you will be interested to know that we have written two pamphlets, one covering deportation appeals and one covering sponsorship appeals. They are in the process of being printed and Mr. Sloan has brought a couple of copies to file with your Secretary. These will be single pamphlets in French and English, French one way and English the other way. These are being translated into seven of the most commonly used languages and will be made available through the special inquiry officers to the appellants, to any ethnic groups that care to have them, indeed to anybody. I will be sending copies of the English-French pamphlet to all of the members and senators and I would ask anyone who wishes to acquire a copy in any of the languages we have it in to please let us know because these are presently being printed.

Mr. Brewin: Could I ask if the reports of these seven legal cases is in any publishable form and, if so, could they be made available to the members of this Committee.

Miss Scott: I am still struggling with the problem of the publication, Mr. Brewin, because the run is not big enough. I think we will have to be subsidized.

The Joint Chairman (Mr. Klein): If there are no further questions, thank you very much.

Miss Scott: Thank you.

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ALISTAIR FRASER,
The Clerk of the House

HOUSE OF COMMONS

Special Joint Committee of the Senate and House of Commons on Immigration

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