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IMMIGRATION AND REFUGEE PROTECTION ACT

Bill to Amend—Second Reading of Bill C-280—Debate Continued

Speech by:

The Honourable Vivienne Poy

Thursday, December 6, 2007

THE SENATE

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IMMIGRATION AND REFUGEE PROTECTION ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Goldstein, seconded by the Honourable Senator Campbell, for the second reading of Bill C-280, An Act to Amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171). —(*Honourable Senator Cowan*)

Hon. Vivienne Poy: Honourable senators, today I wish to speak briefly in support of Bill C-280.

I support Bill C-280 primarily because Parliament determined that a Refugee Appeal Division should be established at the time when the Immigration and Refugee Protection Act was passed in 2001, and I believe it is regrettable that a number of ministers in both the Liberal and Conservative governments have chosen not to carry out the will of Parliament.

I have been in communication with many constituents over the past six months, and have spoken to representatives from the Canadian Council for Refugees. I assured them that I would publicly express my support for this bill.

As Senator Goldstein has detailed, the 2001 legislation was intended to streamline the refugee and immigration process by reducing from two to one the number of panel members who preside over a case thereby, theoretically, doubling the number of refugee cases being heard. The appeal division was put in place as a safeguard measure to ensure the integrity of the system, but it was never implemented. It was presumed that applying for judicial review to the Federal Court would suffice. However, this not only puts an unfair burden on the court, but it also does not substitute for an appeals division. As Senator Goldstein emphasized, the vast majority — 90 per cent — of applicants are refused leave to apply to Federal Court for a review since the grounds are "essentially limited to alleged errors of law," leaving no appeal on the merits available to refused refugee claimants.

Filing at the Federal Court is also very expensive when compared to the review process of the proposed Refugee Appeal Division. According to representatives for the Canadian Council for Refugees, the implementation of the RAD would "greatly reduce the case load of the Federal Court and, in particular, eliminate frivolous Federal Court applications." They expect the Refugee Appeal Division, ultimately, to be both cheaper and faster, thereby helping to curb backlogs in the system.

Honourable senators, mistakes are made in refugee cases. Human beings are fallible and systems are imperfect. As Peter Showler, former chairperson of the Immigration and Refugee Board, wrote in his brief prepared for the Standing Committee on Citizenship and Immigration in the other place, more mistakes are made with single-member decisions. His detailed reasons are based on his experience as chairperson of the IRB, and can be read in his presentation dated March 29, 2007.

While I am willing to accept that there are false claims, there are many more refugees who flee genuine persecution in their homelands. They deserve the full protection as designated in our existing legislation.

To quote the Inter-American Commission on Human Rights Report, on the situation facing asylum seekers in Canada:

> Where the facts of an individual's situation are in dispute, the effective procedural framework should provide for their review. Given that even the best decision makers may err in passing judgment, and given the potential risk to life that may result from such an error, an appeal on the merits of a negative determination constitutes a necessary element of international protection.

Refusing to provide an appeal process as promised in legislation undermines our international reputation. Canada is committed to upholding international law with respect to refugees, and our failure to provide an appropriate appeal process is a failure to meet our obligation.

Ironically, the present government claims that it is not implementing the RAD because it would slow down the system and it wants to clear up backlogs. Unfortunately, under the current government, the backlog is growing. According to the Canadian Council for Refugees, the government is not filling enough vacancies on the Immigration and Refugee Board and is not renewing the memberships of candidates, many of whom are highly qualified.

• (1610)

In addition, the government has rejected the recommendations of a non-partisan group whose members, drawn from the legal, academic and NGO communities, had put forward a number of names to fill vacancies. To quote the response of Ms. Janet Dench, Executive Director of the Canadian Council for Refugees:

> The appointments process at the IRB has been really problematic because of the political nature of the appointments. In the last few years, there has been some movement away from that . . . Now, it seems the government is wanting to claw back political control over the process.

The lack of renewals of the appointments of experienced members, and the failure to appoint those recommended by the non-partisan panel, prompted the resignation of the board's chair, Jean-Guy Fleury, in early 2007, with the claim that the IRB lost "300 years of experience in one year." The number of vacancies has grown from five under the previous Liberal government to over 40 vacancies currently. Mr. Fleury felt he could no longer carry out his job since the board was so seriously understaffed and under-resourced. The rest of the advisory board also resigned.

In the meantime, refugee claimants are facing longer and longer wait times for their hearings, under great anxiety as they put their lives on hold.

Honourable senators, refugee claimants are in Canada because they fear for their personal safety. Claimants have a right to a speedy hearing and a chance to appeal the decision; they are being denied both under the current system. Bill C-280 will at least allow refugees to take advantage of the provisions in our present legislation.

In addition to the Canadian Council for Refugees, Amnesty International, the Canadian Bar Association and the Parliamentary Standing Committee on Citizenship and Immigration in 2004 have all called for the implementation of the Refugee Appeal Division.

The UNHCR has written that, "Canada, Italy and Portugal are the only industrialized countries which do not allow rejected asylum seekers the possibility to have first-instance decisions reviewed on points of fact as well as points of law."

This legislation should be viewed as a non-partisan issue because we are talking about human beings, not just numbers. I urge honourable senators to respect the will of Parliament, because many lives are dependent on it.

On motion of Senator Tkachuk, debate adjourned.