

**APPEARANCE BY THE HONOURABLE JOE VOLPE, P.C., M.P.  
SENATE STANDING COMMITTEE ON HUMAN RIGHTS  
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**Hon. Joe Volpe, P.C. M.P., Former Minister of Citizenship and Immigration, as an individual:**

Thank you for those words of introduction. You are right, perhaps the most difficult position in cabinet is that of Minister of Citizenship and Immigration. It is also a good and challenging one and satisfies those who think government fulfills a larger purpose than the one of day-to-day management of certain files. I found myself being in the position of being the Minister of a very dynamic portfolio. By that, I mean that it was prepared to change and it was preparing to meet the challenges of tomorrow from a demographic perspective.

*[Translation]*

I can continue in French, because I do not have anything in writing. I would simply like to tell you my positions in the past and my current position, as an individual.

So, if I may, I will tell you and briefly explain the reasons supporting my position, which have not changed in the least.

*[English]*

The RAD was the focus of Bill C-280 when I was minister. I thought of it as part of a comprehensive position for the Minister, in my case, and his or her department, in someone else's case, in addressing the demographic challenge of Canada. It was not to be separate from everything else, although we have a tendency to think about the refugee determination process as being something quite different from immigration.

I know you know all this already, Madam Chair and Honourable Colleagues, but the refugee component of the immigration plan comprised approximately 15 per cent of the grand total. It represented 15 per cent of the 40 per cent that went into family class, with 60 per cent being the focus on the economic category as per public policy. That changes, perhaps, with a change of Minister or sometimes with the change of government. Public policy demanded 60 per cent in the economic category; 40 per cent in family class. Of that 40 per cent, 15 per cent would be for refugees.

I say that because there is a lot of focus on backlogs and how to deal with them. Let me tell you my approach when the issue of the RAD came to me. The RAD said that we needed to do this because the changes to the Immigration and Refugee Act were predicated upon an agreement that people made with stakeholders in the community. Therefore, this would have to happen. I said, "That is fine." I try to live up to other people's deals and negotiations, but I knew that there was a process also put in place that said "Upon review, let us see what happens." I asked, "Most importantly, what are the dynamics?" The dynamics are twofold: Either the RAD, or proponents of the RAD, was able to increase the numbers of refugees that would be landed in Canada or they would be more interested in ensuring that the process would have the appearance of greater fairness.

I say "greater" because the people that I consulted, those from the United Nations responsible for refugees, liked to think of Canada as the premier example of a system for refugee determination that underscored fairness and product. In other words, we would meet our targets but we would do it fairly and there would be a process in place for those who had failed the process that had been put in place.

From my perspective, as the person responsible for the administration of the department, I wanted to ensure, first, that we could eliminate a backlog; and, second, that we could always meet our international commitment, which was to ensure that we would have approximately 15 per cent of our immigration total be met by recognized refugee applicants.

If I might digress for a moment, from my perspective, the refugee applicants were again divided into two: Those who met the criteria abroad and, therefore, went through a filtering system through the United Nations; and those who landed internally. The numbers of those landed abroad or qualified abroad used to be like this and those landed here at this point. I realize that you cannot see that in print; however, by the time I became Minister, the numbers had actually reversed.

We were expending a lot of material resources in ensuring that the inland applicants were landed within the constraints of 15 per cent and, at the same time, we were spending fewer and fewer dollars in doing what the humanitarian aspects of our policy dictated we do in an international context. I wanted to bring the two closer together. I said, "Let us look at the numbers of refugees. If I am going to immediately implement the RAD," and I was not about to because the test period had not been met yet, "on the number of refugees, what would happen?"

I know you have the numbers already, and in my mind they are not precise, but the year I was Minister, the number of refugees landed under both categories was the highest within the 10-year period leading up to today. I think we were at about 35,700 and change. As a reference point, in the year 2001, there were approximately 8,000 less, in other words 27,000. The year preceding my entry into the portfolio, 32,000 plus had been landed. I saw the number of refugees landed increasing. I said, "Under one category, there is no urgency to implement the RAD."

I looked at the other category, and that is whether there was a process in place so that people would be treated fairly. That would mean one would want to give applicants in the refugee system an opportunity to enter Canada with the same kind of rigorous fairness that would be applied to everyone else. As I said, it is all comprehensive — an immigration plan to meet Canada's demographic challenges and to meet Canada's human resources and labour market needs. "Under process," I said, "An applicant comes and gets a hearing at the IRB, may be followed up on failure with a pre-removal risk assessment, can be followed up by a judicial review — Federal Court, and can be followed up by humanitarian and compassionate risk assessment. What will the RAD do to those four levels of opportunity to have a case reviewed positively again?" Of course, the answer is, "very little." Even though the legislation said the RAD looked at law and process, the fact of the matter is you really had someone review all of the material and say, "Well, there is a case for doing something different." In other words, there really was not new material, so we were going to add a fifth element to a four-element process addressing only the failures.

I then said, "I will wait until there is a definitive indication that things have changed for the worse." As the numbers that I gave you indicate, we were actually landing more, and if that is one of the objectives of those who would propose the RAD, then we had already met that objective. There was an 18 per cent increase over the previous year. The backlog had gone down to a manageable level of 25,000 and was dropping. I do not want to be partisan, but I ask you to look at the numbers of what happened since. You can draw your own conclusions.

You asked me to come as an individual to give you an indication of what happens in the thinking of a Minister who wants to review the immigration system as part and parcel of a demographic program for Canada, of which the immigration policy is the most important. There you have it. That is the reason I said I would not implement it. Of course, we got into an election so I could not change my mind. When Bill C-280 came forward, I did not see any compelling arguments to make me change my mind.

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### QUESTIONS AND ANSWERS

**Senator Di Nino:** Thank you, and welcome. I was going to call you Minister, but I guess an ex-minister is still a minister.

**The Hon. Joe Volpe, P.C., M.P.:** Once a priest, always a priest.

**Senator Di Nino:** I am not sure I would make the same comparison.

**The Hon. Joe Volpe, P.C., M.P.:** One is holy; the other one is not but they both fulfill a useful function.

**Senator Di Nino:** As you know, a variety of different people do not agree with the position of some of us, including the position that you and I have, on the value of this. You and a number of your colleagues have actually said in the past that the promulgation of this provision would not result in a speeding up or a serving of the needs of refugees. Are you still generally of the same opinion?

**The Hon. Joe Volpe, P.C., M.P.:** Thank you, Senator. I am not sure that you and I have the same opinion because I do not know what your opinion is. Mine is that Bill C-280 did not address the concerns that I had expressed in my introduction. I had said that during my time, the numbers had gone up to land at 35,700 and whatever, and the previous year it was about 3,000 less, and in the 2001 it was actually about 10,000 less. Those people who used 2001 as the reference point because of the passing of the legislation were, in their assessment, not looking at what had happened. If their objectives were to land more refugees, that was already being done. There had been close to a 40 per cent increase. If their objectives were to make the system fairer, I would have to ask for a definition of fairness. Certainly in terms of a process that made the entry into Canada legitimate within the rules, then I think that that was already being accomplished by the four steps that I outlined, and I did not think the fifth one would enhance anything.

**Senator Di Nino:** One reason that at least one of the former ministers gave for not implementing the RAD provision was that the backlog, which was too large at the time, would not be well served and that, in effect, it would probably make the backlog worse. I think one of the ministers said it would bring the whole system to a halt. Seeing that the backlog is even larger now than it was then, would you feel that is still a concern that we would have to be aware of?

**The Hon. Joe Volpe, P.C., M.P.:** I tried to point out in my presentation the reasons for the backlog developing or why it would exist. There are various ways to deal with the backlog. Again, my numbers are historical, so they are easily verifiable. The ones current today are numbers that are developing, so I am not sure you can put as firm a handle on them.

Forgive me for repeating this, but one of the reasons for having a backlog is you would have more applicants appear on the scene than you would have space for. As long as your public policy says 15 per cent and your target number is 250,000, you can take 15 per cent of that and that is all you will work with. If your number drops to 230,000, that 15 per cent becomes less, so your backlog increases. Another reason is that the system you have in place is not processing as many applicants in as efficient a way as possible. In other words, you are not meeting the 15 per cent.

If you are not meeting the 15 per cent no matter the overall total, then it is a staffing issue. I ensured that we had appropriate staffing in place, qualified people who met the rigours of an assessment that the people from the IRB would say is objective, so we had staffing that was commensurate with the demand. I cannot speak to the staffing today. I can only repeat what is out there in the public domain, and that is that the process itself does not have the people it might normally have, and that would be a reason for the backlog.

I cannot speak to the people who are part of the larger immigration plan because I am not sure whether the target number has gone up or down.

Before I left, we had put in a place a plan that would be at least a five year plan that saw a gradual increase up to the last year, and we had sufficient funds for it. One reason the immigration department has so many challenges is that, when I went in, it had an annual budget of approximately \$850 million, and part of that went for immigration and refugee determination. We had to maintain approximately 90 offices in 73 countries. It is a difficult process. The department got cabinet to give us an additional \$2 billion, approximately, over a five-year period. That tripled the dollars available, so we had the resources.

I cannot speak to what happened to that money. About 40 per cent of it was for integration and settlement, which would have gone in part to maintaining the infrastructure for integrating the refugees. The rest would have gone to making the system much more efficient and responsive while the numbers were increasing. Again, I do not know what happened to that money. Government members will have to answer to that.

**Senator Di Nino:** During the time you were the Minister, you were responsible for efficient operation. Were those who came to us under the umbrella of refugee served effectively and efficiently? Were any problems created that we could not solve with the legislation we had at the time?

**The Hon. Joe Volpe, P.C., M.P.:** I will tell you the four levels available to failed refugee claimants. I always dealt respectfully with people who advocated for refugees. Most of them have a philosophical attachment to this work and believe it is the right thing to do. I do not disagree with them, but there are 10 million people around the world who could fit into the category of refugee. There are approximately 150 million migrants. From a very objective perspective you would consider how you put the 10 million in the context of the 150 million.

I do not know how many others were there. My view was that Canada has a human resource and a labour market need as well as a demographic need for expansion of the country which dictates that we go after the people who want to leave their home base and come to Canada to create a new society. I believed that we had to ensure that we had the resources and a department that was willing to do that. That is why I said in my opening remarks that the department was in a state of dynamic flow in that direction.

The challenge for me was to get money from cabinet. Happily, I succeeded. I did not get as much as I wanted, but I got a substantial amount.

To address your question about whether we had the resources, it appeared that, after months of negotiating to relate resources to priorities, we had what we needed to meet the demand. The people from the IRB were happy because I was giving them the personnel they needed to address the issues and I was giving them the rationale that would serve as a context for making a decision that I hoped would be positive, as well as giving them the flexibility of numbers, because the number was increasing. You cannot say, "Give me more, but cap it at 15." That 15 is a reflection of a larger number.

**Senator Di Nino:** We have suggested to people who would like to have this legislation passed that the current minister and four previous ministers of immigration were of the opinion that the RAD is not necessary and that the system works fairly efficiently now on behalf of those seeking refugee status. We have heard some pretty strong comments in response. Yesterday, a couple of witnesses said, in effect, that all these ministers have shirked their responsibility as ministers and have ignored the will of Parliament. How do you respond to that?

**The Hon. Joe Volpe, P.C., M.P.:** I suppose I could take personal offence to that. I do not want to speak to the intentions of colleagues who preceded or succeeded me, so I will speak only for myself. At the risk of sounding self-indulgent, I developed a consensus with the department about where it was going. It did not happen overnight. There were challenges that we both met, and we developed a working relationship that suggested that we were moving in tandem for the development of public policy. I do not know how one can claim that a minister is shirking responsibilities when he or she has the department working toward the objective of increasing the number of people who you think need to be helped.

Immigration is not really about helping someone else; it is about developing your country and using people who may be in need of assistance to further your very self-interested national objectives. I thought that we were increasing the numbers. I gave you the numbers and probably understated them, but you can verify them. Statistics Canada will give them to you. If you go beyond people's expectations, how can you be shirking your public duty?

**Senator Munson:** Welcome, Mr. Volpe. Why would it not help to give a refugee one more chance? There have been inconsistent rulings. People have been sent back when perhaps they should not have been sent back. Do we tell the Canadian Council for Refugees, the Canadian Bar Association and the others groups that have appeared before us that they are wrong?

**The Hon. Joe Volpe, P.C., M.P.:** I was asked that question when I was Minister as well. They thought the IRB made the wrong decision. They thought the pre-removal risk assessment repeated the wrong decision. They thought that the judicial review repeated the same error. They thought the minister and his department, in having a humanitarian and compassionate risk assessment, repeated the same error. What do they think will make the RAD change that decision?

**Senator Munson:** From their perspective, it is a sense of fair play and justice, as you spoke of earlier.

**The Hon. Joe Volpe, P.C., M.P.:** Why stop at five and not go to six?

**Senator Munson:** If we do not do anything now, is it all good? Is the status quo good?

**The Hon. Joe Volpe, P.C., M.P.:** You are asking me to speak about my experience as a Minister and as an individual. Where the government stands today is a different question, but that is not why you asked me to come here. I dealt with issues of people who came into the country and claimed refugee status, and the accusation by others who did not share the CCR's position was that they queue jumped and that there were many other people who had an equally legitimate right to entrance into Canada.

It is all a question of perspective. What is "fair"? Is fairness dealing with the application of someone who wants to come to Canada, or is fairness associated with people who are in a deprived position and find themselves in Canada and want to stay here?

A safe third country agreement intervened and came into play. It was difficult for many people to justify rushing to add another opportunity for someone who was in Germany, for example, failed a refugee claim there, or perhaps did not file a refugee claim there, hopped over to France, found his or her way to the United States, and then made his or her way across the border, to claim to be a genuine refugee claimant.

The idea was to try to ensure that we would deal with those who were legitimately here in the country and who had not gone through the United Nations process — one that we supported and we funded — in an expeditious fashion.

I went through those four. The RAD was a fifth. We could add a sixth or a seventh. However, if the answer is negative the first four times coming up, who are we talking about in terms of fairness? Are we talking about the person who filed in Beijing and has to wait forever because the target number for Beijing is considerably lower than the number who actually applied?

**Senator Munson:** Thank you for that. I just have one other question. Mr. Volpe, the Canadian Bar Association and others who appeared before us talked about what they feel is an abuse of the parliamentary system. By that they mean that we move through this whole process of a piece of legislation, a debate happens and it goes on and on. This debate has gone on for many, many years.

When it finally reaches that little point at the end where the Refugee Appeal Division aspect has to be proclaimed — has to become law — the minister has the right to say, "Whoops, I do not have to do anything." From their perspective it is contrary to the rule of law for statutory provisions to be set aside at the discretion of the executive.

In other words, there was a plea last evening from churches and so on — from people who have been through this whole process. When they think they might have it, the hook comes: All the things they have done and all that debate does not mean very much at the end of the day. The minister or the executive power still has the power to say, "No, sorry. It cannot be done."

**The Hon. Joe Volpe, P.C., M.P.:** Someone would say that in the context of Bill C-50 today. However, quite frankly, a much more objective position is that power left with the executive branch is still very much a part of the parliamentary process.

I am not here to defend the government; far be it for me to do that. I ran on a platform that was completely different from the current government's platform. However, the public had a different view. Instead of being Minister of Citizenship and Immigration, I am here as an individual reflecting on a historical fact.

There are political scientists, other lawyers and judges who have an opinion but it is that: An opinion. It is a welcome opinion because it enhances the debate but, in the end, someone has to make a decision.

I do not like some of the decisions that the current government is making. However, I cannot say it is not part of the democratic process. It is part of the democratic process. You wanted them and you got them. Now you deal with it.

My job is to ensure there is always an alternative. You are asking me about what I did when I was there.

**Senator Munson:** Thank you.

**Senator Jaffer:** Thank you for coming and explaining things to us. The comprehensive way in which you were approaching a very difficult task has been very educational. I was struck by how you spoke about numbers. Also, I was struck by how important it is, and rightly so, that you were setting out how important it was that we have a strong employee base upon which to build Canada.

One thing I would like you to address is our international obligation to protect refugees. I am sure you had implied it though you did not address it outright. I know you spoke about 15 per cent and it is interesting, I had never heard of it that way.

We have an international obligation to have a fair process. Canada, Italy and Portugal are the only countries in the industrialized world, as you know, that do not have a second appeal process. I would like to hear your comments on our international obligation to protect refugees.

**The Hon. Joe Volpe, P.C., M.P.:** Madam Senator, I have to disagree with the assessment that we, along with Italy, Portugal and another I cannot remember, are the only ones that do not have a second process. I outlined four.

I thought we were fulfilling our international obligation. I must hasten to add that you are asking me to give you a historical perspective. Therefore, I do not want my statements to be misinterpreted as speaking to the government's current position.

We were part of — the only non-European nation to be part of — an international assessment of where we are in terms of human rights index with respect to immigration. We did not fare too badly because of two initiatives that my department and I put forward in 2005 on which we got full marks and for which we are applauded everywhere. I mean "we" as Canadians.

One of them is that we are in full compliance with our international obligations with respect to refugees. My personal view was that we should spend more of our resources in identifying refugees abroad. In other words, let us use the international bodies that we sustain to provide us with the qualified people who are actually in harm's way, to put in a non-diplomatic way. For example, are all those poor people who suffered in that earthquake in China refugees? Well, there would be some people who would say they ought to be considered such.

However, until you have a body or an institution in place that makes a determination, you are faced with the alternative of someone coming to your door, knocking and saying, "Here I am and I am a refugee." How do I determine that that is more valid than the institution to which we all belong in terms?

I wanted us to start thinking in terms of rebalancing the numbers so that we would have more determination *in situ* as opposed to making determinations at our gate. In part, the questions you see amongst your colleagues — you are asking particular perspectives — would suggest that we do not have uniformity of view on how to deal with people who want to come into Canada.

I was determined to don a hat that always said that anyone who knocks at the door has an application to come to Canada, whether it is there in paper or it is implied. If we think of them as individuals who want to make a contribution to Canada, then we have an obligation — not just internationally but domestically — to ensure that that is always a bona fide application.

There are some people who are obviously in greater need. My heart goes out to them just like everyone else, maybe even more so. However, you cannot justify spending, I do not know, many tens or hundreds of millions of dollars in being part of a UN process to determine or screen in applicants and then say, "Forget that, we will give that money. However, we will short-change that part of the process where people make their way here."

How can they get here, Madam Senator? They cannot walk here from some place else, unless are you coming through the United States. You will not swim here. I do not mean to be facetious, but the Atlantic and Pacific Oceans are darn big. You will arrive here if you are smuggled here, if you fly here or if you land at one of the ports more or less legitimately. That suggests that you have some access to means or that you are being exploited.

I wanted to make sure that we could distinguish between when someone is being exploited, when someone has access to means, when someone is a bona fide refugee and when someone is an applicant for permanent residency but decided to take a different route. I could not do that, unless I had the resources, the money and the philosophy behind it.

I thought we could develop the philosophy. We worked together with the Europeans and Americans — my department did on my behalf — and, for my part, I managed to get \$750 million specifically for this from cabinet to ensure that we would be able to address these questions and to be able to be compliant with the UN.

I had the senior official from the United Nations High Commissioner for Refugees, the UNHCR, come see me. He was delighted with the way that Canada was handling the process. I could not take full credit for that and I would be a vainglorious fool if I even attempted to do so. However, obviously it was a system that he was seeing from beyond our borders. He said, "These Canadians have got something right and we need to support them."

**Senator Jaffer:** Far be it for me not to talk about refugees abroad being given help. I am a recipient that of largesse, so I do not want that to be forgotten. However, when people arrive at our doorstep, we look at the rights of every individual. That is why we are the great country that we are.

You talked about four processes. I do not agree that those are appeal processes. For example, Peter Showler, who was knowledgeable on these issues, said that the PRRA assessment was intended to figure out at the end if someone had a new risk of going out. That was not a review of the decision. The H&C process is not a review of the decision, it is to decide whether that person, as you have said, is able to settle in our country. The Federal Court must first give you leave to be heard. It is not really a review. It was the Refugee Appeal Division that was really a review of the decision. When you talk about four processes, there is not really a review of the process. A different process is set up but there is not a review of the original decision.

**The Hon. Joe Volpe, P.C., M.P.:** I guess I reserve the right to differ. Mr. Showler, whom you have identified, is like many other people with an opinion. As much as that opinion would be valid, you would say that he was in that kind of position so he would know. Yes, he might. He was charged with a particular task and he was giving you an impression about how he viewed that task ought to be filled. I was charged with a particular task and I moved to ensure that I fulfilled it in the way that I perceived to be in the best interests of the country.

There are those who view my period a little differently from the way that I viewed my administration. That is okay. When we are talking about people's lives, I did not want anyone to try to pull the wool over my eyes about this being an appropriate appeal process or not. When you got to the point where you were making an H&C application on risk, you were in a position to be able to tell someone, "everyone before you was wrong," for example, to say, "I will face death and persecution if I go back to where I came." Unless a person is made out of granite, I do not understand why you would not be able to make your case. With my predecessors, I found that when I advanced the position of some applicants on the basis of material that had not been considered, my colleagues almost invariably instituted a review that ended in the affirmative, but I had to be even more convincing than everyone else beforehand.

I guess this is a rights-based society and country. It was not always that way, but, happily, it is. It is still very strict about you knowing how to promote and defend your rights. There is a cadre, an army of people, who are expert in this. They are available to anyone who thinks that his or her rights are not being fully developed. With all due respect to anyone here who is a lawyer, that is they are there for that.

**Senator Jaffer:** Obviously, we will agree to disagree. Because we are colleagues, I will send you what we heard yesterday.

**Senator Nolin:** Written argument?

**Senator Jaffer:** No; he is no longer a decision-maker. I will send you what we heard yesterday, namely, that mistakes can happen. No one, not even in their wildest imagination, can say that our review process is air tight.

Earlier, you spoke about something that intrigued me, namely, stakeholders. I was not sitting here when this legislation was being discussed. I remember very clearly that there was a two-pronged approach. Instead of having two members, you would have one member. Just in case the member made a mistake, there would be a Refugee Appeal Division. I believe that we have been short changed. We now have the one member, but we do not have the RAD process. You said that an agreement was made with the stakeholders. I believe that we have let people down because we have only taken one approach. We have the one member, but we do not have the RAD process in place.

**The Hon. Joe Volpe, P.C., M.P.:** You are probably right; we will have to make an agreement. I can only give you my perceptions and they are historical.

I am always wary about someone who makes a point for everything on the basis of the worst case scenario involving a small handful of people. I think of that as a guide to ensure that you do not fall into those problems. Others before me — and I was not there for any of the negotiation, either — will recall that there was a time when we did not have an IRB process. Others will recall when there were three people on the panel before they were reduced to two and before they were reduced to one. Others will recall as well that there were varying degrees of competence and preparation for every one of those panellists.

I will give you an indication that, from my perspective, I wanted to have at least a minimum grade of qualifications, a standard that could withstand scrutiny by people who promote and advance rights amongst those who previously did not have any. We invested in ensuring that that first step be addressed, because it is useless to have 30 steps if the people who are making the decisions along the way: first, do not have a policy framework in which to deal; second, do not have a legal or charter framework in which to address the issues; and, third, are insensitive to the objectives of the hearing itself.

I needed to have people who wanted that. That does not mean that other ministers before me did not want that. I just felt that I wanted to move away from the accusations that were being levelled at us for patronage and insensitivity. I am a bit like a poet, I suppose; I know what I am writing about. When you write that poem, you and God know what the intent is but 30 minutes later, God is the only one left and everyone else is a critic.

I guess we do have to disagree. I think that the rights of the individual are eminently promoted by this system. Whether the government has the resources and the political will to invest in them the way that I thought my department did when I was there — and, again, I hasten to add that it was not because I provided the leadership but because we developed a context in which everyone would fulfil their own role — is for someone else to do.

**The Chair:** Senator Goldstein, you have been patient.

**Senator Goldstein:** Thank you. Patience is not my strong suit, as you probably know.

**The Hon. Joe Volpe, P.C., M.P.:** But it is a virtue, nonetheless.

**Senator Goldstein:** It is a virtue, one I do not possess a great deal of.

**The Hon. Joe Volpe, P.C., M.P.:** You must have been made a Senator for a reason.

**Senator Goldstein:** Thank you for coming here this afternoon and for sharing with us your experience and the philosophy that guided you during the course of your stewardship of the department.

I do not think anyone here, or elsewhere, is criticizing you for that stewardship. You did what you thought you had to do, what you ought to do as well. You were inspired not only by what you must do but also by your concept of your moral duty. We all admire that.

No one here thus far, and no one as far as I know generally, is attacking you for what you did. None of that is at issue today. What is at issue today is that there is a statute, and that statute has many provisions. Let us talk about only three, which, for a variety of reasons you and your colleagues in this portfolio — and you and your colleagues in this portfolio have some reasons which are congruent and some reasons which are special — did not cause to be promulgated. Are you aware, because you have been in government much longer than I have, of any other law that has passed by the Parliament of Canada containing provisions some of which had been promulgated but some of which have not?

**The Hon. Joe Volpe, P.C., M.P.:** Thank you for your preamble. I did not think I was coming here to defend either my stewardship or my morality. I am glad that you took note that that is not why I am here. I am not here even to defend any of the actions that I took or did not take. I was guided by one moral imperative, and that was what is in the national interest — not what I ought to do and not what I had to do, but what is in the national interest. I dare say all ministers probably do the same.

With respect to the answer to your very specific question, yes. Bill C-11 came forward and went to the Senate. The Senate asked for an amendment, and it came back. Bill C-11 has to do with promulgating various sections, including Section 27, I believe, and that will be done once the government has concluded a series of consultations with the provinces and other jurisdictions that have to do with the airline industry. That Bill has been passed and I guess proclaimed. That is the most recent one. I know this because I asked in committee today to have the minister come forward and explain to us why a year later we still have not had an indication of the status of those consultations. It is not an uncommon thing.

**Senator Goldstein:** With great respect, it is uncommon. What you have just indicated to us concerning Bill C-11 was predicated upon consultations because of a variety of potential constitutional issues that could arise. In this particular instance, there was no predication of this piece of legislation on any external factor. Perhaps I should make my question more precise. Again, I am not criticizing you or your predecessors. I am just asking the question. Are you aware of any statute which was not predicated on specific consultations or which did not have constitutional overtones, part of which was not promulgated?

**The Hon. Joe Volpe, P.C., M.P.:** Senator, you have been kind enough to point out that I have great experience in government, and part of that experience you heard me indicate to you earlier about the parliamentary process and the constitutional duty of ministers and the executive. I am aware that legislation allows for that executive discretion to be applied in the national interest. Let me return the favour by telling you that I am not as steeped in statutory law as you might be, so you have me at a little bit of a disadvantage.

**Senator Goldstein:** You spoke of this legislation in your mind or in the minds of your predecessors as being subject to a test period. I am not sure that I understand what you meant by that. Could you take a moment and explain that to me again?

**The Hon. Joe Volpe, P.C., M.P.:** I appreciate that. Perhaps my use of the word "test" is an inappropriate one. What I wanted to indicate, and I think I elaborated to illustrate this, is that you needed to have a period over which you could see the impact of the legislation. If the legislation was designed to increase the numbers of people who would be landed as refugees, and if that was the ultimate test of the success of the legislation, then you could not do it the day after you had promulgated the legislation. You obviously have to have a period of assessment. If the test of the success of the legislation or the appropriateness of the legislation would be whether people had suffered unfairly under this system, i.e., if there were more and more demands on Stage 2 and Stage 3 and Stage 4, then you would have to have a period of assessment as to what characteristics of the decisions lead someone to go to the next phase and then the third and the fourth, and then presumably a fifth one.

I felt that one could not possibly have an accurate assessment of the impact of the legislation unless a particular period of time had gone through. When I became Minister, the House of Commons immigration committee had undertaken to review whatever information it had at its disposal and was to present a report, which I think was tabled in the House sometime in September or October, the exact date escapes me, of 2005, when we were right in the middle of a discussion of whether we were going to go to an election. I must confess that I was not able to address their findings with the same kind of precision with which I am trying to answer your question.

**Senator Goldstein:** Thank you. Is it correct or am I mistaken that none of these assessment concerns were mentioned or raised during the debate which culminated in the passage of the bill?

**The Hon. Joe Volpe, P.C., M.P.:** I cannot comment on that because I was not part of the debate that led to the passage of the bill. I do know that people constantly made the case, and you heard me say to Senator Jaffer and I think you repeated the word "stakeholders." The arguments that were made, and the briefings I received were that the stakeholders felt that they were part and parcel of the revised legislation in 2001, and they wanted compliance with what they understood then to be the negotiations. I was not part of those negotiations.

What was of greater interest to me, as I have said, was the impact of the legislation, which I took to be the general interest of all Canadians and parliamentarians. You want to be seen as a nation that is compliant with your international obligations, number one; as a nation that is compliant with your human rights standards, number two; and as a nation that is responsible in its evolution and development of an immigration plan that includes refugees, number three. I thought that those were the first orders of priority, and that is how I operated.

**Senator Goldstein:** You spoke to us about being content. You did not use that term, but that is what you meant, I think.

**The Hon. Joe Volpe, P.C., M.P.:** It would depend on what you say, whether I agree with you or not.

**Senator Goldstein:** If I stopped there, that would be an interesting question, but I do not intend to stop there. Being satisfied is perhaps a better term. You were satisfied that Canada was in compliance with the international standards required of it for purposes of refugee assessment and admission and refusal of admission, and there are standards. Canada participated in that, correctly so, and you said that Canada was, in fact, in compliance.

A year after this legislation was passed, in May of 2002, the United Nations High Commissioner for Refugees wrote to Minister Coderre and said, amongst other things, the following. We have to understand that the United Nations High Commissioner for Refugees knew about pre-removal assessment, knew about the Federal Court appeal, which is not an appeal, as we both know, knew about humanitarian considerations, and knew about the entire gamut of the refugee procedure which Canada has put in place. Nevertheless, the following was said by the United Nations High Commissioner for Refugees, on behalf of the United Nations: "The United Nations High Commissioner for Refugees considers an appeal procedure to be a fundamental, necessary part of any refugee status determination period. It allows errors to be corrected, and it can also help to ensure consistency in decision-making." The Commissioner went on to say, "In the past, a measure of safeguard was provided by the fact that determinations could be made by a two member panel, but with the implementation of the IRPA on June 28, this safeguard will be lost." We see the United Nations telling us — and they told us again yesterday in testimony here — that we are not in compliance with international standards. Everyone knows that there are four mechanisms available. They are saying we should have a fifth mechanism.

You are saying that perhaps in terms of the availabilities of your budget and your personnel — and we understand that you had virtually no control over that — this was not a valid, cost-effective choice you could make because you were relying on other arms and elements of the immigration policy of Canada to correct any problems and to deal with a variety of resettlement and other matters that had to be dealt with. Nevertheless, that United Nations condemnation of Canada stands baldly out. It started in 2002 and continued on June 2, 2008. Does that give you pause?

**The Hon. Joe Volpe, P.C., M.P.:** Sure. Give me an opportunity to go back to my notes. I can recall that in 2005, the individual who filled that position came to Parliament Hill, was introduced by the Speaker of the House and came to me and said thank you for doing what you are doing. I did not ask him to put that in writing. However, here is something from the UNHCR Canada operations plan 2004 and I think we are talking about the same individual, "Canadian policy and practice are often seen as setting the example for other countries."

I do not know whether that means that you are no longer happy with what he said in 2002. Certainly in 2004 and 2005 when he came to see me about where we were going, and asked me to continue ensuring that Canada fulfilled that definition, it would suggest to me that the United Nations was at least content — to use a word that you elaborated on earlier — to see that Canada, the landmark society for human rights and refugees, was continuing in a path that he and his organization felt led the way for others to follow.

Is that the case today in 2008? I do not know; I have not been in government since the beginning of 2006. I do not want to say that all good decisions stopped in 2006, but in a weak partisan moment, I might be tempted to say something like that. However, that would take away from this presentation.

**The Chair:** Thank you for resisting and for giving us your perspective when you were minister and your reflections today. They have been helpful and they have completed our picture as we look at various aspects of Bill C-280.

As we probably have a television audience, I would remind people of the good work that the Senate does. One of those is the work of Senator Banks, who has proposed a bill several times. Unfortunately, it never got to full enactment, but it was to take off the books of the government and Parliament acts that have been passed but not implemented.

Senator Nolin and I, and I believe Senator Jaffer, had been in the Standing Senate Committee on Legal and Constitutional Affairs, where we were given numerous examples by Senator Banks and officials of partial enactment of bills. This is an ongoing study and dilemma that I hope the Standing Senate Committee on Legal and Constitutional Affairs will be seized with in the future. That is a plug to stay tuned to see the good work of the Senate in that regard.

Mr. Volpe, thank you for coming today.

**The Hon. Joe Volpe, P.C., M.P.:** My compliments, Madam Chair. Thank you for giving me the opportunity to speak to you. If it has helped to give you a more rounded picture, that is great. If it has not, I have enjoyed my time with you nonetheless and I thank you for your reception.