



**HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA**

39th Parliament, 1st Session

39^e Législature, 1^{re} Session

The Standing Committee on Citizenship and Immigration has the honour to present its

Le Comité permanent de la citoyenneté et de l'immigration a l'honneur de présenter son

FOURTH REPORT

QUATRIÈME RAPPORT

On Wednesday, June 21, 2006 and pursuant to Standing Order 108(2), the Committee adopted the following motion:

Le mercredi 21 juin 2006 et conformément à l'article 108 (2), le Comité a adopté la motion suivante :

That, pursuant to Standing Order 108(2), the Committee recommends that the government place an immediate moratorium on deportations of all undocumented workers and their families who pass security and criminality checks while a new immigration policy is put in place.

Que, conformément au paragraphe 108(2) du Règlement, le Comité recommande que le gouvernement applique un moratoire immédiat à la déportation de tous les travailleurs sans papiers et de leurs familles qui subissent avec succès des vérifications de sécurité et de criminalité pendant la mise en place d'une nouvelle politique sur l'immigration.

That the Committee adopt this recommendation as a report to the House and that the Chair present this report to the House.

Que le Comité adopte cette recommandation comme rapport à la Chambre et que le président présente ce rapport à la Chambre.

In accordance with the provisions of Standing Order 109, the Committee requests that the Government provide a comprehensive response to this Report.

Conformément aux dispositions de l'article 109 du Règlement, le Comité demande que le gouvernement fournisse une réponse complète à ce rapport.

A copy of the relevant [Minutes of Proceedings \(Meeting No. 13\)](#) is tabled.

Un exemplaire des [Procès-verbaux pertinents \(séance no 13\)](#) est déposé.

Respectfully submitted,

Respectueusement soumis,

Le président,

NORMAN DOYLE
Chair

THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

DISSENTING REPORT

Ed Komarnicki, MP (Conservative Party of Canada)
Parliamentary Secretary to the
Minister of Citizenship and Immigration

Submitted to the Standing Committee on Citizenship and Immigration

June 22, 2006

This dissenting report is made in response to the motion as presented by the NDP Member for Burnaby-Douglas and passed as amended by this committee on the 21st day of June, 2006. The motion as passed results in the Standing Committee on Citizenship and Immigration adopting the following statement as a report to the House which reads as follows:

That, pursuant to Standing Order 108(2), the Committee recommends that the government place an immediate moratorium on deportations of all undocumented workers and their families who pass security and criminality checks while a new immigration policy is put in place.

There was no consensus of the members of the Standing Committee on Citizenship and Immigration and this dissenting report is filed to reflect my dissent to the report as concurred with by the Members noted.

Background

At the present time there is a growing concern with respect to the plight of undocumented workers all across Canada. This is a matter with no easy solutions and a number of competing concerns, all of which warrant careful consideration and study. There is no question this government and the Conservative Party of Canada recognize that a thoughtful and measured response is required before policy can be implemented to fully address this situation.

The proposal of a moratorium on deportations is something which unquestionably warrants study by the Standing Committee on Citizenship and Immigration. Canadians look to the representatives they elect to address matters

like this. It is through their Members of Parliament that they may participate in the development of policy options and recommendations to their government. Those options and recommendations would also undoubtedly benefit from the input and wisdom of committee members, particularly those who have been thinking about the problem for 13 years as caucus members of the former Liberal government. It is also through the unique ability of parliamentary committees to call witnesses, receive submissions and engage in public consultation that stakeholders and the broader public can contribute directly and transparently to improving outcomes for those affected.

Yet, troublingly, there has been absolutely no effort on the part of the Standing Committee on Citizenship and Immigration of the 39th Parliament to hear from even a single witness. No representative of any of the stakeholders, interested groups or the public has been afforded an opportunity to give evidence or make any presentation to the committee. The members of all three Opposition Parties have chosen instead to abrogate their public duty and curtail the public input. It is perhaps a telling extension of the fact that not one of them or their Parties made halting deportations or regularizing illegal workers a platform commitment in the past election campaign.

The proposal of a moratorium ought to be considered in light of Canada's immigration policies, generally. We believe Canada's immigration policies are regarded as responsible, logical, humane and democratic. They have been built on principles of fairness and respect for the rule of law. Immigration is an important economic, social and cultural engine for Canada. Several avenues have been created to welcome newcomers to Canada while allowing government to attain Parliament's and its own objectives with respect to immigration.

The Skilled Worker Program selects immigrants with flexible skills on the basis of their ability to become economically established in Canada. The selection criteria places more emphasis on knowledge of Canada's official languages, level of education and previous work experience, which are primary indicators for the long-term success of newcomers and their integration into the Canadian labour market and society. Points are also awarded to foreign nationals who have previous work experience in Canada as temporary workers. As well, those who have arranged permanent employment are allocated additional points. The Minister of Citizenship and Immigration is exploring ways to make our immigration program more responsive to labour market needs.

The Canadian immigration system also responds to localized or industry-specific labour shortages through the Temporary Foreign Worker (TFW) Program and through Provincial Nominee Programs (PNP). PNPs allow participating provinces to nominate permanent immigrants based on their own particular needs, whether workers are recruited from abroad or already in Canada as temporary residents, without the requirement for labour market opinion. Co-managed by CIC and Human Resources and Social Development Canada

(HRSDC), the TFW Program is largely employer driven and responsive to offers of employment from Canadian employers. Recruitment into the program is geared towards individuals who want to work in Canada, but may not be planning to make this country their permanent home.

In high-demand industries, CIC continues to work with stakeholders to create special programs within the TFW. The Construction Recruitment External Workers Services (CREWS), for example, was created along with stakeholders in the construction industry to manage, control and allow for the efficient processing by HRSDC and CIC of applications for the entry of temporary foreign construction workers. The Minister is interested in receiving feedback from those affected by it on how it could be improved. Similar programs exist for the agricultural sector and for the oil sands industry.

A moratorium on removals must also be considered in light of already existing policies that allow for foreign nationals facing removal to remain in Canada. Foreign nationals experiencing exceptional circumstances in Canada may apply for humanitarian and compassionate consideration (H&C). Applicants are required to prove that hardship is unusual, excessive, or undeserved, and the result of circumstances beyond the applicant's control. CIC officers accord all applicants the opportunity to have their applications assessed fairly.

Our government is continually reviewing the economic climate in Canada and identifying ways in which immigration can be more responsive to labour market needs while respecting the social and security-related requirements of immigration. We believe Members of the Standing Committee have a responsibility to keep in mind the importance of maintaining the integrity of the immigration system. Fairness to those seeking to come to Canada legally is imperative.

There are many who are of the view that any regularization initiative for foreign nationals who have illegally remained in Canada is unfair to the hundreds of thousands who have applied for immigration through legal channels and have waited patiently for processing. There are some who have expressed concern about the “draw” factor of a moratorium on deportations – that is, the potential for others to come to Canada and remain without legal status. Some have raised that an effective removals program is essential to the integrity of Canada’s immigration system. We wonder what the effect will be on those without status when some in their community or in their situation do not pass the criminality and security checks referred to in the Motion and whether they will be driven further underground. All of these questions merit the advice and evidence of those with expertise. The Opposition, however, would rather not see them asked or take part in answering them.

The Conservative government has also shown its commitment to fairness and a refreshing willingness to listen to those who have views toward solutions for

problems Canadians and those wanting to come to Canada have found with the policies of former governments. We are proud to be part of a government that recently admitted over 800 refugees fleeing Myanmar, gave international students legitimate opportunities to come to Canada and gain valuable work experience through an Off-Campus Work Permit Program, created new measures for victims of human trafficking, cut in half the Right of Permanent Residence Fees, and ended the decade-long funding freeze for settlement and adaptation services with a budget increase of \$307 million.

As Members of Parliament, as members of the Conservative caucus, we consulted and listened to stakeholders who came before Parliamentary committees to develop these policies and programs that are improving the outcomes of immigrants, refugees and new Canadians. For matters like a moratorium on deportations and the broader issues affecting those without status, we believe it is equally important to successful outcomes for stakeholders to contribute and be heard.

The Operation of Standing Orders

We do not believe that this Motion was brought in accordance with the letter or the spirit of the Standing Orders of Parliament. The Standing Orders are intended and do facilitate Parliament to discuss issues of importance in Canada. The motion of the Member for Burnaby-Douglas was brought before the committee, as a report purportedly in accordance with the Standing Orders of Parliament, a practice many have become accustomed to. Yet, a simple reading of Standing Order 108 reveals the basic obligations of the committee as it relates to the presentation of a report to the House. The motion falls far short of those basic requirements.

The Standing Orders read in part as follows:

108(1)(a) Standing committees shall be severally empowered to examine and enquire into all such matters as may be referred to them by the House, to report from time to time and to print a brief appendix to any report, after the signature of the Chair, containing such opinions or recommendations, dissenting from the report or supplementary to it, as may be proposed by committee members...

108(2) The standing committees, except those set out in sections (3)(a), (3)(f), (3)(h) and (4) of this Standing Order, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which

are assigned to them from time to time by the House. In general, the committees shall be severally empowered to review and report on:

- (e) other matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit.

Under Standing Order 108(2) there is no question that the committee is empowered to study **and** report on a moratorium on deportations, as this topic is unquestionably a matter relating to the mandate, management and operation of the department of Citizenship and Immigration.

Yet the essence of Standing Order 108(2)(e) is that there must be either an examination and inquiry, or a study and report or at the very least a review of some kind by Parliamentarians before there can be a report to the House.

The Standing Orders that are expressly excluded by Order 108(2) also contemplate a review **and** report. This further suggests that something more than a mere motion brought forward by a committee member, totally out of context of any review or work before the committee.

With respect to the presentation of the report, this is governed by Standing Order 109 which reads as follows:

109. Within 120 days of the presentation of a report from a standing or special committee, the government shall, upon the request of the committee, table a comprehensive response thereto, and when such a response has been requested, no motion for the concurrence in the report may be proposed until the comprehensive response has been tabled or the expiration of the said period of 120 days.

A motion of and in itself is not a report. The word 'report' from the Oxford English Dictionary is defined as, "an account given or an opinion formally expressed after an investigation or consideration." The word review is defined as, "an assessment of a subject or thing." These are the conditions precedent to a matter coming before the House.

From a point of order perspective, the motion arguably was premature as there cannot be a report or recommendation to the House until such time as the committee has studied, reviewed, examined or inquired into the matter and then reported in the nature of the Motion.

A motion asking the committee to first review and then report to the House on the issue of undocumented workers would have been in order and appropriate. The Motion as presented by the Member for Burnaby-Douglas is not that.

The standing orders ostensibly set down rules for parliamentarians to prepare reports, and that is the purpose of Standing Orders 108 and 109. The Standing Orders should be interpreted as supporting parliamentarians to do this important task, and not as allowing members to transfer this task to others.

We would want to look at the issue of undocumented workers and would expect that every member of this committee should also want to be part of a careful and comprehensive examination of this important issue. To do so would provide each of us with voice on solutions to the unfortunate circumstances facing those persons living and working in Canada without status. The issue of the plight facing undocumented workers is simply too important to this committee to allow us to abandon or otherwise ignore our responsibilities as Parliamentarians and to simply defer this matter to someone else to prepare a report without any input from this committee whatsoever.

Conclusion and Recommendations

To be sure, the issue of undocumented workers is a serious and far reaching one that requires the attention of this Government.

In fact it is the second item of attention that this committee will study when it returns in the fall session, commencing in September of 2006.

The motion in issue was passed pursuant to Standing Order 108(2) despite my objections as Parliamentary Secretary and in our personal capacity as Members of Parliament and as members of the Standing Committee on Citizenship and Immigration.

We took issue and objection to the motion if passed being treated as a Report to the House of Commons, when it was in fact and on any objective basis not a report. It came in the simple form of a Motion presented in the nature of a recommendation without a shred of evidence having been heard, without any material of any kind, and without witnesses or interests groups appearing.

Indeed, the Motion itself does not meet the prerequisites or conditions required for it to be a report pursuant to Standing Orders 108 and as such, should not have been allowed to be treated as a report.

In fact, it is either an abuse of the committee process or at the very least a use of Standing Order 108 in a manner it was never intended to be used. The presentation of the motion as a report to the House also accrues to it other

benefits such as those provided under Standing Order 109, namely, a response from the government and ultimately the ability for a Motion of concurrence.

Given the absolute lack of any evidence or study of an issue of such significant importance, and given the fact that the Standing Committee on Citizenship and Immigration will be studying the issue of undocumented workers upon the return of the House in the fall, it would only be appropriate that the issue raised in the motion be subsumed in the study of undocumented workers and that the results be incorporated in the report resulting therefrom.

We therefore request a response from the Government with respect to my request that the subject matter of the motion be made part of the larger study by the Standing Committee on Citizenship and Immigration on undocumented workers.

As additional support to the argument that the purported report is not a report as contemplated by Standing Order 108 are references to the relevant provisions as found in the House of Commons Procedure and Practice (ed. 2000) edited by Robert Marleau and Camille Montpetit, appended hereto as schedule 'A'.

All of which is respectfully submitted this 22nd day of June, 2006

Ed Komarnicki, MP
Parliamentary Secretary to the Minister
of Citizenship and Immigration

I concur:

Rahim Jaffer, MP Edmonton-Strathcona

Nina Grewal, MP Fleetwood-Port Kells

Barry Devolin, MP Haliburton-Kawartha Lakes-Brock

**Schedule 'A' to the Dissenting Report
of Ed Komarnicki, MP**

Position that the Motion as presented to the committee by Mr. Siksay was Out of Order is supported by the text found within *House of Commons Procedure and Practice* - Marleau and Monpetit, ed. 2000

At Chapter 20, page 878 dealing with subject matter studies, the text provides that, "Committees sometimes hold hearings not for the purpose of preparing recommendations for the House but simply in order to stay informed with respect to an important topic within their mandate. **In most cases, however, the committee will present a report to the House, outlining the evidence which it received, summarizing its deliberations and presenting its recommendations.**"

"Typically, a committee will begin with a background briefing provided by the committee research staff or departmental officials. The committee will then invite testimony and briefs from interested parties. During the evidence-gathering phase, the committee may travel to broaden the range of witnesses heard and to visit sites and facilities relevant to the study. Following the gathering of evidence, the committee will provide drafting instructions to the staff assigned to prepare the report. Once the draft report has been circulated to the members, the committee will meet to consider it and propose any alterations necessary to accurately reflect the committee's views. Committees often consider draft reports at in camera meetings, but reports are also considered in public session. Once the committee has agreed to the final version of the report, it is presented to the House." (pg. 878)

"Committees make their views and recommendations known to the House by way of reports. There are several types of reports that committees may present, including: reports dealing with routine matters affecting a committee's operation, **and reports following the completion of an inquiry into some matter referred by the House, or related to the mandate, management or operation of a committee's designated ministry or area of responsibility.**" (page 879)

The text at page 886 goes on to provide the type and context of a Motion with respect to a Report. The text reads as follows, "**Recommendations in committee reports are drafted in the form of motions so that, if the reports are concurred in, the recommendations become clear orders or resolutions of the House.** In framing their recommendations, committees cannot exceed the authority of the House. Most importantly, with respect to the expenditure of funds or the introduction of legislation, committees may recommend only that the government 'consider the advisability' of such measures."

Other forms of motions that accompany the formulation of a report are procedural and are set out as follows, "Once committee members have agreed on the contents of the report, it is formally adopted by motion. The committee then specifies clearly and explicitly, by way of a motion, the format of the report. In addition, the committee adopts another motion instructing the Chair to report it to the House. As final changes to the report may have been made at the meeting prior to its adoption, it is also usual to adopt a motion giving editorial power to the Chair, to ensure that the final text of the report in both official languages is in conformity with the decisions taken by the committee, provided that no change be made to the substance of the report. The committee may also adopt a motion, requesting that the government provide a response to the committee's report. Finally, the committee may decide to hold a press conference, following the presentation of the report, to publicize the results of their study." (pg. 880)

The matter raised by Mr. Siskay in his motion is not routine in nature as contemplated by the above text, but was clearly substantive in nature. Moreover, there is a format to such substantive reports.

On page 882 with respect to substantive reports the text provides that, "Substantive reports, especially lengthy ones, are often prepared as printed documents with special covers. While committees have considerable latitude in the format of such reports, there are a number of elements which are normally included. **The text of the report follows the citation of the authority under which the study was carried out. It outlines the issue or issues dealt with and often includes reference to appropriate portions of the submissions the committee received, both oral and written.** For large studies, the text is usually divided into separate chapters, dealing with the various aspects of the subject. **Following the text, the committee's recommendations on the subject are listed. Appendices are usually included, listing the witnesses heard and the briefs submitted in the course of the study.** If the committee has chosen to request a government response to the report, the request is inserted before the Chair's signature at the end of the report. Any dissenting or supplementary opinions which the committee has agreed to attach appear after the Chair's signature. The relevant minutes of proceedings, relating to the committee's adoption of the report, conclude the document." (pg. 882)