The Committee feels that it is not necessary or practical to provide individuals with a right to counsel prior to an inquiry. However, in the event that any information taken prior to an inquiry is used against a refugee claimant, then the claimant must be made aware of this information prior to the hearing and be given the opportunity to respond to it.

In order to ensure the availability of counsel at detention review, the Committee recommends that the Immigration Act should be changed to allow refugee claimants the option to postpone the initial review following the decision to detain for up to 120 hours from the present 48 hours.

According to Rabbi Plaut, "At a minimum, discussions should be held with provincial legal aid plan administrators to ensure claimants are not denied (legal aid) certificates." (p. 159)

6. *UNHCR Participation*

UNHCR participation in an advisory capacity has proven to be beneficial in the Canadian context and this should be continued (p. 163).

The Committee disagrees with (Plaut's) recommendation (that a transcript of a rejection be submitted to the UNHCR for review) since UNHCR participation of this type is not required in the model proposed by the Committee because a decision to reject a claimant must be unanimous. The Committee agrees with the three remaining recommendations (to postpone panels pending UNHCR advice, to allow the UNHCR to attend hearings as amici curiae, and to sit as an ex-officio member of the Documentation Division) with the reservation that any opinions of the UNHCR representatives must be expressed in the presence of the refugee claimant.

7. *Interpretation*

Although the Committee agrees that interpretation services in refugee hearings need to be improved, it does not feel that it is in a position to make the necessary administrative recommendations to accomplish this. The Committee urges the government to examine the feasibility of each of Rabbi Plaut's suggestions. The Committee also believes that care should be taken to ensure that interpreters are not biased against the best interests of the claimants.

Dissenting Statement on the Fifth Report of the Standing Committee on Labour, Employment and Immigration

Dan Heap, M.P., Spadina
(edited version)

Although much of this report is good, I find two serious flaws in it. The pressure of Committee work on all members was such that we could not find time to resolve these points. Because of these two flaws I dissent from the report, as follows:

1. *The Appeal System*

The Committee disposes in one paragraph of the refugee claimant's right to appeal. It recommends an appeal, with leave, "on broad grounds," to the Federal Court of Appeal. *This will not work.*

All the witnesses before the Committee asked for a stronger appeal system. Remeber the Supreme Court's warning, in its April 4 decision on the Singh case, that a mistaken judgement may cost a person's liberty or life.

> *Therefore I recommend that we set up a special appeals branch of the Convention Refugee Determination Board. A claimant who asks to appeal would have the written record of his case read by one member of the branch who would decide whether the claim is "manifestly unfounded" and if so deny leave to appeal. If leave were not so denied, the case would be heard by an appeals panel with a mandate to hear and examine the claimant afresh, hear and examine other witnesses, and invite the opinions and advice of the UNHCR representative.*

2. *Right to Counsel*

Many witnesses told us how genuine refugees' cases have been prejudiced because they were denied the right to have a lawyer or other counsel at the first examination.

A refugee arrives, scared from previous persecution, often not knowing our languages and laws, and is quizzed alone by a uniformed Enforcement Officer trained to discover reasons to keep people out. This contradicts the whole thrust of our report, which is to *separate determination of refugee status from immigration procedures.*

Furthermore many witnesses told the Committee, and the Sub-Committee on Immigration Detention, how some refugees, without right of counsel, have been unjustly detained and sometimes unjustly treated in detention.

The Supreme Court, in deciding that refugee claimants must have an oral hearing, implied that everyone physically in Canada has certain rights under the Charter. I believe, with most witnesses before the Committee, that right of counsel is one of these, and that evidence taken without counsel ought to be excluded from decision-making. To wait years more for the Supreme Court to verify this is surely an unreasonable *waste of human suffering and taxpayers'money.*

> *Therefore I recommend, with Rabbi Plaut, "that the refugee claimant have the right to counsel as soon as a claim is made, that he/she be advised of this right and that it be enshrined in our legislation." (p. 158, Refugee Determination in Canada).*

I strongly regret that the many beneficial recommendations of the Committee's Report may be of no help to a refugee if we deny him/her the right to a strong appeal and the right to counsel from the beginning.

Therefore I oppose this report *as a whole,* and urge the public to persuade the Minister to correct these flaws.