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**EVIDENCE**

## Thursday, December 9, 2004

## Chair

**The Honourable Andrew Telegdi**

# Standing Committee on Citizenship and Immigration

**Thursday, December 9, 2004**

● (0905)

[*English*]

**The Chair (Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.)):** Order, please.

We are hearing evidence and we have Monsieur Fleury, the chairperson of the board, with us and Madame Stuart-Major and Madame Krista Daley.

I wonder if you could go ahead and give us an overview for about 15 minutes and then we will go into questions.

Thank you, Mr. Fleury.

**Mr. Jean-Guy Fleury (Chairperson, Immigration and Refugee Board):** Mr. Chair, committee members, thank you for inviting us here today to discuss the Immigration and Refugee Board. I would like to introduce Marilyn Stuart-Major, our executive director of the board, and Krista Daley, general counsel.

This is my second appearance before this committee as chair of the IRB. I would like to say how pleased I am to be here again. I appreciate the opportunity to tell you about our work and to answer any questions you may have.

The IRB is a human rights tribunal. We have a serious task because our decisions, whether they enable people to stay in Canada or require them to leave, are life-changing decisions.

[*Translation*]

With that in mind, I would like to share with you my vision for the IRB—the accomplishments we have realized, the challenges I had, and our plans to continue to make ourselves into a model organization within Canada's immigration and refugee determination system.

[*English*]

As you know, the IRB is an independent, quasi-judicial body comprised of three separate tribunals. I trust you have received a package with the background information, so I will not go into details of the three tribunals today.

I would like to take this opportunity to talk about the bigger picture, including what we have done over the last year and what we will do in the months ahead to address specific issues.

First, let me briefly review our relationship with the government. Although the IRB functions independently of government, it is accountable and reports to Parliament through the Minister of Citizenship and Immigration. This nuance is very important. Our mandate is to administer the law as it pertains to immigration and refugee protection, not to make policy. That responsibility falls to parliamentarians and the government, not to tribunals such as the IRB.

Let me share with you some of the challenges we have faced. At the end of March 2003, we were looking at a staggering backlog of 52,000 claims awaiting a decision in the refugee protection division alone. The backlog was not due to poor performance but rather to a massive spike in global migration that started in the late 1990s and peaked in 2001.

The challenge before us was more than just numbers. It was about building a more responsive and dynamic organization, thereby meeting our mandate. It was about responding to the call from the Clerk of the Privy Council to be more innovative and creative, to conduct ourselves to the highest standards of values and ethics, and to deliver better services with a focus on results for Canadians.

In addition to the direction of the clerk, the issue of public safety and security has suddenly thrust itself into the public domain as never before. The stakes of our organizations were high, but so was our determination to succeed.

[*Translation*]

Our response to the refugee backlog and the call for change was comprehensive. We looked at every aspect of our work: who does what, and how it is done. Here are some examples: we standardized and simplified the case management system; we changed how we conduct hearings, and we are now more focussed and proactive in our questioning; we created two tools to guide decision-makers, including three set of guidelines and two jurisprudential guides; we also introduced 11 national documentation packages and ongoing discussion groups on human rights conditions in various countries.

● (0910)

[*English*]

Finally, the government introduced a new independent, transparent, merit-based selection process to ensure we attracted the best candidates at the IRB. Those changes pertained mostly, but not exclusively, to our refugee protection division. We also implemented measures in the immigration division and the immigration appeals division to realize efficiency, streamline process—in other words, back to basics.

[*Translation*]

I am pleased to say that a backlog that stood at 52,000 less than two years ago is down by almost half to 27,600, as of October 31 of this year. But I did not accept this invitation just to talk about the numbers. The numbers represent a human face and compelling stories. The simple reality is that people awaiting a decision have their lives put on hold.

A reduced backlog means taking people out of a state of uncertainty. It also means living up to our national and international obligations to provide protection for those who need it, and making the way clear for the government to deal with people who are not recognized as refugees.

[*English*]

The past year has been a year of success, but the transformation is not yet complete. Let me address some of our priorities in the months ahead.

An important priority is turnaround times for processing refugee claims. My goal is to reduce the process to an average of six months. It will not be good enough to reach that target once, but to sustain it for at least 18 months.

How are we going to achieve this goal? This year we are concentrating on smart management of our pending cases. There are two aspects of this strategy. One is to focus on scheduling older cases, and the other is to fast-track simple ones. This will allow for a quick yes or no to people whose cases require less preparation or research.

Although there are efficiencies to be realized through a fast-track process, I want to assure you that for more complex cases we will take the necessary time to ensure that justice is served. Each case will receive the time necessary for a fair and thorough hearing.

[*Translation*]

I would now like to turn to matters of security, and where the IRB fits in the broader issue of public safety. In the first place, the IRB does not act alone, but has a role along with Citizenship and Immigration Canada and the new Canada Border Services Agency (CBSA) with respect to refugee claims. Each claim is screened up front by the appropriate law enforcement agencies before it reaches the IRB. In fact, the IRB will not begin a hearing until it receives the results of a security screening. In addition, if something comes to light in one of our hearings after the case has been referred that raises a security concern, we notify the CBSA. The CBSA may then choose to intervene and participate in the hearing so that the security issue is adequately addressed.

[*English*]

I understand that the refugee appeal division has been an issue for this committee and for certain of our stakeholders as well. Also, when the minister appeared before this committee on November 23, she suggested that you talk to me regarding the RAD. I'm more than happy to provide the context in which this internal appeal would operate, but the decision to implement the RAD rests with the government, not the board.

The RAD would add a fourth tribunal to the board. As with any appeal process, it would review individual cases to see that justice was done. Second, it would help resolve inconsistency in decision-making.

At the same time, it is important to remember what it would not do. It would not allow new information or any detail to be presented in the appeal that was not submitted in the original hearing. It would not re-examine the case on the basis of humanitarian and compassionate grounds, but would administer the same tests as the original hearing. It would not allow for an in-person appeal; the RAD would be a paper process only.

● (0915)

[*Translation*]

There are other factors to consider. It would certainly extend the time between the initial screening and the final determination of status by up to five months. It would require initial start-up costs of an estimated $2 million, in addition to $8 million in annual operating costs. And it would take approximately a year before it was fully operational.

These, in my view, are the principle issues concerning the Refugee Appeal Division. An appeal process has its merits, but there is also the fact that it would introduce another layer of process in the system. That is the balance the government needs to weigh in deciding whether to proceed or not with the RAD.

Let me say that should the government decide to act on the RAD, we would be ready, with sufficient new resources.

[*English*]

Let me turn to the existing avenues that are available to refugee claimants who have not met the criteria for protection in a RPD hearing. A non-successful claimant has recourse to the Federal Court. Of course, any person who wishes to remain in Canada can make separate application to the Department of Citizenship and Immigration on humanitarian and compassionate grounds or can bring new evidence to the department during the pre-removal risk assessment.

I would like to say that I have full confidence in the IRB system as it stands now. We have been focusing our efforts on taking people out of states of uncertainty, reducing our processing times, and further enhancing the quality of decision-making. We have been hard at work on an ambitious agenda of reform to administer the law in a fair and efficient manner.

In conclusion, I'd like to leave the notes aside and talk about the fact that this is not about numbers. We had an urgent situation. We're halfway there in terms of backlogs and in terms of changing the board to an administrative tribunal as opposed to a court.

It's about fairness and rendering justice. That is important. We keep that in mind throughout our deliberations on the management committee, and we keep it in mind throughout our deliberations on every decision that we render. We have a good reputation internationally, and we will maintain and sustain that.

Above all, all of this was done with top-notch staff, with devotion and commitment by everyone in the organization.

Thank you very much.

**The Chair:** Thank you very much for the presentation. There's no question that we are very fortunate to have a good system, but like all systems, it can be improved.

Diane, are you ready? Okay. Diane, for seven minutes, and that's questions and answers. Go ahead.

**Mrs. Diane Ablonczy (Calgary—Nose Hill, CPC):** I think he's telling me to be brief, Mr. Fleury.

We appreciate your attendance here. I want to commend you for the work that you've done since you took over the IRB, streamlining the process and dealing with some of the backlog. I hope that your ambitious agenda to get the timeframe down to six months will succeed. We will certainly be rooting for you.

As you know, members of the committee are very concerned about the refugee appeal division not being implemented. This is partly because the RAD is in the legislation and we believe it's not acceptable for a government to ignore its own legislation, and also because there have been concerns about the one-person determination and not enough checks and balances in the front end with only one person. If you get a person with a lack of understanding, a misapprehension, or even a bad mood, there is a concern that there's not enough of a safety valve.

Could you tell us if any alternatives to the refugee appeal division have been contemplated in your studies, perhaps in other countries, or in your discussions with other colleagues? Is the delay in implementing RAD because there are some concerns, as you pointed out in your remarks, about whether that's the best way to go? Is there another alternative that the committee should be considering when deciding on how we're going to be coming down on this issue?

● (0920)

**Mr. Jean-Guy Fleury:** Thank you.

First, I did try in the opening remarks to show in a very objective fashion what the RAD consisted of and what it could do. And of course it is and it remains a government decision.

But to answer your question, yes, we did look at other jurisdictions. In my first year I happened to visit most of the countries in Europe—six of them—to see first of all how they did the actual first-level rendering of decisions. All of them have appeal regimes. The United States has an appeal regime.

What we wanted to do within the board was see if there was a form of review that we could initiate ourselves as part of the administrative reform. We searched, and I think we did a very long reflection. Within our board right now, as the act is written, it would not be possible for us to have a second-thought level initiated without legislative change.

We also looked at other administrative boards in Canada. I happen to be co-chairing a conference on the Canadian council of tribunals in Canada, and this is one of the concerns. Some have some peer review, but it's all in legislation.

So from what I've seen, any appeal regime is legislative.

Inside, you can do quality control. You can impress on your members in terms of development. You can support them through research, good legal advice, and continuous training. We have a very strong professional development program, which partly goes to your first question about whether we increase our risk, since there is only one member as opposed to two. We try to balance that by concentrating on the quality of the individuals.

That's how we try to compensate.

**Mrs. Diane Ablonczy:** I know my colleagues will be coming back to this, but I wanted to ask another question about the safe third country regulations.

As I understand it, refugee claimants will be coming before the board having entered Canada under the safe third country regulations. But the criteria in the safe third country regulations are somewhat different from what they are in the Immigration and Refugee Protection Act.

For example, the definition of “family in Canada” is expanded. Some of the grounds for admissibility are different from what they are under IRPA. I'm concerned that this creates two different tiers of refugees, some of whom have a better chance to make a claim under the broader criteria under the safe third country agreement than they would under the IRPA.

I wonder what arrangements have been made to accommodate this discrepancy and how you see it affecting the decisions of the board.

**Mr. Jean-Guy Fleury:** I know the draft regulations have been discussed. We will be training and doing information sessions once we have more clarity on all of this in terms of the criteria within our board.

But I think the fundamental point you're raising is that we will not be interpreting the agreement because we will deal with only the people who are referred to us. The interpretation of whether people are within that agreement will be done by an immigration officer or a border officer. We will deal with and definitely render decisions on people who are referred to us under admissibility.

● (0925)

**Mrs. Diane Ablonczy:** Well, the problem is, though, that once people are referred to you.... For example, suppose they have a family member in Canada who is not a family member under IRPA but is a family member under the safe third country regulations, which is a different definition. You still have to decide—you, as your officers—whether that person qualifies under that heading. You will have to interpret the safe third country regulations, because you'll have to decide whether there's a prima facie case for a legitimate claim under those criteria, which are different from the IRPA's. So you're going to have to deal with them, aren't you?

**Mr. Jean-Guy Fleury:** I will ask Madam Krista Daley to deal with this.

I'd just like to say that you're right, there may be people giving false information, and then they're referred to us. How would we deal with that if that happens and we discover it?

**Mrs. Krista Daley (General Counsel, Immigration and Refugee Board):** At the present moment, our look at the impact this will actually have in terms of the decision-making process is, as mentioned by Mr. Fleury, that once a claim or an appeal gets to the board, we will be applying the Immigration and Refugee Protection Act, those criteria. That is our only jurisdiction—to apply the actual provisions in the act.

What Mr. Fleury has alluded to is that if they.... There is the mechanism whereby if we discover during our processes that perhaps they have misrepresented something at the port of entry—for example, the issue of family members and whether they existed or not—then we would have to look at whether or not the department brings that forward as a misrepresentation and something we would then have to look at.

Our initial sense—and we're working through this, as the regulations come to be in effect at the end of the month—would be that we will apply IRPA once those people get to us, as opposed to going back and reviewing the definition in the safe third country regulations.

**The Chair:** Thank you.

Madam Faille.

[*Translation*]

**Ms. Meili Faille (Vaudreuil-Soulanges, BQ):** I will begin by asking a few questions, and if I have any time remaining, I will ask some more.

For the benefit of all Committee members, I would like you to explain the difference between judicial review and an appeal, and that you list the 22 appeals the Minister has referred to.

I also have some questions about differences between the different regions of Canada and different IRB members in terms of decisions. What steps do you take to ensure that refugees coming before the IRB receive fair treatment, whatever member is reviewing their case? I would also like you to explain in detail what you have done to streamline the system and how you target countries. Who determines those targets and what criteria apply during the triage process?

Thank you.

**Mr. Jean-Guy Fleury:** I jotted down some of your points as you were finishing. If I have forgotten a few, please remind me of any that I may have missed.

I would like to begin by talking about appeals, which was the subject of your first question, as I understood it. In my opening remarks, I tried, wherever possible, to talk about the current provisions of the Act. In other words, if the appeal process were to be implemented, what would this mean in terms of appeals and what would these appeals consist of?

As regards negative decisions, the first avenue of appeal is the Federal Court. An individual may request a judicial review to ascertain whether there has been an error in law. At the outset, I stated that a claimant can make an appeal to the department on humanitarian grounds. There is also the initial risk assessment. Those are steps in the process. It's important to be careful when using such terms as “appeal” and “remedy”. Wherever possible, I try to talk about the different steps in the process. I see the Federal Court as representing an avenue of appeal, whereas the two other things I referred to are internal processes.

As regards harmonization across the regions, you are right. Every year, we issue some 44,000 decisions on refugee claims across three large regions. There is no doubt that ensuring harmonization across the regions is a considerable challenge. Our harmonization work focussed on four or five points.

Second, we provide ongoing training on conditions in countries around the world. In my opening remarks, I mentioned that we have introduced 11 national documentation packages. In other words, the same information about these countries is considered all across Canada in any decisions that are issued. We're at the beginning of that harmonization process. It's important to remember that in addition to the administrative reforms we have already put in place, we have an internationally recognized research department and a legal department to provide support to decision-makers.

Wherever possible, we try to ensure that decision-makers become experts on a particular country and thereby acquire some expertise. We organize special briefing days that focus on a specific country and in which people from across the country take part. Recently, for six countries in particular, we noted discrepancies of up to 30 per cent in decisions on claims from the same country.

But before addressing the matter of differences between the regions, I should say that every case is considered its merits and that the conditions prevailing in a given country, and specifically the conditions that existed at the time the claimant left the country, must be reviewed individually for every claimant. So, in each case, decision-makers review the evidence put before them, as well as the conditions in the claimant's country. All of those elements contribute to greater harmonization in the decision-making process. However, it is unreasonable to expect the acceptance rate to be the same for every country when decisions are made on a case-by-case basis. We have an obligation to determine whether a claimant is being persecuted or not.

I believe you referred to six points. You talked about screening and the way we handle complex and non-complex cases. In some cases, we may reach a decision in only four hours or a day. But the people making these decisions are experts—public servants who have received very good training. We have also established guidelines. The members gradually acquire the expertise that allows them to assess cases, determine whether they are complex cases and whether the outcome could be positive or negative. So, a selection does take place. That is how we are able to begin the process.

● (0930)

**Ms. Meili Faille:** Pardon me for interrupting you. Could you provide the Committee with detailed documentation on the triage process? I don't want to take up the Committee's time now. Perhaps you could table the detailed information with the Committee.

**Mr. Jean-Guy Fleury:** I'd be pleased to do that.

**Ms. Meili Faille:** Could you give me the names of the 11 countries that you target and the reasons why you target them?

**Mr. Jean-Guy Fleury:** We target those countries which give rise to the greatest number of claims. That's perfectly normal.

**Ms. Meili Faille:** Can you list them for me?

**Mr. Jean-Guy Fleury:** I can provide you with that information. I haven't got it here, but I can certainly send you the list. If I had the necessary resources to develop a national documentation package for every country, we would certainly do that. But if a country only generates three refugee claims, it would be difficult to justify that kind of research, given the cost.

**Ms. Meili Faille:** How do you explain the fact that some members have rejection rates of more than 80 or 85 per cent, whereas others seem to be fairer? How do you explain that kind of result?

● (0935)

**Mr. Jean-Guy Fleury:** There are three points to be made here. First of all, we're talking about individual decisions based on the evidence put before a given member. We do not only consider the conditions in a given country. We also take into account the claimant's credibility and the evidence presented. You mustn't forget that this is always an individual decision based on the evidence presented to the decision-maker.

Second, because the members making the decisions have expertise in some areas, some countries, such as Columbia, have a very high acceptance rate because of the conditions there. The fact that a member is an expert on one country or another can affect the acceptance rate.

The third factor is the area where they are assigned. Some people are assigned to the fast-track process. When a claim is fast-tracked, right off the bat there is a 95 per cent probability that the decision will be positive. The claim is reviewed as part of the fast-track process. Members assigned to the fast-track normally have a higher acceptance rate.

So, those are the three reasons why the rate may vary from one member to the next.

As far as we are concerned, what is important is that they be good decisions and that justice be done. The acceptance rate is not a factor that is considered in the individual appraisal.

[*English*]

**The Chair:** Thank you.

Ms. Crowder.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thank you.

Thank you for your presentation. I have three questions and I'll just ask them all at once.

The Minister of Canadian Heritage has held up the Department of Citizenship and Immigration as a model for gender-based analysis in its policies. I wondered if you could specifically comment on how gender-based analysis is applied in the IRB.

I am sitting in for somebody else, so this second question I have may have already been addressed. When you talk about a potential additional five-month delay if this appeal process is implemented, I wonder if you could comment specifically on that, because that seems like an undue length of time, given my familiarity with other appeal processes and other organizations.

The third question I would like you to address around the appeal process is that from my perspective an appeal process is very important for women. Often women have been victims of sexual violence. They may be less able or less willing to plead their cases. Cultural factors intervene with their being able to speak about these issues. Many women don't have documentation and are far more at risk. An Amnesty International report was released this week around rape and torture as a tool that's being used in many countries, and women are less able to talk about that publicly. I wonder if you could specifically comment on how women could be better served by an appeal process that addresses their needs.

**Mr. Jean-Guy Fleury:** I'll ask Madam Daley to address numbers one and three, specifically number one, because she was, when Madam Mawani was chair, a very big person in terms of developing the guidelines, and they're well known, as you say, internationally.

**Mrs. Krista Daley:** Thank you.

Yes, I've been involved in this file since approximately 1994. At that point, our chairperson had issued guidelines on what we call “gender-based persecution”. These were an international first and have been followed in concept, not necessarily word by word, in a great many refugee determination systems since then.

The guidelines do, I would say, two things. They first bring what I would call a gender-based analysis generally to refugee laws. For example, we put forward the proposition that historically, women's experiences of human rights abuses had not been recognized as part of the refugee convention, and we put forward the proposition that clearly, issues around, for example, forced sterilization, forced abortion, bride burning, domestic violence, and rape would now be, and should be, considered by our board members to form a part of the refugee definition.

The other element of those guidelines fits into your third question, which is how could we assure ourselves that the procedure for our tribunal was alive, alert, and sensitive to the issues of women who appear before us, both because of their personal experience but also perhaps because of the cultural background from which they come?

These guidelines, as I said, in 1994 were very much a first. I would say, when we sit here now eleven years later, that it has been an overall success, in terms of how we process these claims.

● (0940)

**Ms. Jean Crowder:** How do you measure that success?

**Mrs. Krista Daley:** I think that's a very good question.

One thing we haven't seen is whether "our acceptance rate".... There's often a lot of preoccupation with whether that is a measure of success, whether the rate of acceptance goes up or down. For me, a measure of success goes once again into your third point, which is that for these women, who can't perhaps speak about their experience or have the evidence adduced at the first instance, would an appeal help them?

One mechanism that we do have within the board as a recourse mechanism—and Mr. Fleury had spoken about recourse mechanisms from negative decisions—and one aspect that we are able to do ourselves in terms of recourse when there might be a contention about a decision that we've taken is where there has been a denial of natural justice. It's very limited in scope, there's no doubt. It's not a full-blown review; it's not a full appeal. It's where there's an issue that this person had been denied natural justice at the first instance. One element of that would be if women come forward years later and say they were unable to tell their story of rape because of cultural inhibitions, perhaps, or because the husband was in the room at the same time and they were unable to speak about it.

We have not seen those types of what are called motions to reopen" on gender-related claims, so I would think that would be one element to indicate that they were successful.

I would say that when we look at how the Federal Court reviews our decisions, the Federal Court itself has also been quite supportive of the guidelines and where we've gone on those. Once again, in terms of your question on what's a parameter of success, it has to be whether or not we are overturned on a regular basis or an ongoing basis by the Federal Court because of our inappropriateness of dealing with these cases.

As I said, that's where we sit in the gender file, generally, since 1994. I can tell you that we are currently looking at another aspect of gender—and I say currently because this has really just come on our agenda in the last few months—and that has been the issue of trafficking in persons generally, but I'm now turning my mind more specifically to trafficking in women and children. As we all know, it's not only women and children who are trafficked, it's a broader category, but we're turning our minds to that, as well as to the issue of vulnerable claimants, generally, before the board. So we're in the midst of some ongoing initiatives on those fronts.

**Ms. Jean Crowder:** And then there was the length of time on appeal.

**Mr. Jean-Guy Fleury:** Yes, I haven't forgotten.

Those are all estimates, because we have no experience, but there are about four or five assumptions. The assumption is that a good, high percentage of people will appeal. So if you look at last year, at the 44,000 decisions that were rendered, the acceptance rate right now is roughly, nationally on all countries, 41%. It gives you an appreciation of the size of the numbers of appeals we would have to deal with.

Second, you would have to allow a certain amount of time to appeal. That may be 30 days for people to decide if they're going to appeal or not, so there's one month gone. The other thing, of course, is that in order to make sure that the resources would be within the $8 million, we're talking about 15 people rendering decisions, about 650 a year, and 30 analysts supporting that capacity. Keep in mind it is all paper. Also, because people will appeal, we would be dealing with more complex cases. So those were, notionally, the things we would have to do to build our capacity should there be an appeal based on what's in the law.

**The Chair:** Thank you very much.

We're going to go to Mr. Anderson.

**Hon. David Anderson (Victoria, Lib.):** Thank you, Mr. Chairman.

The issue of numbers is throughout your presentation. You had a backlog approximately two years ago, 18 months ago, of 52,000 and it's now down to about half. What is the decline in applications? How can the gross numbers be sorted out?

● (0945)

**Mr. Jean-Guy Fleury:** Yes, that's a good point.

When we say we have a decline in backlog, we've improved our own personal productivity by members in everything we did, because the process changed, by roughly 60%. But the decline is also in direct relationship to the fact that there are fewer cases this year being referred to us. At the beginning, the cases referred were at 39,000, I think, and you can correct me. Now, this year, projections are that it's going to go down maybe to 30,000—and we don't know, but maybe less. Those are projections that the Department of Citizenship and Immigration gives us.

So yes, there are two components to the fact that we've been able to reduce in terms of the backlog. One is our own initiatives and the issues we do; and second, there's the fact that the referrals are starting to decline. We can give you specifics in terms of numbers.

**Hon. David Anderson:** Sure, that may be helpful for members of the committee to have that.

On this, the issue of backlog is not new. While you have referred to a spike in the late nineties until 2001, the prospect of a spike in mid-2004 to 2008 is just as likely as not. So with the unevenness and with the pattern in the past of near constant backlog, why has it taken so long to make the changes to improve productivity by 50%?

**Mr. Jean-Guy Fleury:** I can't speak about the past other than to say that eight years ago I was executive director for two years with Madam Mawani, but I can speak to what we did two years ago. What we basically said is that we're not a court, we're an administrative tribunal, and what are the flexibilities an administrative tribunal can render?

Secondly, I think the most important facet that helped us tremendously in this was, rather than having Ottawa dictate new ways of doing business or looking at things, we brought everyone to Ottawa for three weeks, from clerks and people working in *le greffe* to decision-makers, GIC members, and people who support the GIC members—I know you know the board well—and I said everything is on the table other than the law; if there's a requirement to change the law, it's not on; what we need to look at is how we work, how the work is arranged, how the work is assigned, and whether we can accelerate things without losing quality. The action plan was then developed by staff.

The other element of all this is that we are an administrative tribunal, so any day in their discussion, if they needed a decision from me, I would walk in and we would look at it. If I could, I'd make a decision based on good information, whether it was on cost factors or fairness factors, so we were amending as we went along.

Secondly, there was a lot of excitement and commitment to it by all, including the decision-makers themselves. And as you know, the dynamic between the public service and the GIC is always alive and well. We worked on that tremendously.

I've talked about the concept of convergence. Between how we conduct hearings, adjudicative strategies.... And we also, as you would appreciate, looked especially at the positive side of working through oral decisions. On the positive side, our oral decision rate is now higher, at more than 50%, and oral decisions on the negative side have also increased.

This is basically what we did. I think it was a commitment by staff. It was building on what other people had done prior to my arrival, and I guess we just put the right dynamics together.

**Hon. David Anderson:** Thank you for the explanation of what was done, but the question still remains. A 50% increase in productivity is a dramatic change. If you had a 50% drop in productivity, we'd be asking you serious questions, and I'm asking serious questions about a 50% increase. While we certainly appreciate the increase, it leaves a question out there. Why was it not more effective previously if it's now possible to have such a major change?

● (0950)

**Mr. Jean-Guy Fleury:** Well, I have more grey hair, but that being said, we worked with stakeholders. A lot of people are not necessarily happy with everything. There are a lot of stakeholders who feel that because of our changing the way we deal with them, they have to change the way they deal with us.

You would appreciate, for instance, the fact that the personal information form is basic to our needs. It's our document that starts everything, and the claimant has to complete it within so many days. Well, in Toronto, because the backlog was so high, 30% came in on time, which meant that when you did your triage and your streamlining, you didn't have the data—you didn't have the information to work with; you were waiting. So we put it that unless people came in and had a good reason, we would consider it abandoned. You can imagine the radical cultural change that made with the representatives. Well, we had courts that studied the exceptions, where people were sick or whatever it was. That being said, within 60 days, I would say, 90% were in within the timeframe. This is a small illustration.

If you multiply those, you are pushing the agenda to say, listen, we are the masters of the tribunal. I have to account here today. You don't account. We will run our board. This is an administrative board and I'm accounting to Parliament. You don't account to Parliament and to Canadians.

It was rough, it was tough, and if I may say so, the verdict is still not in. To sustain that and to get to six months will require as much effort in the next two years.

**Hon. David Anderson:** Well, I will not get onto one of my favourite hobby horses, which is client-driven government agencies and deference being paid to client groups rather than to Parliament and its interests. I'll leave that. I will simply say I appreciate your answer very much, and I congratulate you on the 50% improvement in efficiency.

I still think we have to, Mr. Chairman, have some better explanation as to why previously, in the face of dramatic increases in applications, we did not have some of these measures taken earlier.

**The Chair:** Thank you very much.

Now we're going to go to the Conservatives for a five-minute round. Diane and Nina are going to split their time.

**Mrs. Diane Ablonczy:** I want to come back to the safe third counntry regulations, because I really think something is being missed here.

Under the safe third country regulations, the definition of family is expanded. In fact, they even include someone who acted as a family member even though not a family member. Someone comes to you, therefore, under that provision. You, under the safe third country regulations, must then admit them to Canada; you must grant them status. You must approve their claim, all other things being equal, even though another refugee making a claim under IRPA would not be given status.

Let me give you another example. Suppose someone comes to Canada and they're admitted and allowed to make a claim because they have committed a crime for which they could be given capital punishment. Under the safe third country regulations, those people would be able to make a claim before you for refugee status, and that would be grounds for the claim to be admissible. Under IRPA, someone who has committed a serious crime—certainly murder is a serious crime—would not be acceptable; they would not be able to make a valid claim.

Those are just two examples; there are others. You have a clear difference in criteria, with people able to make a claim before you under the safe third country regulations where you must allow them to do that and must validate it, these being people who would not be able to make a claim under IRPA.

I'm not talking about making a false claim. I'm talking about the fact that the grounds for those two refugee claims are different but valid, and you can't turf one claimant out because he's a criminal. If he might face capital punishment, you can't turf him out because he has no family in Canada, because under the safe third country regulations, if someone has acted as a family member, they're admissible. You have two categories of claimants where you must treat the claim as valid.

How are you going to escape having two different categories of claimants, where a claimant would not be admissible under one piece of legislation but is under other pieces of legislation? I need to know how that's going to be resolved.

● (0955)

**Mrs. Krista Daley:** I like the first example of the family member.

This is just so I'm clear, because I think this is important: once again, this board does not implement or deal with admissibility issues vis-à-vis any admissibility or eligibility issue or the safe third country regulations.

As I understand from my reading of the regulations how they would work, a person would come to the border and would say, "I have a family member in Canada and therefore I'm in essence an exemption from the safe third country regulations, which would have sent me back into the United States." That's how I understand it would actually work at a port of entry. They then get to come into Canada because of this broader definition, as you've expressed it, of a family member. Citizenship and Immigration will make that decision, not the board. They will then be referred to us on that refugee claim, but that does not necessarily mean they've been found to be a refugee. They still have to satisfy all the definitions anybody else has to satisfy under the Immigration and Refugee Protection Act.

As I understand it, there is nothing in the safe third country regulations that goes to the merits of the claim. The issue of the safe third country regulations is simply that there's a method to determine whether people get returned to the United States or get to come into Canada to make the claim.

I think you had commented and said that therefore we had to find them to be admissible and that there were grounds. It seems to me that once it comes to this board, we will apply the provisions in the Immigration and Refugee Protection Act as to who is a refugee and who is not, and these definitions in the safe third country regulations don't apply. So once they get to us, it's the same definition one way or the other. That's how I see it working.

So I'm not sure we ever see these two different classes, because for us, all we ever apply is the Immigration and Refugee Protection Act. There's nothing in those safe third country regulations that dictates what our decision is. Our decision is always going to be based on the definition in the law. That's how I see it working.

**Mrs. Diane Ablonczy:** So they're allowed to make a claim under grounds that would not be acceptable through the board. It doesn't make sense, but I understand what you're saying.

**The Chair:** That's the whole five minutes, so we'll let it come back to you.

**Mrs. Diane Ablonczy:** Okay, I'm not saying any more.

**The Chair:** Colleen.

**Ms. Colleen Beaumier (Brampton West, Lib.):** I'll pass.

**The Chair:** I have a question that I'll pick up on.

Mr. Fleury, you mentioned that you have a 41% acceptance rate. I wonder if you would have figures for the committee—and if he doesn't, Ben, you might want to see if you can get them for us—on how many people subsequently, after they're turned down for a refugee claim, get accepted on humanitarian and compassionate. And how many people get a positive response on pre-removal risk assessment? And to the best of your ability, how many people who actually have been rejected are out of the country?

I know those are tough questions. And finally, if the officers had the power to grant H and C, instead of going through a cumbersome process of the determination system, would it be possible for them to make the determination early on so people can exit the system, and the same with the pre-removal risk assessment?

**Mr. Jean-Guy Fleury:** With respect to your first question, on the three conditions that are statistics of what happens once we make a determination, first of all, it's not within our purview, but we do not have statistics once a person has been given a decision, either positive or negative. I assume, I don't know, that the department when they review a file know very well if they were negative or what happened at the board in terms of its determination. But we don't keep statistics of this.

● (1000)

**Mrs. Krista Daley:** No. Once we make our decision, whether it's a positive or a negative, that is the end of our dealings with that person.

**Mr. Jean-Guy Fleury:** On your second question, I want to make sure I understand it. You're saying if the immigration officer or the border agency officer as opposed to our board members had the power to do an H and C right there, would it change the outcome?

**The Chair:** No, I mean your board members right now. When somebody comes to them, the board members could do a screening on H and C and pre-removal risk assessment, because if that can be done fairly quickly, why do we want to put them through a hearing and then have them maybe be successful on a much shorter process, administratively speaking.

**Mr. Jean-Guy Fleury:** It's not possible in law right now. This would be a policy question that the government and the department would have to address. How would it affect us? Obviously it would change the dimension and the dynamics of the mandate of a chair, a member, rendering decisions if they have that capacity, but we don't have it now.

**The Chair:** Okay, thank you.

I'm going to go on to Roger.

[*Translation*]

**Mr. Roger Clavet (Louis-Hébert, BQ):** Thank you, Mr. Chairman.

I want to thank the representatives of the Immigration and Refugee Board for being with us this morning. I very much appreciate the clarifications made, in particular by the Chairperson, Mr. Fleury.

The fact is, the human dimension is extremely important. I think we all need to keep that in mind, not only the people making the decisions, but the people who suffer the consequences of those decisions. On both sides, these are difficult times both for the decision-makers, and for the people waiting for those decisions.

You have provided us with some figures. But behind those figures are human faces. It's important not to forget what these people have been through. And the human dimension also manifests itself in those making the decisions. My information may be incorrect, but I just want to check one thing. I'm told that in the Immigration Division, a number of employees, particularly board members, are getting close to retirement. Has any planning been done in that regard? There, too, we're talking about human beings. And moving on to a somewhat more delicate matter, is it not true that some employees of the Immigration and Refugee Board recently filed human rights complaints? For example, there may be accusations of racism involved. I don't want to discuss specific cases, but I would like to be made aware of the general situation in that regard. The human dimension also exists at that level. Have any human rights complaints been filed? So, there are two parts to my question.

**Mr. Jean-Guy Fleury:** I will try to answer as best I can. First of all, I want to point out that all members of the three tribunals perform complex, demanding and difficult work.

According to the government rule, board members who review refugee cases are appointed for a maximum of 10 years. That has certain benefits, since the task of issuing negative or positive decisions in their difficult circumstances is an extremely arduous one.

In terms of human resources, we try to ensure that two or three fundamental areas are covered. First of all, we ensure that members have the necessary tools to render decisions. Professional development for members following their recruitment is extremely elaborate. We may well be an international model in that regard. I'm not saying that to boast, but the United Nations is always asking us to train immigration judges.

Yes, there are pressures and there are cases that certainly need to be looked at very closely. There is also the personal and psychological impact. We have a confidential counselling program in place for those wishing to avail themselves of it.

As regards the Immigration Division, it is staffed with career public servants. You are right that 50 per cent of them could retire this year. In our action plan for that group, we have built in appropriate succession. Recently, we organized departmental and interdepartmental competitions all across Canada. We selected candidates. This week, I attended a conference where I met four new recruits. We have no trouble attracting candidates. So, we have a succession plan and we are taking the necessary steps as well to ensure that the institutional knowledge is passed on before immigration judges leave the board.

● (1005)

**Mr. Roger Clavet:** [*Editor's Note: Inaudible*]… for complaints. To your knowledge, have any complaints been filed?

**Mr. Jean-Guy Fleury:** I don't know what you're talking about exactly. We obviously have a process whereby people can file complaints against board members and decision-makers, and that process is followed. We do the research, establish the facts and render a decision on the merits of the complaint.

**Mr. Roger Clavet:** The press referred to Black employees working for the Refugee Protection Division. I may not have specified that earlier; my apologies.

**Mr. Jean-Guy Fleury:** Now I understand what you're talking about.

**Mr. Roger Clavet:** Some complaints were filed. Without going into detail with respect to each of those complaints, can you tell us whether there were many of them, and whether or not they are special or isolated cases?

**Mr. Jean-Guy Fleury:** Thank you for that clarification.

Yes, in one office, we did have complaints about race-based discrimination. An investigation was conducted in relation to that complaint. As you may know, I worked for some 30 years in human resources and labour relations. As far as I'm concerned, respect for human rights is fundamental. Every time a complaint is filed, I demand to review it, that an investigation be carried out, and that we ensure there was no discrimination. If there has been discrimination, I take steps to correct the situation.

[*English*]

**The Chair:** Thank you.

**Mr. Jean-Guy Fleury:** To finish, I do not see, and I have not seen for two years now, a pattern with respect to that question.

**The Chair:** Thank you.

Mr. Temelkovski.

**Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.):** Thank you very much, Mr. Chair.

Thank you for appearing before us today. You're definitely shedding some light on this issue. You're doing a great job. As you mentioned, your staff is overburdened with so many cases.

What I'd like to ask is this. In terms of acceptances, you mentioned 41% of cases have been accepted. You've rendered decisions on 44,000, so that would mean about 16,000 or 17,000 have been accepted and 28,000 have been rejected. Diane was asking what happens afterwards, and I don't think we heard really that you know anything of what happens with those people afterwards, other than there's a risk removal assessment done.

How do we know these people have left the country, if they are within the country? Is it a concern? What are some of your concerns about these negative decisions that have been brought up that maybe we should look into deeper?

● (1010)

**Mr. Jean-Guy Fleury:** Again, the department refers people to us after admissibility. We render a decision on the board, based on the facts that we have in front of us and according to the convention. Once we've rendered our decision, again, the department is so advised, and from there they take the responsibility of the outcome.

It's difficult for me to comment, other than I want to make sure that within our board they're quality decisions and the right decisions. That I can try to work on. They're independent decision-makers. They work with the facts in front of them. We try to make sure they have all the tools necessary to render just decisions, according to the law and according to the convention. That's where I can invest our efforts and that's where I can sleep at night and say we are doing our best.

I agree with you. It must be and it is difficult for those who receive negative decisions.

**Mr. Lui Temelkovski:** Maybe I can move on to the other side. As the backlog is decreasing quickly, you must be anticipating that additional applicants will be coming in, flowing up from some areas, perhaps Iraq, or maybe the United States has some people who do not want to go to war. Have you had any applicants for refugee status from the United States, and do you anticipate a spike from Iraq or Afghanistan?

**Mr. Jean-Guy Fleury:** I'll ask my colleagues to correct me, but in terms of Iraq and Afghanistan, the request for refugee determination has actually diminished from past years.

Do we get refugees from the United States? Yes, requests.

Do you have the numbers?

**Mrs. Marilyn Stuart-Major (Executive Director, Immigration and Refugee Board):** I don't have the numbers at my fingertips, but certainly they're not in our top ten countries. I'd be pleased to provide the numbers for the past two years to the committee.

**Mr. Lui Temelkovski:** Would they be from people refusing to go to war?

**Mr. Jean-Guy Fleury:** I can't comment on the present case that's in front of the board right now, but none whatsoever, other than what's in the press that you've read and I've read.

**The Chair:** Thank you very much. Actually, that's a good question; we'll probably be looking at it at some point.

Nina, you're on.

**Mrs. Nina Grewal (Fleetwood—Port Kells, CPC):** Thank you, Mr. Chair, and I would like to thank the witnesses for appearing before us.

According to the Auditor General, 60% of refugees don't produce any documents when they come to the airport. No wonder 36,000 refugees who applied are missing. When they go to the plane, they have some documents, but the documents disappear later on, so the onus should be on the airline. Genuine refugees from Sierra Leone, Rwanda, and other places who don't have access to the system are dying. So the system is flawed and legitimate refugees don't come. Is something being done about this?

**Mr. Jean-Guy Fleury:** I'll ask Madam Daley to respond.

**Mrs. Krista Daley:** If I understand correctly, the first part of your comment is on the issue of documentation. I think we can comment on that. The issue of people actually coming to Canada is not within our jurisdiction.

With respect to documentation generally, there was a new provision put in the legislation that came into effect in June 2002 regarding the issue of identity documentation and the obligation on any claimant to cooperate with the institution in order to get that documentation. We've been working with that new provision. We ask all claimants for any documentation they have to show their identity and we ask that they provide the board with copies of those documents.

The issue of whether or not a client actually has identity documentation for us is not a determinative issue. It is still within the context of the hearing. We have to ascertain whether or not they are who they say they are, to the best of our ability in the hearing. The issue about people being abroad and not being able to get here for documentation is not something we really have any comment on.

● (1015)

**The Chair:** Ms. Faille.

[*Translation*]

**Ms. Meili Faille:** I would like to make one request. Could you table information explaining the measures you have taken to accelerate claims processing? You've talked about best practices that you took your inspiration from. Could you provide us with details regarding specific measures you have taken that have allowed you to improve claims processing time?

**Mr. Jean-Guy Fleury:** Yes, certainly. We will definitely provide you with that information. I would like to come back to what you said a moment ago.

You said that our processing times have been reduced. But I don't want to mislead you. We are issuing more decisions now than ever before. We have reduced our backlog, but the turnaround time concerns me: it is still about 14 months. And the reason it is still about 14 months is that we focussed on those refugee determination cases that were clearest in our view. The complex cases are taking a little longer.

Earlier, I mentioned that our goal this year is to reduce turnaround times from 14 to six months. But we will not be able to declare victory until we have managed to sustain that six-month turnaround time for a period of at least 18 consecutive months. That is a considerable challenge. We are currently negotiating with the Treasury Board to receive the $13 million allocated to us year over year to reduce the backlog. If these resources are provided to us, there is a good chance the turnaround time will be down to six months 18 months from now.

**Ms. Meili Faille:** I see.

**Mr. Jean-Guy Fleury:** We will provide you with information regarding our action plan and all the initiatives that have made it possible to achieve these results. But there is one thing I cannot give you: and that is our employees' commitment. It is not available in the form of a document. But they have certainly given us that commitment.

**Ms. Meili Faille:** What you are really saying is that your success will depend on additional resources being provided over the next few years.

**Mr. Jean-Guy Fleury:** No.

**Ms. Meili Faille:** But the $13 million…

**Mr. Jean-Guy Fleury:** It's a combination of factors. There is no doubt the $13 million was very helpful. It allowed us to have more decision-makers. So, it's clear that those resources did help. However, it's the whole set of initiatives that we took that also helped us. It's not only a matter of resources. It also has to do with the way we work.

**Ms. Meili Faille:** Is the information you have put together in the 11 documentation packages public?

**Mr. Jean-Guy Fleury:** Yes, and it is available on our site. We can even tell you how to access it. It is extremely interesting and very comprehensive.

**Ms. Meili Faille:** When the number of refusals goes up, the workload in our offices also increases. There are cases where there may have been errors in the documentation or in the translation. Some of these people don't have any other recourse. It is costly to file an application with the Federal Court. But when we are looking at what avenues of appeal are available, and we turn to the Minister, we get no response from her. When errors are made, what are we supposed to do? Can you suggest something? Is the Appeals Division able to resolve these issues—for example, translation errors?

**Mr. Jean-Guy Fleury:** I believe I already mentioned the advantages of the appeal process. When an initial decision is rendered, there can be misinterpretations. An appeal gives an individual a better chance of success. As Krista Daley clearly stated earlier, where the principles of natural justice have been contravened or there is a technical error, we can always conduct an administrative review, but that is not an appeal. Let's be clear on that.

● (1020)

[*English*]

**The Chair:** Thank you. Your time's up.

Ms. Crowder.

**Ms. Jean Crowder:** We've had a couple of questions on the human resource planning within the IRB and one about the number of people who potentially could retire.

I assume you have an employment equity plan in place, as well, and I wonder if you can comment on the number of employment equity candidates who are actually working for the IRB. That's one question.

The second question concerns this. My understanding is that in your report on plans and priorities, part of what you've indicated as a method for speeding up processing is using video conferencing and also rendering oral decisions.

On the video conferencing, many refugee claimants may not have any experience in that particular medium. For many of us who have actually been on TV before, we know what a challenge it is. Since credibility is often one of the determining factors, I wonder if you could specifically comment on how you're going to deal with that particular issue.

On oral decisions, my understanding is that this is a way to speed up processing. What are the checks and balances on quality decision-making with oral decisions?

**Mr. Jean-Guy Fleury:** Thank you. I will definitely deal with the three questions and ask my colleagues to add to that. Both of them have views with respect to the three issues.

On employment equity, as you know, we have two streams of employees. We have Governor-in-Councilappointees in which the appointment is made by the government for some duration. We have the statistics, and I'm going to give them to you. I think in terms of Governor- in-Councilappointees we're roughly at 33% for visible minorities, and our board has easily about 30 people of different ethnic origins. We're probably, in the federal government in Canada, the highest in terms of representing Canada and the mosaic.

In terms of our employees, I think our general Canada-wide numbers are at 18%, and in Toronto at something like 30% or 35%. When I give you the statistics, I may be out by plus 1% or 2%, but I'm sure I'm in the vicinity.

We are very active. We have a program. I'll let the executive director talk about the initiatives on employment equity. Then I'll deal with video conferencing and oral decisions.

**The Chair:** You have two minutes.

**Mrs. Marilyn Stuart-Major:** We do have an employment equity plan. For the purpose of brevity, perhaps I should be sharing the employment equity plan with the committee.

We think it's really important to look like the people we represent. As the chair said, certainly for the public servants in the Toronto office, I believe the latest statistics for the visible minority representation is well over 40%. I'll be pleased to share the plan in all its aspects, as well as the numbers, with the committee, both nationally and by office across the country.

**Mr. Jean-Guy Fleury:** Mr. Chair, do I have two minutes?

**The Chair:** No, now you're down to 40 seconds.

**Mr. Jean-Guy Fleury:** Oh, my goodness.

● (1025)

**The Chair:** No, a minute and....

**Mr. Jean-Guy Fleury:** Video conferencing has been used in our three tribunals for years. It is also enshrined in the law. And like you, we are very cautious and very sensitive to what it can and can't do. I would not argue that it beats or it's equivalent.

Having said that, though, we did increase its usage because of the backlog, and it permitted us to use our resources better in the sense that close to 2,000 cases were transferred to Montreal, cases from Mexico were transferred to Vancouver, and we have better usage.

Now, you need to do a lot of things to make it work. First, the technology is far more advanced than ten years ago; it's live, almost. You'd swear you were there. The technology, on the credibility issues.... People have been trained to use it. Third, and I think more importantly for your concerns, you are right in thinking there are some people who should not be studied or listened to in terms of video conferencing, and we do extract.... As a matter of fact, in the transfers from Toronto to Montreal, 200 cases were returned to Toronto because they were not appropriate for video conferencing.

We had a study done that will be out next month. We can improve. It will show that we can correct course. I think we will have to tighten our criteria as to what can go to video conferencing and what can't. Vulnerable claims, oral—

**The Chair:** Thank you very much. Perhaps you can provide us with some data on that, because it's a good question.

**Mr. Jean-Guy Fleury:** Sure, yes.

**The Chair:** In terms of employment equity, we have Colleen, who will wrap up the last question.

**Ms. Colleen Beaumier:** There are so many things, it's unfortunate we can't have more time to have more of a dialogue here. However, I have three questions.

In order to expedite some of these cases, have you considered having IRB members on call at international ports of entry where these cases...? Obviously, some are clear cases and should be accepted and some should be clearly rejected and others should maybe go to a bigger hearing. Would that help?

We also have two kinds of refugees. We have people who come to Canada and claim refugee status and we have the UN convention refugees who have applied outside of Canada. Is there any association between the out-of-country refugees and the IRB?

Third, you have two types of members. You have order-in-council members and you have public servant members. Is there a ten-year sunset clause on both? Because one of my concerns is the burnout that occurs. I think that's one of the reasons the order-in-council members are ten-year appointments; it's because of burnout. Are the public servants under the same rules?

**Mr. Jean-Guy Fleury:** I'll answer the last one right away. With regard to the public servants who are career public servants and hear cases with respect to detention, we have not detected a pattern of burnout. I know our statistics, and it's not the case.

With respect to Governor-in-Council appointees, you're right, there's a direct relationship. I'm not saying we have more than anybody else, but we do have people on long-term disability who have found the work very difficult. Not that we have more than anybody else, but we watch that very closely and we do have programs to supplement them, especially as of this year, when we had to increase our productivity.

With respect to giving time or consideration to having members at the border, I have not given any consideration to that since I arrived. Is it something I should look at? I could. However, I have not given consideration to that as yet.

I know when I was executive director, with my colleague from Montreal, we had 2,000 claims from South America, from Chile. We considered going to work at the border, but at that time we didn't see the value in that.

I think the second question....

**Mrs. Krista Daley:** Maybe I could elaborate on that first point.

One issue that would have to be looked at is the coordination with what the department has to do before we can ever do anything at a port of entry. The department, once again, has to do the eligibility to ever give it to us. So at any port of entry it would really be a two-stage, if not a three-stage, process. I think that's one of the factors that has to be looked at. It is not as simple as saying, "Here's a member, who will determine immediately if you're a refugee." The statute as drafted would require a sequential review of that person.

On the second question, there are two categories of refugees who come to the board. Then you asked the question on the ones who are determined abroad by the UNHCR and then resettled in Canada. The answer is we have no dealings with that category of people.

● (1030)

**The Chair:** Thank you very much.

We're going to wrap up this portion of our hearings.

**Mrs. Marilyn Stuart-Major:** Very quickly, you may not be aware of this, but our regional directors sent an invitation to each and every member of Parliament for briefings on what we do and how we do it. If you'd like to attend a hearing, either here in Ottawa or in your home riding where our offices are, we'd be glad to accommodate that.

**The Chair:** Thank you very much for appearing.

We're going to hear from our senior analyst.

**Mr. Roger Clavet:** Mr. Chair, I have a point of order. I would like to suggest something to you. I wonder if it would be possible that when we have witnesses and we're debating—we are not on the floor of the House of Commons—to let us complete our sentences. I feel frustrated for the witnesses sometimes because of the time given them. Giving a cue is a good idea, but stopping someone in the middle of a sentence happened a few times. I don't like that.

I know you understand and you're in favour of freedom of expression. I would suggest to you, if it is possible, not to put witnesses in a position where they are panicking to complete a sentence, if it's not too much to ask.

**The Chair:** My problem is that I have been kind of lax.

**Mr. Roger Clavet:** Yes, I know, but we could give a cue and phase it out.

**The Chair:** Okay. Your point is well taken.

Thank you for appearing. I'm sure we'll have you back.

We'll take a short break.

● (1032)

(Pause)

● (1039)

**The Chair:** All right, we've got to get out of here in 20 minutes, and then we've got some other business to deal with.

Before we start this portion of the meeting, I have to ask the members if we can get the CIC official and the CBSA official next Tuesday for our morning meeting. Would it be possible for committee members to meet next week on Tuesday from 4 o'clock to 6 o'clock? Would that be possible? We wanted to hear about the CBSA and we wanted the CIC people here, but that's the only time they're available next week.

What is the pleasure of the committee?

● (1040)

**Mr. Lui Temelkovski:** I've got a wine and cheese party I'm hosting.

**The Chair:** Okay.

**Mr. Lui Temelkovski:** And you're all welcome; you are invited today.

**The Chair:** Can we have the committee meeting at the wine and cheese party?

**Mr. Lui Temelkovski:** Absolutely.

**Ms. Colleen Beaumier:** That's right, because the party is Wednesday. And on Thursday, are we here?

**The Chair:** Probably not.

**Ms. Meili Faille:** I will be here on Tuesday.

**The Chair:** You'd be available at 4 o'clock on Tuesday? Who else will be available at ...?

**Ms. Jean Crowder:** I can't commit.

I don't know Mr. Siksay's schedule, but I would assume we could find a replacement if he weren't available.

**The Chair:** Okay.

Diane.

**Mrs. Diane Ablonczy:** I would have to check my schedule. If my schedule is free, I would do the noble thing, but I'm not sure at this point.

**The Chair:** Well, what do you want to do?

**Mrs. Diane Ablonczy:** I can get back to you. I can send a BlackBerry message right now.

**The Chair:** Okay, we'll get back to the question when you get your BlackBerry message back, but it would be nice if we had that meeting before we break.

Now to our senior analyst.

**Mr. Benjamin Dolin (Committee Researcher):** I doubt I'll be able to get through all of this in 15 minutes, but I'll do my best.

First of all, on the legal basis for the safe third country agreement, under the the IRPA, the minister may designate a country as a state to which refugee claimants can be returned to make their claim for protection. Section 102 of the act sets out the regulatory authority for this power and lists the factors to be considered, which includes whether the country is a party to the refugee convention and the convention against torture, as well as the country's policies and practices with respect to claims.

[*Translation*]

**Ms. Meili Faille:** Could you speak more slowly, please?

[*English*]

Can you speak more slowly? They can't keep up, and I can't understand.

Merci.

**Mr. Benjamin Dolin:** Okay.

Section 102 sets out the factors to be considered when listing a country. If a country is listed, section 101 of the IRPA deems that claimants transiting that country are ineligible to have their claim referred to the IRB. The U.S., of course, has a similar provision in their Immigration and Nationality Act, which precludes an application for asylum where, pursuant to a bilateral agreement, the alien may be removed to a country where the alien's life or freedom would not be threatened and where they would have access to a full and fair procedure for determining a claim to asylum.

The provision for naming a so-called safe third country has existed in Canadian law since 1989, but has never been used. There was an attempt in the mid-nineties, with an agreement between Canada and the U.S. A preliminary draft agreement was concluded in November 1995 and released to the public. This committee held hearings in 1996 and issued a report in May of that year, but implementation of that agreement obviously never occurred.

The current agreement was signed in August 2002, and copies have been distributed so that you will be able to see the outline of the basis for this new regulatory process coming into effect on December 29. It was in the late fall of 2002 that the committee studied the proposed Canadian regulations—

**The Chair:** What are you referring to, in terms of your documents? Or do we—

**Mr. Benjamin Dolin:** It's the safe third country agreement. I gave it to Bill to distribute. It's the text of the agreement itself.

That was from August of 2002. Canada pre-published the regulations in October 2002; the Americans didn't pre-publish theirs until March of this year.

**Ms. Meili Faille:** This is the document that you're reading?

● (1045)

**Mr. Roger Clavet:** No, it's neither one. Those are his notes.

**Mr. Benjamin Dolin:** These are just my notes.

**Mr. Roger Clavet:** And we have the agreement here.

**Mr. Benjamin Dolin:** Yes, I've just provided a copy of the agreement.

**Mr. Roger Clavet:** We have two documents.

[*Translation*]

**Ms. Meili Faille:** Could I have the English version? I really can't follow you. The interpreter is unable to translate what Ben is saying. And I don't have the documents in front of me with the terms he is using.

**The Chair:** Ben, could you please speak more slowly?

[*English*]

**Mr. Benjamin Dolin:** Oui.

**A voice:** He'll do his best.

[*Translation*]

**Ms. Meili Faille:** It's hard. I only get the beginning of each sentence.

[*English*]

I understand only the first words, and then she's trying to keep up.

**Mr. Benjamin Dolin:** I can inform the committee that there is a document, a publication on harmonization of asylum processing in the EU, that I have written as a document that provides lessons to North America, where the EU and the North American system are summarized. That should be available within the next couple of weeks. Hopefully I can forward it to members so they can have a better idea and have it in writing.

In any event, the current agreement that is being implemented on December 29 was signed in August 2002. Canada's regulations implementing the agreement were pre-published in October 2002. This committee studied those recommendations and issued a report, a copy of which was forwarded to your offices electronically on Tuesday. That report of this committee, which was tabled in December 2002, will also provide a good, detailed outline of much of what I'm talking about today.

I was planning to summarize the key instruments in international law with respect to this process, but given time constraints, it will suffice to say that under the UN refugee convention and the UN convention against torture, contracting states are not supposed to expel or return people to where they will face persecution on an enumerated ground or the possibility of torture. Of course, the U.S. and Canada are signatories to both agreements.

Turning to the agreement in the Canadian regulations, article 3 of the agreement provides that Canada and the United States will not return anyone referred back under the agreement to another country until an adjudication of their refugee claim is made. The basic premise is therefore that one of the two countries will process the claim, although there is some disagreement over whether this will in fact happen. I'll address that momentarily.

The agreement is premised on the government's view that selecting a new home based on personal preferences or economic reasons falls within the domain of immigration and does not properly belong in the asylum context, and that in essence refugees should be required to seek asylum in the first country they enter.

This committee, in our study of the pre-published regulatory framework, heard from some witnesses who argued that claimants should be permitted to choose where they are most likely to find a safe haven that allows them to become economically and socially re-established.

The United Nations High Commissioner for Refugees has established guidelines for implementing the safe third country concept and does not in principle oppose such accords; that is my understanding, and it certainly accords with the representations the committee heard during our previous study. UNHCR recognizes that states are entitled to enter into agreements to share responsibility for determining asylum requests, provided it is explicit that return can be effected only when the claimant will be able to access fair asylum procedures in the receiving country.

The regulatory impact analysis statement that accompanied the proposed regulations in 2002 indicates that the UNHCR supports the objectives of the safe third country agreement and considers that both Canada and the U.S. meet their international obligations. However, when the UNHCR representatives appeared before this committee in 2002, they felt it necessary to qualify that statement by indicating that there are portions of the agreement that could jeopardize access to refugee protection, contrary to international norms.

The agreement, to begin with, will only apply at land ports of entry. The regulations specify that the agreement will not apply at a location that's not a port of entry, such as an inland CIC office, a harbour port, or an airport. As well, claimants will not be returned to the U.S. if they establish they have a family member in Canada who is a citizen, a permanent resident, a person whose refugee claim has been accepted, or a person at least 18 years of age who has had a refugee claim referred to the IRB.

● (1050)

The regulations would define family members in respect of a claimant as a spouse or common law partner, their legal guardian, or any of the following: child, father, mother, brother, sister, grandfather, grandmother, uncle, aunt, niece, or nephew.

Unaccompanied minors are also exempted, and the regulations provide details in this respect. If the minor is under 18, is not accompanied by a parent or legal guardian, and has no spouse or common law partner and no parent or legal guardian in the U.S., they will be allowed to access Canada's refugee determination system.

The agreement will also not apply to people with a valid visa to enter Canada, or those who do not require a visa to enter Canada but would need one to enter the U.S. Since September 11 there has been significant harmonization of Canadian and American visa requirements, so that is not much of an issue any more.

It should also be noted that article 6 of the agreement provides that either country may examine at its own discretion any refugee claim where it determines it is in the public interest to do so, and pursuant to article 6, proposed regulations indicate return to the U.S. will not occur if the claimant is charged or has been convicted of an offence, in the U.S. or any other country, that's punishable by the death penalty, or if the person is a national of a country for which the minister has issued a stay on removal orders—one of the so-called moratorium countries.

Article 10 of the agreement provides for the suspension or termination of the agreement, and the proposed regulations—no longer proposed, but the regulations to come into effect on December 29—set out the notification process that would be required. It can be terminated on six months' notice or suspended for up to three months upon written notice to the other party.

In terms of the numbers this is expected to impact, when the committee looked at the issue in late 2002 we were given various statistics regarding the number of claims the agreement would address. Figures provided by the department at the time indicated that from 1995 to 2001 about one-third of all refugee claims in Canada, anywhere from 31% to 37% annually, were made by claimants known to have arrived from or through the United States. Additional people making inland claims may not have been captured in this data, even though they came through the U.S., simply because their route of entry could not be confirmed.

Of those claiming at a port of entry, where verification of transit countries is more easily undertaken, 60% to 70% came from or through the United States on their way to Canada. In 2001, 13,497 people known to have come from or through the U.S. made refugee claims, and 95% of these applications were initiated at land border ports of entry, which as I mentioned are the only target of this agreement.

While no one could provide data regarding refugee claimants transiting Canada to the U.S., most estimates suggested that it was unlikely the number would be more than 100 or 200 a year. So we're talking of thousands—over 10,000—coming via the U.S. to Canada and probably less than a couple of hundred coming through Canada to the U.S.

Officials from CIC appearing before the committee indicated quite clearly that the purpose of the agreement is to reduce the number of refugee claims being referred to the IRB. A particular problem at the time was people who received visitor visas to the U.S. and then immediately took a bus to the border and made a claim for refugee status in Canada.

● (1055)

Among the issues that arose in the course of this committee's previous study, one of the main ones was questioning whether the United States is truly a safe country for all asylum seekers. Specifically brought to the fore were various American procedures, such as the expedited removal process, the detention procedure, the one-year time limit to file a refugee claim in the United States, and differences in the interpretation of the refugee definition in American jurisprudence.

Obviously, I don't have time to go into all of the issues. Perhaps at a later date we may also know whether we're going to be hearing from the UNHCR and other groups talking about the possibility that some refugees refused entry to Canada under the agreement will not get a full hearing in the United States because of either the expedited removal process or the different interpretation of particular refugee claims, such as gender-based asylum claims.

There are also new concerns that have arisen more recently, since the committee's last study, regarding the U.S. Patriot Act. It allows for the indefinite detention of some foreign nationals, including asylum seekers, if the Attorney General makes a designation that they are alien terrorists, based on the standard that they have reasonable grounds to believe they represent a threat to the United States.

**The Chair:** We're going to be swamped with the new committee coming in. Actually, the clerk has suggested to me that if we're going to meet on Tuesday, we could meet at 3:30, and finish his presentation.

**Mr. Benjamin Dolin:** Sure. We could pick up where I left off.

**The Chair:** It's key stuff that we're dealing with.

How's your time, Diane? Are you going to be okay on Tuesday?

**Mrs. Diane Ablonczy:** It grieves me to say that I'm free.

**The Chair:** You are free. We're pleased.

[*Translation*]

**Ms. Meili Faille:** Can I ask one question before we adjourn? Could we discuss the motion I tabled regarding the Appeals Division? The IRB has confirmed this morning that this does not fall within its jurisdiction. In terms of implementing the Appeals Division, there doesn't seem to be a problem as far as the Board is concerned. It's just a matter of political will.

In my motion, I ask the Minister to implement that section of the Act and proceed with the Appeals Division? Will we have an opportunity to debate my motion at some point?

[*English*]

**The Chair:** On Thursday?

[*Translation*]

**Ms. Meili Faille:** Tuesday?

[*English*]

**The Chair:** On Tuesday?

[*Translation*]

**Ms. Meili Faille:** Fine.

[*English*]

**The Chair:** Okay. Thank you very much.

We'll get to hear the rest of it, Ben.

Of course we now have a steering committee meeting going on in the next room for the members of the steering committee. We're going to Room 306.

The meeting is adjourned.

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