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Chair

Mr. Norman Doyle

Standing Committee on Citizenship and Immigration

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● (1100)

[*English*]

The Chair (Mr. Norman Doyle (St. John's East, CPC)): We have a quorum, so we will call our meeting to order, as we continue our meeting on refugee issues.

We are pleased to welcome witnesses today from Amnesty International Canada: Claudette Cardinal, coordinator, refugees, Canadian francophone section; and Richard Goldman, coordinator, refugee protection, Table de concertation des organismes au service des personnes réfugiées et immigrantes.

Welcome to our meeting.

We don't have a full complement yet. We have some work going on in the House of Commons with respect to some meetings this week, so I imagine members will be along in due course.

If you have an opening statement you want to make, please feel free to make it.

We'll begin our meeting.

[*Translation*]

Ms. Claudette Cardinal (Coordinator, Refugees, Canadian Francophone Section, Amnesty International Canada): My name is Claudette Cardinal. To begin, allow me to thank you for giving us the opportunity to talk to you about our concerns over the Pre-Removal Risk Assessment Process, otherwise referred to as the PRRA. My colleague, Richard Goldman, will be assisting me in this presentation.

This brief is being jointly presented by three organizations: Amnistie internationale, and the Table de concertation, which is a Quebec-wide coalition of 140 groups serving refugees and immigrants, as well as the Centre justice et foi, a Jesuit centre for social analysis in Quebec.

For several years, our three organizations have been greatly concerned about the low acceptance rate for the Pre-Removal Risk Assessment, PRRA. In 2005, the national acceptance rate was 3% out of over 6800 decisions. In Quebec, the rate was just 1%, and did not increase in 2006. Our concern is based on the collective belief that no person should be returned to a country where they might face persecution, as provided for in the Refugee Convention, also known as the Geneva Convention, or face torture or cruel and unusual punishment, as provided for in the Convention Against Torture.

In analyzing files of refused refugees who have called upon our organizations for support, we have come across examples of practices that lead us to believe that there are systemic problems with the PRRA process. These problems include: dismissing apparently trustworthy evidence without providing the reasoning for doing so; arbitrary choices among documentary evidence; failure to independently consider credibility once the IRB has made a negative finding; raising of the evidentiary threshold far beyond that required by statute and jurisprudence.

Our submission clearly outlines these problems, which are supported by real life and concrete examples. We'll spare you full reading of our submission. Since I used to be a lecturer at a Montreal university, I will take for granted that you have all read and become familiar with the document. I would also invite those who have not had the chance already to become familiar with the Canadian process in seeking asylum. It is well explained in the first pages of our document. Our introduction also dispels many wrong and commonly held notions, such as the one repeated by one of the four or five ministers of this department over the last three years. It has been wrongly repeated that an applicant would have 52 possibilities to appeal a negative decision. Mr. Goldman will also talk to you about some other commonly held notions.

I, for one, wish to talk to you about one of my frustrations that is also shared by many others who fight to promote justice. Last Friday, I had the privilege of hearing Mme Louise Arbour, United Nations High Commissioner on Human Rights, speak. I also saw the television interview she gave. She was asked whether or not Canadians were doing everything possible to protect persons in danger. She replied that given all of the resources available to Canada, the bar should be very high. I believe that in most cases, we do not reach the bar. On the topic of the United Nations, Ms. Arbour talked about inaction and bureaucratic red tape. Don't these also qualify the work we do, from time to time?

Allow me to cite other examples of cases of applicants which have ended in Canada sending asylum seekers back to their country of origin. These are examples of cases which occurred as I was researching and drafting this presentation. Therefore, these cases are very recent, and as the saying goes, hot off the press.

● (1105)

[*English*]

The Pakistani gentleman whose case is referred to beginning on page 4 of our document went into hiding in a city far from his original home with his wife and children as soon as he returned to Pakistan. Last week his Montreal lawyer was able to contact the man's wife, and she indicated that within a very short time upon their arrival in Pakistan they began to receive death threats and threats that the children would be kidnapped.

I must say that when they returned to Pakistan, they did not go to the city where this man had originally been tortured. They went far away, to another place, and yet somehow authorities or the people who were opposed to them knew they were back and found out where they were and were threatening him and his children.

He had to flee the country and seek refuge in another country, where he will never be able to find full-time or permanent work. His situation is very iffy, but at least the pressure on his family decreased once he left.

So it's thus a misconception on the part of PRRA officers to believe in many instances that authorities and/or those responsible for persecution are unaware of a refused asylum seeker's return to his or her country of origin.

Yet despite all of this, this gentleman is still hopeful that his application for permanent residency, which he filed before he left Canada, will be granted.

[*Translation*]

Another case in which Amnesty International was involved concerned a former Mauritanian slave working as a peaceful advocate for the rights of Mauritanian slaves. When his country banned slavery, he travelled across the country informing former slaves of their rights. He was detained and tortured three times but, the third time, he managed to escape and make his way to Canada.

Two of his brothers, who were also human rights workers, were admitted into France as refugees. Although this man, who had applied for refugee status here, and his brothers had similar cases, Canada decided to deny the former's claim and send him back to his country of origin. Fortunately, after his removal, the Federal Court authorized a judicial review; however, the gentleman had already left. His whereabouts are unknown. We do not even know whether he is still alive.

I have one final example to illustrate the capricious decisions of PRRA officers. I want to tell you about a Mauritanian woman who filed a number of documents as new evidence in her PRRA application.

In a recent decision, the PRRA officer rejected documents from a Mauritanian court, saying that there was only a French translation and that the original document, written in Arabic, had not been provided. The officer also rejected evidence regarding two specific events that the woman related as new evidence of her fears, claiming that there was no mention of these events in the personal information form or PIF. However, that was not true, because not only had these events been detailed in the PIF, the IRB had also referred to them. Although the officer had listed a letter of support from Amnesty International's Canadian section (French-speaking) as new evidence, the officer failed to refer to it in his analysis.

With all due respect, I must point out that this contravenes a Federal Court decision. Not all the facts are the same, but the principle still applies. In the *Thang v. Canada (Solicitor General)* decision of March 2004, Justice O'Reilly stated:

● (1110)

[*English*]

> The officer listed numerous documents that she had considered in making her decision. However, absent from the list was a document specially prepared by Amnesty International supporting Mr. Thang's application.

There is a presumption that decision-makers have considered all of the evidence before them, even if they do not refer specifically to each item. However, the more central a document is to the issue to be decided, the greater the obligation on the decision-maker to deal with it specifically. This is particularly so when the document contradicts the decision-maker's own conclusions. Here, the document at issue is a specific, detailed analysis of the applicant's personal circumstances, conducted by a credible source who arrived at a conclusion contrary to the officer's findings. The officer had a duty to at least refer to the report in her reasons.

[*Translation*]

The report in question came from the Canadian section (English-speaking). The Canadian section (French-speaking) is much smaller and receives approximately one hundred requests for assistance each year. Not all are from failed refugee claimants, but a vast majority are.

However, every year, I can write a specific letter of support for only 10 or 12 of those individuals, in other words, barely 10% of applicants subject to a removal order, because of the stringent standards imposed by Amnesty International's head office. We don't support someone just because we want to: we must comply with very strict criteria. I must tell you that this woman is scheduled to be sent back to Mauritania on February 27. As in other cases, some of the evidence in her file was rejected outright; it was not even taken into consideration.

If I may, before giving the floor to my colleague, I would like to share with you an off-the-cuff remark by a political advisor to one of the last four or five ministers. One day when I called the minister's office to ask for the minister's support regarding a very specific case and to prevent the individual in question from being removed, the political advisor said that I had no idea of the number of cases in the minister's office, that there were so many problems and that there was no rhyme or reason to it. In my opinion, if there are so many problems, perhaps it is time to fix the system.

[*English*]

The Chair: Thank you, Ms. Cardinal.

Go ahead, Mr. Goldman.

Mr. Richard Goldman (Coordinator, Refugee Protection, Table de concertation des organismes au service des personnes réfugiées et immigrantes): Thank you.

I want to thank the committee members for receiving us today and for taking time to hear us.

I'd like to draw your attention to the recommendations we have made on pages 9 and 10 of the English version of our brief. We have them in two different parts. One is immediate recommendations, which would require no legislative change, and the other section is longer term and requires legislative change.

The first recommendation is the implementation of the refugee appeal division of the Immigration and Refugee Board. As I'm sure all of you know, this has been on the books since 2002, but it has not been put into effect. The reason we recommend it is that the Immigration and Refugee Board, like any system of adjudication, is open to human error.

To give you an idea of the possible scope for human error, earlier in our paper we cite the range of acceptance rates in 2005 for IRB members who heard and decided on at least 100 cases. As you will see, they vary between 5% acceptance and 88% acceptance. It's not to say that the IRB is better or worse; it's a system of adjudication that deals with human beings. It's open to human error. The stakes are actually higher than for any administrative or judicial decision taken in Canada. Given that Canada has abolished the death penalty, this is the only judicial or quasi-judicial decision in Canada that could lead to somebody's torture or even death.

Those are the stakes. With all due respect to some members who have said the contrary, even in the House of Commons, there is no appeal from an Immigration and Refugee Board decision. There is no appeal on the merits.

The possibility of judicial review exists at the Federal Court, but this has many obstacles. First of all, you must apply for permission to have your case heard by the Federal Court. There are 89% of cases that are refused at that level; they are never heard. If they are heard, the court can only intervene if it finds there has been a manifest error. It's not simply a question that the decision was not correct. A true appeal is when one tribunal looks at a lower court's decision and asks if it arrived at the correct decision. Here, it must be manifestly unreasonable, which is an extremely high standard to meet. It really is not fair to describe that as an appeal.

On the pre-removal risk assessment, which is the topic of our presentation, we have listed—at great length—different problems with it. My colleague Claudette has even provided some additional examples. But it was never conceived as an appeal. It was conceived as a way of looking at changes in circumstances or new evidence that becomes available after the Immigration and Refugee Board hearing. It was certainly never conceived as an appeal on the merits.

The other recourse, which is sometimes described as an appeal, is an application for permanent residence on humanitarian and compassionate grounds. This involves no independent assessment of the risk that claimants face if they were returned to their country. The risk assessment is carried out by the same PRRA officer. It's really not reasonable to call it an independent recourse, much less an appeal. And as Claudette mentioned in one of her examples, very often people are removed from Canada while awaiting a response on their humanitarian application. She mentioned a concrete example.

We'd like to point out, although I'm sure you're aware, that this would require no legislative change. In fact, it would simply require implementing existing legislation.

Our second recommendation is enhancing the training of PRRA officers with regard to the assessment of evidence and the interpretation of Canadian legislation, including the charter and human rights instruments. We feel this training should include the participation of representatives of the UNHCR and NGOs such as Amnesty International and the Canadian Council for Refugees.

● (1115)

Our third recommendation concerns disclosure by Citizenship and Immigration Canada of the qualifications and other requirements for being nominated as a PRRA officer, as well as the conditions of tenure, such as their expected workload, length of contracts, if applicable, job performance evaluation, and quality control of decision-making.

We note in our brief that one of your members on December 5 asked a question of Citizenship and Immigration Canada about the level of training and qualifications of PRRA officers. As the courts have mentioned, they are making extremely important decisions and are often applying complex legislation, like the UN Convention relating to the Status of Refugees, IRPA, and the Canadian Charter of Rights and Freedoms.

The member has been kind enough to provide me with some of the information that either has been or will be distributed. One thing that jumps out is that in Quebec the majority of PRRA officers have less than 24 months' prior job experience. These are people whom you would expect to be very senior agents with a great deal of immigration experience, a great deal of experience dealing with people facing persecution. I don't want to comment more. You'll have a chance to analyze this—I haven't—but it seems to be treated as something of a junior position.

One last immediate recommendation concerns oral hearings for the pre-removal risk assessment. As you may know, and as we point out in our brief, an oral hearing before the officer who will decide the pre-removal risk assessment is not guaranteed. Not only is it not guaranteed, it's almost never granted.

We cite a section of the IRPA regulations that has always seemed very ambiguous to me. It points out that an oral hearing should be granted when “there is evidence that raises a serious issue of the applicant's credibility”. We find it very strange that virtually all the decisions, whether at the IRB or the PRRA, are decided on issues of credibility, yet there are virtually no oral hearings.

This is something that has never been clear to us; therefore, we feel the immigration manual that applies here should be modified to make it clear that where credibility is an issue, there should be an oral hearing, especially where someone was not afforded a hearing before the board. Since 2002 there has been a category of people who claim refugee status in Canada but will never have an oral hearing before the board. This includes a person who made a claim some time in the past. They may have returned to their country and there may be a complete change in circumstance, but since they made a prior claim some time in the past, they will never get another oral hearing before the board.

We feel if that's the case they should at least be guaranteed an oral hearing before the PRRA officer. We cite a Federal Court decision stating not exactly that, but that generally where credibility is an issue, a person should get an oral hearing before the PRRA. We feel that should be codified into the immigration manual.

On longer-term recommendations that would require legislative change, we feel that ultimately it makes most sense for the PRRA to be taken completely out of the hands of Citizenship and Immigration Canada and placed in the hands of the Immigration and Refugee Board. This would solve all the problems of institutional independence, expertise, and training that we mention in our brief. More generally, it seems to be illogical to have two sets of officers—one at the IRB and one at Citizenship and Immigration Canada—who are applying the very same definitions of refugee and protected persons. Why not have only the experts at the IRB apply this? It seems like a needless duplication of services, and it raises all the difficulties of duplicating training, or possibly inadequate training and experience.

A second recommendation is to abrogate paragraphs 101(b) and 101(c) of IRPA that prevent someone who previously made a refugee claim in Canada from having another hearing in their lifetime before the Immigration and Refugee Board.

Finally is to enhance the powers of the IRB to reopen inquiries where there has been a significant change of circumstances, so they can re-hear a case, examine it, and grant refugee status. Right now, the IRB is very limited in the types of cases where it can reopen a hearing. It's limited to questions of natural justice, so it's just when there was a real problem of fairness in the hearing. Even if there has been a major change in circumstances, even if 10 years have passed since an earlier decision, the IRB cannot revisit the claim or reopen it for a further hearing. We feel this change is likely to avoid the need for the pre-removal risk assessment in many cases.

● (1120)

So those are our recommendations.

● (1125)

The Chair: Thank you, Mr. Goldman, and Ms. Cardinal as well.

We'll now go to questions from our committee members, and I believe first on the list we have Mr. Karygiannis.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): Good morning to both of you, and thank you for coming. Certainly you are to be commended for the work you're doing, not only in Canada but throughout the world, on issues of refugees and protection of the human rights of individuals who can't speak for themselves.

I know this is going to go a little off topic, but for the last couple of days the committee has been looking at the three detainees in Kingston. I'm not sure if you have been following that particular issue. The committee has visited them and thoughts have been raised in the House of Commons.

I was wondering if one of you, or both of you, would have any comments on what is going on down there, or any thoughts on the matter.

Ms. Claudette Cardinal: I don't know what's going on specifically in Kingston, but I see what I see in the paper or hear on television. Certainly we're concerned about the three persons, just on a human level, with what they're going through right now. As a former nurse in one of my professional lives, I would certainly be concerned about someone who has been on a hunger strike for that long.

Amnesty has been before this committee, I believe, and certainly before the committee on security with concerns about the security certificates as such and the fact that we are detaining people on very little concrete evidence, and we don't detain them for just a few months. One of those men, if I understand, has been there five or six years.

If we've got the evidence, then let's charge them with something, but don't leave them in this state of limbo for this long. Also, if we return them to their countries of origin, probably they are at great risk of being tortured, being arbitrarily detained, and possibly worse, and that is certainly something that Amnesty is 100% against and is very concerned about.

Mr. Richard Goldman: I think the position of both Amnesty and my own organization, the Table de concertation, is that indefinite detention without access to evidence and without a charge is something that's not compatible with our system. Of course, I'm not telling you anything new to tell you it's before the Supreme Court and we're awaiting their decision, and we are certainly hoping the fact that the authorities realize this is a controversial provision guides them in their actions in terms of the prison conditions that seem to have sparked this particular hunger strike.

I don't know if there's much more we can say about that.

Hon. Jim Karygiannis: Thank you. Going back to the PRRA applications, and I know of the good work that you've been doing not only in one province but throughout Canada.... Have you seen any PRRA applications in regard to a specific country where let's say an overzealous immigration officer or case officer might be removing people? I'm looking for a particular country where people might have been removed, where they had been put in danger, one country more than another.

Mr. Richard Goldman: Go ahead with your Pakistani example.

Ms. Claudette Cardinal: Certainly Pakistan.

In terms of the cases that I receive for our help, there are certainly a lot of people from Africa, and often single men. That doesn't mean that men accompanied by spouses and children are not refused, but certainly those alone.... And maybe it's just the case that a lot of them are francophone countries, so they would come to Montreal and that's what I see. It's hard to know—the chicken or the egg.

Hon. Jim Karygiannis: You mentioned Pakistan.

Ms. Claudette Cardinal: Pakistan, the gentleman whose case we referred to.... Certainly there have been a number. There is also—

Hon. Jim Karygiannis: Was he of a particular religion, or a particular sect of a religion?

Ms. Claudette Cardinal: This man in particular, yes, and I can give you the example of a Pakistani woman also who was—-

Hon. Jim Karygiannis: Christian, Ahmadi, Shiite, the man whom you were referring to?

Ms. Claudette Cardinal: She was Muslim. This gentleman was Shia.

The woman, I believe, was Shia also. She was in a village and she managed to organize the women in her village. She found sewing machines. She got these women sewing, and they were able to sell the clothing they were making. It was giving them a bit of money. She ran into opposition with the religious leadership, saying that she was organizing the women against their spouses. Her whole family... her husband died in detention, her father's home was burnt and eventually he died also. She has a cousin who was shot as he appeared before the courts in a Pakistani town. She has two brothers who have disappeared—she has no idea where they are. And this women, just from her work—she was the leader of the Pakistan Peoples Party in her town.

● (1130)

Hon. Jim Karygiannis: PPP?

Ms. Claudette Cardinal: Yes, PPP. So she is in great danger, and yet Canada saw fit to deport her. Her family has been almost decimated for political reasons, and yet we didn't seem to see any problem there.

Hon. Jim Karygiannis: Staying on Pakistan, has Amnesty International dealt with any cases of Ahmadis?

Ms. Claudette Cardinal: Not the francophone section, but I cannot speak for the anglophone section. They may have. We function completely differently and completely separately, so I don't know.

Hon. Jim Karygiannis: You mentioned Africa. Can you give us a couple of examples of where overzealous case officers might be returning people to Africa, the single men you were talking about?

Ms. Claudette Cardinal: For the Mauritanian gentleman I referred to here, the Federal Court eventually...he was one of the 11% of whom they said, yes, perhaps we should do a judicial review of his case, but he's already gone.

Hon. Jim Karygiannis: So he's got an H and C in?

Ms. Claudette Cardinal: Not to my knowledge.

Hon. Jim Karygiannis: He had a PRRA application?

Ms. Claudette Cardinal: The PRRA officer said this man was not at risk. He was an ex-slave, and slavery has been taken off the books in Mauritania, so he should not be in trouble. He was detained three times and tortured three times because he was defending the human rights of ex-slaves and telling them what their new rights were.

Hon. Jim Karygiannis: So he had no H and C in?

Ms. Claudette Cardinal: I don't know if had an H and C.

Hon. Jim Karygiannis: Have you seen cases where people have been removed, where a PRRA officer says it's all right to go, not a problem, but they have an H and C in and they have been returned after their H and C has been heard in Canada?

Ms. Claudette Cardinal: And they come back here?

Hon. Jim Karygiannis: Yes.

Ms. Claudette Cardinal: I have not personally witnessed that, no.

Mr. Richard Goldman: I have heard about one case, a Palestinian fellow who was removed and has a successful H and C, and now apparently should be returned to Canada. It's definitely a potential part of the system, but it seems to happen very rarely.

The Chair: Thank you, Mr. Karygiannis.

Mr. Gravel.

[*Translation*]

Mr. Raymond Gravel (Repentigny, BQ): You said earlier that the acceptance rate for refugee claimants was 3% in Canada but 1% in Quebec. Is that right?

Ms. Claudette Cardinal: With the PRRA, people whose refugee claim is rejected are told that, before being sent back to their home country, they can undergo an assessment to determine the risks they would face if they were sent back. Across Canada, 3% of these cases are successful. So these people are considered to be facing risks. In Quebec, it is only 1%.

Mr. Raymond Gravel: That is incredible. I would like to know how the PRRA process works. For example, when notice of a request is given, how long does it take for the officer to make a decision? If people are turned down, how long is it before they are sent back to their country?

Mr. Richard Goldman: It varies a lot. To begin with, the Canadian Immigration and Refugee Board, the CIRB, makes its decision. If the claim is successful, the problem is resolved. If not, the claimant can ask for a judicial review by the Federal Court but the Court refuses 89% of the applications. Going that route suspends the file for two or three months. Many claimants simply do not have the resources to appeal to the Federal Court. It varies a great deal. It is an interesting point because people often say that the process is too long. They say that the CIRB, for example, takes too much time. The longest timeframe is one between the CIRB's decision and the pre-removal risk assessment, or PRRA. I know files that have dragged out for a year and a half before people have their PRRA, although, as I mentioned, it can be done within two or three months. Then there is the pre-removal risk assessment. There is a 30-day period for the request. The answer can come after one or two months, and the date of departure may be set right away, or it can drag out for six months or a year.

So basically, the length of the process that starts with a refugee claim and ends with removal from Canada—if that is the result—can vary from one year and three months to two or three years. The longest steps in the process are at Citizenship and Immigration Canada, first with the initiation of the PRRA and then with the decision resulting from the PRRA.

● (1135)

Mr. Raymond Gravel: You indicated earlier that Louise Arbour had said that the bar was set high and that it was not being reached. What do you mean by that?

Ms. Claudette Cardinal: She said that Canada, because of its resources and great opportunities, should set the bar high concerning the number of people that we can accept as refugees, etc., especially in comparison with other countries. She was not talking specifically about refugees, but I made a parallel with the work that we are doing. I believe that the bar may not be high enough and that, especially with respect to the PRRA, we do not always reach it. We should require more from Canada than other countries, since we consider ourselves to be a welcoming country and one where the rule of law exists. Given all our resources and opportunities, more should be required of Canada than of many other countries.

Mr. Raymond Gravel: I am a new member of the committee, and I heard you talking about incompetence and lack of training, probably. Have the officers involved in PRRAs received instructions that most people must be refused? Is it possible that there are such instructions?

Ms. Claudette Cardinal: You would never find such kind of instructions on paper. The administrative manual that officers have to consult to enforce the act and regulations, the PP 3, is very well done, except that it is not always followed. In the early summer, there were some tables found that summarized the officers' duties. No table indicated how to accept PRRA cases, but there was one showing how to reject them. That speaks volumes, it seems to me.

Some time after I started this job, Michel Frenette, who was the Director General of the francophone section of Amnesty International in Canada at that time, asked to meet with the acting manager for immigration in the Quebec section. I do not remember the person's exact title. Near the end of the meeting, she asked me how we could be 99% certain that these people were at risk if they were removed to their own country. I was absolutely shocked to hear her say that. The threshold is not 99%; the balance of probabilities is what needs to be applied.

If she talks that way to her colleagues at lunch or on break, she is spreading that attitude to the whole staff. A lowly PRRA officer may decide that he will get his knuckles wrapped if he accepts too many applications. These are employees and they need to follow instructions, even if those instructions are not written down.

I will give you another example. I was at a meeting that two immigration representatives attended and one of them made a presentation. I was once again very critical of the PRRA, since I felt that there had been very serious problems, as I explain in my brief. At the end of the meeting, when I was getting my coat, one of the two young women came to see me and said that they would sometimes like to be able to say that a given person was at risk, but that they did not dare to because they were afraid that the CIRB would lose face, since the Board has already decided that there was no risk.

● (1140)

Mr. Raymond Gravel: There's a problem there.

Ms. Claudette Cardinal: I do not know what the situation is like elsewhere in Canada, but that is what we are dealing with in Quebec.

[*English*]

The Chair: Thank you, Mr. Gravel.

We'll have Ms. Chow, please.

Ms. Olivia Chow (Trinity—Spadina, NDP): Is there any world body, the UN perhaps, where there can be a class action suit or some kind of action that said that CIC and the Minister of CIC are showing contempt for the House of Commons, given that they have not implemented the refugee appeal division, not given oral hearings that they're supposed to through the PRRA process, and not really had a genuine appeal process, other than through the Federal Court?

Is there any body that you can possibly think of for some of the refugees who have been deported and are now facing death or torture or now have to flee to another country? Are there any possibilities that there could be a class lawsuit?

Mr. Richard Goldman: I don't know if class actions exist on a world scale, but some international bodies have pronounced on the problem of the absence of an appeal, notably the Organization of American States in its review of Canadian asylum procedures. It has commented on the fact that the absence of a review is a problem, and the UN High Commission for Refugees has as well.

In terms of individuals who feel they have not been properly treated, there are a couple of recourses. There's recourse, for example, to the Committee Against Torture, on an international scale, and there have been some successful applications. Some of them have criticized features, including the lack of an appeal in the Canadian asylum system. The problem is that none of these are specifically binding in terms of forcing Canada to enact legislation or to respect legislation that's on the books.

Ms. Olivia Chow: With reference to your first longer-term recommendation, if PRRA is to go to CIC, I often—

Mr. Richard Goldman: No, it's from CIC.

Ms. Olivia Chow: I'm sorry, if it's to go from CIC to IRB, I often thought that if you have the same people reviewing the same case, and the same body, then it could be a problem, so it does make sense in some ways to have PRRA away from the IRB and to have two bodies looking at it.

Now, if you take it out of CIC and put it into the IRB, it would be the same person. Let's say this person has a 5% success rate and is turning down 95% of all refugee cases; this may be the same person, the PRRA officer, or the PRRA officer could be reporting it back to the same person. It gets into the same cycle, the same rut, and then I can't see the refugee having a second chance for new information to be submitted.

Is it possible for CIC to establish an independent refugee appeal division, away from IRB—since IRB is not going to do it anyway, as I have noticed over the last few years—and actually have an independent appeal body through CIC? Then I can see PRRA going into IRB. That's fine.

If you take everything into IRB, given that they have not been willing to establish an appeal division and have not been willing to examine one at 5% and one at 85%, what confidence do you have that putting PRRA into IRB will give you fair justice for these refugees?

Mr. Richard Goldman: Well, I have to say right off that every institutional arrangement faces its challenges. What I would have to say is that it's not the IRB that didn't want to establish the refugee appeal division; it's the Government of Canada.

Now, that said, and admitting that every institutional arrangement faces its challenges, I do think it is possible to have a tribunal at which there is an appeal division that operates independently and professionally. I think we're very encouraged by the steps that have been taken to professionalize the nomination process for the IRB, and that's where the effort should continue.

Certainly there should never be a case in which one agent is reviewing his or her own decision. That is a basic principle in law. It's just not a fair way of doing things. If there's a separate division, if there is this increasing professionalism and expertise in Immigration and Refugee Board members, then I think it addresses our worries.

Perhaps there is no one perfect solution, but it just seems to make a lot more sense to have one tribunal in Canada, one in which people are professionally chosen, professionally trained, kept to a very high standard, and kept independent of government, as opposed to trying to create two.

I think you're suggesting that there be even a third institution, one that's not the IRB and not CIC, but it still is a duplication of all these resources, training, and so on, and in the present context, to create a third government body just doesn't seem to make a lot of sense.

● (1145)

Ms. Olivia Chow: Would we save any money if we actually put the PRRA into the IRB? We like to save government money, right?

Mr. Richard Goldman: I would say that if the appeal division were to be implemented in the way it was first presented—which was that you go to the IRB, you get a negative decision, you go on appeal, you win or you lose—if you lose, you no longer get a stay of all removal proceedings from the time you get a negative decision of a refugee appeal division.

Just to step back a bit, one of the big incentives for refused claimants right now to file at the Federal Court—some have excellent reasons for filing, others don't—is it gives them an extra three months or so during which everything is suspended. So whether they have a good case, and some do and might even be in the lucky 10% or so that have their case heard, or whether they have no case, there's a strong incentive to file at the Federal Court because it buys extra time.

That's extremely expensive to everybody, especially to the Federal Court judges, who are looking through a lot of cases that they don't feel are seriously prepared but have to look through anyway.

If the refugee appeal division were introduced, but there was no stay of removal after that, then virtually no one would file at the Federal Court unless they felt they had a really serious case. There would be no benefit to them. They would just have to spend a lot of money without getting any additional stay. So I believe that would save the Canadian taxpayer a lot of money, implementing it in that way, which is my understanding of the way it was meant to be implemented.

With the other recommendations of allowing the IRB to reopen a case where, exceptionally, there was very strong new evidence, change of circumstance, *coup d'état*, and so on, that in itself would probably eliminate much of the demand for the PRRA.

For the remaining cases where there actually did have to be a PRRA at the end of the line, to make sure someone was not deported to torture or death, I don't think it would save any money because you're still paying an official to make the certain decision. But I think you would save the money further upstream with those other reforms I mentioned.

The Chair: Thank you, Ms. Chow.

I will go now to Mr. Komarnicki.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you very much.

Following up on Ms. Chow's comments, are you suggesting that if RAD were implemented, the PRRA would be decided at the IRB level and decisions made there with respect to that aspect? Is that what you're saying?

Mr. Richard Goldman: Yes. Definitely our long-term solution is that the PRRA be taken out of the hands of CIC—

Mr. Ed Komarnicki: And put into the IRB?

Mr. Richard Goldman: Yes, sent to the IRB.

Mr. Ed Komarnicki: What about the humanitarian and compassionate grounds applications? Would you advocate that those too be placed in the hands of the IRB contemporaneously with the other process?

Mr. Richard Goldman: Personally, I haven't thought that through. There are many challenges with humanitarian and compassionate claims. It could be the topic of a whole presentation.

● (1150)

Mr. Ed Komarnicki: Would it not make sense, based on what I'm hearing you say, to combine the processes into at least one form if you had an appeal procedure beyond that?

Mr. Richard Goldman: The objectives of the two programs are different. But if you were to say, this is what my government is going to put forward, institute the RAD, put PRRA at the IRB, and have the IRB also decide H and Cs, I think we could live with it.

Mr. Ed Komarnicki: Given that thinking, would you agree with me then that the Federal Court, which has reviews—and I must disagree with you somewhat; it's not just for manifest error of facts, but if they disagree with the facts, they can send the case back for another review. If you were going to have the two levels of appeal, would you agree that you should narrow the areas of appeal to the Federal Court, which would now be a third level of appeal on issues covered in the first two levels?

Mr. Richard Goldman: I realize that we may end up agreeing to disagree, but the criteria for the Federal Court intervening on credibility or issues of fact is that the finding of the decision-maker was manifestly unreasonable. Those are the words that—

Mr. Ed Komarnicki: They use more words than that, because I've looked at the act myself. It's not just manifestly unreasonable or otherwise not supportable on the facts or something like that; it goes wider than what you suggest it says.

Mr. Richard Goldman: But the thing they're looking at, whether it's credibility or fact, the standard that is used, the notional standard, is that of manifestly unreasonable as opposed to correctness. If it were an actual appeal, the Federal Court would say it doesn't believe the decision-maker has made the correct decision. We see Federal Court decisions where the judge actually says, I might have arrived at a different decision, but it's not manifestly unreasonable. That said—

Mr. Ed Komarnicki: Then your point is that you don't think the jurisdiction of the Federal Court needs to be narrowed if you implement what we just discussed.

Mr. Richard Goldman: I don't believe it needs to be narrowed, but I believe there would be virtually no incentive for refused claimants to turn to the Federal Court, and the caseload would be drastically reduced.

Mr. Ed Komarnicki: I'm going to shift now to another point, and that's with respect to the removals themselves. Is it the position of Amnesty International that there ought not to be any removals where there are certain risks that might be experienced by an individual, notwithstanding issues of national security or criminality? Is there not a balance that needs to take place between issues of national security and a potential risk to the individual?

Ms. Claudette Cardinal: It's certainly a very delicate balancing act. But it is Amnesty International's position that if you have evidence showing that a person is a security risk to Canada, then let's try that person. Amnesty International is opposed to returning someone to a country where the risk of his or her being tortured, or being submitted to cruel and unusual punishment, or—

Mr. Ed Komarnicki: So as long as there's a potential risk, you're saying there should be an absolute ban on a return of individuals to those countries—

Ms. Claudette Cardinal: Yes.

Mr. Ed Komarnicki: —notwithstanding national security risks or interests. Is that correct?

Ms. Claudette Cardinal: Yes, because obviously if someone is a national security risk, and you are not able to try them, there are other mechanisms that Canada can use to supervise that person and make sure he or she is not a risk to Canada. But you don't send them somewhere where you know they're going to be killed.

Mr. Ed Komarnicki: Isn't this the issue that Mr. Karygiannis was raising in Kingston? You have people detained or under severe restrictions, which in and of itself is an area of concern because of national security interests.

Ms. Claudette Cardinal: But they're not charged. We don't even know what people have against them.

Mr. Ed Komarnicki: The fact of the matter is—and perhaps, Mr. Goldman, I would disagree with your comments—they do get a pretty precise summary of the case against them when it's a matter of national security.

Wouldn't you agree with me, Mr. Goldman?

Ms. Claudette Cardinal: No.

Mr. Ed Komarnicki: They don't get a summary of their evidence? I'll ask Mr. Goldman that, because I think he would know differently.

The Chair: Mr. Komarnicki, you have the floor for two more minutes.

Mr. Richard Goldman: I don't plead national security cases. I know they have no access to actual evidence and the possibility of cross-examining or testing it. I can't really say more.

Mr. Ed Komarnicki: But you're not aware of whether or not they have access to the summary of evidence?

Mr. Richard Goldman: I can't say, no.

Mr. Ed Komarnicki: With respect to the PRRA officers who presently exist, I understand that at least there was an undertaking this fall when we were at the CCR, the Canadian Council for Refugees, meeting in Montreal. During the course of that meeting, there was an undertaking to enhance the H and C training for PRRA officers, including training of the officers themselves.

Have you been involved in sort of a consultative process in arriving at what that might be, or what process might be followed?

Mr. Richard Goldman: What was that?

Mr. Ed Komarnicki: To review the training of officers who dealt with humanitarian and compassionate grounds, as well as with the pre-removal risk assessment process. Have you been involved in a consultative manner with the department with respect to the training and upgrading of officers themselves?

● (1155)

Mr. Richard Goldman: No, not so far. It's our understanding that CIC is doing an assessment of PRRA, which will be carried out mainly in March, and that they will be consulting NGOs, including Amnesty International—as far as I know—and the Table de concertation des organismes au service des personnes réfugiées et immigrantes.

But we have not been contacted directly about it. Maybe CIC has provided you with more details about their PRRA review.

The Chair: Mr. Wilson, please.

Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Thank you very much, Mr. Chair.

Thank you for coming.

Amnesty International is an important organization in Canada, and it's very active in British Columbia and in west Vancouver, which is my home riding.

The question I have for you is, what are the variations in the acceptance rates between the various appeals officers? Specifically, I'm looking for those for western versus eastern Canada.

Mr. Richard Goldman: Are you talking about the pre-removal risk assessment?

Mr. Blair Wilson: Yes.

Mr. Richard Goldman: Between about 1% and 3%, I believe.

Mr. Blair Wilson: But do you know what the differences are on a regional basis? Is Quebec more lenient than Ontario and Ontario more lenient than British Columbia, or is it fairly consistent?

Ms. Claudette Cardinal: Quebec is at the bottom of the pile. I seem to recall, in recent statistics, having seen that, for PRRA, western Canada seems to have a higher acceptance rate, particularly B.C.

Richard, you have more recent statistics.

Mr. Richard Goldman: We have actually just been given some statistics. In British Columbia, it seems to be about 3%; in the prairies, less than 1%; Ontario, 1%; and Quebec, 1%—although we have heard that the national total is 3%. It seems to be between 1% and 3% everywhere. There's no place where it's 10% or 15%.

Mr. Blair Wilson: I wonder if you could go back and elaborate just a little bit more on the discussion you had earlier when you were talking about cost savings with respect to the ways in which RAD could be implemented. You were saying something specifically about there being people who are filing now just to have three months' extra stay in Canada, versus, if we implemented the RAD system, there would be no stay. Could you elaborate a little bit more on that?

Mr. Richard Goldman: Yes. Right now when somebody receives an Immigration and Refugee Board decision, a negative decision, they have the option of filing at Federal Court for judicial review, although about 90% of them are not even granted permission to have a hearing.

Some of them have excellent cases and have every reason to apply for a judicial review, and some of them even succeed, a very small percentage. However, some don't, and the reality is that there's a strong incentive, even for those who may not have a good case, to file simply because it buys them an extra three months or so when everything is suspended.

The way I understand the RAD was supposed to be implemented, you would have your IRB decision, and if it was negative, you would go to the Refugee Appeal Division. But then after that if it was negative, you would not benefit from any stay of removal proceedings by filing at Federal Court. Therefore, there would be absolutely no incentive for anyone, except those who had a very strong case, to file. There would be no reason to file a frivolous claim at Federal Court, and from what we hear from the Federal Court, this is an enormously time-consuming procedure they have to deal with in which most of them get rejected.

As you know, Federal Court judges, deservedly, get a high salary. Therefore, their time is very costly to the Canadian taxpayer. Therefore, we believe that actually this particular configuration of things, which it is my understanding was the original idea of how it was supposed to work, would involve a considerable savings to the taxpayer.

● (1200)

The Chair: Thank you, Mr. Wilson.

Ms. Grewal.

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

In your submission you mentioned your concern that we are sending people back to countries where they are at risk of persecution, at risk of torture, and at risk of cruel and unusual punishment. So in how many countries would you consider it unsafe for people to be returning back?

Ms. Claudette Cardinal: I'm not sure it's a matter of countries. It's the persons and what has happened to them in their country of origin—and there are many, many countries where human rights are violated. But it is specific to a person and to his or her country as such. It depends, obviously, on what their facts are, what kind of work they were involved in, why they were tortured or why they were detained, or why there were these violations, but I'm not sure you can specifically say some countries are necessarily worse than others.

Because the kind of work I do allows me to see a cross-section like this and not see clients from this country or that country, and so on, I'm not really the best person to be able to say, but I don't know that you can say that, in some places....

It really depends on the individual and what has happened in his or her country.

Perhaps Richard could comment.

Mr. Richard Goldman: I would just like to add that the Canadian government, as I'm sure you know, at any given time suspends removals to some countries through moratoria. We feel this is a very good idea. We think perhaps some countries should be added. Right now, we have Afghanistan, Burundi, Congo, Zimbabwe, and so on. Colombia seems like a country that is probably dangerous to return most people to, but the point is, at least from our perspective, that is a good thing, that although in any given country a person may face persecution depending on what they've done, their profile, and so on, there are countries where at times it seems to be generally too dangerous to return anyone safely, and that is a good feature of our immigration system.

Mrs. Nina Grewal: Are you aware of any actions that the Department of Citizenship and Immigration has undertaken to address these concerns?

Mr. Richard Goldman: Sorry, Ms. Grewal, which concerns?

Mrs. Nina Grewal: The concerns you have regarding the appeal division and refugees returning back to the countries—

Mr. Richard Goldman: To my understanding, if it's the appeal division, then the position for the moment, from the last few ministers, is no.

With regard to moratoria, a number of organizations have requested that it be added—and I gave the example of Colombia—but this has been turned down.

I don't know if that answers your question.

Mrs. Nina Grewal: Yes.

What are the acceptance rates for PRRA applications? Do they differ, depending on the office or region of the country in which the PRRA officer is located?

Mr. Richard Goldman: That's what we were just looking at. I have some raw statistics here, but I'd have to try to figure out the percentage in my head, and my math isn't the best. But we can safely say that the percentage is 1% to 3% across Canada.

Since it was one of your members who just handed this to me, I believe these statistics will be distributed to you.

Nonetheless, the story is that it's approximately a 1% to 3% acceptance rate anywhere you go in Canada.

Ms. Claudette Cardinal: Perhaps I could add something here.

People who are frightened for their lives or for their safety are returned to their country of origin and only 1% to 3% are at risk? It seems to me that someone looking at it logically would ask themselves, “Well, we might find 20% or 30%, but 1% or 3%?”

So there seems to be something wrong with the logic in terms of the way in which the exams are carried out.

Mrs. Nina Grewal: Okay.

Do you have any idea of how many refused claimants who are issued removal orders apply for pre-removal risk assessments?

Mr. Richard Goldman: Virtually all refused refugees do ask for the pre-removal risk assessment. I would think it's in the high 90%. Although perhaps some feel it is safe to return to their country, for the most part, if people are asking for refugee status, it's because they believe it's unsafe.

But if they don't apply for the pre-removal risk assessment, if they say they're not interested in it, then the removal officer books a flight for them and they leave in the next few weeks.

● (1205)

The Chair: Thank you.

Madame Faille, five minutes.

[*Translation*]

Ms. Meili Faille (Vaudreuil-Soulanges, BQ): Thank you for being here.

I have asked a number of questions in the committee about the pre-removal risk assessment. We have been given answers to our questions. Last week, we received the latest statistics about the PRRA.

Since there is no appeal division, many unsuccessful refugee claimants ask for a pre-removal risk assessment, or PRRA. Others do not do so because they do not have enough arguments to back up their case. So they make a claim on humanitarian grounds instead. However, the acceptance rate for people who apply on humanitarian grounds after their refugee claim has been denied is so low that their chance of success is quite limited.

One of the concerns expressed by lawyers who help refugees fill out their application for a PRRA is the number of years of experience that the officers have and what makes these people qualified to adequately assess PRRA applications.

We recently received a training manual. We asked for departmental officials to come and tell us how many years of experience these officers had and how many weeks or days of training they had received. That seemed to be a problem for the department, since these officers may not all have the skills and experience needed to carry out these assessments.

We asked the department to indicate to us what type of degree the officers had and when they earned it, without giving us the officers' names. We also asked about their experience in quasi-judicial tribunals, since that is one of the requirement for carrying out a PRRA, as well as the language profile of the officers and the number of decisions they had rendered.

Unfortunately, our request was turned down. In my opinion, the department did not understand that we did not want the names of the officers. We simply wanted to have an exact profile of the officers doing the PRRAs.

You have before you the number of months of experience that the PRRA officers have. In the Montreal office, 18 of the 31 officers have less than two years of experience, which seems worrisome to me. In the files that I looked at, the officers were between 22 and 25 years of age. At that age, people are fresh out of university. I have never seen a board member that was 22 years old. I do not know whether you have ever seen citizenship judges that age. I have never seen anyone that age on a board where it would be possible to acquire the quasi-judicial experience needed by PRRA officers.

I find this troubling, given the importance of these decisions. I would like to know whether this is something you have also seen in your work. It is one of my concerns and it is why I often ask questions about the PRRA.

Ms. Claudette Cardinal: In my opinion, these people are very well intentioned. Those that I have met—I do not know many—want to do their work well, but they do not have enough experience or enough life experience. I have the impression that they have learned a lot of fine theory at university, but, once they are on the front lines, they realize that it is not quite the same thing.

Since the officers do not meet the people seeking a PRRA, they have to rely on documentation. It is impossible to understand someone's situation simply by looking at documents, without having any contact except by sending out a refusal once the decision is made.

It seems to me that lack of experience is a problem. It is not the fault of the officers, who have the best of intentions. It is just that they are very young and they lack training and experience.

● (1210)

Ms. Meili Faille: They may have a university education, but that does not necessarily make them people who have enough experience to make this kind of decision, which has such an important impact on people's lives. Thank you.

[*English*]

The Chair: Thank you.

Mr. Devolin, please.

Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC): Thanks, Mr. Chair.

Thanks for being here today.

I have a question about the RAD. I'm really looking for your personal opinions as people who deal with these issues and live in this world.

Since the RAD was passed by Parliament, there have been many ministers. I can't count that far back, but I think there were at least half a dozen. There have been three different prime ministers and two parties in power, two minority governments and one majority government, almost a whole bunch of political circumstances, and yet it hasn't been implemented.

Could you give your opinion on why you think this hasn't happened?

Mr. Richard Goldman: Well, I think you'd have to ask the ministers and the government. I could only guess that it may be some fear of a perception that we are adding another layer, where if it's not properly analyzed and described, the difficulty is there.

I think if it is explained that, first of all, there's a lot at stake and it can correct human errors, and, second, it could be and was intended to be configured in a way that would in a sense streamline the process and relieve the Federal Court of a great deal of its workload, it's only a question of explaining it to anyone who objects, whether it be the public or a think tank that happens to object.

It seems to me that it makes perfect sense on all levels.

Mr. Barry Devolin: I'm not an expert in this area, but the explanation you gave sounded good to me. It sounded compelling in terms of why it should be implemented and why it doesn't necessarily need to add another layer.

I'm not asking this question from a partisan point of view. I'm asking you very sincerely.

You've had a whole bunch of ministers from all parts of the country, males and females from different parties. They surely would have been briefed on this by their officials, and they must have met with groups such as yours. I find the suggestion that it simply needs to be better explained to them to make them support it is hard to believe, given that it's their job.

I would think when you become Minister of Citizenship and Immigration, this must be one of the first things that lands on your desk. It would be kind of an open issue that you may be asked to deal with.

As I said, I wonder if there's not more to it than that. I quite frankly don't know what it is and why this hasn't happened.

Ms. Claudette Cardinal: Have some ministers not said it would be too costly?

In looking at that one aspect and not looking at what the downstream effects would be if you have to pay here but you're saving down there, it comes to the same thing. It is certainly one of the reasons that has been given.

Mr. Richard Goldman: I also want to be clear that I wasn't saying it has to be better explained to the ministers. I was saying you may have to ask the ministers why they didn't do it.

I was speculating that it may be some fear of a perception that we're adding another layer and it has to be better explained.

Mrs. Nina Grewal: Is there time left?

The Chair: You have time left.

Mr. Richard Goldman: Could I add one thing?

In answer to your question from the point of view of the advocacy community, this has been enormously frustrating.

If we go back to the implementation or even the drafting of IRPA 2002, there was an ongoing dialogue with the department, the minister, and so on.

A type of deal was struck whereby the number of commissioners would fall from two to one. There used to be two commissioners, two IRB members who would hear each case, which in theory reduced the scope for human error. In exchange, there would be a refugee appeal division that would save an enormous number of positions overall or would reduce the number of positions and save taxpayers' money.

It was enormously frustrating to see the part of the deal that reduced a safeguard was implemented but not the part of the deal that put in a new protection.

On at least one occasion, one minister appeared before the Canadian Council for Refugees and said they were not doing it right away, but they promised to do it within a year. The year passed and nothing happened.

At another time, your committee asked the minister to come up with something within six months or to explain why he was not implementing it. I don't believe you ever got a really good explanation.

● (1215)

The Chair: You have about a minute, if you want to use that minute from Mr. Devolin. You had a short question.

Mrs. Nina Grewal: In your submission you appear, to me at least, to be politely saying that many members of the IRB are incompetent and that improvements are needed, including having a better appeal mechanism. Would this be an accurate reading, and if so, are improvements to the PRRA really the most effective solution to the problems facing refugee applicants in Canada?

Mr. Richard Goldman: We didn't say in our brief that many members of the IRB are incompetent. What we said was there is scope for human error, and the wide variation in acceptance rates seems to confirm that the IRB, just as any institution, is open to human error.

Improving the PRRA is one important way of addressing any human error that could be committed in the IRB; however, we have a series of other recommendations, including the implementation of the refugee appeal division.

The Chair: Thank you.

Ms. Chow.

Ms. Olivia Chow: If we were to follow all of your recommendations, we would move the PRRA into the IRB, therefore streamlining the process and using the expertise developed by IRB; establish a refugee appeal division to give the opportunity for refugee claimants to appeal based on facts and law, as recommended earlier; then change the regulation to allow the stay of removal during the Federal Court of appeal—

Mr. Richard Goldman: It would be to eliminate it.

Ms. Olivia Chow: —to eliminate it, yes. So what process does it take in order to change that? Is that a difficult change? Is that a change that's supported by a majority of the refugee advocacy organizations? What process do we need to take in order to make that change? Is it just changing the immigration regulation? How can we do that?

Mr. Richard Goldman: For the first part, implementing the refugee appeal division, you simply have to implement legislation that's on the books.

Ms. Olivia Chow: It's straightforward.

Mr. Richard Goldman: Moving the PRRA to the IRB would require reopening the Immigration and Refugee Protection Act. I believe it's fair to say that would be the majority wish of the advocacy community. The Canadian Council for Refugees, in its presentation on IRPA, at the time was in favour of the PRRA's being handled by the Immigration and Refugee Board.

Ms. Olivia Chow: So if we actually come out with a package deal, so to speak, to do all three of those things at the same time, how long do you think it would take to implement such a process?

Mr. Richard Goldman: I don't think the obstacle is in the mechanism of it; it's in the legislative and political will. However, the first part is already on the books, so I would say it would be better to go ahead with the first part rather than wait for the other parts and do it all together.

Ms. Olivia Chow: Okay, I hear you, because you never know—they might do the second part and then not implement the RAD again, as we've seen earlier.

Moving the PRRA into IRB is really just an administrative change. It doesn't require an order in council legislative change of any kind?

Mr. Richard Goldman: It seems to me it requires reopening the Immigration and Refugee Protection Act, because there are elements of delegation and so on. The whole structure is based on this being done by civil servants, as opposed to by the Immigration and Refugee Board.

Ms. Olivia Chow: I see. So the first step is really to establish the Refugee Appeal Division, then move the PRRA into IRB, then remove the allowance of stay of removal during the Federal Court appeal.

Mr. Richard Goldman: As far as I understand, one and three were always intended to go together. That is, as soon as the refugee appeal division was to be implemented, the regulations were to eliminate a stay of removal after that, even if the person applied to the Federal Court.

Ms. Olivia Chow: I see. Thank you. That is now very clear.

I have just one last question. Has there been any financial analysis through which any of your organizations has come up with an estimate to show, if we are changing the Federal Court so they can't stay, how much money the federal government will save, not necessarily on the immigration side but on the court side, given how expensive it is for the Federal Court to go through all of that process?

● (1220)

Mr. Richard Goldman: That analysis has not been done. It would involve looking at how many unsuccessful leave applications the Federal Court is doing, how many hours the judges and their support staff are spending on average, and multiplying that by their salaries. It seems to me it's many millions of dollars, but the analysis has not been done, to be honest.

Ms. Olivia Chow: Thank you.

The Chair: Mr. Alghabra, please.

Mr. Omar Alghabra (Mississauga—Erindale, Lib.): Thank you, Mr. Chair, and good afternoon to both of you.

Thank you very much for joining us here today. It's great to have such great experts on this topic to help us navigate through this matter.

I'd like to step back even further and look at the whole process broadly. From where I stand and from what I've been observing over the last few years, we have what appears to be a fundamental flaw in how we deal with refugee applications and how the process is being dealt with, from the appeal mechanism to the initial handling, to the time it takes for an individual's claim to be heard. Sometimes it's tempting for an individual who may not have a legitimate claim to abuse the system because it gives them an opportunity to stay here for a very long time and, as you said, appeal to the Federal Court, and do other things.

First of all, what do you think is the fundamental flaw? Is there more than one, or do you not agree that there is a fundamental flaw in how we deal with refugee applications?

Mr. Richard Goldman: I think we have a lot to be proud of in Canada. Whatever criticisms we have, when we put them in an international context we see that there are many positive features. A lot of our comments and criticisms are to build on what we have, which again has many excellent features. Things we have brought forward in the past include, for example, the nomination process for Immigration and Refugee Board members, on which there seems to have been a great deal of progress in the last few years; the absence of the appeal; and a better or more independent means of assessing risk at the end of the process.

On the delay, we think the way we have presented the introduction of the appeal and the absence of a stay of removal to the Federal Court will help to streamline the system and move people ahead more quickly, whether to get landing or to be removed from Canada. On the ground, a lot of the delays come well after the Immigration and Refugee Board, where people are waiting around an uncertain time for their pre-removal risk assessment, and then even for the decision on the pre-removal risk assessment. So for those who are concerned about delays and the cost to social services, a lot of it has nothing to do with the IRB; it comes with just waiting around for administrative decisions.

Mr. Omar Alghabra: I'm glad you brought that up. We have a lot to be proud of in this country, and Canadians feel very proud of how we deal with immigrants and refugees. We recognize our obligations on a humanitarian basis and our obligations to international treaties. Thank you for saying that.

I also agree with your strong recommendations on the implementation of the appeal division. You addressed this throughout the day, but it is important to mention it again. Many people say that the PRRA process is a substitute for the appeal mechanism, that a lot of the failed claimants have that option, and that the officer who does the examination basically reviews the case and looks for opportunities where the IRB judge made a mistake, perhaps to reverse the decision.

How do you respond to these claims that PRRA is an appeal mechanism?

● (1225)

Ms. Claudette Cardinal: It's possibly the only option people have.

I'm sorry, what was your last statement?

Mr. Omar Alghabra: I stated first that I'm in agreement with implementing the appeal division, but we need to respond to the claims that PRRA is already an appeal mechanism and there is no need for the installation or implementation of—

Ms. Claudette Cardinal: But it's not. You said that people look at the IRB decision and think maybe a mistake was made, but they don't do that. The say, “The IRB found this person to be not credible, therefore we don't believe anything the person says”. In answer to either Madame Faille or to Mr. Gravel, I said that a PRRA officer once said to me, “There are many times when we would like to grant these PRRA applications, but we feel that if we do we're saying the IRB didn't do a good job. We're in a bad position, so we say there's no risk and this person can go back home.” That's maybe not the public perception, but that is what's happening.

Mr. Omar Alghabra: We're proud of the work your organization does. We are benefiting immensely from your expertise here today and your statements in general. So I want to thank you on behalf of Canadians for all the work you're doing.

The Chair: Thank you, Mr. Alghabra.

Mr. Telegdi.

Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.): Thank you very much, and thank you for being here.

I don't know if anybody explained, but we were having a debate over in the House on the detainees and the hunger strike. That's why some of us were missing; we were going back and forth.

I missed your presentation, so you might have dealt with this point. I have observed, over time, that it's very rare that a PRRA will stop the removal. Essentially, what the refugee board says seems to carry the day, and any risk assessment tends to be very rare.

I had a case in 1999, and it has really burned into my memory. It involved a state of the former Yugoslavia, Vojvodina. I had this young woman who lost at the refugee board. The thing I'll never forget is that the adjudicator said he did not believe there was collusion among the police, the media, and the government in the former Yugoslavia. This was before NATO took action to bomb. What was even more incredible was that they had this woman slated for deportation back to the former Yugoslavia. She was going to land at 10 o'clock and NATO was going to start bombing at 12 o'clock.

The PRRA said this wasn't a problem, even though this thing had been building up and we all knew what kind of state Milosevic ran. To have the system fail so dramatically on two counts.... One was to have an adjudicator who had no knowledge of the reality of the former Yugoslavia make the statement that there was no collusion among the media, the police, and the state; you essentially had a police state, a dictatorship, and for the PRRA not to pick that up, the dangers that were happening in that region, particularly to the Romanian minority living in the state of Vojvodina....

In terms of the board, I believe we have improved the qualifications of the people who sit on the board to make the initial determination, but we really failed on not having the appeal.

I always thought that whenever we hear refugee cases, we should probably first look at the PRRA, the pre-removal risk assessment, and look at humanitarian and compassionate grounds, because those are the easiest things to deal with. If that was not a consideration, then we could look at going to the refugee board to get their determination.

I think the way the process is set up right now is too long. We were led to believe in committee that if we put in place an appeals division, the process would actually speed up, and that if we made other adjustments as well, we'd have a much better refugee hearing process and it would be much more satisfactory for everybody involved.

Could you comment on that?

● (1230)

Mr. Richard Goldman: You seem to be in complete agreement with almost everything we said, so I want to congratulate you on your excellent analysis.

Some hon. members: Oh, oh!

Mr. Richard Goldman: That's exactly what we are saying. The refugee appeal division should streamline the process, because—we said it once or twice before—by eliminating afterwards the stay to the Federal Court, it would reduce the incentive to apply to Federal Court and streamline the Federal Court's caseload quite a bit.

As you mentioned, I think there has been a great deal of progress at the IRB. Again, going back to what we said to Mr. Alghabra, we have, in many senses, an excellent system, one to be proud of, and it's a question of building on those strengths and seeing where the gaps are now—as you mentioned, the appeal division, the PRRA.

By the way, this may be unnecessarily technical, but the PRRA didn't exist in 1999. It was something else called the PDRCCC, as you may remember. In fairness, one of the positive features of the PRRA was that with the so-called PDRCCC you had to apply for it within 15 days—I think it was 15, maybe it was 30—of your refugee determination, which made no sense at all. There was no check at the end of the process. It came immediately after your refugee claim. So the idea behind the PRRA of having a last check a year or two later, when the person is up for removal, in principle makes a lot of sense, but it all has to do with who carries it out, what their training is, what their independence is, and so on.

Hon. Andrew Telegdi: I see Mr. Ed Komarnicki is sending the message up to the department that we want to have the refugee appeal division instituted.

Mr. Richard Goldman: That's good.

Hon. Jim Karygiannis: And to concur, he shook his head.

The Chair: Okay. That was the response required there.

I'll go to Ms. Grewal.

Mrs. Nina Grewal: Thank you.

If a field applicant does not go the PRRA route, what is the average time of delay between the initial refugee determination proceeding and the claimant's eventual removal from Canada?

Mr. Richard Goldman: I don't have a statistical average. I can talk on the basis of real-world experience of seeing several dozen cases each year.

Again, to recap, if a person applies to Federal Court, that will buy them about three months. Once the Federal Court is finished, or if they don't bother with the Federal Court, then they are looking at anywhere from, I would say, three, four months, at a minimum, to a year, a year and a half, to be called for their PRRA.

Now, if your question was what happens if they don't do the PRRA, they are called into the office, the removal officers says, "Would you like to do a PRRA?" and they say, "No, I don't want to", the removal officer will set a date for their removal because there's nothing else left for them. And if they did happen to file a humanitarian application, that does not suspend, in itself, the removal.

So I guess the answer would be, if they're not going to do the Federal Court, if they're not going to do the PRRA, we're looking at anywhere from a minimum of three or four months to a year, a year and a half, in some cases.

● (1235)

Mrs. Nina Grewal: Okay, thank you.

The Chair: Thank you.

I want to thank the witnesses for coming today and making your presentations, your contributions. We'll be doing a report, of course, and your contributions will definitely be taken into consideration.

Thank you.

Ms. Claudette Cardinal: Can I just ask, do you have a sense, not in terms of necessarily our recommendations but in terms of the PRRA process, of how long you will be in analyzing it and seeing if there are some changes you could do, or if you're going to leave it as is, or recommend that it...?

The Chair: Our recommendations?

The last meeting we have on refugee issues will be March 1, so the draft report on refugee issues will come shortly thereafter, sometime around the middle of March, or March 20 maybe. We do have other witnesses, organizations, to come here, but the last one we have on our list would be for March 1. After that, of course, the analysts have to be given time to do the report, compile what we've heard, and make various recommendations at that time. It would probably be the latter part of March.

We'll just suspend for a moment and wait for our witnesses to move out before we get into a couple of motions we have to deal with.

Thank you very much.

● _____ (Pause) _____ ●

The Chair: Could we bring the members back to the table? We have two motions to deal with.

The first one is from Mr. Telegdi, “That the 10th report”—

Hon. Jim Karygiannis: I have a point of order, Mr. Chair. Certainly this is something we can discuss after we discuss the two motions. There were three motions. I submitted something in writing to the clerk, and unfortunately, that's not in front of us today. We should be discussing that at the end of discussing the motions. I'd like an opportunity to process that one.

The Chair: Okay. First of all, we'll deal with Mr. Telegdi's motion, and then your motion.

Mr. Telegdi's motion is:

> That the 10th report (Citizenship Revocation) and the 12th report (Updating Canada's Citizenship Laws) of this Committee in the 1st session of the 38th Parliament be adopted as reports in this session; and that the Chair present the reports to the House.

Any discussion?

An hon. member: He's going to have to move it.

● (1240)

Hon. Andrew Telegdi: I officially move it.

The Chair: Okay, sorry. So now we'll go to discussion.

Mr. Komarnicki.

Mr. Ed Komarnicki: I'm making a point on this type of motion. I think you made it in the past and make it again.

The reports that Mr. Telegdi would like to put in as reports before the House have already been recognized as reports by the House. There are conclusions and recommendations made by the committee that are available to anyone.

However, to say that we should adopt those reports of that committee as reports of this committee and send it to the House as if we ratify and approve everything in the report, which is what he's asking, I think is unfair to this committee. It certainly is unfair to individual members like me who were not here at the time when the reports were put together. For instance, Mr. Rahim Jaffer was there, and certainly he can decide. If he decided then to support it, he may well now.

The point of the matter is there are only four members of that committee on this committee. Certainly I and others were not parties to that. When you hear witnesses, you certainly have the opportunity to cross-examine the witnesses, you have the opportunity to ask them questions, and you have the opportunity to have input into the process and the recommendations themselves.

I don't think it's fair to have those reports, which are legitimate reports, then become adopted by this committee as if the committee heard and actually had the opportunity to intervene. I know one of the issues in the tenth report was of course the burden of proof that was required for revocation of citizens, and there's a fair difference of opinion by some as to whether it should be on a balance of probabilities or beyond a reasonable doubt.

Certainly some witnesses suggested even a different burden that was specified during those hearings. I think the words they used were “clear and convincing evidence”, which is yet a different standard. Not to have input, in a fashion, I think, as appropriate, is just not something we should get in the habit of doing. Those reports are there; they speak for themselves. But to get this committee to adopt it I think is wrong in principle now and it would be wrong in the future. If we want to have further hearings, then let's do that.

For that reason, I would certainly oppose the motion, although there are many aspects of the reports—and I've looked through them—that I think are good recommendations and fair recommendations. They are not something one can argue against. Overall, it's not the way to do business, and I think this motion should be withdrawn.

The Chair: Okay.

Mr. Telegdi.

Hon. Andrew Telegdi: Thank you very much, Mr. Chair.

I might point out that the citizenship and immigration committee in the last Parliament made a study of citizenship issues its number one priority. We did it all in the total expectation that we were going to be able to pass new legislation. Unfortunately, the untimeliness of the election interfered with that.

An hon. member: One that was called by the Conservatives.

Hon. Andrew Telegdi: Let me say to the member that Diane Ablonczy, who used to sit over here, was a very able critic for the committee, and a very good lawyer at that. I might also mention that Mr. Komarnicki, as well as all the Conservative members, were in support of the report.

We have five members of this committee who served on the last citizenship and immigration committee: Ms. Grewal, Mr. Jaffer, Ms. Faille, Mr. Siksay, and me. I might point out that any division that existed on that committee was on the Liberal side, even though the majority of the Liberals were in favour of both those reports.

The other point I would like to make to the parliamentary secretary is that this was a very expensive process. We travelled across the country. We hit every capital. We hit Montreal, Vancouver, and, for the very first time, we also went to Kitchener–Waterloo as a parliamentary committee, and we also heard many witnesses. This follows on the work of this committee that goes back a number of parliaments. There was a really strong feeling that we need to update the Citizenship Act, which right now is at its six-year anniversary.

Going back to the 10th report, which Mr. Komarnicki was referring to, I might mention that it received the concurrence of the House, without debate. That means it was unanimously adopted by the House, and certainly Mr. Komarnicki was a member of that House. So I really see no problem in accepting that report, and I think it can enhance the work that we want to carry forward.

● (1245)

The Chair: We have other people who want to speak on this.

Mr. Devolin, then Mr. Siksay.

Mr. Barry Devolin: I'm not addressing the specifics or the value of this report. From a process point of view, could we draw a report that was tabled in the 31st Parliament and table that again? If the argument is being made that it's appropriate to draw any report that was ever produced in any previous Parliament, if there's nothing inappropriate about doing that....

The fact is that some or all of the members weren't around at that time, and the facts may have changed and the world may have changed. Notwithstanding those things, if it's still theoretically appropriate to do that, I guess he can make that argument.

As someone who wasn't a member of the committee and who wasn't a part of this process, certainly using the line of rationale that I understand is being used, then this could be drawn from a Parliament ten or fifteen years ago. Are we to somehow rubber-stamp that?

This is not a case of putting something on the public record. This is already on the public record because it was tabled in the last Parliament. I think this is different from committee work that started and was unfinished, and which we would risk losing if we didn't pursue it. That was the argument the last time, but I think it's a different argument from this argument.

The Chair: We really need to have everyone speak on this before we go to a vote on it, okay?

I have Mr. Siksay, and lastly Madame Faille, and then we'll call for the vote.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Chair.

I want to make it very clear at the beginning that I unequivocally support the two reports that are mentioned in this motion, but I do have difficulty with the process. I don't think there's anything out of order about the motion, but to hoist those reports from the last Parliament and ask this committee to approve them and submit them as reports of this committee without even having had the opportunity to discuss them is I think very unfair to the members who are new to the committee.

It's a very different circumstance to take evidence that was heard by the committee in previous parliaments and submit that, because then the members can review that evidence and make judgments on that evidence. But to actually take the report and the recommendations and, without an appropriate or thorough discussion of them, present those to this Parliament as the work of this committee could misrepresent the committee.

At this point, I wouldn't be able to support this motion as it stands.

The Chair: Last, but not least, we have Madame Faille, and then we will vote on the motion.

[*Translation*]

Ms. Meili Faille: Having been on the committee when these reports were adopted, I can say that nothing has changed in the Citizenship Act. I do not think anything has changed regarding the testimony either; on the contrary, we have learned even more. I think that these reports can be important for the study that we are doing on the citizenship issue.

Since the procedure is very much in order, the motion is not a problem. However, I agree with the content of these reports and I would like them to be reused in the committee's work.

[*English*]

The Chair: I said Madame Faille would be our last speaker on that, so I'm going to call for the vote.

Hon. Andrew Telegdi: I'm going to challenge the chair if he calls for a vote on this.

The Chair: Do you have another submission?

Hon. Andrew Telegdi: I do. If the issue is that we want to have some time to debate the conclusion of the report, I will put the motion on the table until we have the opportunity to do that.

● (1250)

The Chair: Will you say that again?

Hon. Andrew Telegdi: Get the report and put it on the table. I'll table the motion until we have such time to have an opportunity to discuss the report. We can do it in conjunction with the—

The Chair: So you want to stand the motion.

Hon. Andrew Telegdi: Yes, until we deal with the citizenship issues and the testimony, and we'll introduce that for debate.

The Chair: We need consent to stand the motion.

Some hon. members: Agreed.

An hon. member: Mr. Chair, I had my hand up to speak on this.

The Chair: No, we're not playing games here. The motion has been allowed to stand.

Hon. Jim Karygiannis: I'd like to challenge the chair on that.

An hon. member: The committee made the decision, not the chair. You can't challenge the chair on that.

The Chair: Let's go to the next motion. Mr. Karygiannis is giving notice of his motion.

Would you like to speak to that, please?

Hon. Jim Karygiannis: Mr. Chair, last week we heard from a variety of folks, especially on the third safe country agreement. Certainly, it doesn't seem to have been working.

One of the things we can do as a country is go forward to the UNHCR and have the minister speak to it, to set up precedents and set up guidelines for the rest of the world to look at and follow, and also to have an ombudsman to monitor the cases and provide guidance to the rest of the countries.

The Chair: That's your motion, and you're moving that motion.

Is there further discussion on the motion? No?

I'll call the question on the motion.

(Motion negatived [See *Minutes of Proceedings*])

The Chair: The meeting is adjourned.

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