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Chair

Mr. Norman Doyle

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● (1005)

[*English*]

The Chair (Mr. Norman Doyle (St. John's East, CPC)): Maybe we will get started. It's a little after 10 o'clock. We do have a quorum.

We have our first group of witnesses—well, group is the wrong word; I don't believe two constitutes a group. We have with us today, Jenna Hennebry, assistant professor, departments of communication studies and sociology, Wilfrid Laurier University. Jenna, I think we met you in Toronto.

Also, we have François Crépeau, professor of international law. Mr. Crépeau was on our video conferencing last week and it didn't quite work out. Sorry about that. It wasn't your fault. I think the problem originated on this end. We don't even know yet how it came about. In any event, we're not anticipating any problems today—thank heavens.

Welcome to both of you.

It is Monday, and people travel on Monday, trying to get their flights and what have you. Some people might be a little late, but I think we can get started. We have a quorum.

I'll put it in your hands. I imagine you both have opening statements to make. Whoever is going first, please feel free to begin on consideration of part 6, Bill C-50.

Go right ahead.

Dr. Jenna L. Hennebry (Assistant Professor, Departments of Communication Studies and Sociology, Wilfrid Laurier University, As an Individual): Thank you very much for inviting me here. Although I have a number of concerns that I want to bring up with respect to Bill C-50—in particular part 6, obviously—I'm going to focus on a population that I've spent a great deal of time researching and a on set of migration issues, focused on temporary migration. I want to do this because I believe Bill C-50 could have significant consequences with respect to temporary foreign worker programs and temporary migration in general. I have quite a number of concerns, but I will pour through them kind of quickly, and then we'll have a chance to come back to particular points I make, if you would like further information.

I believe the budget allocations for Citizenship and Immigration and the proposed changes to the IRPA do not address the backlog but instead encourage temporary migration. I see this taking place because the foreign worker program is a faster alternative to bringing in permanent immigrants, but it circumvents the points system. I believe this heightens the possibility for discrimination on the basis of race, country of origin, gender—since the majority of foreign workers are men—political affiliation, sexual identity, etc.

With Bill C-50, more employers may turn to the foreign worker program as an alternative, even more than they have in the last year or so. I'll speak to that in a minute. Employers, I think, will turn to this program instead of waiting, and they are already tired of waiting for the government to admit many high-skilled and low-skilled permanent applicants waiting in the backlog, as they have put it, many of whom are family members of immigrants who are already in Canada. I find it interesting, with such argued labour shortages, that we see the backlog as a problem as compared to a potential resource for the Canadian economy.

I think it's interesting that in 2007 we didn't meet our permanent immigrant targets, while our foreign worker program and the number of temporary foreign workers increased dramatically. We saw more than 150,000 foreign workers entering during that period of time.

I think what's disturbing, actually, is that there's no cap on the number of foreign workers admitted through the foreign worker program, and obviously there can be no backlog because it's employer driven. It's an entirely employer-driven program. According to Human Resources and Social Development Canada, we've seen a 122% increase in employer requests for low-skilled workers, as well as a 39% increase for high-skilled workers, between 2005 and 2007. We're going to see this pressure increase, and if we have a system that is basically pushing employers to look for foreign workers instead of waiting for workers to be processed, we're going to see that number increase.

I also believe that Bill C-50 enables increased private and economic interests driving policy in immigration. As I've mentioned, I think it encourages temporary foreign workers and therefore an employer-driven immigration system. It also creates the potential for a greater number of third-party recruiters and employment agencies, who already play a significant role for employers by locating foreign workers and setting up their contracts. There's a lot of concern about these agencies being unregulated and basically a potential for greater exploitation and criminal behaviour as well. In most provinces, these organizations are not regulated. Certainly, that is the case in Ontario.

There has also been much discussion about using the provincial nominee program in conjunction with the foreign worker program. Although this does provide a small window of opportunity for workers to gain access to Canadian residency, it does nothing to remove private interests from determining who will be Canada's immigrants. It also does nothing to regularize it, standardize it, such as providing a three-year period across the board for all workers. It does vary by program, but generally there is no direct path for foreign workers. This basically means that a foreign worker can be working in Canada for two or three years, and then at the point at which they conclude their contract and they want to stay in Canada permanently—maybe they have a Canadian spouse, or fiancé, as in my case, or they may even have a job offer—under Bill C-50 the minister would be under no obligation to even consider their application. I think that is problematic on a couple of levels.

I think Bill C-50 heightens the vulnerability of foreign workers because of that very problem where temporary foreign workers basically do not need to apply for permanent status because they may only be considered as applicants if the minister deems it so—this comes from my reading of proposed section 87.3, where it will be up to the minister to decide whether to consider that foreign worker or not.

I think it's important to note that many foreign workers apply for refugee status after working in Canada for a number of years, particularly the low-skilled foreign workers. Also, quite a number, if they don't receive any other status, we believe go undocumented or basically overstay, and this leads to a real problem, because we don't see appropriate monitoring and statistics and tracking, so we don't really know where this population is and the kinds of health risks this may pose. With respect to foreign workers, there are different procedures for evaluating health and health screening—with respect to temporary foreign worker programs—than there are for permanent immigrants. It depends on length of stay, and of course there's nothing to ensure that length of stay doesn't in fact turn into a much longer time than anticipated.

With respect to health, one more point I want to make is that really I'm concerned that the minister has not, or Bill C-50 has not, considered the impacts it might have on health screening of immigrant and foreign worker applications. I think it's important to recognize also that foreign workers, especially those in low-skilled categories, will have been foreign workers in many other countries prior to the point at which they enter Canada. This may be a different factor than immigrant populations, so you may be talking about a different set of health risks and a different set of health considerations.

I think, overall, Bill C-50 poses significant challenges to Canadian multiculturalism and social cohesion. As I've said, the foreign worker programs encourage a hierarchical system based on country of origin and often gender, and moving to a system that encourages more temporary foreign workers is problematic. I also think there are a number of challenges if you have a combination of populations working together, with foreign workers, immigrants, and Canadian citizens vying for similar jobs and having difficulty. If you have an immigrant wanting to sponsor a family member and not being able to do so, and instead they see a foreign worker coming in temporarily to fill jobs, I think that creates conditions ripe for conflict, ripe for racism, and potential problems for Canadian multiculturalism.

● (1010)

The Chair: Thank you.

Mr. Crépeau.

[*Translation*]

Prof. François Crépeau (Professor of International Law, Centre d'études et de recherches internationales de l'Université de Montréal (CÉRIUM)): I will be speaking French.

[*English*]

But I can answer questions and reply to comments in English, if you so wish.

[*Translation*]

I had an opportunity to read the letter addressed to you by the Barreau du Québec, as well as the one from the Canadian Bar Association. I am part of the Barreau du Québec's Immigration and Citizenship Advisory Committee. I was not involved in its work, because I was abroad, although I do share its concerns. Members of the Barreau du Québec will be appearing this afternoon, if I am not mistaken. So, I will let them address the specific points they raised.

Since you have invited me to appear as an individual, I will be making my own personal observations. I would like to talk about the context and principle associated with the rights of migrants. At the present time, there is a strong tendency for people to believe that foreigners have fewer rights than the rest of the population, and that their rights are not as deserving of respect as those of others. That applies, not only in Canada, but to most countries that receive immigrants. That strong tendency is apparent in government policies, the media and in society in general. I think it warrants discussion.

Foreigners have rights. Under the Canadian Charter of Rights and Freedoms, foreigners have the same rights as other individuals protected by the Charter, except the right to vote, to be elected to office, to be educated in the language of the minority, and to enter and to remain in Canada. All the other rights apply to everyone, and that includes anyone in Canada, as well as foreigners. Foreigners are no less human than we are when it comes to protecting their fundamental rights. In that respect, the fact that they are not allowed to enter and remain in Canada does not mean that we can do whatever we like with their file. We cannot just treat them any way we like, because we are talking about immigration.

Since the 1950s, administrative law, which includes immigration law, has become so sophisticated that it is now at least as likely to violate fundamental rights as is the criminal law. When I was in school 30 years ago, we talked about the duty of fairness and procedural justice. The legal guarantees established in administrative law were intended to favour those subject to that law. With the coming into force of the Canadian Charter of Rights and Freedom in 1984, the concept of fundamental justice was introduced, a concept that obviously applies to the right to life, security and freedom for all, be they foreigners, citizens or permanent residents.

Under a progressive concept of rights and freedoms, we developed for ourselves, here in Canada, a set of individual guarantees that force the government to be accountable for its actions. They are the duty to give the reasons for its decisions, and the many forms of recourse provided under the legal system for all those who are subject to laws and regulations, either citizens or foreigners, so that there is an opportunity to review administrative decisions that affect them and affect their rights. Among other things, the Charter forces the government to justify each and every decision which is likely to impact the rights of those affected by them.

However, there is a tendency to feel that foreigners are not entitled to that treatment when it comes to immigration. There is a tendency to weaken and casualize their legal status. One notes that, under the Immigration and Refugee Protection Act, immigration law is the only area of federal law where practically all the appeal mechanisms have disappeared. They're all gone. There is judicial review, but only with leave. Appeals by right on matters of fact have disappeared. Yet, where refugee protection is concerned, questions of fact are fundamental. Now there is never any possibility of review.

Under the criminal law, two levels of appeal are deemed to be perfectly normal, but under immigration law, not even one is available. The fact that the Immigration and Refugee Board still does not have an appeal division clearly illustrates that fact. There is no avenue of appeal on the facts, and yet this is the only decision in Canada that can result in the death, torture or arbitrary detention of a person. Over the last 20 years, it was not deemed to be a normal thing to create an appeal mechanism to ensure that the facts have been appropriately assessed.

● (1015)

Bill C-50 also contains a number of provisions along the same lines. One provision makes it possible to render no decision—either positive or negative—which, theoretically—we will see whether the courts go along with this—would have the effect of prohibiting judicial review. Because there would have been no decision, there could be no judicial review. It is felt that the affected party is not entitled to judicial review.

The same applies to the Minister, in terms of not rendering a decision on applications made outside of Canada on humanitarian grounds, and to the officer, in terms of not issuing a visa, for the simple reason that no decision has been made.

The Minister also has the option of issuing instructions that will establish priorities regarding the decisions to be made on individual files. However, these instructions will not go through the normal process of discussion and consultation—which is what occurs in your Committee, when it studies bills or regulations—put in place to ensure that such bills and regulations consider the public interest. So, these instructions will not be subject to the normal process of accountability.

Based on the premise that underlies all of these issues, a foreigner will not be entitled to the same guarantees as a citizen, is not worthy of the same protection as regards his rights, and can be treated in a discretionary, even arbitrary manner—one that we would consider unacceptable were it to apply to us. I am here to challenge that premise.

Foreigners have the same right to dignity as we do. When it comes to the processing of their applications, they should be entitled to the same procedural guarantees. Of course, they do not have the right to enter and remain in Canada. But, as regards the process for deciding to deport or remove someone, or refuse a visa application or refugee claim, they should be entitled to the same procedural guarantees that we would demand for ourselves in similar circumstances. Why? Well, because those procedural guarantees ensure the credibility of the system in the eyes of citizens and all those who are subject to it. People can believe in the system because it provides an avenue of appeal with respect to individual decisions, as well as a consultation process, such as this one, regarding instructions.

● (1020)

[*English*]

Justice must not only be done; it must be seen to be done.

[*Translation*]

It is important to recognize that this is a matter of fairness, and not just administrative convenience, particularly since foreigners are already much more vulnerable because of their status and violations of their fundamental rights. My colleague referred to this earlier.

That was what the Supreme Court said in the Charkaoui case, after successive ministers had claimed that the provisions of the Act complied with the Charter. I think it's a shame, particularly where immigration matters are concerned—although this is not the only area—that we have decided to leave it up to the courts to remind us of the importance of protecting fundamental rights, as occurred with the Aboriginal people, inmates, gays and lesbians.

Today, the same applies to immigrants. The courts will be the ones telling parliamentarians and the government what they have to do. That projects an image of Canada to the rest of the world that, in my opinion, is extremely counterproductive and certainly inconsistent with the image it has had in the last 30 years.

If one sees democracy as a complex relationship between political representation, the protection of fundamental rights and the rule of law—in other words, access to avenues of appeal—it is quite clear that immigrants, whether we are talking about temporary workers or illegal alien workers, do not benefit from political representation.

What do they have left? Protection of their fundamental rights and an avenue of appeal in a country that believes in the rule of law. If they are denied that kind of due process, as well as any discussion of instructions that affect them, that means there is no democratic guarantee in place to protect them. From that standpoint, I think there is a need to provide all of them, and particularly specific categories of immigrants who are vulnerable, a status that includes specific legal guarantees.

In reality, we have developed for ourselves a society that tries to increasingly abide by the rule of law. The Immigration and Refugee Board is the top administrative tribunal in Canada in terms of the number of cases it deals with. It is an important group. I find it very disturbing to note that, for a category that includes many people in Canada, we are establishing a form of treatment that we would not accept for ourselves in similar circumstances and which takes us back several decades in terms of our administrative law.

Thank you.

[*English*]

The Chair: Thank you, Mr. Crépeau.

I will now go to Mr. Telegdi, who has some comments to make.

Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.): Thank you very much.

I very much appreciate your comments on fundamental rights and having the courts, at the end of the day, set the standards on the security certificate process. As you know, it was put in there for people with no status. Then it was put in there for immigrants. Then an attempt was made to put the security certificate process in there for citizens as well. I believe it was either Bill C-16 or Bill C-18.

I really am troubled by this whole notion of having more and more temporary foreign workers instead of people who come as citizens to build the country. Historically, this country was built by people with varying levels of skills. Earlier on, the fewer skills you had, the more desirable you were. I remember the men in the sheepskin coats who were brought over to tame the prairies. Now, of course, if you happen to be one of those people, we don't want you—except to bring you in under servitude conditions.

If you watch the evolution from slavery.... When you're tied to a single employer, when you're economically disadvantaged, when you really have no options where you come from, you are essentially put into the position of servitude. It really bothers me that we as Canadians would think about going down the route to that kind of a society. I just find it incredibly offensive that more and more dependence is put on this instead of bringing people to build the country.

I wonder if you have some comments on that.

● (1025)

Prof. François Crépeau: First, as you said, this country has been built by many types of people. For my part, I always think that we need a lot more refugees than we have now, and we need a lot more refugees because refugees will be thankful to have been saved from their plights in their own countries or from lingering in camps and would be happy to be given the opportunity to start new lives for themselves and their kids. I think that's a good starting point. Historically, even though they weren't called refugees and didn't come as refugees but as settlers, the Doukhobors were happy to be able to live in a land where they were free to practise their religion. To me, that's a key element.

I think we need to answer diversified needs. Entering as a temporary worker is not in itself a bad way to enter the country if conditions are in place so that it doesn't become servitude, as you were saying. That may mean a few elements are needed to give them, first, a legal status with legal guarantees so that they can protect themselves in the vulnerable conditions into which temporary work puts them, and second, a way out of that status that offers them some hope.

So there are two points. One is that we need legal guarantees; we need to make sure they are not at the mercy of the whims of the employer. We have seen that.

I think in our decision-making process we should listen a lot more to what sociologists have to say—and I'm a lawyer. I think sociologists tell us the level of vulnerability of these people. They tell us that many live-in caregivers, for example, simply don't complain; they just grind their teeth and wait until it's over so that they can get permanent residence, and then they move on.

We know that at the bar. We've had an issue at the bar of Quebec in recent years. The issue is that immigrants don't complain when their lawyers do something wrong. They simply don't. They'll find another $2,000; they'll find another lawyer, and they'll give $2,000 to another lawyer. They don't complain. The mechanism for complaints against lawyers doesn't work with immigrants, because they're vulnerable and they don't think they're going to win and they don't want to take the risk of sticking their heads out. That's a big issue, and we have to understand that level of vulnerability and provide the guarantees that go with it. That includes recourses. That includes the possibility of going on appeal. That includes making sure NGOs have the tools to defend individual people. That's the first point.

That may include, for example, live-in caregivers, if we take that example of vulnerable people. Many NGOs are rejecting the program altogether, although it serves a purpose and many families are happy to have a live-in caregiver. What we need is a lot more control. It's true that it means spending more money, but we need a lot more control and we need to have applicable laws. I'm shocked every time I have to say that the laws on job safety in Quebec don't apply to live-in caregivers, and I think that's a shame. We need a lot more guarantees to protect them while they are here.

● (1030)

The second point is that we need to give them a way out—and upwards, not downwards. It's not simply saying they can go back home with the little money they've made. We could think of the live-in caregiver program as a model here. For example, for temporary workers we should somehow put in a rule similar to the one we use for citizenship: if you've lived in Canada for, let's say, a total of three years—that makes 1,093 days, or something like that—in the past five or six years as a temporary worker, you have access to permanent residence. You'd need security checks and health checks and everything, but you'd have access. You've given this country the edge in terms of competitiveness and you've participated in making this country more wealthy and more prosperous—well, we are going to recognize this. You haven't broken any laws and you've been a good citizen, so we're going to give you a way upward in this society, because you've shown that you will be a good citizen. That would probably empower these migrants, who would say, “I can become a citizen in this country. I'm going to make sure, if we have proper controls, that my status is respected.”

The Chair: Thank you.

I'll have to hold people to their seven minutes, because everyone is on the list and they want to get on.

Mr. Carrier.

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): Thank you, Mr. Chairman.

Good afternoon and welcome to you both. Your presentations were very interesting. It's great that we have at least a half an hour to talk with you. There could be a lot of questions.

I would like to begin with you, Ms. Hennebry. I missed part of your presentation because you were speaking very quickly and the interpreter had trouble following you. Do you understand French?

Dr. Jenna L. Hennebry: I do, but I don't speak it very well.

Mr. Robert Carrier: Mr. Chairman, we can just add one minute to my speaking time, so that Ms. Hennebry has time to be equipped with an interpretation device.

I was saying that I missed part of your presentation, because you were speaking very quickly and the interpreter had trouble following you. I am going to speak a little more slowly to give you an opportunity to follow as well.

You referred to the clause in Bill C-50 that is problematic with respect to multiculturalism. The fact is that, as regards multiculturalism, Canada is a country of refuge for a number of foreign communities.

If this bill were to grant the discretionary powers, particularly as regards the selection of temporary workers, why might this lead to conflict, in your opinion? Is there not already an issue with integration in Canada? Do you see certain problems arising as a result of a specific provision of the bill?

[*English*]

Dr. Jenna L. Hennebry: With respect to multiculturalism, there are a few key concerns with a continued increase in temporary foreign workers. As it stands right now, many of those workers find themselves in vulnerable situations. They don't have access to the settlement services that are in place for immigrants. They are largely excluded from Canadian society, and they find it very difficult to integrate, because they're not really supposed to; they're supposed to come here, do the work, and then leave. That's predominantly the case for all of the low-skilled foreign workers I'm talking about.

So that imposes significant problems already, without Bill C-50. With Bill C-50, my concern is that we'll see an expansion of that, and there would be nothing to address the present problems that are already a real concern and have been voiced by NGOs, migrants, and other researchers.

The other point is that with the discretionary powers, you have a situation where foreign workers don't have any particular path for permanent residency. Let's say they do apply. They are often without their families for prolonged periods of time. They're seen as workers, not immigrants or families—potentially not as people connected to others. I think for multiculturalism, if you have people staying in a country for two or three years or longer—in a seasonal agricultural worker program, the average is between eight and ten years to participate in the program; those people don't integrate into society. It creates more conflict, because you have groups that are basically outside the system. That's a real problem.

Also, foreign workers cannot sponsor their families, and there would be no obligation with Bill C-50 for the minister to consider that either.

● (1035)

[*Translation*]

Mr. Robert Carrier: I will stop you there, because my time is going by quickly.

Why are you particularly referring to temporary workers? The bill does talk about discretionary powers in terms of accepting applications for permanent residency. However, it does not refer specifically to temporary workers which, I grant you, are already an issue. The discretionary powers would also apply to applications for permanent residency. It will be a discretionary choice, but that choice will not necessarily relate to new temporary workers.

[*English*]

Dr. Jenna L. Hennebry: I have a couple of concerns. One is that intentions are not law. The intentions may very well encourage certain groups to stay permanently. But would there be a fair mechanism to do that? Would it come down to present-day security concerns, or the minister's concerns about someone's politics? We don't know, and I would be concerned about that because it would not be written legally.

The other problem I have is that this is consistently being cited as a way to increase labour market responsiveness. This labour market responsiveness is being done as a temporary way to bring in people to feed that, instead of using permanent immigration to channel people into the labour markets.

[*Translation*]

Mr. Robert Carrier: Thank you very much.

I would like to use the little time remaining to put a question to Mr. Crépeau, who also made a very interesting presentation. I'm sure we will have occasion to come back to it.

As regards international law or the rights of all humans, you say that foreigners and immigrants have fewer rights, or none at all—or, rather, that they have rights, but that those rights are not respected under the current law. Do you feel that the large number of people applying for permanent residency, whose applications have yet to be reviewed, who have not been selected and who could easily be ignored under this bill which provides for discretionary selection, do indeed have rights, even though they are not yet immigrants? Is it your view that their innate rights are being denied them? I would be interested in hearing your definition.

[*English*]

The Chair: Give us a brief response, please.

[*Translation*]

Prof. François Crépeau: According to the current rule—even before this bill came about—applications are reviewed in the order in which they are received, and then a decision is made. We are all familiar with that way of operating because it's the rule that we learned when we were in kindergarten, and it's called "wait your turn". Underlying that is a rule of elementary justice whereby all applications should be reviewed.

What is of concern to me is that we will have a system where instructions will not have been debated collectively or democratically in different forums. They will be made on a discretionary basis and will change that rule. It is probable that a large number of people will never receive a response to their application. There will be no rule, and yet people will spend their time and money to make an application. They will try to imagine a different future, based on the fact that they have made an application, but they will never receive an answer, because this bill makes it possible for them not to be given an answer.

In my opinion, that is a violation of an individual's right to be treated with dignity, even when that individual is from another country. Of course, there is no ability to exercise a right within the meaning of the Charter if you are outside of Canada, but as far as I am concerned, it's a question of elementary dignity.

[*English*]

The Chair: Thank you.

I'm sorry to interrupt, but we have at least three more people.

Mr. Komarnicki.

● (1040)

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

I find it interesting. We were on the road studying temporary foreign workers and people wanted to get into the specific issue of Bill C-50; now we're studying Bill C-50 and people want to get into the issue of temporary foreign workers. It's an interesting process.

Ms. Hennebry, when we looked at legislation, the principal purpose behind the bill was to ensure that people with the skills we need could be brought in and processed more quickly. It would seem to me that this would mean fewer temporary foreign workers. Are you suggesting that there would be more, or do you agree with me that there would be fewer temporary foreign workers if we implement Bill C-50?

Dr. Jenna L. Hennebry: As I read Bill C-50, there's no guarantee that they will be foreign workers or permanent immigrant applicants. My concern is that you have an increase in the number of people coming in as temporary foreign workers, with the promise of being considered for permanent residency, but you have nothing to say that this is actually going to take place.

Mr. Ed Komarnicki: There are three categories under the Immigration and Refugee Protection Act: the economic class, or the skilled or less skilled worker class; family reunification; and refugees. It would seem to me that having more skilled workers coming in as a result of Bill C-50 would serve to reduce the number of temporary foreign workers. Would you agree?

Dr. Jenna L. Hennebry: Well, I think we see the increase in temporary foreign workers in the low-skilled sector, which is not necessarily what's being targeted with the skilled worker class as they come in through the permanent—

Mr. Ed Komarnicki: Specifically, under proposed section 87.3, where do you see the reference there to the temporary foreign worker? That's not the impression I have. Perhaps you could tell me where in section 87.3 you get the impression that it relates to temporary foreign workers, or what specifically in that section tells you that.

Perhaps while you're looking at that I can direct a few comments to Mr. Crépeau and come back to you.

Mr. Crépeau, with respect to the instructions themselves that are issued by the minister, would you agree with me that those instructions would have to be charter compliant or would be subject to compliance with the charter?

Prof. François Crépeau: I hope so, yes, absolutely. The issue is how you can guarantee that.

Mr. Ed Komarnicki: The first test to the instruction would be whether or not it's charter compliant, and then those applying the instruction, which would not be the minister in a case-by-case basis but the actual individuals in the department applying the instruction, would have to apply it in accordance with the charter, would they not?

Prof. François Crépeau: Sure.

Mr. Ed Komarnicki: So both the instruction and the application to process by the department would have to be charter compliant. Would you agree?

Prof. François Crépeau: Yes.

Mr. Ed Komarnicki: Then would you agree with me that Bill C-50 does not apply to refugees or other protected persons?

Prof. François Crépeau: I don't see that in here, except for refugees who would be selected abroad with permanent resident visas. There would be a possibility of making these visa applications a priority—give them a priority if we want to—or putting them last on the list.

Mr. Ed Komarnicki: Let me just narrow this down. What you're saying is that refugees selected abroad are not affected by Bill C-50; Bill C-50 exempts the refugees or protected persons from its application. Agreed?

Prof. François Crépeau: Yes.

Mr. Ed Komarnicki: And are you saying that refugees making applications within Canada are not excepted within this Bill C-50 legislation?

Prof. François Crépeau: That's a good question. Do you mean when they have been recognized as refugees by the IRB and then they apply for permanent residence?

Mr. Ed Komarnicki: My question is simple. Are those in-Canada applications—

Prof. François Crépeau: Good question. I hadn't thought of that.

Mr. Ed Komarnicki: —exempted under Bill C-50 or not? Do you know?

Prof. François Crépeau: I don't know. I wouldn't see why they would be exempted. I'd have to check—

Mr. Ed Komarnicki: Okay. While you're thinking on that, for both the instructions to be charter compliant and for the application of the process under the instruction to be charter compliant, it would have to be non-discriminatory, not based on race, religion, or ethnicity. Would you agree with me on that?

● (1045)

Prof. François Crépeau: That would be one element for sure, yes.

Mr. Ed Komarnicki: Going back to Ms. Hennebry, have you had a chance to look at the specific section, 87.3, that you say refers to temporary foreign workers?

Dr. Jenna L. Hennebry: Yes. Here I was referring not to the fact that this leads necessarily to an increase, but that right here in this section we basically have the statement that, in the opinion of the minister, the applications can be processed. So my concern would be —

Mr. Ed Komarnicki: Wait just a second. Specifically, which portion of section 87.3 are you referring to?

Dr. Jenna L. Hennebry: In section 87.3 you've got applications for a permanent resident status under subsection 21(1) or temporary resident status under subsection 22—

Mr. Ed Komarnicki: Where does it refer there to temporary foreign workers? What you mentioned to me doesn't specify temporary foreign workers.

Dr. Jenna L. Hennebry: No, this isn't specifically about foreign workers; this is about people applying to come in—

Mr. Ed Komarnicki: Okay, but I'm specifically asking you what part of section 87.3 refers to temporary foreign workers, because that's what I thought you were alleging.

Dr. Jenna L. Hennebry: It says "applications for visas or other documents", work visas essentially, or temporary resident status.

Mr. Ed Komarnicki: And which wording are you using?

Dr. Jenna L. Hennebry: As work visas or as temporary resident status.

Mr. Ed Komarnicki: And where are you seeing that? In which part of section 87.3?

Dr. Jenna L. Hennebry: The first one, 87.3(1), reads "This section applies to applications for visas or other documents under subsection 11"—

Mr. Ed Komarnicki: But it says "applications for permanent resident status under subsection 21(1)"—

Dr. Jenna L. Hennebry: Then "or temporary resident status".

Mr. Ed Komarnicki: Yes, "or temporary resident status", which is not related to temporary foreign workers.

Dr. Jenna L. Hennebry: They're still given temporary resident status, or they could be given temporary resident status.

Mr. Ed Komarnicki: So by extension you say that's the portion that applies to temporary foreign workers?

Dr. Jenna L. Hennebry: My concern here is just about the potential for the minister to have discretion to choose which foreign workers to let in and which not to let in.

Mr. Ed Komarnicki: My understanding of Bill C-50 is that it does not apply to temporary foreign workers.

The Chair: Time is up. No closing comment.

I have Madam Beaumier for five minutes.

Ms. Colleen Beaumier (Brampton West, Lib.): Thank you.

I'm pleased to have you both here today.

As members of Parliament in high-density areas, we have a lot of immigration, and much of what you've told us we've experienced. However, I think your opinions are certainly more articulate than I could ever....

The problem I have with Bill C-50, and I'd like your comments on this, is the fact that it is turning more power over to the bureaucrats. When they say "minister", we all know it doesn't mean minister; it means bureaucrats. I think most of us who have dealt directly with the bureaucrats have heard racist comments, and I'll even tell you a few of them.

I called about Jalandhar, and I was told the reason we have such a high percentage of people turned down in Jalandhar is because they were Punjabis, and Punjabis tended to lie more than others. Now, if that isn't just plain ordinary discrimination, I don't know what is. We have a lawyer in Hamilton who has talked about racist comments he's read from bureaucrats.

I'm not saying that bureaucrats are all racist. In fact, it's probably a very, very small percentage. However, on the refugee board...in *The Walrus* magazine, we've seen that there's been political intervention. And that doesn't mean intervention by politicians; it means intervention by bureaucrats, where there was definite bias against the Romas.

When we're dealing with giving more power to the minister, we're not, we're giving it more to the bureaucracy. When equality is ignored, the first victim is justice.

I would like to talk to Mr. Crépeau sometime about reasonable accommodation and have his opinion on that, because he's pretty fiery when it comes to assimilation and treatment of immigrants.

What I want to know is, do you think our charter has made politicians very lazy? We often pass legislation and say, "Well, the charter will take care of it if it's wrong". When everyone who presents before us is of the same opinion as you, why aren't we doing it? What's the down side?

Prof. François Crépeau: You're asking a question that would be a good question for a whole graduate seminar: the effect of the charter on the political system in Canada.

One element that is key, and that would also be an element of an answer for the previous comments.... What the charter has done is ask the government to justify each and every decision that might affect rights and freedoms for one individual. This means that in the early years of the charter, for example, the government has had to go through all the laws on the books to make sure they were so-called charter proof.

What it means nowadays is that very often there is a game, and that's probably normal when you have a standard, where you have people trying to see what the standard means and how you can avoid the standard—not necessarily evade it but avoid it—or how you can do what you want to do while respecting the standards. That's what lawyers do with tax law all the time. So it's not something that is a problem in itself.

What I think it does is put the government, and the bureaucrats, as you were saying, always in a defensive position. For example, if we come back to the security certificate issue—because that's to me very enlightening—several ministers in a row from different parties and different governments have told us, "It's okay. We've checked that with our lawyers; there's no problem with the charter." And this has been said of many acts of Parliament.

Then we get to the courts and the courts say, "No, you're wrong. Once again, you're wrong, and we'll tell you why." Then we send it back to the political system, and the political system has to answer and provide a second type of procedure to see if it works. We'll go back to the Supreme Court, and maybe it will be accepted and maybe not.

What I'm concerned with is that, especially with immigrants...you see the number of cases that have gone to the Supreme Court in recent years on immigration issues or on multiculturalism issues with people who have recently come, etc. We have a tendency to think that foreigners should have fewer rights. That's our sort of common belief. When I was young, aboriginals were nowhere to be seen—they had no rights—and that was taken for granted. There had to be an overhaul of our whole conceptual thinking, and I think we're at that point for immigrants. We have to think now, and governments especially have to think proactively about how they can protect the rights of these people. What are the issues? When we are trying constantly to limit their access to justice—especially to recourses—what we are doing is placing a time bomb in front of us and waiting for it to explode; the courts will say, "No, you can't do that. We've told you time and again." I think in terms of democracy, that's a problem.

● (1050)

The Chair: Thank you.

Thank you, Ms. Beaumier.

For the last two speakers, to wrap it up, I'm going to go to Mr. Komarnicki and then to Mr. Bevilacqua.

Hon. Andrew Telegdi: Mr. Chair, as a point, don't we have everybody speak before anybody repeats? That's the rule we adopted. So Mr. Komarnicki can speak—

The Chair: No, that's not the—

Hon. Andrew Telegdi: Yes, that's the rule we had.

The Chair: No, it's not. That's not the rule. We've talked about this rule on several occasions, but that's not the rule.

Am I correct in saying that, Mr. Clerk?

[*Inaudible—Editor*]...with a five-minute time limit for each round, and that no individual member will be allowed to participate more than once in each round unless the member gives up his allotted speaking time. That's a round, so I think we're okay.

Mr. Komarnicki and Mr. Bevilacqua.

Mr. Carrier didn't put up his hand. Do you want to speak? Okay, so Mr. Carrier.

I was trying to get Mr. Bevilacqua in because he had his hand up there as well, but Mr. Carrier would be next on the list, according to the list and the interpretation of what we're doing. Madam Beaumier was just on.

Mr. Carrier.

An hon. member: This is really crazy.

The Chair: Mr. Carrier.

[*Translation*]

Mr. Robert Carrier: Thank you.

Mr. Crépeau, I have a quick question for you regarding all the rights that you listed. You referred to the right of immigrants to choose the language of education, that is a great principle…

Prof. François Crépeau: Immigrants have all the rights laid out in the Charter, with the exception of their right to be educated in the language of the minority, which is reserved for Canadian citizens.

● (1055)

Mr. Robert Carrier: So, they do not have that right.

Prof. François Crépeau: No, they do not. That is one of the three rights they do not have. The others are the right to vote and the right to enter and remain in Canada.

Mr. Robert Carrier: Given everything that you have said, would it be possible to amend Part VI of Bill C-50, which deals with immigration, even though it is not consistent with the protection of the individual rights you so aptly described?

Prof. François Crépeau: In my opinion, that question will come forward and will be referred to the courts. They will have to decide, for example, based on what mechanism it is possible not to render a decision, because that is one of the mechanisms provided for in Bill C-50. Up until now, we have been able to either accept or reject an application. Henceforth, it will be possible to accept or reject, or render no decision whatsoever.

As was pointed out by the Canadian Bar Association and the Barreau du Québec, not rendering a decision means that there is no possibility of judicial review, since there has been no decision. Thus there would no longer be any avenue for appealing such a decision. It is possible that the courts will decide that, since they are the guarantors of individual rights, if no decision has been rendered two, three or four years later, one can assume that the decision is negative, such that individuals will have a right of appeal.

I think it is really too bad that, once again, we are leaving it up to the courts to do this work. I would suggest an amendment, which would be to delete that section and ensure that a decision is made and that all applicants thus have a potential avenue of appeal.

Mr. Robert Carrier: In other words, you are proposing that we go back to what is currently in place?

Prof. François Crépeau: We should keep what is currently in place—in other words, that a decision has to be made, either positive or negative. If that is not possible, a brief paragraph could be added to say that if there has been no decision—positive or negative—after three years, the decision is assumed to be negative. That would mean that, three years after applying, an individual would be entitled to this recourse. In all cases, a form of recourse must be preserved, since it represents an important legal guarantee.

Mr. Robert Carrier: To your knowledge, is there a precedent here? Are there other examples elsewhere in the world of this kind of discretionary power being given to the Minister of Citizenship and Immigration with respect to the selection of applications to be reviewed? Does that exist in other countries?

Prof. François Crépeau: That's a good question. I know that it exists in systems that are not comparable to ours. For example, under the French system—which is not an immigration and settlement system such as ours, decisions are made without there being any form of appeal—but again, it is not a comparable system. We would have to look at what the Australian or British legislation provides for in that regard, but I have not done that analysis.

Mr. Robert Carrier: Does that mean that, under international law, this would be a valid process?

Prof. François Crépeau: International law is an imperfect system which does not provide a solution. There is no solution to be found in international law, for a number of reasons. One is that there are no detailed regulations with respect to immigration; they simply do not exist. There are regulations regarding the protection of rights, particularly in administrative matters. There again, there are some elements, but you won't find a solution under international law. You will be able to look at certain items in comparative law, but that doesn't mean that the mechanism would be valid under the Charter. Just because someone else does it doesn't mean we should also do it.

Mr. Robert Carrier: Yes, I understand. Thank you.

[*English*]

The Chair: I'm going to go.... Ms. Grewal gave up her time to Mr. Komarnicki, but I am going to get you on, Mr. Bevilacqua, for a few minutes as well.

Mr. Komarnicki, you have about three to four minutes, please. Then I'm going to give Mr. Bevilacqua a couple of minutes.

Mr. Ed Komarnicki: I have a couple of points. When we left off, you were going to check the specific section to see if refugees or protected persons were exempt from Bill C-50. Did you come to a conclusion on that?

Prof. François Crépeau: No. I'd have to have the whole act in front of me to check precisely. I don't have it. I can't tell you now.

Mr. Ed Komarnicki: All right. So if they were exempted, and assuming they were, of course, any remarks related to the refugees would not apply in this context. Do you agree?

Prof. François Crépeau: Yes.

Mr. Ed Komarnicki: With respect to the humanitarian and compassionate grounds applications outside of Canada—not within Canada, because I understand within Canada one or more applications can be made under humanitarian and compassionate grounds, and that still would apply, given Bill C-50.... I know there has been some mention that if a person failed outside of Canada under a skilled worker class—let's say pursuant to an instruction under Bill C-50.... If Bill C-50 wasn't there, would you agree they could apply under humanitarian and compassionate grounds pre-Bill C-50?

● (1100)

Prof. François Crépeau: Yes.

Mr. Ed Komarnicki: What Bill C-50 does, for an individual in that category, is indicate that he may apply, that the minister may consider the application but wouldn't have to.

Prof. François Crépeau: Exactly, yes. That's what I understand.

Mr. Ed Komarnicki: So would you agree with me that this particular portion would prevent someone who fails under the skilled worker class in Bill C-50 from making an application under humanitarian and compassionate grounds?

Prof. François Crépeau: That's what I understand the mechanism does, yes.

Mr. Ed Komarnicki: Would you also agree that Bill C-50, unlike the present system, wouldn't require every application to be processed from start to finish?

Prof. François Crépeau: The applications you mentioned in your previous sentence would not have to be processed.

Mr. Ed Komarnicki: And would you agree with me that under the present system, which has resulted in a backlog of more than 900,000 people, every application has to be processed notwithstanding the goal set by Parliament to limit it to, let's say, 265,000 or less?

Prof. François Crépeau: Yes. I agree fully with that. And to this I can say that the fact that there's a backlog is an administrative inconvenience, but we are at the administrative inconvenience level, not at the justice level. It would be like saying that we're going to prevent people from making appeals in criminal matters because we're going to process these issues much faster.

Here we have a system where people apply, spending lots of money and energy trying to get into Canada and making applications, and they're not even given an answer. And when they are.... There may be humanitarian considerations, but it's important that they be listened to.

Mr. Ed Komarnicki: I have a couple more points—

The Chair: No, I have to cut you off right there. Your time is up.

Mr. Ed Komarnicki: That didn't seem like four minutes.

The Chair: Yes, it was four minutes.

Mr. Ed Komarnicki: It was?

The Chair: Yes.

I'm going to Mr. Bevilacqua, who will be the last one. Hopefully you'll have a chance to continue on with the next group of witnesses and get into that point you were going to make.

Mr. Bevilacqua, I'll give you about four or five minutes. You didn't speak before.

Hon. Maurizio Bevilacqua (Vaughan, Lib.): We seem to invest a lot of minutes figuring out how many minutes we should get.

The Chair: Yes, you're right.

Hon. Maurizio Bevilacqua: First of all, I want to thank you so much for your presentation.

Obviously the purpose of this committee is to find ways to improve on what appears to be a seriously flawed piece of legislation. I'd like to give you this opportunity, the two or three minutes I have, to basically tell us how you would improve this bill and what changes you want.

Prof. François Crépeau: There are not many elements of this part 6 that I like. Probably what's needed is to scrap it altogether—at this point.

I recognize that there are important administrative issues relating to the backlog. Something has to be done about that backlog, because that in itself is an injustice to many people who've been waiting five, six, seven, eight years for their cases to be decided. But I don't think increasing discretion on the part of the bureaucrats or the minster is the way to do it. Certainly spending more money would be, especially in CIC, which is, from what I understand, a department that produces money for the government. Certainly on this issue, spending more money, having more people to process the files, would be a solution.

Dr. Jenna L. Hennebry: And instead we've spent money on facilitating a greater foreign worker program that works faster for employers. Service Canada is all set up to help channel migrant workers and foreign workers into the Canadian economy faster, but we haven't spent the money on bettering the processing of permanent residency applications for the many people in that backlog who have the same skills as the many foreign workers who are being brought in to work in low-skill sectors.

Prof. François Crépeau: I think the idea of processing each and every file according to their order of appearance was a very sound principle. I don't disagree with the idea of having priorities, but having priorities should be something that is discussed democratically. There shouldn't simply be instructions that are not debated beforehand, etc. If we are going to make an exception to the rule of the order of application, we have to understand why. It has to be debated.

Prioritizing some people means putting other people at the back of the list. And it's not those who are prioritized that I'm concerned with; it's those who are at the bottom of the list.

● (1105)

Hon. Maurizio Bevilacqua: Thank you.

Professor Hennebry, what changes would you make?

Dr. Jenna L. Hennebry: I'd have to say as well that there's not much I like either in the whole bill. The discretionary powers are not the only way to handle the backlog. I also don't see the backlog as much of a problem; I see it as a good thing, a sign that we have a lot of people who would like to come to Canada, and we need to go through those and fairly and equally assess each and every one of those applications. It is the right of those people.

Hon. Maurizio Bevilacqua: Basically, both of you are saying you want to scrap the bill.

Prof. François Crépeau: And probably replace it with other provisions that would accelerate the process of all these applications in the backlog, but not this way. There are other means available.

Dr. Jenna L. Hennebry: I would concur.

Hon. Maurizio Bevilacqua: Such as...? What other means?

Prof. François Crépeau: Such as putting more money in the system, having more civil servants processing the files. Who said justice was cheap?

Dr. Jenna L. Hennebry: Digitizing everything....

Prof. François Crépeau: There are ways of accelerating. Our universities have accelerated the processing of student applications. I'm sure we can do that.

The Chair: Thank you, Mr. Bevilacqua, and thank you, Ms. Hennebry and Mr. Crépeau, for your testimony today. We will be doing a report, as you know, and we advise you to stay tuned.

We will call the Canadian Bar Association forward: Stephen Green is the treasurer and Kerri Froc is the legal policy analyst.

Maybe we can begin. We're about 10 minutes late. Sorry, Mr. Green and Ms. Froc, to keep you waiting, but we had people who were enthusiastic about their questions and wanted to get them in. I do welcome you here today from the Canadian Bar Association. I think you've been here before, so you know the drill and how it's done.

I invite you to make your opening statements, after which our committee members will engage in some comments and questions and what have you.

Welcome. Thank you for coming.

Ms. Kerri Froc (Legal Policy Analyst, Canadian Bar Association): Thank you, Mr. Chair.

The Canadian Bar Association is very pleased to appear before this committee today on part 6 of Bill C-50, amending the Immigration and Refugee Protection Act.

You heard from the chair of the citizenship and immigration section of the CBA at the end of March regarding our concerns with the ministerial instructions contained in Bill C-17. Our written submission on Bill C-50 builds on this previous submission and has been circulated to you in advance.

The Canadian Bar Association is a national association with about 38,000 members across the country. The primary objectives of the organization are improvement in the law and improvement in the administration of justice.

It is in this light that we have made our written submission and that we make our comments to you today.

I'm going to ask Mr. Green, who is a member of the executive of the citizenship and immigration law section, to address the substantive issues in the bill.

Mr. Stephen Green (Treasurer, Canadian Bar Association): Thank you, Mr. Chair.

I would like to begin with a little history. I think it's important to understand what part 6 is trying to do.

Prior to the Immigration and Refugee Protection Act, the issuance of visas was pretty much a discretionary matter. Even qualified people were denied visas. IRPA brought us in line with other jurisdictions and really established the rule of law within our immigration process in order to prevent some of the historic difficulties Canada has had with respect to the entry of various people.

IRPA, at the time it came in, was framework legislation. Many of you were on that committee when we were discussing it. As does the legislation of today and recent years, this framework provided great regulatory authority within the act. Very broad regulations were permitted to be made, and this committee heard great submissions with respect to dealing with the transparency of these new regulations that were going to come out under IRPA.

How do we go ahead and make sure there is some type of scrutiny with respect to the regulations? Section 5 in the Immigration and Refugee Protection Act answered that question for us. It resulted in subjecting the regulatory-making powers of the minister to great scrutiny. It provided that each of the houses would receive a copy of these regulations, and they would go to the appropriate committees.

What do we have now as it stands today? I submit that there is sufficient parliamentary oversight consistent with the principles of responsible government and democracy with respect to the regulatory-making power of the minister. We have a transparent system. It permits input and consultation through gazetting, and there really is no perceived arbitrariness with respect to regulations that are passed. Now with the introduction in part 6, that changes. It brings forward instructions with respect to all aspects of visa issuance, except refugee selection outside of Canada. It affects our family class, economic class, temporary class, and humanitarian class. It affects all of that.

What is the result of these instructions? Quite candidly, we have instructions being issued with no oversight. Unlike regulations, which I submit to you have tremendous power and tell us how to interpret our act, there is no oversight with respect to these instructions.

What are the dangers? What will this result in? In our respectful submission, perhaps one of the most dangerous things is the ability of people to lobby the government in power at the time with respect to the manner of developing and issuing instructions. It is all secret. No one will know. We have heard they will meet with unions and various organizations, but that's all in private. Citizens will not know how these instructions will come to be.

On judicial review and the ability to review a decision of a visa officer abroad, we are told in part 6 that a decision to return or not process is not a decision. Therefore, how are we going to go ahead with oversight of our visa officers without the ability of our courts to review a decision to return that really is not a decision according to part 6?

We've heard great talk about this backlog. Let us be clear: part 6 does not affect the backlog. It will not have any effect on our backlog, we submit. Right now there are matters to deal with the backlog, which the present government, to their credit, is dealing with. Individuals who have work permits are expedited through the process, in between four to six months in some countries, and they are able to get their immigration. There are provincial nominee programs under which immigration visas are issued, again within six months. There are SWAT teams that the government sends into various visa offices to deal with the situation as it now exists. It is our submission that we do not need this new legislation to deal with this problem. The minister could, or the government in power could, increase the points under the selection system with respect to economic foreign nationals and therefore reduce the intake.

● (1110)

It is our submission that if this legislation passes it will result in Canada's going back to the dark ages of immigration selection and processing. It would allow the minister to operate in an unfettered manner, opening the back door to many interest groups. There are other initiatives that the government has taken with respect to assisting in the speed of applications. We've heard about the Canada experience class. There have been consultations. That's the way it should be done, and we look forward to seeing the results as they come out.

Those are my submissions with regard to this present situation.

● (1115)

The Chair: Mr. Bevilacqua.

Hon. Maurizio Bevilacqua: I think it's pretty clear where you stand on this issue. It's a question that causes a great deal of concern to us. We feel that the bill is seriously flawed. It doesn't even address the original intent, which was the backlog. We fail to understand the reason that so much ministerial power is required.

We also question the seriousness of the government—departmental funding in this area was increased by only 1%. We also question the seriousness and sincerity of the government when it talks about wanting more skilled labour, when 36,000 fewer landed immigrants have been accepted over the past two years. This is the framework we're looking at.

I will repeat a question I asked to an earlier panel. One of the roles of this committee is to try to find ways to improve on the present system. Could you share with us some of your ideas on this?

Mr. Stephen Green: I think the government is improving the processing of people who have job offers in Canada. I commend them for this. To get these workers to Canada, they are actually plucked out of the system and expedited.

We might be able to look at the level of points that individuals get. We could reduce the intake if we can't deal with the number of people who are applying. Another possibility would be, as we heard from one of the witnesses, to increase the resources available to process the backlog. But as with any type of regulation, we have to sit down and try to figure it out. It's a hard question to answer. But I don't believe part 6 is the way to solve the problem.

Hon. Maurizio Bevilacqua: Suppose you have a Canadian who is reading your comments and is concerned about Canada's immigration system as a tool for nation-building. Explain to him the real dangers of the concentration of power in the hands of the ministers responsible for immigration. Why is this a dangerous thing?

Mr. Stephen Green: It's a danger because the minister would be allowed to close the door any time he or she chooses. Any government could do that when they come in. There's no predictability. There's no rule of law. Families applying to come could be told they are not allowed, that they're not the flavour of the time. That's why it's so important that this framework legislation of the act and the regulations be debated. Canadians can partake and let you decide the regulations. Canadians can hear and understand and have input. Maybe all of Canada will say we should shut the doors, but at least they would have an opportunity to participate. With a minister's instructions, it's not you or I. It's one person who makes the decision.

Hon. Maurizio Bevilacqua: Tell me, these so-called minister's instructions, what do they mean to you from a legal point of view?

Mr. Stephen Green: It's an interesting question. Do they have the power of a regulation? Perhaps not. It's interesting because section 93 of this act goes on to say that instructions are not subject to the Statutory Instruments Act, which deals with regulations.

I think it's a question the courts are going to have to answer: what is the power of these instructions? From a practical standpoint, they will have the same effect as regulations. But they haven't gone through the process that you and I would expect with respect to regulatory changes.

● (1120)

Hon. Maurizio Bevilacqua: Let me ask you another question.

Why would you feel that a minister, or a government, would want to have all these powers handed to them?

Mr. Stephen Green: I really can't comment on that, but I can say that we have a system set up to deal with and to pass regulations. Perhaps this should be done in a regulatory way—and the government responds fairly quickly to regulations.

Hon. Maurizio Bevilacqua: You have a legal mind, obviously, being a lawyer. If you were the minister—and I know you may not want to answer hypothetical questions, but you never know—why would you want to go after those powers? What's so special about having all those powers?

Mr. Stephen Green: You know, I don't know why. I don't know why.

I would just say that we have a regulatory system that was debated, and it is there to have checks and balances, and I think it's the proper route to go.

Hon. Maurizio Bevilacqua: But what would be the motivation?

Mr. Stephen Green: Well, we've heard statements saying that they want to do things more quickly, and this is a quicker way to do them. But perhaps by doing things more quickly, we're throwing out the bathwater first.

Hon. Maurizio Bevilacqua: How would you describe the powers of this minister, if you had to describe them in a few words? What do they feel like from a legal perspective?

Mr. Stephen Green: From a legal perspective, they're the same today as when the act was passed.

Hon. Maurizio Bevilacqua: But if these changes were implemented, what type of minister would you have now?

Mr. Stephen Green: We would have a minister—we would hope—who would exercise this power very carefully, but we would have no ability to debate it or have input. And that's a little scary.

Hon. Maurizio Bevilacqua: Why are you concerned about the minister having so much power?

Mr. Stephen Green: Because I think the rule of law requires that you and I, and everyone, have a right to participate in the changing policy of something that's so important to Canada. With instructions, we don't have that ability.

It's interesting that if one goes to the comments made with respect to establishing these instructions, they said the instructions would be in line with the government of the day. It doesn't say, to meet the objectives of this immigration act, but "the immigration goals established by the Government of Canada" at the time. So we're making a distinction between the government of the time and the objectives that are in this act.

The Chair: Thank you.

Thank you very much, Mr. Bevilacqua.

Mr. Carrier.

[*Translation*]

Mr. Robert Carrier: Thank you, Mr. Chairman.

Good afternoon. Your comments are very interesting, particularly since you are here representing the Canadian Bar Association. I see you as representing the way laws are meant to be applied. You are concerned about Part VI of Bill C-50. Before tabling this bill, which introduces major changes to the Immigration and Refugee Protection Act, did the Minister or departmental officials consult you?

[*English*]

Mr. Stephen Green: Can I ask Kerri to answer that?

Ms. Kerri Froc: I don't believe there was any consultation with respect to Bill C-50 prior to it being brought to the House.

[*Translation*]

Mr. Robert Carrier: You are members of the Canadian Bar Association, which represents legal professionals all across the country. Are you ever consulted by the government with respect to amendments to bills or acts of Parliament?

[*English*]

Mr. Stephen Green: Yes, we have been consulted greatly in many areas with respect to changes in the legislation. There's a provision coming down now where they're looking at all skilled workers having to take an English language test, whether or not they've lived in the United States all of their life. They did come and consult with us; there was great consultation with respect to that. There's another Canada experience class, on which they did consult with us greatly.

So yes. But on this bill, as far as I understand, we were not consulted.

● (1125)

[*Translation*]

Mr. Robert Carrier: Mr. Crépeau, who teaches international law, told us earlier that this bill is not consistent with the Canadian Charter of Rights and Freedoms. Do you agree with him? If so, will your association take steps to challenge the application of this clause, if it does come into force?

[*English*]

Mr. Stephen Green: I'm certainly not an expert on charter issues, so I can't comment on that.

On challenging certain provisions in this, I believe we would challenge them when a certain applicant abroad permitted us to. We're dealing with a very vulnerable group, so it's difficult to test many of these provisions with respect to someone who might be hundreds of thousands of miles away. But I assume many of our members would try to challenge them.

[*Translation*]

Mr. Robert Carrier: I have the feeling you are well acquainted with immigration matters. As you know, there is a backlog of applications to be processed. On the other hand, you have rejected the method proposed to resolve that problem. Do you have an idea of what could be done to resolve it?

Commissioners are the ones who review immigration applications. However, some 50 commissioner positions remain vacant. Could a fairly simple solution, in terms of speeding up the processing of these applications, be to fill those vacant positions?

[*English*]

Mr. Stephen Green: Absolutely. By having more resources available to process these applications, the government would be able to more quickly access applicants whose skills were needed here, because it would all be done through a numbered system.

For example, if Canada needed more nurses, we could pull them out of the system and process them with the jobs available. They do that now, and it's working quite well in trying to deal with the backlog. If someone has a job waiting for them in Canada, that case is pulled out almost immediately and processed very quickly. The government is doing a fantastic job of that.

We hear so much about this backlog, and we're certainly not denying it's a very serious issue, but how many people are still interested after seven years of waiting? That's the big question. Even if it's half a million, it's still too many.

[*Translation*]

Mr. Robert Carrier: That's it for me.

[*English*]

The Chair: You can finish up. You have two and a half minutes.

[*Translation*]

Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): The fact that the government has decided to proceed in this manner to try and resolve the backlog issue really intrigues me. Based on the way things are going to work, the backlog will continue to exist. There will be more and more applicants. Knowing that these discretionary powers are provided for somewhere, applications will simply be transferred from one place to another.

If I had applied for immigrant status, I can assure you that the day I found out these discretionary powers exist would be the day I would try, by every means possible, to take advantage of the new system. Not only are we simply moving the problem somewhere else, but we are creating unfairness. In any case, it will never be possible to completely eliminate the backlog, because the number of applications will continue to grow.

Conditions in other countries will continue to worsen, as we are seeing now. The more difficult things become in some countries, the more applications there will be from people wanting to emigrate. I don't think we can resolve overnight the problem of long waiting lists in immigration.

Do you agree with me?

[*English*]

Mr. Stephen Green: But she or he can also say no right away. It almost balances its way out, because if these provisions are implemented, there can be no backlog moving forward by the minister at that time through this instrument saying, “Sorry, we can take no more applications from this part of Asia, or no more applications from this part of the world.”

I think it's a very dangerous slope we're moving toward with these types of instruments, because we don't have the input necessary that all of us should be involved in.

The Chair: Thank you.

Ms. Chow is next for seven minutes.

● (1130)

Ms. Olivia Chow (Trinity—Spadina, NDP): There are several areas. Once the change is done, it will be issued in the *Gazette* without any consultation. Now, at least, there is a 30-day period of consultation. So is that one aspect where notification after the fact will be dramatically problematic?

Mr. Stephen Green: Yes. As we stated in our paper, for regulations we come before you people and for instruments we just wait to hear.

Ms. Olivia Chow: Right, and that's it.

In terms of changing the points system, it's interesting to look at the Australian model. Instead of giving the minister a lot of power, they changed the points system in a way that allowed a lot more people to enter who fit precisely the kind of work they needed done. As a result, a lot of immigrants, during their first five or ten years, are able to find a job they're trained for.

We know that Canada is facing a labour shortage. Yes, we should scrap part 6 of this. In changing the points system, are there some suggestions you would make to the immigration minister to say, if this is your goal, here is a better way to do it? Do you have some suggestions, instead of lots of power, without consultation, no appeal, can't go to court, and above the law?

Mr. Stephen Green: I think we have to look at two things here. One is that when IRPA came out, Canada got rid of that concept of, “You're an engineer, there's a list, there's a job waiting for you.” We developed this concept called the human capital model, where we look at your age, your education, your work history, and we hope, based on all those skills and all those assets, you would be able to find work in Canada.

You hear these stories where someone came as an engineer and they're a taxi driver. But I think the new system changed that; it talked about human capital. Perhaps you would be a taxi driver at the beginning, but there wasn't this anticipation that you would be an engineer. It was made very clear, because we got rid of that list.

So we have this new concept of human capital. Then we have a whole other process of people who have jobs waiting for them, employers in Canada, people on work permits, that we're able to pluck out of this backlog as it exists today. I think that sort of solved the process for people who are urgently needed.

Now, there's always the debate on how quick is urgent. Is five months too long for an immigrant? We have to make sure we do the checks, the medical.... I don't know. Maybe we could bring them in on a work permit quicker, in that sense, so if someone has a job waiting for them and they want their immigration.... But the Canada experience class is going to help us out with that as well.

Going back to the 1970s, we talked about streams and pools, certain streams of occupations where we know there are jobs and we can say to people that there is a job waiting for them.

I think we have to look at all of these areas, but it is a very hard question to answer. Governments of today and in the past have all had this difficult question. I really think it's time to sit down and figure out...there is this wonderful country, there is wonderful opportunity, there are wonderful people outside waiting to help us, so how do we manage all of this? I think it's time we took our heads out of the sand and really tried to think of a democratic, responsible way of figuring this out.

Ms. Olivia Chow: In 2002—I think Joe Fontana was the Liberal MP chairing this committee and Mr. Coderre was the minister—they changed the points system to try to fit the skills better. As a result, because of the going back and forth and the timing, the backlog dramatically increased. Putting aside retroactively where they should be or shouldn't be, was that a good change in 2002, in the way the points are now really stacked in favour of people who have degrees and speak fluent English? As a result, people like carpenters, who we really need, probably won't be able to fit under the points system because they don't have enough points if they don't speak fluent English, or maybe they're 45 rather than 35, for example.

● (1135)

Mr. Stephen Green: Like every piece of legislation, some of it has good parts and bad parts. The good parts were that the ones who were highly educated, who we really need, had their entry facilitated, but it didn't really answer the questions for the blue-collar workers, as we refer to the situation. Again, the department has been struggling to figure out whether we should lower language requirements, perhaps, for blue-collar workers. Should we lower the education requirement? Again, it's something we have to sit down and debate, talk about, and not instrument it.

Ms. Olivia Chow: Thank you.

The New Democrats have been straight up in saying that we don't support this bill. In your mind, it's beyond part 6. It doesn't matter how we amend it, it's not going to work, so we might as well just scrap it.

Mr. Stephen Green: I don't know about amending it, because one never knows what an amendment will be, but certainly the way it stands now, we would have great difficulty, as we said in our submission, supporting this.

Ms. Olivia Chow: Thank you very much.

The Chair: Thank you, Ms. Chow.

Mr. Komarnicki, for seven minutes.

Mr. Ed Komarnicki: Thank you.

I have a couple of questions. Your initial comment was to increase the percentage required under the points system, which would allow fewer people to come in, the more educated, more qualified, so to speak. Is that what you were saying?

Mr. Stephen Green: No, what I'm saying is that by increasing the points, it would require people to perhaps either have family in Canada or a job offer for them, because that would compensate for the increase. So perhaps the ones who don't have the exact human capital we want at the time would overcome the increase in points by having family in Canada and by having jobs waiting for them. Under the points system, you'd get a bonus of 15 points.

Mr. Ed Komarnicki: What you're suggesting is bonusing up the points system in such a fashion as to exclude some, but include particular classes or categories of people?

Mr. Stephen Green: To reduce the present possibility of a backlog for now, yes.

Mr. Ed Komarnicki: With respect to the regulatory legislation, obviously the status quo as it is now, using legislation or regulation over the last 10 or 15 years, has not addressed the backlog. Would you agree with me? It has increased from about 50,000 back 10 or 11 years ago to over 900,000 today.

Mr. Stephen Green: It's hard. You're comparing apples and oranges, because pre-IRPA it was a totally different system; we have a different system after IRPA. But there is no question there is a problem with the present legislation, and we are all saying that something has to be done with respect to the creation of a backlog.

Mr. Ed Komarnicki: The regulatory changes, even though they can come before a committee, ultimately have to go back to the House, and either they get passed by the government of the day or they don't. Would you agree?

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: Ultimately, the government of the day makes a decision on policy as to what will pass and what will not pass with respect to immigration.

Mr. Stephen Green: Correct.

Mr. Ed Komarnicki: Ultimately, the government of the day is responsible to the electors of Canada, who decide whether they want the government's various policies or not. Would you agree?

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: So whether you have legislative changes or regulatory changes, it ultimately depends on the government of the day, does it not?

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: Of course, in a minority government you might not be able to change legislation or regulation very easily, so it may not respond to a need in the system.

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: Now, the previous Liberal minister responsible for citizenship and immigration said we're not doing the system justice by taking applications that aren't going to get processed for years and years. It doesn't make any sense to continue to take these names. The reality is that we need to change the system. Would you agree that changing the system is the issue?

Mr. Stephen Green: I agree that we support a change in the system to fix this backlog.

Mr. Ed Komarnicki: Now, the instruction issued by the minister must, in her or his opinion, be the goals that are set by the government of the day. Is that not right?

● (1140)

Mr. Stephen Green: Of the government of the day, but not of the Immigration and Refugee Protection Act.

Mr. Ed Komarnicki: No, but of the government of the day.

Mr. Stephen Green: Correct—of the government of the day. But she is not obliged under this legislation to hear the input from other people.

Mr. Ed Komarnicki: Whether you proceed by legislation or regulation or proceed by instruction, in either case input is taken from stakeholders, from those interested, to whichever body, but ultimately that input has to go to the government of the day for action to be taken. Wouldn't you agree?

Mr. Stephen Green: From the regulation standpoint, yes. From the instruction standpoint, no. There's nothing in this legislation that states that the minister has to take input.

Mr. Ed Komarnicki: But the minister, obviously, if she's going to be responsible to the cabinet or the government of the day—and the government is responsible to the electors—would obviously want to take into account what people may have to say about a particular instruction.

Mr. Stephen Green: One would hope, but one questions.... From a legislative authority, it's not there. And we've heard great talk that it is not the intention to affect family class, but the legislation is very clear that the instruments affect family class. So I would say we would want to see this in a legislative mode, as it is with respect to regulations.

Mr. Ed Komarnicki: But you would agree with me that the legislative mode and the regulatory mode, in the last decade, at least, have not addressed any specific changes that might reflect on reducing the backlog.

Mr. Stephen Green: I can't answer that. Obviously, from the factual situation, no, the backlog has increased.

Mr. Ed Komarnicki: Now, one thing that Bill C-50 would do, as amended, at least going forward, is stop the backlog from growing. You would agree with that.

Mr. Stephen Green: Sure, and I think the other gentleman who was here brought that wonderful example about our criminal courts being full and people are waiting. Do we just say everyone is guilty and throw them in jail?

Mr. Ed Komarnicki: No, but the fact of the matter is that the backlog would not grow because not every application would necessarily have to be considered. Agreed?

Mr. Stephen Green: Not every application under this would have to be considered, no.

Mr. Ed Komarnicki: And in line with what the previous Liberal immigration minister said, simply adding more applications doesn't solve the problem either, does it?

Mr. Stephen Green: No, but perhaps if we left the system the way it is.... At least, if we advise people, as the United States does, it's going to take 10 years to bring your brother and sister, that would be a step forward.

Mr. Ed Komarnicki: Would you agree with me that the issuance of instruction would have to be compliant with the charter?

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: And the application of the processes within the instruction would have to be charter compliant.

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: So in the sense of both the instruction and the application of the instruction, it would have to be non-discriminatory. It couldn't be based on ethnicity because it could be challenged under the charter. Would you agree with me on that? Yes or no.

Mr. Stephen Green: I would, but the problem is that there's no input from lawyers who are outside the department to determine whether or not it's charter compliant, and we have many examples of even a retroactivity that was not done.

Mr. Ed Komarnicki: My question was not whether there was input; my question was whether those instructions and the applications of the instructions would have to stand the test of the charter and would have to be charter compliant to be valid. That's the question. Do you agree with me?

Mr. Stephen Green: In the department's opinion.

Mr. Ed Komarnicki: No, not in the department's opinion, in the courts.

Mr. Stephen Green: Fine, yes, in the courts.

The Chair: We'll have to continue some other time.

The seven-minute rounds have been completed.

Mr. Telegdi, five minutes.

Hon. Andrew Telegdi: With regard to charter compliance, it took until 2006 before security certificates got through the Supreme Court and became unconstitutional. That was a quarter of a century from when the charter was enacted. So I hope, Mr. Parliamentary Secretary, that you find a different line on charter compliance, because charter rights can be denied for a long time before they're dealt with by the courts.

I was here in 2002 when this thing was put through, and the committee was very much against it. I don't give a damn what any immigration ministers have said since I've been here, because basically they have all been pretty incompetent. Bureaucrats have run the department. So when they're talking about a minister's real power, it's bureaucratic power.

This thing was a total disaster. The reality is that we have a huge backlog, yes, but just imagine if you didn't have a backlog. What would that say about Canada? The fact of the matter is that you can find people in the backlog who the economy desperately needs right now. That is where we have a crisis. And we predicted it back in 2002, that blue-collar immigrants couldn't get in, labour couldn't get in.

Essentially the fault lies with the points system and how the points were allocated. If we want to keep the points system, which has been praised by all the countries we've looked at, be it Australia, New Zealand, Britain, or the United States, which have undertaken studies, for objectivity and clarity I think the fix has to be in fixing the points.

You mentioned allocating more for family. That makes sense. Allocating more for a job offer makes sense. Our points system is out of whack when you compare it to other countries in terms of being responsive.

So if we decide on that, and we want to keep the points system because we want to keep the objectivity of it, then we have to fine-tune the points system so that a job offer means a lot more in terms of getting in the queue. Once you're in the queue, we have to have a method of bringing people out of the queue—so if we need 100 welders, we can grab 100 welders from a backlog. That backlog now doesn't contain any welders, and that's the problem. The government is looking at temporary foreign workers, which I think is totally the wrong way to go in terms of satisfying the shortcomings of the present-day points system.

If we want to fix the system and we want to keep what is good about it, then we have to be a lot more responsive in terms of meshing the points system with the requirements for the country economically. Labourers are needed in this country, and the only way they can come in is either as refugees who happen to be labourers.... But in terms of the economic files, the only way they get in is through the temporary foreign worker program, which creates a whole slew of other problems where people are exposed to servitude, exploitation, and the list goes on and on.

My whole argument is, make the points system responsive to the needs of the economy, be able to fast-track people. Processing doesn't take that long. The only reason we have a backlog is that when we have 500,000 people applying, we take out 250,000. Well, guess what? The backlog will have grown by 250,000. There you have a backlog. But the big problem with this backlog is that we don't have welders and we don't have labourers.

People have expectations that if they come because of their degree and knowledge of the language, they're going to get some job that is commensurate with their experience. We heard evidence in committee of an engineer who comes here, can't find a job, and is very unhappy. In the meantime, you have a bricklayer who comes here and finds a job and is very happy.

I'd like to have you comment on that.

● (1145)

Mr. Stephen Green: I think there has to be a proper meshing of the temporary movement as well as the permanent movement. And for employers in Canada, I think even six months is a long time for them. So I think you have to work both and look at both. Processing of immigrant applications is becoming very difficult for our visa officers abroad, from a security standpoint and a medical standpoint.

I think you need to use both the temporary and the permanent movement to satisfy the working environment in Canada.

Hon. Andrew Telegdi: Have you ever asked why it takes 30 days to get in a temporary foreign worker and it takes a hell of a lot longer to get in an immigrant? It shouldn't be. The security requirements and all those things—

Mr. Stephen Green: For a permanent immigrant, you must check their documents, whether they're fraudulent and so on. It's a lot more in-depth. This person is coming here forever. Sometimes our officers have a very difficult time determining that, so that's why the temporary movement is very good, for employers to satisfy that need quickly. The government, to their credit, really has done a good job in the temporary movement.

The Chair: Good. Thank you.

My list goes back to Mr. Komarnicki.

Committee members, if you can, would you stay around for about five minutes after this is over? I want to get more direction on the way we distribute questions back and forth.

Mr. Ed Komarnicki: Mr. Chair, Nina is giving me her time. That's why I'm speaking.

The Chair: Maybe we can have a little five-minute discussion on that.

Where did we just come from? We came from Mr. Telegdi, so I will go to Mr. Carrier.

He wasn't on the list, so I guess we'll go to Mr. Carrier.

● (1150)

Mr. Robert Carrier: Do I have five minutes?

The Chair: Yes.

[*Translation*]

Mr. Robert Carrier: Yes. Thank you.

Mr. Green, I listened to your discussion earlier with the Parliamentary Secretary. I am disappointed to hear of such significant changes being suggested with respect to immigration, considering that, when the Conservatives took office, there were only five commissioner positions to fill, and now, there are 50. There is a lot of talk of problems with the processing of applications, but I think we should at least begin by appointing commissioners and possibly even increasing the number of commissioners, in order to resolve the problem. In any case, we are stuck with the current bill.

Earlier, you were also saying that you would agree to the idea of finding a different way of reducing the number of people in the queue, by setting different criteria. I would be interested in hearing your views. You have said that it is undemocratic for choices to be made and priorities set at the discretion of an individual—the Minister, in this case.

If certain priorities were to be discussed by a committee, with a view to developing grids for analyzing applications, would that be a potential solution? You talked about the family class. Family reunification could be a priority. Would you see that as an acceptable process for setting priorities, or do you still believe that all applications must be reviewed based on the date they were received, whatever the purpose? Did you follow me?

[*English*]

Mr. Stephen Green: First of all, with respect to the family class, it's something, really, that the department can't control, how many times a Canadian falls in love with another person, and it has always been interesting to me why these numbers are included in our final numbers. If suddenly we're a great nation of love and everyone falls in love and we want to bring in 60,000 people, we have to do it. So I've never really understood why we mix family class with this other class.

I think it would be a positive move if we debated this and it went to committee, but again, we would want to make sure that the present rule sticks—one applicant overseas did apply—and I think the courts have already told us that. So if we decided on a different system, it would always be forward looking.

[*Translation*]

Mr. Robert Carrier: So, you would agree with priorities being established by all of the parties represented in a committee for the review of applications before becoming the law. You would agree with the principle that priorities be established on the basis of a regulatory parliamentary process.

[*English*]

Mr. Stephen Green: I would agree, but we do it now. Anyone who has a job offer in Canada who's waiting abroad is plucked from the list and processed immediately. So the government is presently doing it today, in a positive way.

The Chair: There is about a minute and a half if you want it. No?

Mr. Komarnicki.

Mr. Ed Komarnicki: Thank you.

I have a couple of quick points.

Since coming to office, we've made over 100 appointments. So that's significant.

First of all, are refugees, protected persons, excluded from the effect of Bill C-50?

Mr. Stephen Green: I would say that under this, people who are applying for refugee status from outside Canada are specifically excluded from this. And it appears, because this legislation keeps referring to applying for a visa, that refugees inside Canada who are accepted are not applying for visas. So it appears that it does not affect refugees.

Mr. Ed Komarnicki: So we're agreed, in your opinion, as a lawyer, that this legislation does not apply to protected people, to refugees, applying from inside or outside Canada.

Mr. Stephen Green: Yes, it would appear to be that way.

Mr. Ed Komarnicki: Does it apply to temporary foreign workers?

Mr. Stephen Green: Yes, absolutely.

Mr. Ed Komarnicki: Which section and specific reference are you referring to?

Mr. Stephen Green: Proposed paragraph 87(3)(1) refers to subsection 22(1) of the act, and subsection 22(1) refers to the temporary worker movement. It absolutely refers to temporary workers.

● (1155)

Mr. Ed Komarnicki: What does it allow to be done with respect to the temporary foreign workers themselves?

Mr. Stephen Green: If an instrument is issued, the minister can do as he or she pleases.

Mr. Ed Komarnicki: In terms of ticking in every application, as I had referenced earlier, it simply means that you have more applications if you don't somehow prioritize them. I thought I heard you say that you liked the idea of the Canadian experience class. You liked the idea of the provincial nominee program and other like programs that put certain people to the front of the class, so to speak.

First, by putting certain of them to the front, if that's all you did, are you not then allowing the backlog to continue to grow with those people who aren't in the front?

Mr. Stephen Green: You'd have to figure out a way to reduce the picking up of this larger backlog, but it's certainly a very good idea that is implemented now through plucking. I think it meets the objectives of the act, which talks about satisfying economic means and the family class, because the family class is expedited as well.

Mr. Ed Komarnicki: In effect, prioritizing skilled workers to come to the front of the line, if Bill C-50 does that, would be in agreement with that objective.

Mr. Stephen Green: The problem is that we have no idea how that process is going to select those who should go to the front of the line.

Mr. Ed Komarnicki: Let me ask you, with respect to the Canadian experience class in the provincial nominee program, if that occurred by regulation, legislation, or policy.

Mr. Stephen Green: The Canadian experience class has had extensive consultation across the whole country, and it is my understanding that it will be coming through regulation. We haven't seen it yet.

Mr. Ed Komarnicki: Okay, and what about the provincial nominee?

Mr. Stephen Green: The provincial nominee is part of the agreement that's been in here. The government negotiates with the province and the feds. There's tremendous negotiation that goes on.

Mr. Ed Komarnicki: The negotiation goes on between the provinces and the federal government, but it doesn't happen through legislation or regulation. Is that what you're saying?

Mr. Stephen Green: It happens as a result of IRPA permitting the federal government to enter into agreements with the provinces. That was debated already, and it was determined to be the best mechanism to permit that.

Mr. Ed Komarnicki: The Canadian experience class is another aspect of policy shaping or taking form with respect to a program that brings people to the front of the line.

Mr. Stephen Green: It's not policy; it will be law. It will provide priority to people who have been educated here, who have paid their own way, yes.

Mr. Ed Komarnicki: So like the negotiations taking place under the provincial nominee program, the instructions, if permitted by legislation, could do a similar kind of thing by bringing skilled workers or less-skilled workers, if you like, to the front of the line.

Mr. Stephen Green: There's no debate on what these instructions will be, unlike the provincial nominee programs, on which there was great debate. There's the Canada-Quebec accord. There are all kinds of accords that have occurred.

Mr. Ed Komarnicki: There's nothing preventing debate before instruction takes place. In fact, from what I can see, the minister has indicated that there will be consultation with provinces. There will be consultation with stakeholders. There will be wide consultation before instruction is issued.

Mr. Stephen Green: Then I would say to put it in section 5 to make it law.

Mr. Ed Komarnicki: Then you would agree with me that this legislation, Bill C-50, is not an instruction; it just gives the ability for an instruction to occur. That's what we're talking about.

Mr. Stephen Green: Yes.

Mr. Ed Komarnicki: We're not talking about a specific instruction; it's the ability to issue an instruction.

Mr. Stephen Green: Right.

Mr. Ed Komarnicki: So when the minister says there will be consultation with the provinces and stakeholders before an instruction issues, do you not accept that or believe that?

Mr. Stephen Green: It's not a question of belief. I would rather see it in the law, because the minister has the authority to say, "I don't want to hear from you", just like the way this came out.

The Chair: Thank you.

That about completes it.

Thank you very much for coming today, Mr. Green and Ms. Froc. As you know, we'll be doing a report, and hopefully some of the recommendations you made will be contained in it.

I want to mention something about the way we do questioning here. We haven't talked about it in quite some time, but it has been straightened out.

I think the problem, Andrew, was that you were looking at the individual, but it specifically says "the party". The witnesses are to be given ten minutes, sometimes seven, and during the questioning there will be allocated seven minutes for the first questioner of each party and thereafter five minutes will be allocated to each questioner who has not yet had a chance to participate, in the following order. And that's the order.

I went over to Nina, for instance, and she had not yet participated, but she was free to hand her five minutes over to Ed if she wanted to.

● (1200)

Hon. Andrew Telegdi: Yes, but it says here that, "thereafter five minutes be allocated to each questioner who has not yet had a chance to participate", and it lays out the order. After that the schedule will repeat with a five-minute time limit for each round. That's where it should end. What you have said is totally converse to what was said in the previous section.

I know we had big debates about this previously, and it was always to make sure that everybody had a chance to get in a round of questions.

The Chair: That's if the person wants to. If I go to an individual who says, "This is my time slot and I haven't yet participated, so I'm passing my time slot"...that's why it says "party".

Hon. Andrew Telegdi: No, it says that in the beginning. But then it says, "there be allocated seven minutes for the first questioner of each party and that thereafter five minutes be allocated to each questioner who has not yet had a chance to participate, in the following order". That means everybody who hasn't spoken gets a chance to speak.

It gets difficult where it says, "and that no individual member be allowed to participate more than once in each round".

The Chair: We've done this so many times already.

Hon. Andrew Telegdi: This was done specifically because we didn't want to get into a situation where the parliamentary secretary did all the questioning and talking, and then—

The Chair: But on your side, if Maurizio didn't want to participate and he said, "Andrew is the expert on this and I must give this to Andrew", he could pass that over to you half a dozen times if he wanted to. That's done all the time.

Hon. Andrew Telegdi: No. I'm saying that everybody has to get a chance to dip in on it, and then you start a new round.

The Chair: That's if they want to, yes. That's the way we've been doing it. It's the party.

Hon. Andrew Telegdi: Yes, but after “the party”, it says “each individual”. It doesn't say, “party”, any more. It's only in the first round.

The Chair: It says, “that no individual member be allowed to participate more than once”.

Hon. Andrew Telegdi: But it says, “seven minutes for the first questioner of each party and thereafter five minutes be allocated to each questioner”.

The Chair: That's each questioner who has not yet had a chance to participate. It's each questioner within the party, I suppose.

Hon. Andrew Telegdi: We reduced it to “each questioner”. So those who haven't asked questions can ask questions, and you don't have somebody asking two questions before everybody has had a chance to ask a question. That's what it is about. That's what it says. Take a look and read it. That's the purpose behind it.

[*Translation*]

Mr. Robert Carrier: Mr. Chairman, I think the problem results from the fact that this article does not clearly state that every member of the Committee must take a turn. The rules don't talk about cases where a Committee member transfers his or her time to a colleague. What distorts the intent of this clause is that every person can have an opportunity to speak. In order for there to be a better, more democratic discussion, I think it would be appropriate for each member to have an opportunity to speak, so that the Parliamentary Secretary is not forcing a colleague to give him his or her speaking time.

[*English*]

The Chair: We've dealt with this a half a dozen times. Apparently people are not interested in dealing with it any further because everyone has left.

We'll try to get everyone on—let's put it that way.

The meeting is adjourned.

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