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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (0905)

[*English*]

The Vice-Chair (Hon. Maurizio Bevilacqua (Vaughan—King—Aurora, Lib.)): I'd like to call to order meeting 27 of the Standing Committee on Citizenship and Immigration. According to the orders of the day, pursuant to the order of reference of April 22, 2009, we have Bill C-291, an act to amend the Immigration and Refugee Protection Act, on the coming into force of sections 110, 111, and 171.

Today we have the pleasure of having the following witnesses for our first session: Lorne Waldman, who, as everyone knows, is an immigration lawyer; Julie Taub, an immigration and refugee lawyer and a former member of the Immigration and Refugee Board of Canada; and Raoul Boulakia, who is also a lawyer.

Some of you have appeared here before, so you know how this works. You get a few minutes to do introductory comments. Thereafter, we will engage in a question and answer session.

We will begin with Mr. Waldman. Welcome.

Mr. Lorne Waldman (Immigration Lawyer, As an Individual): Thank you.

Mr. Boulakia and I chatted, but I didn't have an opportunity to talk to Ms. Taub before she came in. What I'm going to do is talk in general about the principles and Mr. Boulakia is going to have some specific comments.

The issue of refugee determination and having a fair system has been debated and I've been part of the debate since 1977, that I can remember. I guess I'm revealing a little bit about my age at this point.

I think it's important to go back to basic principles. The fundamental principle that any fair refugee determination system must have in Canada is that determinations must be made by independent members. I highlight this because there's some talk about having immigration officers make determinations at the border quickly. I would have very grave concerns about whether that would be acceptable under the charter, and it certainly wouldn't be acceptable as a basic principle of fairness.

The system has to be fair. There has to be some kind of independent review, and it has to be efficient. We know there have been serious criticisms about the efficiency of the current refugee determination system, which I'll address briefly, and I think Mr. Boulakia will have more comments.

The refugee appeal division was included in the legislation as a result of many years of complaints that the Federal Court was not a satisfactory review mechanism. The Federal Court is the court that sits on judicial review, and anyone who knows administrative law will understand the concept of deference, which is a legal conference that the Supreme Court of Canada has written huge amounts about. Based on that concept, a court sitting on judicial review owes deference to the tribunal below and can only intervene if the tribunal makes very obvious errors with respect to findings or has made clear errors of law.

Those of us who work in refugee determination are convinced that the Federal Court is not an adequate review mechanism, and it was for that reason we lobbied very hard for the creation of the refugee appeal division. The appeal division—and I know I've had extensive conversations with Peter Showler, who was the chair at the time when IRPA was introduced—can produce efficient and adequate review within a few months. Therefore the concern that it would add a layer and unreasonably extend the process is not, in my view, well founded.

Moreover, if we had a refugee appeal division, as was stated at the time, the fact that there is now an automatic stay of deportation while the Federal Court reviews the case could be reconsidered, because once there is a review on the merits by a second review panel at the refugee appeal division, having had two different reviews, one could argue that there is no need for there to be an automatic stay. It would still be open to the Federal Court to grant a stay if they thought it was necessary, but when the refugee appeal division was contemplated, that was part of the package that was going to go forward.

So by eliminating the automatic stay at the Federal Court and replacing it by a refugee appeal division, in essence, you're creating a process that is not going to be longer. The difficulties we've had to date with IRPA and the backlogs, in my view, are to a very large extent problems with respect to understaffing at the board.

To conclude my opening remarks, I want to emphasize that in my view the refugee appeal division, if it were implemented, would not unduly extend the process and it would create a fairer refugee determination system.

Importantly, there are other things that can be done without massive amendments to the law that would also create a fairer process. If the government today is concerned about efficiency, there are suggestions that many different people have made over time—and Mr. Boulakia is going to be talking about some of them—that could create a fairer system.

● (0910)

For example, just to give you one idea, we now have a PRRA, which is a very time-consuming process that uses a large amount of resources. A recent report suggested that we could do away with the PRRA and replace it with the refugee appeal division, the RAD. We introduced the PRRA because there is often a year or two between rejections and removals, and removals require reviews. But if the RAD had the power to reopen cases on fresh evidence, you could get rid of the PRRA, save a lot of money, and have a more efficient refugee determination process over the long term.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you, Mr. Waldman.

Ms. Taub.

Ms. Julie Taub (Immigration and Refugee Lawyer, Former Member, Immigration and Refugee Board of Canada, As an Individual): I thought Mr. Boulakia was next. I thought they were together.

The Vice-Chair (Hon. Maurizio Bevilacqua): Fine.

Mr. Raoul Boulakia (Lawyer, As an Individual): The efficiency of a refugee board is something that's in everyone's interest. People often mischaracterize the refugee system as a struggle between refugee advocates and people who want to be tough on refugees, or left versus right. Actually, there's no left and right on refugee issues. I represent people who are capitalist, communist, whatever, and you'll find people from every side of the political spectrum who will sympathize with at least one of my clients sooner or later.

We all hate inefficiency. When I have a client whose relatives are stuck in a refugee camp somewhere, and he has wounds because he was tortured, he wants his hearing fast. He hates inefficiency. Everyone hates inefficiency. So we just want to help you to make the system work better and have integrity

The independence of a tribunal is extremely important for many reasons. For one thing, they're like judges, and judges have to have independence and security of tenure. You could improve security of tenure for board members just by increasing their appointment times, even without changing IRPA. This would keep them from having to go through these renewal processes. Minister Kenny said that every time we change the appointment process, it takes us a long time to staff the board; it's not necessarily always our fault.

Make longer-term appointments, get them in there, and keep them in there. That way, every time you have a new election and a new government, you don't have all this chaos. The board needs to have stability as an institution.

As to efficiency in the process, the 1994 Davis and Waldman report called “The Quality of Mercy”, which was commissioned by the government of the day, recommended that the refugee officers, now called refugee protection officers, should be able to make a positive decision.

If you have 50,000 files, they can go through them and take out the ones that are obvious. They're no-brainers. They can take those out of the system. Then you take the board members and you focus them on the cases that require more investigation. You pull out the easy cases in which government thinks that the people are refugees. You clear them out of the system and focus the board members, who are paid twice as much as the refugee officers, on the cases that seem to require a hearing. Then you clear up the backlog. When Mr. Fleury was the chair, he had refugee officers who completely cleared up the backlog. But they were all short-term employees, not permanent civil servants, and a lot of them got laid off as soon as they cleared the backlog. So what happened? We had e-mails from the refugee officers in Montreal to officers in Toronto telling them that if they have a backlog they had better not clear it up, because they'll get fired.

It's like going into a mine and as soon as you dig out all the gold, you get killed. It's stupid. We need to have permanent civil servants with security of tenure—and you don't need to change the act to do that—in the position of refugee officers, so they can clear a lot of the stuff out of there. Then if you're worried about people from a particular country, you get them heard fast, because you've cleared out the system.

You don't need to change the act to do that. You have a thing under IRPA allowing a chairperson to issue a directive—chairperson's guidelines. Make a directive that refugee officers have the power to go through any file and make a recommendation. Then, automatically, a decision will go out under the chairperson's name, accepting that refugee. You don't have to change the act.

You would be creating a sort of automated system. If a refugee officer says particular people are clear, then you clear them, and you move them through to a hearing much faster.

As to the importance of having a RAD, a full appeal, it has to be a full appeal. It can't be just a technical appeal, because both sides need to take a shot at the case on appeal. If the government finds out this guy pulled a fast one on you, and they think he's a liar, or if we find out that he had an awful lawyer, that he was self-represented, or that he was mentally incompetent, we need to present the evidence on appeal. It needs to be a full appeal.

● (0915)

If you have a full appeal, then you avoid a lot of political problems. Every day we have stories. Our stories don't get into the media all the time. We have to have a real wild one to get into the media. But we're always taking cases to the Federal Court where what we're really litigating is a stupid decision. We're not litigating over some genius point of philosophy or refugee law or something. It's simply some board member getting something totally wrong and his decision is full of mistakes. If we had a RAD the board could clean up its own mistakes. So what gets presented to the Federal Court becomes what's representative of the institution, not embarrassments to the institution. Then you would have way less litigation in Federal Court.

You'd also have a system where you have way less likelihood of people going to the media with crazy stories. Every time you see a case where a board accepted someone that 99% of the board members would not have accepted, it's because there's no appeal. Every time we come out with a case where somebody got rejected, like some refugee from Burma—and I know Minister Kenney is very sympathetic to people from Burma—if we get a refugee from Burma who's rejected and we have to go to the media, it's because there's no appeal. If you had an appeal, your offices would get fewer phone calls and you'd be in the news less often.

Sorry, I misspoke. I mean the board, not you. This is the problem when you speak off the cuff. This is why I'll never be a politician.

We don't want the refugee board to be the subject of eternal debate. We want the refugee board to be a sound institution that is able to represent itself. What comes out of the board has to be representative of the board's true thinking, what the majority of board members think. The RAD allows the board to deal with its own issues.

It's very important that the board be independent also in terms of our government and its ability to maintain a system with integrity and a system that is not subject to any kind of political pressure. We have trade relations with most countries in the world, including countries that have questionable human rights records. We can't have a system where any government can come to us and ask us why we're accepting these refugees—don't we like doing business with them? It's going to be one country today and another country tomorrow.

There's no government that doesn't believe it's special. So when you have people who are directly accountable to a minister, or people who are not independent and people who have short-term tenure, then you have a system that is not truly judicious and doesn't truly have the force of independence. You have a problem because today it's one country that you think is reasonable and the next day it's going to be a country where you think they really have an awful human rights record. But what do you say? What do you say to them? What does your minister for foreign affairs say to them?

I would simply say that if you bring in RAD and you bring in a chairperson's guidelines, you could make the whole system way faster and you wouldn't have to totally reopen the whole act.

Thank you.

● (0920)

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you very much.

Don't rule out public life; it's not that bad.

Mr. Raoul Boulakia: Public life might rule me out.

The Vice-Chair (Hon. Maurizio Bevilacqua): Ms. Taub.

Ms. Julie Taub: I come from the opposite point of view. I think the whole refugee system, as it stands today, as it was created in 2002, is completely dysfunctional and out of control. It has been an opening for abuse and a point of entry for many of the terrorist groups that have been well established in Canada.

I think the whole system has to be completely reformed. Just adding a refugee appeal division to a dysfunctional system will make a bad system worse.

Some of you are shaking your heads. By the way, half my practice is devoted to refugee claimants, and I do find that the Federal Court is more than adequate to deal with appeals. I've done well at the Federal Court, as you can see. My Federal Court decisions are in the biography that I provided.

My solution would be, number one, appoint more Federal Court judges who specialize in immigration matters. I have more faith in a Federal Court judge who has been vetted for his experience and expertise than in a patronage appointment to another appeal level.

There are already sufficient appeals for failed refugee claimants, as you can find on page 4 of my presentation. If a refugee claimant fails, he may go to the Federal Court. If he decides not to go to Federal Court, he will have a pre-removal risk assessment. If that is denied, he can go to Federal Court again.

At any time during this whole process, a refugee claimant can apply for permanent resident status from within Canada on humanitarian and compassionate grounds, and if that is denied, he can go back to Federal Court.

This can go on for years, as you've noticed from many notable cases of people who came as refugee claimants and did not depart from Canada. For example, there's the case of Mugusera. In 2005, the Supreme Court of Canada deemed Leon Mugusera, the exiled ethnic Hutu hard-liner, a war criminal and ordered him deported for helping incite the genocide that ravaged Rwanda. He was a failed refugee claimant from 1995, and guess where he still is? In Canada.

I have a list. I'm not going to read the names to you; you can see them for yourselves. These are failed refugee claimants who are either war criminals, terrorists, or criminals, who are still here years after they made their original refugee claim.

I would suggest that one of the major reforms that could be made is having a list of safe countries of origin whose citizens simply would not be allowed to have refugee claims—for example, the European Union. There are 27 countries. The European Union is much like the United States. Every citizen in each of those 27 countries has the right to work and live in one of the other 26 countries.

Let's take, for example, the Czech Roma. If they are having difficulties in the Czech Republic, they have a choice of 26 other countries in which to live or work. There is no need for Canada to accept any refugee claims—I don't mean "accept" as a positive decision, but to even process them—from the European Union. Or how about Switzerland? Or the United States? There should be a list of safe countries of origin.

Would you like to continue doing that, sir? It's rather impolite.

I would also suggest that a refugee protection officer be at every hearing to vet all the cases beforehand. I believe that is important. And if there is a problem with fairness or lack of consistency at the refugee board, perhaps the government should have civil servants rather than patronage appointments. Patronage appointments don't always ensure that you have the best person on the refugee board.

That's all I have to say for now. Thank you.

● (0925)

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you so much, Ms. Taub.

Thank you to everyone.

We're now going to proceed to a question and answer session. It's usually a seven-minute round. I'll have to be flexible.

We'll start with Mr. Karygiannis.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): Thank you.

Thank you all for coming.

Ms. Taub, you kept mentioning patronage appointments, and I did notice that you are a former member.

Ms. Julie Taub: That's right, and when I was appointed to the board—

Hon. Jim Karygiannis: Allow me to finish the question, please.

Ms. Julie Taub: Okay.

Hon. Jim Karygiannis: That's the way that things are done in court, right? Somebody poses a question, and until they're finished.... You're a lawyer.

When were you appointed?

Ms. Julie Taub: I was appointed in 1997.

Hon. Jim Karygiannis: I don't think the board is a patronage appointment any more.

Ms. Julie Taub: Yes, it is.

Hon. Jim Karygiannis: I see the parliamentary secretary saying it's not. I would take his word. I would take his word. So the board is no longer a patronage appointment.

You alluded that refugees who come into the country are terrorists. Those are your words. I could have been wrong.

Ms. Julie Taub: No, I did not say that. I said that was one of the points of entry for terrorist groups. I certainly did not say that all refugees are terrorists.

Perhaps if you had listened instead of making these impolite gestures—

Hon. Jim Karygiannis: Ma'am, I was listening very carefully, and as an individual who came to this country, who sought refugee status when I came into this country, your comments certainly offended me.

Ms. Julie Taub: I'm sorry. I came into this country in 1949, a child of Holocaust survivors, and I certainly don't feel offended—

Hon. Jim Karygiannis: So you also sought refuge in this country.

Ms. Julie Taub: No, we didn't seek refuge. There was no such thing in 1949. We came in as independent immigrants.

Hon. Jim Karygiannis: Under the protection of Canada. You were selected—

Ms. Julie Taub: No protection. We came in as independent immigrants, based on merit.

Hon. Jim Karygiannis: As Mugusera did. Mugusera was selected to come to this country. I certainly did not appreciate your comments that pretty well brushed every person who comes in as a refugee as being tied to the terrorists.

Ms. Julie Taub: But I did not say that.

Hon. Jim Karygiannis: And a lot of people who are actually coming into Canada seeking refuge because they're fleeing a circumstance back home certainly do not appreciate the comments.

Ms. Julie Taub: I certainly did not say that.

Hon. Jim Karygiannis: Having said that, I have a question for Mr. Waldman.

Ms. Julie Taub: I'm not finished. I did not say that all refugees are tied to terrorism.

Hon. Jim Karygiannis: I didn't ask you a question. Madam, I made a statement, and I thank you. I don't want to be hostile here.

Ms. Julie Taub: And your statement was false.

The Vice-Chair (Hon. Maurizio Bevilacqua): Excuse me. I'm going to call this meeting to order, please.

I think your point was made. I think the point has been exhausted.

I think your point has been made. People understand what you've said.

Now we're going to move to Mr. Waldman and Mr. Karygiannis.

Mr. Terence Young (Oakville, CPC): On a point of order, Mr. Chair, people have given up their own time to come here today, and did not come here to be berated or lectured to by the members opposite.

If the member could just ask questions in an orderly manner, I'm sure we could get through this meeting.

The Vice-Chair (Hon. Maurizio Bevilacqua): Mr. Young, that's not a point of order. I'm chairing this meeting and I'll proceed accordingly.

Mr. Karygiannis.

Hon. Jim Karygiannis: Mr. Waldman, would you tell us why a second tier would help? We did hear that going to the Federal Court is adequate and that people can apply for H and C, humanitarian and compassionate, while they're waiting. H and C can take up to four years, and then they can go to Federal Court.

Which is more feasible, going to Federal Court with a lawyer or going to the RAD on a second level, and which will cost less to the applicant or to the refugee claimant in terms of legal fees, for example?

Mr. Lorne Waldman: The concern is that the RAD is creating another level, but I think the RAD could be implemented in a way that wouldn't take a lot of time and it could be efficient.

The difference between the RAD and the Federal Court is that the Federal Court judges are sitting in what's called judicial review. The judge on judicial review doesn't have the power to make new findings of fact. He doesn't have the power to accept or reject the case. All the judge can do on judicial review is say that the refugee board made an error or it didn't. If you come from the point of view of the refugee claimant, the best outcome you can get is that the judge said the decision was wrong and it has to go back for a new determination. So you've already created a need for a second hearing through the judicial review process.

There have only been one or two cases where the court has actually said the case is so obvious that they are accepted. About 99% of cases are sent back for a second hearing, so you've created a need for a second hearing unnecessarily. They can't review findings of fact. If they think the decision is wrong, they can only overturn it if they think it's clearly wrong, because there is this thing I spoke about before called deference.

I want to comment that this is the first time anyone has ever mentioned this report I did 15 years ago. I thought it was lying on some shelf and had been totally ignored. So I'm glad someone has acknowledged this idea.

The advantage of having a RAD is twofold. First of all, the RAD can correct mistakes of fact that were made by the first division. The second thing is that if they decide there was a mistake, the RAD can finally resolve the case by making a positive decision so there doesn't have to be a rehearing. Those are two fundamental differences between what the RAD would be and what the Federal Court would be.

As I said, you could make the system a lot more efficient by creating other efficiencies. For example, you could create screening mechanisms inside the board that could ferret out the obvious cases and get them accepted quickly and you could streamline the clearly weak cases and get them through hearings quickly so the board could focus its energy on the difficult cases in the middle. There are lots of things you could do. As I said, if you had a RAD, my personal view is that you wouldn't need to have a pre-removal risk assessment. You could get rid of that process.

Let's say the reason you need a pre-removal assessment is that if you were rejected in 2005 and they didn't get around to deporting you until 2009, something could have happened in your country. There could be a change of circumstances, so you need to have someone look at the situation. If the system moves more quickly you could always make it possible for the person to go back to the RAD and say it's been a year and a half, all these things have happened, and ask for reconsideration. You give the power to reopen at the RAD. A written application would be the same as doing a PRRA, but it would be done in one place.

There are ways to make the system more efficient that would still allow for the RAD to be implemented.

● (0930)

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you very much.

Let me be the second person to thank you for that report.

Mr. St-Cyr, you have seven minutes.

[*Translation*]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): Thank you, Mr. Chair.

To begin, I would like to make two comments on your testimony, Ms. Taub. Have no fear, I am...

Ms. Julie Taub: I can answer in French. Go ahead.

Mr. Thierry St-Cyr: I am a very moderate person, but I would still like to go back to the concern Mr. Karygiannis noted. I do not see how the fact that a terrorist has used a judicial system is an argument. Terrorists also use the regular courts. In Quebec, Mom Boucher went to court and created an entire saga. Fundamentally, that is not a reason. That is why we have courts, to separate the wheat from the chaff. So I do not really see that as an argument.

Ms. Julie Taub: Can I answer that?

Mr. Thierry St-Cyr: You can if you like, but it was just a comment.

Ms. Julie Taub: I wanted to use that to point out that we already have so many levels of appeal that it can delay or avoid deportation for 10 or 20 years. All I am wondering is why add another appeal level without first...

Mr. Thierry St-Cyr: I understand your argument, which is in fact the government's argument. I do not agree with that argument; it has nothing to do with terrorists. We are not going to sacrifice...

● (0935)

Ms. Julie Taub: It is just an example.

Mr. Thierry St-Cyr: I allowed you to speak, so let me finish.

We are not going to sacrifice a principle that we consider to be fair because people might abuse it. That was a comment I wanted to make.

My question is for Mr. Waldman and Mr. Boulakia, who support creating an appeal division. Given that an appeal division would create a body of precedents, do you believe that it would help bring uniformity to decisions?

Many immigration lawyers in Quebec do not say so publicly, but they tell me that what we have is quite simply a board member lottery. When a client comes to them and asks them whether they have a chance of winning, they tell them that it depends on the board member, either way. Some judges reject practically everybody. When member Laurier Thibault made a decision about Abdelkader Belaouni, a resident of my riding, he rejected 98% of the people who appeared before him. I challenge anyone in this room to go before a judge knowing that they convict 98% of the people who appear before them. Everyone would say it's a charade. There is also the other extreme: some members accept everyone with no problem.

I would add that there are no precedents being created regarding substance. I am not talking about technical issues, that can be appealed to the Federal Court. Would creating an appeal division remedy this problem?

Mr. Raoul Boulakia: I tried to refer to this, but it is very difficult to talk about everything in a few minutes, that being the tragedy of my entire career.

I have been a lawyer for nearly 20 years, and my vocation is to defend the law. When my clients come here from outside Canada, I am ashamed to have to tell them, frankly, that whether their claim is accepted depends on the luck of the draw and on the board member. That should not be how it is. That was what I was trying to say.

People often say that they can't appeal to the Federal Court or present fresh evidence. The fact that there is no appeal tribunal also operates against the government. For example, if a person has used subterfuge at a hearing, the government could prove in Federal Court that they did not tell the truth.

I tell people that they can't appeal. A refugee appeal division would be the only appeal mechanism. As you say, an appeal division would ensure uniformity in the tribunal's decisions. Ultimately, a tribunal's decisions reflect what it wants to say and represent.

There are also other ways of creating a more effective tribunal. People have complained that some claimants come from countries where there are obviously no problems. People from Portugal have made refugee claims because a consultant firm advertised this. As a lawyer, I do legal aid work. Do you think I am going to go to another country and advertise my office? I am tired enough of trying to survive on the legal aid tariff alone. Lawyers do not advertise like that. If you don't allow consultants to appear before the tribunal, that kind of advertising is not going to happen.

There are ways of solving common problems effectively. How would a refugee appeal division operate? The decisions of an appeal tribunal are authoritative. If 500 people came from Portugal, the appeal tribunal would make a decision about that country, regardless of whether the person was telling the truth or not. It would decide that there are no problems in Portugal, because the state provides protection. The matter would be settled. There are things you can do if you understand the law.

My first duty is to defend the law and I do not like being ashamed of the thing I am serving.

Mr. Thierry St-Cyr: Mr. Waldman, do you want to add anything?

Mr. Lorne Waldman: Forgive me for having to speak in English. I understand French but it is difficult for me to speak it.

[*English*]

I just want to respond to one thing. It's this whole idea of numerous appeals and things like that. This goes back to the whole idea that a failed refugee has a lot of options open to him.

It's true that we have the PRA. The reality is that the PRA is not an efficient review mechanism. The acceptance rate is, I think, about 2% or 3%. There are huge amounts of resources being expended on a process that really doesn't achieve any useful purpose at the end. That's why I repeat: you can divert those resources to the RAD and eliminate the PRA and you would have a fairer process, in my opinion.

In terms of the H and C, this is something that goes back to.... It's funny, but I had totally forgotten about this report and now Mr. Bevilacqua has reminded me. I think there is this idea that you can make 20 and 30 H and C applications, and it's true that legally you can. That's perhaps something the government might want to look at, because the reality is that for the vast majority of people, once you've made one H and C, you have your answer. Unless you really didn't present your full case, it's not likely that another officer looking at the same set of facts is going to make a different decision later. I think there are things that could be done to curtail these types of endless H and C applications.

● (0940)

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you.

Ms. Julie Taub: Could I...?

The Vice-Chair (Hon. Maurizio Bevilacqua): Ms. Chow.

Time was up for the question, Ms. Taub.

Ms. Olivia Chow (Trinity—Spadina, NDP): Thank you, Mr. Chairman.

So what I hear, Mr. Boulakia and Mr. Waldman, is that to have an effective, consistent refugee determination process, we need to get rid of the unscrupulous consultants, put in an appeal division, eliminate PRA and the stay at the Federal Court, and give the refugee officer the power to say yes to obvious cases through a chair directive or guidelines without legislative change, without changing IRPA and without taking it through Parliament.

Those are five clear areas, and of course there is a sixth, which is to have officers that are fully trained and permanent: if you add the resources, you can clear the backlog and stop the flow of bogus refugee claims; you would save money in the Federal Court and you would certainly eliminate the backlog.

Is this what I'm hearing, or have I missed one of the elements?

Mr. Lorne Waldman: Let me make a few real important points.

You don't have to change IRPA and you could achieve pretty much everything you've said. First of all, if you implement the RAD, you could, in the regulations, give the RAD the power to reopen. Let's say there was a decision. If new evidence became available or there was a passage of say a year between the decision and removal, the person would have a right to apply to the RAD in writing. It would be identical to a PRA application, right?

So you could put the regulations in place that would give RAD the power to review and reopen. The difficulty would be how you would get rid of the PRA without legislative change. You could probably do that through a regulation that would basically say that if someone's had a RAD, they wouldn't be entitled to a PRA.

Mr. Raoul Boulakia: I have a way you might deal with the PRA without reopening the whole parliamentary debate over IRPA. You could route the PRA and delegate the RAD. The PRA officer is a delegate, right? That's all he is. There's no law that says this office at 6080 McLeod Road in Niagara Falls is for PRA.

All you need to do is delegate. You say yes, there's still a PRA, but it's delegated to the RAD. Then what you do is you blend, because then you can only get a PRA if you have new evidence. You blend it. You go back to RAD, but only with new evidence.

There are two very small technical points you can put in. In terms of Minister Kenney's concern of people going over and over again, you could put in a time limit. You'd say either you have new evidence or this much time has passed before you can try to reopen; you can't just keep making applications.

Also, there is making the board members more permanent. On making it transparent, I know the government has made efforts to depoliticize the appointment process, and former board members keep saying that it hasn't changed. Make it more transparent. Make it better so that we end the debate over this, but make more long-term appointments. Long-term appointments create greater independence.

● (0945)

Ms. Olivia Chow: Just to be clear, let me see if I'm correct. My understanding, Mr. Waldman, is that you can be applying on humanitarian and compassionate grounds, but you still face deportation. That does not stop you. Two days ago the minister said that you can apply for H and C grounds, and on and on and on. I've seen many cases when, in the middle of applying for H and C grounds, with kids born in Canada, you still get deported. Am I correct on that?

Mr. Lorne Waldman: Yes. There's no doubt that the H and C doesn't stop deportation. You could do the same thing with reopenings at the RAD, as Raoul said.

The reason you need to have the power for reconsideration is that there are often long delays between the decision and the removal, and things can change. You could have, for example, a regulation that says that you can apply to reopen your case at the RAD or can apply for a PRA at the RAD, and if it's been less than a year from your decision, there's no automatic stay of removal, or something like that. There are things you could do that would prevent the type of abuse the minister is concerned about, right?

In the case of an H and C, as you said, there's no automatic stay. We can go to the Federal Court and get a stay, but the chances are very remote, and it's only in extremely unusual cases that the Federal Court will decide that it's appropriate to issue a stay. For the vast majority of people, the mere fact that you apply for the H and C doesn't delay the removal.

Ms. Olivia Chow: Who would be staffing the RAD, the refugee appeal division?

Mr. Raoul Boulakia: It would be members of the Immigration and Refugee Board. But what I would really hope is that the screening process for appointments to the refugee appeal division would give people long-term contracts and would be at the highest level of transparent public scrutiny so that we end the debate and everyone accepts that these appointments are really quality appointments, have nothing to do with politics, are clearly merit-based, and everyone accepts it, including people who've been through the process and think they got it in some way they don't respect.

Ms. Olivia Chow: Right now, people are interviewed and they qualify. Let's say that there are forty who qualify. Their names are put in front of the minister's office. Of the forty, the minister picks five, for example, or ten. The ten the minister picks are political appointments. It would be, "Why didn't you pick the other forty who qualified?" So that should be....

The Vice-Chair (Hon. Maurizio Bevilacqua): Give him one second to answer that question.

Mr. Raoul Boulakia: A short list is a short list.

Mr. Rick Dykstra (St. Catharines, CPC): Point of order.

Ms. Chow is certainly not correctly indicating how decisions are made with respect to appointments.

Mr. Raoul Boulakia: Rather than commenting on the opinion, I'll just comment on a technicality.

A way to make something seem more clear is to never make a short list that gives you one out of four choices. Just make it a really short list so that it's one out of two, or something much, much shorter, so that people can't debate why he picked this one instead of that one.

The Ontario Court of Justice, the Ontario court, has an excellent appointment process. I have to say that even within that, the Attorney General does make choices, but people don't debate the choices.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you.

We'll go to Ms. Wong.

Mrs. Alice Wong (Richmond, CPC): Thank you, Mr. Chair.

I have questions for Ms. Taub.

First of all, I really appreciate your being here. When I look at the panel, you're the only woman there. So thank you very much for doing that.

You have stated before.... I'm quoting what you said before today, actually:

> Canada has the most generous refugee system in the world that has unfortunately become a parallel immigration venue for those who are not qualified to immigrate, for economic migrants, criminals, even terrorists. The need for a total overhaul of the refugee determination system is urgent to serve the best interests of genuine refugees and Canadians in general.

Why do you think the system is so attractive to non-refugees?

Ms. Julie Taub: It is very easy to use the system to prolong your stay in Canada; it's as simple as that. You can make a refugee claim—you can be a diplomat, an international student, or a visitor—if you don't want to go back or you can't renew your visa. These are instances of clients who have come to see me and asked, "What if I make a refugee claim? Can I stay then?" That's the reputation Canada has.

We have the highest acceptance rate, hovering around 50%, whereas the European Union averages about 12%. Is it that all the countries in the European Union are stupid, or are we so exceptionally smart that we know better? It's too easy. The acceptance rates are the highest, and it's known worldwide. We have to really reform the system. Basically some of the comments I heard were in effect about trying to reform the system.

I have to bring this back to 2002, when it was supposed to be implemented with the Immigration and Refugee Protection Act. For some reason the Liberal government said they didn't want to implement it. They had time. They could have implemented it in 2002 and they chose not to, because they felt it was another layer of appeal. So it's not just this current government that says it's another layer of appeal.

If you want to have something like the RAD, then you have to reform the entire system.

Just one correction: the Federal Court can overturn a case for patently unreasonable findings of fact. I have had a couple of cases overturned and sent back because of that.

What we're looking at today is implementing the RAD as it was conceived in 2002. We're not looking at implementing the RAD with all these changes—getting rid of the PRA, appointing different people, and improving the qualifications of board members. We're looking at 2002 as it is in the law now. That's the only thing that should be considered: add RAD and keep everything else. That is what is under consideration, not these other changes that everybody is suggesting.

● (0950)

Mrs. Alice Wong: Thank you for the correction.

Bill C-291, which we are looking at right now, appears to go in an entirely different direction to some of the things you have warned against. How do you think this would affect the flood of bogus refugees and the difficulty in removing them? We have seen so many cases here. Please comment.

Ms. Julie Taub: If you add RAD without making a significant overhaul of the refugee system, bogus refugee claimants can remain here indefinitely for decades.

There is the case of Mahmoud Mohammad Issa Mohammad. He is a terrorist who was given a 17-year sentence by a Greek court for an attack on an El-Al airliner in 1968. He came to Canada first as an immigrant, and then he made a refugee claim. He was refused. He was ordered deported in 1988 but he's still here. This is just one of the most outrageous examples in my paper that you have before you.

Give another layer of appeal; wait a year, as they're suggesting, from the original refugee claim; wait another year before you have an appeal before the RAD—

Mr. Raoul Boulakia: We didn't say that. You're just changing what I said.

Ms. Julie Taub: You said it would take about a year.

If the decision of the RAD is not what you want, it's still appealable to the Federal Court. You're not eliminating the Federal Court from this equation by adding a RAD. If you eliminate the Federal Court and let the refugee appeal division have the last word, that's another thing, but the Federal Court is always there at any level.

I would have more confidence in Federal Court judges than in members appointed to a RAD. Simply appoint more Federal Court judges who will deal strictly with immigration matters. And reform the refugee system.

Mrs. Alice Wong: How much time do I have?

The Vice-Chair (Hon. Maurizio Bevilacqua): You have a minute.

Mrs. Alice Wong: Thank you again.

I think there are cases right now where the reason people have been able to stay is that their appeals have taken a long time. We have had cases for 10 years and over 12 years. We have doubled the amount of time. So by the end of the 20 years, we probably have the second generation grown up in Canada already.

So is that the system we are looking at right now, Ms. Taub?

● (0955)

Ms. Julie Taub: Well, in some cases, that is the system we're looking at, absolutely.

Mrs. Alice Wong: Thank you.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you so much, Ms. Wong.

We don't have enough time for an entire round, but I will do something new here and have a rapid round. You'll ask a very quick question and then allow anybody else to ask a question too, and then the panellists will answer.

Alexandra Mendes, do you have a very quick question of less than a minute?

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): I have one statement and one question.

First of all, Mugesera did not come to Canada as a claimant; he came to Canada as a selected refugee from abroad, and he came in as a permanent resident, first cleared.

Second, to Mr. Waldman and Boulakia,

[*Translation*]

I think the fundamental problem is that we do not have an appeal system. That is what the introduction of this bill is trying to remedy.

Can you describe the proposed process, very simply?

[*English*]

The Vice-Chair (Hon. Maurizio Bevilacqua): Okay, thank you.

Mr. Calandra, be very quick.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): Okay.

Mr. Waldman, you're a practising immigration lawyer. Because I have you in front of me, I will ask you briefly to answer some questions about how billing works for immigration lawyers. I've heard Mr. St-Cyr on this and I've reviewed testimony from previous Liberal and Conservative ministers with respect to an appeals division, so I've heard all of these comments before and want to go in a different direction.

I want to know the costs associated with appeals to an appeals division. I want you to explain to me, briefly if you can, how you bill. Is it by the hour? Do you take a retainer? What would an appeal to an appeals division cost somebody seeking that appeal?

I'm going to suggest—and you can comment on this—that the addition of an appeals division would certainly add a very attractive new revenue source for certain lawyers practising in the immigration field. So I hope you will give me some comments on that.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you, Mr. Calandra.

Mr. St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: I asked earlier whether the appeal division could bring uniformity to decisions. I would also like to know whether it would be possible to monitor board members' performance. If 90% of a judge's decisions are reversed on appeal, the chief justice is going to let them know at some point that things are not going as they should. It seems that in this case, these people can make any decision they like, since there is no accountability and no subsequent review.

[*English*]

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you.

Mr. Lorne Waldman: It is very important, in response to what the member was saying, to state that all of us who work as lawyers are frustrated by the delays and inefficiencies in the system and we all want to make a positive contribution to make the system work more fairly. That's why, when Mr. Boulakia and I talked about the RAD, we're not talking about the RAD in isolation. Contrary to what was suggested, we're not saying bring in the RAD and don't do anything else. If you bring in the RAD, you have to bring it in together with other changes, the ones we pointed out, which would, in the end, create a fairer and efficient system, a system about which there wouldn't be all of these complaints to the government.

So if you asked me to describe the system.... Well, there could be a different system if you made legislative changes. But if you didn't make any legislative changes, a person could make a claim, and the refugee hearing officer could look at all of the files and choose the clearly well-founded claims, which would be accepted without a hearing, and that way you could probably get rid of 20% of the claims quickly. So you would eliminate a lot of the backlog. They could also screen out the clearly or manifestly unfounded claims and put them into a rapid stream as well, to get them out quickly to a hearing. You'd have a hearing before the refugee division. If the decision were accepted, and unless the minister decides to appeal, it's over. If the decision were negative, it would go to a hearing before the RAD, which, according to the way it was proposed before, would be a quick review, normally done in writing—although there would be the possibility of a hearing, supposed to be done within two to three months. If the RAD rejects having a hearing, there is a possibility of judicial review, but the important difference is that whereas now there is an automatic stay of deportation while the Federal Court looks at the case, if you had a RAD, you could eliminate that because there would already have been two reviews. The Federal Court could still stay the deportation, but it wouldn't be automatic.

If the system worked quickly, then there wouldn't be a need for a PRA. If there were a delay in the deportation so a certain amount of time had passed or there were new evidence, you could have the PRA done at the RAD, as we've said. So you could eliminate all the costs of having the PRA separate from the RAD.

So I would say that you could have everything done as quickly as before, or much more quickly, and still have a RAD that would eliminate the process. So I think there is a spirit here of trying to acknowledge the government's concerns to get a more efficient system, but also acknowledging the concerns expressed about the need to have a review.

● (1000)

The Vice-Chair (Hon. Maurizio Bevilacqua): Mr. Boulakia.

Mr. Raoul Boulakia: To the member of Parliament's question, one of the problems was that you came up with this idea in IRPA that did make sense, but to implement it in a way that would be effective and wouldn't create more problems, you needed better technical advice. That's what we're trying to give you. I often say to people that if you want good advice, get a good lawyer.

In response to the concern of lawyers wanting more fees, I'm not getting paid for being here. You can get a lot of advice that would help you to implement this, make it work, and make it work to everyone's satisfaction, including people who are concerned about abuse, with some good free advice from lawyers who are willing to be part of a system. Engage us. We want to help. We want the system to work. None of us wants the system to fail. Don't just think that if you pass legislation you only need to rely on the inside people. Bring outsiders in. We all want to work together.

If anyone thinks there are lawyers who are determined to get more legal aid work in Quebec and Ontario, I know what the rates of legal aid are. I know that there's a partial boycott being done by criminal lawyers in Ontario. Please, consultants bill a lot more than lawyers. There is no control. Really, let's get serious. Who are you talking about?

Mr. Lorne Waldman: On the member's question about the fees, whatever the fees would be for a RAD, it would be a lot less than a Federal Court application, which is much more complex and time-consuming. I would suggest to you that the claimants would be better served by a RAD because they would have access to a less expensive appeal process.

Ms. Julie Taub: Could I comment on that, please?

The Vice-Chair (Hon. Maurizio Bevilacqua): Yes, and then Mr. Calandra.

Ms. Julie Taub: To get back to the fees, just because you go to the RAD doesn't eliminate the possibility of going to Federal Court afterwards. That's number one.

I believe we all want the same thing here. We want a more efficient system. From my point of view, a more efficient system would be overhauling the refugee system, as opposed to just adding the RAD to a dysfunctional system. In the end, we have the same goals. In the end, we want something more efficient and less open to bogus claims and we want a more rapid processing of genuine claims. We all want the same thing. We want to get to the same goal, but by different routes.

The Vice-Chair (Hon. Maurizio Bevilacqua): Mr. Calandra, a final question.

Mr. Paul Calandra: It strikes me that everything you're saying seems to suggest that bringing forward the RAD without significant changes first would be absolutely inappropriate. We're almost putting the cart before the horse.

Also, with respect to legal aid fees, I think taxpayers in Ontario and Quebec might also have something to say about the costs associated with an appeals division.

You're right, Ms. Taub: it doesn't stop you from appealing to the Federal Court. I wonder if it's not your duty as a counsel to people that, if you get a decision you don't like, you would automatically appeal that decision or find avenues to appeal that decision, which would then in essence cost the taxpayers even more money.

We have cases of people who've been in this country for 15 to 20 years. We have a case of a gentleman who is a hijacker, shot his hostages, and he's been here for 20 years. I think you're familiar with that case. If I'm not mistaken, it's Parminder Singh Saini, who articled in your law firm. The Canadian court suggested that he should be out of this country, that he's a danger to this country, and 15 years later he's still here.

I think taxpayers have a right to have confidence in the institutions, as you've been suggesting, and have a right to feel that their government is working for them. It is the responsibility of all of us to make sure our country is safe and our communities are safe.

With that, I'll close, Mr. Chair. Thank you for allowing us to go over time. Hopefully we'll have another opportunity to hear from these witnesses in the future.

You don't have to comment. I just wanted to get that off my chest.

Mr. Lorne Waldman: All the things we stated are things that could be done without legislative change. That's the reason we suggested all these things. Obviously, if you do legislative changes you can do lots more, but you can create a fair, efficient system, implement the RAD, and not have to make any legislative changes.

● (1005)

The Vice-Chair (Hon. Maurizio Bevilacqua): I want to first of all thank everyone for their input. As parliamentarians, we depend heavily on individuals and experts to provide what can be at times varied opinions, but that's what makes the public debate exceptional in this Parliament. For that, on behalf of the committee members, I want to express our sincerest gratitude.

Thank you.

We'll suspend for five minutes.

● (1005)

(Pause)

● (1010)

The Vice-Chair (Hon. Maurizio Bevilacqua): I call the meeting to order. This is the second session. As we all know, the orders of the day are, pursuant to the order of reference of Wednesday, April 22, 2009, for study of Bill C-291, an act to amend the Immigration and Refugee Protection Act, coming into force of sections 110, 111, and 171.

The second panellists include, from the Canadian Council for Refugees, the executive director, Janet Dench. Welcome. As an individual we have a former ambassador and former executive director of the Canadian Immigration Service, Mr. James Bissett. Eventually we'll have Rivka Augenfeld, representative from the *Table de concertation des organismes au service des personnes réfugiées et immigrantes*.

We will begin with the Canadian Council for Refugees and executive director Ms. Janet Dench. Thank you very much for coming. You have approximately seven to ten minutes—closer to seven, please.

Thank you.

Ms. Janet Dench (Executive Director, Canadian Council for Refugees): Thank you very much.

Thank you for the invitation to speak to you this morning about Bill C-291, compelling implementation of the refugee appeal division.

[*Translation*]

The Canadian Council for Refugees urges the Committee to complete its study very quickly, given that the bill has already been studied by both the House and the Senate in the previous Parliament. It is very important that the bill be passed quickly, for three reasons.

The first is that the bill is important. Providing refugee claimants with the right to appeal may save lives. Wrong decisions at the refugee hearing that go uncorrected can lead to refugees being returned to persecution, torture and even death. Contrary to much popular opinion, there is currently no appeal on the merits for refugee claimants. The limited recourses that are available are incapable of correcting many errors in refugee determination.

The second reason is that the bill needs to be passed quickly. It is already more than six years since the Immigration and Refugee Protection Act came into effect without implementing the right of appeal for refugees foreseen by the Act. As a result, for six years refugee claimants have been having their fate determined by a single decision maker in a system never approved by Parliament. Refugees have already waited too long for this injustice to be corrected.

The third reason is that the bill was very close to becoming law. All that was left was for the House of Commons to vote on the amendments made by the Senate. It should therefore be a straightforward matter for the House and Senate to pass the same text without further debate and delays.

● (1015)

[*English*]

As you discuss this bill and the broader question of possible changes to the refugee determination system, we would encourage you to bear in mind several points.

First, refugee protection is a matter of human rights. A refugee determination system must first and foremost ensure respect for the human rights of those who claim our protection. Of course, you have a responsibility to ensure that the system is working efficiently and that it is not hampered, for example, by large numbers of claims from people who do not need Canada's protection. But your primary concern should always be to ensure that the system is ensuring that no one who needs Canada's protection is sent back to persecution or torture. We are therefore concerned when there appears to be more time and energy given to worrying about unfounded claims than about claimants who are wrongly rejected and face return to persecution or torture because there is no appeal on the merits in the Canadian system.

Second, refugee determination is about offering protection to individual human beings who need it. The success of the refugee determination system must be judged on whether it recognizes those individuals who need protection. It is not about whether the overall acceptance rate is high or low. To an individual person who needs protection and who has been rejected, it is no help to say that the acceptance rate in Canada is high. We want to underline the dramatic implications of the lack of appeal on the lives of individuals.

I invite you to read the story of Juan Manuel in this document that was circulated, on page three in the sidebar. Juan Manuel made a refugee claim that was denied in Canada. Shortly after his return to Mexico, he was brutally attacked by the people he had originally fled. He was in intensive care for 12 days. He was lucky to survive. If bystanders hadn't intervened, he would have been killed.

In another case, the UN Committee Against Torture intervened to stop Canada deporting an individual to a risk of torture.

● (1020)

[*Translation*]

It was in December 2004. The Committee Against Torture found that Canada had failed Enrique Falcon Rios, a victim of torture. The decision also highlighted some problems with Canada's refugee determination system, notably the lack of any effective appeal or recourse for correcting errors in decisions by the Immigration and Refugee Board.

[*English*]

There is a third point we would encourage you to bear in mind. There is a lot of misunderstanding about the refugee system. Unfortunately, the refugee system, which is quite complex, is often misunderstood or misrepresented. As you review problems in the system and consider changes, we strongly recommend that you make sure you get really good information about the system. For example, people frequently suggest that delays are caused in the refugee system by humanitarian and compassionate applications, commonly called “H and C”. We were discussing this earlier. However, it does not seem to be widely understood that there is no stay of removal pending an H and C application. So it is not true that a person can delay their removal by simply making an H and C application.

Another example of a misunderstanding is the common assumption that the problem lies with legislation if it takes a long time to remove refused claimants. In fact, it is more often a problem of bureaucratic processes and priorities. Despite the growing backlog at the Immigration and Refugee Board, many Mexican claimants have been having their hearings very quickly, because their claimants have been given priority by the board. Yet there may have been no effort to remove them for many months or years, those whose claims were rejected, because they are not a priority with another arm of the government.

The CCR and its member agencies have a wealth of experience with the system. We can see what is working and what is not. We urge you to recommend to the minister that he consult with the NGOs serving refugees before drafting any legislation.

There is a fourth and final point that we urge you to consider.

[*Translation*]

Discussion of refugee issues needs to be respectful and well-informed. We have heard numerous serious inaccuracies in recent public comment on the Canadian refugee system, often apparently motivated by hostility to refugee claimants. This does not support reasoned discussion about the important policy issues. Refugees are among the most vulnerable people in society and are easy targets for attack, as non-citizens in a foreign country.

[*English*]

We encourage you, as you discuss these issues, to always keep in mind that we are talking about human beings who deserve our respect.

Thank you very much.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you so much, Ms. Dench, for your presentation.

We will now hear from Mr. James Bissett. Welcome.

Mr. James Bissett (As an Individual): Thank you very much, Mr. Chairman.

Our asylum system is really in a mess. It doesn't serve the needs of genuine refugees, it's enormously expensive, it encourages and rewards human smuggling, it presents our country with a serious security risk, it undermines our immigration program, and it has damaged our bilateral relations with many friendly countries. It compromises our trade and tourist industry; it's the primary reason that our southern border has been, in effect, militarized and that Canadian goods and services and people can no longer pass quickly and freely across the border.

No other country in the world that I'm aware of would even dream of allowing anyone to enter the country simply because they claim to be persecuted. Yet in the past 25 years we have allowed over 700,000 people who claimed to be persecuted to enter the country. Last year, 37,000 claimants came to Canada, and we're getting about 3,000 every month.

Even now, these people who come in don't have to meet any of the immigration requirements. There's no medical screening before they come, no criminal screening before they come, no security checks conducted before they come. They simply walk in and claim that they're persecuted. We then invite them in, put them up in hotels, show them where they can go to the welfare office to get welfare. We permit them to work, we give them free medical care, and they're free to travel once they leave the airport. We haven't the slightest idea where they're going and what they're doing.

They come from large numbers of countries. In 2002, we had citizens of 152 different countries apply for refugee status in Canada. Among them were Germans, Swedes, Swiss people who were coming from democratic countries where the rule of law prevails, countries that have signed the UN Convention on Refugees and are obliged to look after asylum seekers as well as we do.

So our policy has been deeply flawed and has been flawed for many years—for 25 years, I would say. Every attempt to reform the system, even modest reforms to bring our policy on asylum seekers in line with most of the other western countries of the world, has been strenuously resisted by special interest groups.

In 1989 new asylum legislation was introduced in Parliament. It was designed to establish a system that was fair and equitable to refugee claimants but was realistic, in the knowledge that any quasi-judicial body, whether it's a court or the IRB—the Immigration and Refugee Board—cannot function if it allows universal access to itself. Without some form of front-end screening, any quasi-judicial body breaks down by sheer volume.

Professor Edward Ratushny—many of you may have heard of him, a distinguished professor at the University of Ottawa law faculty—was appointed by Lloyd Axworthy to study and recommend new legislation on asylum seekers. In his report, among other things Ratushny recommended as his first recommendation that access to any new system be limited by screening out clearly unfounded or incredible claims; otherwise the system would be overwhelmed by individuals using the asylum route to gain entry to Canada.

Ratushny pointed out how Germany's very generous asylum system was being exploited and abused. In 1980, Germany received 108,000 asylum claims and spent $250 million on welfare for those waiting for a decision to be made. That's an amount that, as Professor Ratushny pointed out, could have had tremendous value, had that kind of money been used by the United Nations High Commissioner for Refugees in his efforts to look after real refugees in camps around the world. He added at that time in his report that Canada was fortunate in being able to deal with such potential problems before they materialized. However, Ratushny warned, there's no reason for any sense of complacency.

● (1025)

In 1980 Canada received 1,600 asylum claims.

What the Germans did was tighten up, but they didn't tighten it up well enough, because in 1993 they received 438,000 claims for asylum. It so alarmed the German government that they had to change their constitution, which allowed anyone from any country to come and claim in Germany. The Germans changed their constitution in 1993, and their legislation now is very tough. And it's tough because they keep out people who are coming from countries that are obliged, as signatories to the UN convention, to look after asylum seekers and that are democratic and follow the rule of law.

In 1989 the legislation that was passed in that year relied heavily on Ratushny's recommendations, and that allowed the drafters of the legislation to design an asylum system that was intended to be a model for the globe. It was going to be an independent board; the hearing was to be non-adversarial. And that's very important, because that means, in effect, that the story that the asylum seeker tells the board pretty well has to be accepted. They can't be cross-examined.

A two-member board was envisaged, and if a negative decision was handed down, both of the board members had to agree to it. There had to be a unanimous refusal, in other words. Second, a positive decision did not require written reasons by members of the board, but if they turned someone down they had to give written reasons. And a refused claim could be appealed with leave to the Federal Court.

However, to have such a generous system depended on restricting access to the board, and the instrument that was used at that time to achieve that was to give cabinet the power to list countries that were considered to be safe for refugees. Again, all of the European Community countries implemented this long ago. There is no possibility of someone coming from a democratic country with a rule of law, from countries that have signed the UN convention, to make a refugee claim in any of the European countries.

So that legislation was about to be passed. Three days before it was enacted, the Minister of Immigration at the time said it would pass into legislation but without enacting the "safe country" provisions. The result of that was, of course, that the whole system collapsed, and it's still collapsed today. So the failure to use the "safe country" is very serious.

On the issue you're looking at today, it doesn't make any sense at all to add another level of appeal to the system we now already have—not at this point, when the minister has recommended legislation in the House soon and when we have a backlog of 62,000. Bring this second level of appeal in and you're going to find that the backlog is going to be 80,000, 90,000, 100,000, and the waiting period, which is up to three to five years now, is going to be probably five, six, eight years. It just makes no sense.

I would have much to say about this, but I'll end by saying that anyone who suggests that this should be accepted by the committee would be.... As my grandchildren term it, it's a no-brainer.

Thank you.

● (1030)

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you, Mr. Bissett.

Ms. Augenfeld, welcome.

[*Translation*]

Ms. Rivka Augenfeld (Representative, Table de concertation des organismes au service des personnes réfugiées et immigrantes): Good morning. Thank you for inviting us.

Briefly, the Table de concertation des organismes au service des personnes réfugiées et immigrantes is a coalition of 137 member organizations throughout Quebec. Collectively, we have over 35 years of experience in services on the ground, and of knowledge of the problems, the legislation, amendments, regulations, policies and operations, and, as an official said, ways of doing things, sometimes. I will come back to that later.

Individually and collectively, we support the position of the Canadian Council for Refugees. I therefore do not want to repeat everything Ms. Dench has said. However, I can tell you that in my years of experience I have spoken with virtually every minister of immigration, over 20 in the last 30 years. Too often—not always—the words are the same, year after year: front door, back door, false refugees, false claimants, everything that discredits refugee claimants.

[*English*]

The term "false claimants" is a very unfortunate term, because a person can sincerely believe they have a case and be refused. You can be the victim of violence and not fall within the definition. Some people come here before the headlines. We saw that, going back to the time when Mr. Bissett was in the department, with the Salvadoreans, the Guatemalans. The Sri Lankans came before the headlines. When the Sri Lankan Tamils were really victims of persecution and came in the eighties, we didn't know why they were coming because we thought Sri Lanka was a democratic country and part of the Colombo Plan. Well, we learned. So sometimes it's the refugees who bring the story.

I will just say that the 1951 convention, which Canada only signed onto 40 years ago—but we're proud of that and we're celebrating the 40th anniversary—was partly the result of a total absence of protection for Jews and Roma and many others during the Second World War and the Holocaust. The convention came into being to try to prevent such a catastrophe from ever happening again. Unfortunately, it doesn't always work.

We have to be careful with our vocabulary. It's a catch-22 to try to speed up a process to match the resources rather than to concentrate on what resources and what places you need, what types of resources, at what point, and an analysis of what really happens, as opposed to the types and numbers of processes that are being bandied about. They vary from speaker to speaker and from minister to minister. I'm not blaming the ministers; they're given the information.

I would suggest, as one of the previous speakers said, that you need good statistics. You need to see how many people are really going through how many processes, what the real story is. You need to look at why the accelerated, expedited process is being used so little at the Immigration and Refugee Board. We only have about 10% of the cases being accepted at that level. Only 65% of people actually go to leave to appeal. Of those, how many go on to make H and Cs? I hope you have the statistics; it would be good to have them.

[*Translation*]

The resources and the implementation of certain processes are not included in the Act and never will be. The question is therefore: why do things get bogged down at some points? It is a matter of resources and the will to do it, and sometimes a matter of bureaucracy. There is no appeal.

[*English*]

There is no appeal. As we speak, anyone who tells you there is an appeal on the merits, it's not the case. It's mistaken. A very minuscule number, as our previous speaker said, are referred back to the Immigration and Refugee Board. That is costly; that is not effective. It could be prevented if you had an appeal.

No system is infallible, and this we need to repeat as often as we have to. Mistakes are made even by experts, and that's why even for traffic tickets and taxes and drunk drivers, you have an appeal.

● (1035)

[*Translation*]

It is trite to reiterate that this is a matter of life and death.

[*English*]

Almost is not good enough. The fact that we helped *x* number of people will never justify sending even one person back to torture or death or imprisonment. I think we also need to remember that the resource exchange was made with the IRPA. We went down and the NGO community agreed to reduce the panel from two to one because we were mindful of resources, one member of the first hearing in exchange for an appeal. So we went down to one member and we never got the appeal. This is forgotten. Now we're talking about this as if nothing was ever sacrificed for the appeal, and there was a sacrifice. Now we're stuck with one member, no appeal.

The institutional memory of everything that's happened, unfortunately, sometimes lies with the community organizations, and it's nobody's fault.

[*Translation*]

Members of Parliament join the committee, but they leave. You have a lot of goodwill, you have expertise, but next year you may not be here. Some people who were here no longer are. The same is true in the Department: most people there were not there 10 years ago. And so we are the only ones with this expertise.

[*English*]

I think an investment in the hearing and appeal would have been much more fair and cost-effective in 1989 when my learned colleague was the director of immigration. We have to remember that in 1989 there were two levels. There was a credible basis to have a case heard, which supposedly screened people who didn't have a credible base. Over 90% of those cases went through to a second level of a full hearing. Now, that's not efficient.

I'm not trying to tell you to go back to the good old days, but all the way back then we could have had a two-level system at the time, which would have been more cost-effective, 20 years ago. The agency doesn't prevent removal. As we said, the PRI is not an appeal. It was designed to be post-appeal. The PRA....

[*Translation*]

The PRRA was after the appeal.

[*English*]

To finish, I make two points. Everyone is complaining that only 10% of the Mexicans are accepted. Well, let's remember that 10% of several thousand people is hundreds of people. Hundreds of people need our protection from a country like Mexico, where some people perceive there to be no problems. We would submit that there are.

I would finish with this point, Mr. Chair. The NGO community has an enormous amount of experience and expertise. We've seen what works. We've seen what doesn't work. We all want the same thing. We want refugees to get speedy protection. We want those who don't need our protection to have a speedy determination, but we will not sacrifice the safeguards that are needed to make sure that no one is mistakenly refused. I think we have to remember what the UNHCR says in this booklet, which you can get from the representative who is here, that there is no such thing as a safe country. Any country can produce refugees. We have to be careful not to decide that it's not possible to be a refugee from certain countries.

I would really beg you to include in your recommendations that the NGO community be included in discussion pre-legislation, to offer our expertise. Once the legislation is on the books, it's a little bit late. We have a lot to offer. We are offering you, mostly for free, our advice and our expertise and all the grey hairs that have come from being involved with this issue for such a long time.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you so much for that presentation.

I want to move to the question and answer session, but I am going to ask members as well as the witnesses to keep our questions and answers concise, precise, and to the point. That way we can get a lot more information and get valuable insight from you. We do have a vote in thirty minutes, but that's not going to affect this committee, because it takes us less than ten minutes to get to the House.

Mr. Karygiannis, you have five minutes.

Hon. Jim Karygiannis: Thank you.

Thank you to the panel for coming.

I have to make a point. Some of the panellists are saying that bogus refugee claimants that come over are terrorists. The majority of people who seek refuge in Canada are genuine individuals who are fleeing from persecution in their own country. To have some examples of people who have been here for 20 years, a very low number, 1% or 2% of the people, is something everybody around this table has to dissociate themselves from, because Canada is a country that gives people who come here seeking refuge an opportunity to excel. The fact that some of my colleagues around this table are trying to associate refugees with terrorists is a sad approach.

I have a question to the panel. In every level of deliberations—Canada Pension Plan, EI, or ODSP, the Ontario disability benefits, or WCB, or whatever you're applying for—you've got a number of levels of inside appeals. If you're applying for Canada Pension Plan you have the first level you're applying for, and if that's not given to you then you go to the board. And if that's not given to you, then you can go to the ombudsman. When people are applying to get something in the non-legislative area, outside the court process, we as Canadians citizens give our people a second and third appeal, so why are we not giving the people who are coming to Canada the same opportunity? Why are we cutting them out by saying that if they're applying as refugees, they've had their hearing and if they disagree they should go to the Federal Court? As people applying for Canada Pension Plan, they can go three steps before they must go to the Federal Court. Why are we treating them differently? Can you please...?

● (1040)

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you, Mr. Karygiannis.

Ms. Dench.

Ms. Janet Dench: I would underline your point by remarking that the decision before the Immigration and Refugee Board, when a claimant appears before them, is quite possibly the only decision that is made by a Canadian tribunal where you are potentially deciding on the death or life of the person, because the consequences of a wrong decision can be, and in some cases are, death for the person that is refused. So this is an incredibly important decision.

One asks one's self, how is it that we can be allowing that decision to be made by one person without an appeal on the merits, when trivial matters are subject in Canada to appeal on the merits? The only conclusion that many of us can reach is that it is showing a lack of respect for the lives of those refugees, those people who are asking for our protection.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you.

Ms. Augenfeld.

Ms. Rivka Augenfeld: To further underscore, because somehow there is a perception.... We could be doing public education in the other direction. Every human being is a human being, as General Dallaire says. When we truly believe that every human being is a human being, their status is secondary to their need for protection and their need to be heard.

If a person comes to this country.... I hate to disagree with my learned colleague here, but we are not the only country in the world that allows people in simply because they claim protection. That is the convention. The convention is about

[*Translation*]

non-refoulement until it is decided whether the person needs our protection or not.

[*English*]

Hundreds of thousands of people stream across borders in very poor countries, asking for protection. We do security checks up front now. Before a person can go through the system, there is a security check. So this constant bandying about of "terrorist" is a scare tactic to scare people. It's not true that we don't check people. We check them up front.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you.

Mr. Bissett.

Mr. James Bissett: On the security issue, I'm inclined to agree: very few asylum seekers have been found to be terrorists. But some have, and one of them, of course, is the famous "Millennium Bomber", Ahmed Ressam, who came here as an asylum claimant from Algeria. He didn't even bother to appear before the board. He eventually tried to blow up the Los Angeles airport.

Perception is the greater part of reality. If you talk to the people in the Department of Homeland Security in the United States, they'll say the reason they are building up the border is because they know that we let anyone in who comes in, and they don't get a security check. The security check starts after they're in, and it may take months for it to be carried out. So it's the perception of it. That's all I want to say on that.

On the other question, I agree that there should be levels of appeal. There are levels of review, though. You have leave to appeal to the Federal Court. Then you do get a humanitarian and compassionate review by the department, and there are very large numbers accepted. Then if you are ordered deported, you get a pre-removal risk assessment and an oral hearing at that, and if it's refused, then you can again seek leave to the Federal Court.

If you look at the removals, there are very few failed asylum seekers being removed—maybe 5,000 a year.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you, Mr. Bissett.

Mr. St-Cyr.

Mr. Terence Young: Chair, on a point of order—

The Vice-Chair (Hon. Maurizio Bevilacqua): Yes.

Mr. Terence Young: —maybe you could tell the committee what time you want us to adjourn to go to the House.

The Vice-Chair (Hon. Maurizio Bevilacqua): We'll finish with the witnesses, and we'll conclude at eleven o'clock.

Mr. Terence Young: That gives us only seven minutes to get to the House. There's not enough time.

The Vice-Chair (Hon. Maurizio Bevilacqua): Do you want to leave in ten minutes?

Mr. Terence Young: That would be fine, I would think. I would like to suggest that perhaps we could divide the remaining time evenly among the three parties.

The Vice-Chair (Hon. Maurizio Bevilacqua): Absolutely.

I won't count your intervention as your time, though.

Mr. St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Thank you, Mr. Chair.

Mr. Bissett, I am not going to ask you any questions. I was somewhat surprised by your testimony. My impression is that you made a lot of gratuitous accusations and threw out messages that do not correspond to what we see on the ground. That seems a little too easy, to me.

Before the 1995 sovereignty referendum, we granted citizenship to thousands of Canadians at top speed. There was one terrorist in that batch. No sovereignist will say that federalism encourages terrorism. That has nothing to do with it. There are processes, but some terrorists manage to get through the cracks. That is not a reason to toss out our whole system.

I will now address Ms. Dench and Ms. Augenfeld. The government tells us there will be a thorough reform. The system is going to be rebuilt from the ground up, so this is not the time to be adding a new refugee appeal division. Under the Act, the government has one year to bring about this reform, that we have been talking about for eight years.

Do you think we should wait and see whether there will ultimately be a reform and whether it will be a good one, or should we rather create a refugee appeal division immediately and pass the bill? Next year, if the government brings us something worth considering, then we will analyze it.

● (1045)

Ms. Janet Dench: The current Act has been in force since 2002. One of the reasons the government cites when it talks about it being impossible to create an appeal division is that it is planning to amend the Act. We have been hearing this argument for seven years, since 2002. It is not a new one. A system was developed, and it was approved by Parliament. So why are we not implementing it? If we have to make changes afterward, we will at least know whether the system is working or not. We will have more information for any future reform.

Ms. Rivka Augenfeld: I agree with that, and I also think it has to be done now. However, it must not be done without resources. There absolutely have to be adequate resources. The bill already provides for time for obtaining resources. As long ago as 2002, draft regulations were being considered. We don't have to start over from zero. We have got to take action. As Ms. Dench said, we have been talking about reform for years. Several ministers, in two governments, have talked about it.

It think it is simple, and it would solve a lot of problems. The use of resources will be more efficient, not the reverse. It will also be fairer. How could anyone decide not to do it? That is a mystery to us. It should have been done long ago. In any event, you now have the opportunity to make the recommendation to your own parties.

Mr. Thierry St-Cyr: With the current Act, there is a lot of talk about the opportunity of unsuccessful claimants to appeal, but also about the fact that the Minister may appeal a decision by a member that he thinks is too lenient. The government talks about all these people who have slipped through the net, false claimants and people who do not have Convention refugee status who manage to stay in Canada. So it is somewhat inconsistent for the Minister to be opposed to the opportunity to appeal bad decisions by board members.

[*English*]

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you.

Mr. Bissett.

Mr. James Bissett: I wonder if I could make a comment on Mr. St-Cyr's question.

The Vice-Chair (Hon. Maurizio Bevilacqua): Absolutely, go ahead.

Mr. James Bissett: I think it's important to realize that if the enactment of the new appeal section came into effect, it simply means a paper review. It's not a *de novo* hearing. There can be no new facts presented, no new evidence presented. Someone reviews the paper decision that was made by the board. That's it. It's not worth it to do that at this particular time. Particularly when the backlog is building up, you will just add another time delay. There's no substance to this kind of an appeal. If there's going to be an appeal it should be a real appeal, a *de novo*.

The Vice-Chair (Hon. Maurizio Bevilacqua): Merci, Monsieur St-Cyr.

Ms. Chow, you have five minutes.

Ms. Olivia Chow: I only need two. I have a question for Ms. Augenfeld and Ms. Dench.

There were three lawyers here earlier on, and I made these different suggestions: remove unscrupulous consultants; implement the refugee appeal division, with the power to reopen and review cases; eliminate the pre-removal risk assessment; eliminate the automatic stay of removal at Federal Court; hire more permanent refugee protection officers and give them the power to grant approval status to obvious cases—this is through the chair's guidelines and directives—and remove political patronage from appointments to the refugee board.

Those are the recommendations to have an effective, fair, consistent, and rapid refugee determination process. Are these recommendations, on top of the RAD, something that you would support?

● (1050)

Ms. Janet Dench: From the point of view of the Canadian Council for Refugees, we would not support all those recommendations, and there are other things that we think are critical.

I would highlight that the implementation of the refugee appeal division has been an urgent call from the refugee advocacy community since the current system came into place in the 1980s. You, as parliamentarians, have a responsibility to make sure that people who need Canada's protection are not sent back to persecution. You should therefore feel personally responsible for ensuring that the system meets its obligations, and that Canada meets its obligations, not to *refoule*refugees. We're here today to urge you to make that a priority.

There are other problems in the system. The appointments to the Immigration and Refugee Board are also a priority. Before any legislation is tabled for further reforms, we would very much like to discuss that with the government. We have many suggestions to make, and we are bemused, confused, that the government has failed and the minister has declined to have any conversation with the refugee advocacy community. We cannot understand how one can expect to have good legislation come forward when you don't make use of the communities of expertise that are out there.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you, Ms. Dench.

Ms. Rivka Augenfeld: May I answer?

I agree with everything Janet Dench said, but I would also say that you can't first fix the system and then bring the appeal. The appeal is part of fixing the system. You bring in the appeal, you put in the necessary resources, and then you look simultaneously at some of the other things that can be done.

I would remind people, to go back to my point—and because I'm sitting right next to Joe Bissett—that in 1989, when there were over 100,000 people in a backlog when the new IRB came in, the NGO community, lawyers, and others had recommendations for how to clear that backlog that would have been fairer and more efficient. The government announced a program that was supposed to last two years and cost $200 million. It ended up taking over five years and cost $500 million. Who got left last in the whole thing? Refugees who needed protection. There are ways of dealing with this, but first you have to implement the RAD, make it fairer, and then other things will follow.

Ms. Olivia Chow: You're suggesting the RAD should have the right to reopen and review cases for hearings, right?

Ms. Rivka Augenfeld: If necessary.

Ms. Olivia Chow: I didn't realize it was $500 million that was blown out the door at the time for the 100,000 backlog.

What percentage again—you said it so fast I missed it—actually right now go to Federal Court of all the ones that were turned down?

Ms. Rivka Augenfeld: May I answer?

The Vice-Chair (Hon. Maurizio Bevilacqua): Yes, you may.

Ms. Rivka Augenfeld: I was given the statistic at a meeting last week with the Immigration and Refugee Board that about 65% of cases that are refused go to the Federal Court, ask for leave. Of those who ask for leave, very few are accepted for leave. Of those who are accepted for leave, very few have their appeal examined.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you very much.

As you probably can hear, there is a bell going on. The vote will take place around 11:08. There may be some members of Parliament on the committee who will be leaving. That's the reason why they're leaving. On their behalf, I want to thank you very much for your input.

We now will hear from Mr. Young.

Mr. Terence Young: Thank you, Chair.

Mrs. Dench, you said the minister maybe hasn't consulted with the community. This process here today is the highest form of consultation. Two parliamentary assistants to the minister are sitting on this committee today to hear your testimony. It will be examined closely by the political staff. It will be examined closely by the bureaucracy and the minister. I wanted to assure you of that.

My question is for Mr. Bissett. You stated, Mr. Bissett, that we're the only western country that does not have some sort of a pre-screening procedure to sort out obviously fraudulent and unfounded refugee claims. What would such a procedure look like?

Mr. James Bissett: The primary one is the one that we had in the 1989 legislation. This is that certain countries are listed as safe for refugees; they are a safe country of origin. If you're coming from a country, as I said, that's democratic, that follows the rule of law, that's a signatory to the UN convention, then you're not eligible to make a claim. You may be screened by a refugee officer at the port of entry who will ask you questions, but generally speaking you don't get access to the refugee systems.

Other countries in Europe and elsewhere have what they call “manifestly unfounded claims”. That is if someone has a claim that's obviously frivolous, the refugee officer questions him and believes that it's unfounded and there's no real substance to the claim, the claim can be stopped at that point and not allowed into the system. There are various ways of doing it.

● (1055)

Mr. Terence Young: Thank you.

Can you please explain the involvement of what you described as foreign racketeers in the fraudulent routing of aspiring economic migrants to Canada's refugee system?

Mr. James Bissett: Of course we're a favourite target of human smugglers because the smugglers know that all you have to do is get on an aircraft destined to Canada. They will provide you with false documents that will enable you to get on the aircraft. Once on the aircraft the smuggler will tell you that he guarantees you five to ten years in Canada, even if you're found by the board not to be genuine.

Mr. Terence Young: And they make a great deal of money doing that.

Mr. James Bissett: Of course they may. We know there are some cases where they pay $50,000 U.S. to get aboard an aircraft destined to Canada. We are the country of choice for human smuggling.

Mr. Terence Young: Thank you, Chair.

I'd like to give the rest of my time to Ms. Grewal.

The Vice-Chair (Hon. Maurizio Bevilacqua): Sure, go ahead.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): In the past you have stated that the Canadian refugee system needs reform. What are your proposals for efficiency or cost savings? Would you please comment on that?

Ms. Janet Dench: Yes.

We're very much interested in looking at how the system can be more efficient. There are many things that don't work very well in the system. One of the problems that has arisen is that there has been this development of more and more categories of people who are ineligible to make refugee claims, so they don't get before the Immigration and Refugee Board. But many of them may need protection, so you have to have some other kind of mechanism to review whether they need protection. That has been done through the pre-removal risk assessment. If you talk to people who know the PRA, pre-removal risk assessment, most will feel that it is not a great success. We certainly think we should try to consolidate our processes so we have something that is a much simpler way for all people who say they need Canada's protection, which is at the Immigration and Refugee Board.

One of the things, for example, we had recommended when this legislation came in is that rather than having the pre-removal risk assessment to see whether there is new information that needs to be considered, which means you have to open up a whole new file and whole new office, you simply have an opportunity for reopening to the Immigration and Refugee Board. They already have your file. They've said, in the case of a refused claimant, that you don't need protection, so they could take an application that says okay, this is the new evidence, and the Immigration and Refugee Board could simply see if this is enough that they should take a look at this or not. That would be something that would be much more efficient.

We have days' worth of suggestions. Unfortunately, we don't have time to go into them all this morning, but we would certainly welcome an opportunity to discuss all of these with representatives of the minister or of the government, to go into more detail with all of the suggestions that we have, in order to make the system both more efficient and also fair and to ensure Canada does meet its international obligations.

Mr. Terence Young: Mr. Chair, I just want to correct myself, if I may. I believe I said “parliamentary assistants”. I meant to say “parliamentary secretaries”. “Assistants” is a term left over from my days at Queen's Park. May I correct that, please?

The Vice-Chair (Hon. Maurizio Bevilacqua): Duly noted.

I want to thank you so much on behalf of the committee for your input. As you know, we take your presentations extremely seriously and look for the insights you have provided to us today.

Thanks very much. Now we can go to vote.

Take care.

The meeting is adjourned.

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